

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-WM3)**

TO THE HONORABLE MARCY FRIEDMAN:

The undersigned certificateholders (the “Undersigned”) 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-WM3 (the “SACO 2005-WM3 Allocable Share”) identified in the proposed judgment attached as Exhibit A. The Undersigned comprise all certificateholders claiming an interest in the SACO 2005-WM3 Allocable Share in this proceeding, and respectfully urge the Court to enter the attached proposed judgment. As there is no triable issue of fact as to the SACO 2005-WM3 Allocable Share or the entry of this judgment, the Undersigned request that the judgment be entered without further delay so that the SACO 2005-WM3 Allocable Share can promptly be paid to SACO 2005-WM3 certificateholders. The

undersigned have conferred with the Trustee and Payment Administrator, U.S. Bank National Association, which has confirmed that it can implement the proposed judgment and has no objection to it.

Dated: New York, NY  
December 18, 2020

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*Attorneys for U.S. Bank N.A., solely in its  
capacity as NIM Trustee for the Poetic Trusts*

# **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 \_\_\_\_\_, 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 (SACO 2005-  
WM3)**

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, this [proposed] Partial Severance Order and Partial Final Judgment (the “Order”) concerns SACO 2005-WM3 (the “Undisputed Trust”), which is one of the Settlement Trusts subject to the Settlement Agreement; and

WHEREAS, the Undisputed Trust is governed by a Pooling and Servicing Agreement (the “Subject PSA”), pursuant to which U.S. Bank National Association is the payment administrator and trustee (in all such capacities collectively, the “Subject Petitioner”); and

WHEREAS, all capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Petition or the Subject PSA, as applicable;

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; 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 Olifant Fund, Ltd., FFI Fund Ltd., and FYI Ltd. (the “Olifant

Funds”), 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 Advisers, 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, and Western Asset Management Company (each for themselves and, to the extent applicable, as investment managers of funds and accounts, and collectively, the “Institutional Investors”), Poetic Holdings VI LLC and Poetic Holdings VII LLC (“Poetic”), and Nover Ventures, LLC (“Nover”) asserted an interest in the Undisputed Trust; and

WHEREAS, Nover asserted ownership interests in the Undisputed Trust through its interests in another trust structure such as a CDO, re-REMIC, or NIM trust, but not in certificates issued by the Undisputed Trust; and

WHEREAS, Poetic asserted ownership interests in the Undisputed Trust through its interests in a NIM trust (the “NIM Trust”), but not in certificates issued by the Undisputed Trust; and

WHEREAS, on August 7, 2018, the Court granted a motion for summary judgment filed by the Institutional Investors and other investors, thereby dismissing Nover and Poetic as respondents with respect to any Settlement Trust in which they do not hold certificates (NYSCEF No. 471) (the “Standing Decision”); and

WHEREAS, in the Standing Decision, the Court afforded Nover and Poetic an opportunity to substitute into the proceeding the trustee of the CDO, re-REMIC, or NIM trust

structure through which they respectively and separately asserted interests in the Undisputed Trust; and

WHEREAS, on September 14, 2018, the Court so-Ordered a Stipulation and Order Regarding Trustee Substitutions, under which Poetic substituted into this case U.S. Bank National Association, solely in its capacity as Trustee of the NIM Trust (“U.S. Bank as NIM Trustee”) through which Poetic asserted an interest in the Undisputed Trust (NYSCEF No. 514) (the “Trustee Substitution Stipulation”);<sup>1</sup> and

WHEREAS, under the Trustee Substitution Stipulation, Nover did not substitute into this case the trustee of the other trust structure through which Nover asserted its interest in the Undisputed Trust; and

WHEREAS, after giving effect to the Standing Decision and the Trustee Substitution Stipulation, the Olifant Funds, the Institutional Investors, and U.S. Bank as NIM Trustee are the only parties with standing to appear with respect to the Undisputed Trust; and

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” (NYSCEF No. 843); and

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<sup>1</sup> This substitution was effectuated pursuant to and in accordance with a direction and indemnity agreement by and among Poetic and U.S. Bank as NIM Trustee. At the direction of Poetic, U.S. Bank as NIM Trustee agrees and consents to this Order as indicated herein. As set forth in the applicable agreements, U.S. Bank’s capacity in its role as NIM Trustee is separate and distinct from U.S. Bank’s capacity in its role as trustee and payment administrator for the Undisputed Trust, and these separate roles were created at the closing of the transaction. In this proceeding, U.S. Bank has separate counsel for its NIM trustee roles and trustee/payment administrator roles.



WHEREAS, the Olifant Funds, the Institutional Investors, and the NIM Trustee agree and consent to this Order, which resolves the issues for which judicial instructions were sought concerning the administration and distribution of the Allocable Share for the Undisputed Trust (the “Subject Allocable Share”); 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, as used herein, the term “Transfer Month” means the calendar month of the Judgment Entry Date, if the Judgment Entry Date is on or before the eighth calendar date of that month, and otherwise the month immediately following the month of 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 for the Undisputed Trust occurring in the Transfer Month, and

NOW, THEREFORE, on the motion of Patterson Belknap Webb & Tyler LLP, attorneys for the Olifant Funds, Warner Partners, P.C. and Gibbs & Bruns LLP, attorneys for the Institutional Investors, and Perkins Coie LLP, attorneys for U.S. Bank as NIM Trustee, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Petitioner is to (i) cause escrowed assets to be liquidated to cash with a value equal to the Subject Allocable Share plus any investment earnings thereon, and (ii) cause the Subject

Allocable Share and investment earnings thereon to be deposited in the Distribution Account of the Undisputed Trust. From the time of the aforementioned deposit, the amounts so deposited shall be deemed a Subject Allocable Share for the Undisputed 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 Subject Allocable Share not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall be distributed (x) on the Distribution Date for the month the Trailing Interest is received by the Subject Petitioner so long as the Trailing Interest is received on or before the fifteenth day of the month or (y) if the Trailing Interest is received after the fifteenth day of the month, on the Distribution Date for the immediately following month. Any Trailing Interest shall be deemed to be a Subject Allocable Share for the Undisputed Trust, 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 it is further

ORDERED, ADJUDGED and DECREED that the Subject Petitioner shall distribute the Subject Allocable Share to certificateholders of the Undisputed Trust on the AS Distribution Date; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Share for the Undisputed Trust, the Subject Petitioner (i) shall first distribute the Subject 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 to account for the Settlement Payment Write-Up; *provided, however*, that in order to avoid creating any under-collateralization in the

Undisputed Trust following the distribution and administration of the Subject Allocable Share, the applicable certificate principal balances shall be increased by the Settlement Payment Write-Up only up to an amount equal to the Stated Principal Balance of all of the Mortgage Loans in the Undisputed Trust as of the AS Distribution Date (the “Pool Balance”) and any portion of the Settlement Payment Write-Up that exceeds the Pool Balance shall remain unapplied; both (i) and (ii) in a manner consistent with this Order; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Share for the Undisputed Trust, the Subject Petitioner shall (i) apply the Retired Class Provision to prevent the distribution of the Subject Allocable Share to any applicable class of certificates with aggregate certificate principal balances of zero dollars (\$0.00) immediately prior to the AS Distribution Date; and (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) immediately prior to the AS Distribution Date (the “Outstanding Classes”); and it is further

ORDERED, ADJUDGED and DECREED that the instructions in the two paragraphs immediately preceding this paragraph are intended to and shall (i) cause the Subject Allocable Share to first be distributed to any Class A Certificates, Class M Certificates, and/or Class B Certificates that constitute Outstanding Classes (“Outstanding Class A, M, and/or B Certificates”) up to the amount of the certificate principal balances of the Outstanding Class A, M, and/or B Certificates as calculated in a manner consistent with this Order, and (ii) cause any portion of the Subject Allocable Share that remains undistributed following the distribution in the immediately preceding clause to be distributed as Excess Cashflow pursuant to Section 5.04(a)(3) of the Subject PSA; and it is further

ORDERED, ADJUDGED and DECREED that any aspects of the administration and distribution of the Subject Allocable Share not expressly addressed in this Order shall be performed as provided for in the Subject 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 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 Trust, or (iii) any applications to certificate balances (e.g., write-ups) or distributions of payments or funds other than the Subject Allocable Share; and it is further

ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in the Undisputed Trust are barred from asserting claims against the Subject Petitioner with respect to any conduct taken to implement and comply with the terms of this Order and with respect to the Subject Petitioner's administration and distribution of the Subject Allocable Share, 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, the Subject Petitioner 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, to the extent practicable during the COVID-19 public health emergency.

Dated: New York, New York

\_\_\_\_\_, 2020

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Hon. Marcy Friedman, J.S.C.

Judgment signed and entered this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

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Clerk of New York County