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# New York Supreme Court

## Appellate Division—First Department

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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, NA, 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),

**Appellate  
Case No.:  
2020-02716**

*Petitioners,*

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

*(For Continuation of Caption See Inside Cover)*

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### RESPONSIVE BRIEF FOR STRATEGOS CAPITAL MANAGEMENT, LLC

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Capital Management, LLC*

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*Appellants-Respondents*

AEGON USA INVESTMENT MANAGEMENT, LLC, BLACKROCK FINANCIAL MANAGEMENT, INC., CASCADE INVESTMENT, LLC, FEDERAL HOME LOAN BANK OF ATLANTA, FEDERAL HOME LOAN MORTGAGE CORP., FEDERAL NATIONAL MORTGAGE ASSOCIATION, GOLDMAN SACHS ASSET MGMT L.P., VOYA INVESTMENT MGMT LLC, INVESCO ADVISERS, INC., KORE ADVISORS, L.P., METROPOLITAN LIFE INS. CO., PACIFIC INVESTMENT MGMT COMPANY LLC, TEACHERS INS. AND ANNUITY ASSOC. OF AMERICA, TCW GROUP, INC., THRIVENT FINANCIAL FOR LUTHERANS and WESTERN ASSET MGMT. CO.  
(the “Institutional Investors”)

– and –

*Appellants-Respondents*

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 and THE VARIABLE ANNUITY LIFE INSURANCE COMPANY  
(the “AIG Parties”)

– and –

*Appellants-Respondents*

ELLINGTON MANAGEMENT GROUP, L.L.C. and DW PARTNERS LP  
(the “Ellington and DW Parties”)

– and –

*Appellants-Respondents*

TILDEN PARK INVESTMENT MASTER FUND LP on behalf of itself and its advisory clients, TILDEN PARK MANAGEMENT I LLC on behalf of itself and its advisory clients and TILDEN PARK CAPITAL MANAGEMENT LP on behalf of itself and its advisory clients  
(the “Tilden Park Parties”)

– and –

*Appellants-Respondents*

PROPHET MORTGAGE OPPORTUNITIES LP, POETIC HOLDINGS VI LLC, POETIC HOLDINGS VII LLC and U.S. BANK NATIONAL ASSOCIATION, solely in its capacity as Indenture Trustee for the Prophet and Poetic Trusts  
(the “Prophet and Poetic Parties”)

– and –

*Appellant-Respondent*

AMBAC ASSURANCE CORPORATION  
(“Ambac”)

– and –

*Appellants-Respondents*

U.S. BANK NATIONAL ASSOCIATION, as NIM Trustee, U.S. Bank, solely in  
its capacity as Indenture Trustee for the HBK Trusts  
(the “HBK Parties”)

– against –

*Respondent*

NOVER VENTURES, LLC  
 (“Nover”)

– and –

*Respondent*

D.E. SHAW REFRACTION PORTFOLIOS, L.L.C.  
 (“D.E. Shaw”)

– and –

*Respondent*

STRATEGOS CAPITAL MANAGEMENT, LLC  
 (“Strategos”)

– and –

*Respondents*

OLIFANT FUND, LTD., FFI FUND LTD. and FYI LTD.  
 (the “Olifant Parties”)

– and –

*Respondents*

GMO OPPORTUNISTIC INCOME FUND  
 and GMO GLOBAL REAL RETURN  
 (the “GMO Parties”)

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## **TABLE OF AUTHORITIES**

No authorities cited.


Respondent Strategos Capital Management, LLC (“Strategos”), by and through its undersigned counsel, hereby submits its response to oppose the appeal by U.S. Bank National Association, as NIM Trustee, U.S. Bank, solely in its capacity as Indenture Trustee for the HBK Trusts and Prophet Mortgage Opportunities LP, Poetic Holdings VI LLC, Poetic Holdings VII LLC and U.S. Bank National Association, solely in its capacity as Indenture Trustee for the Prophet and Poetic Trusts from the Decision and Order of Supreme Court, entered February 13, 2020 holding that zero balance certificates are entitled to be written up.

### **ARGUMENT**

Strategos joins in the arguments made in Section II of the responsive brief of Tilden Park Investment Master Fund LP, Tilden Park Management I LLC, and Tilden Park Capital Management LP (“Tilden Park Responsive Brief”). For the reasons set forth in the Tilden Park Responsive Brief, this Court should affirm those parts of the Supreme Court's decision and order holding that zero balance certificates are entitled to be written up.

Dated: New York, New York  
December 2, 2020

**DECHERT LLP**

By: 

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**PRINTING SPECIFICATION STATEMENT**

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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Dated: New York, New York  
December 2, 2020

**DECHERT LLP**

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