

New York Supreme Court

Appellate Division—First Department

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)

SUPPLEMENTAL RECORD ON APPEAL

PERKINS COIE LLP
1155 Avenue of the Americas,
22nd Floor
New York, New York 10036
(212) 262-6900
mgilmore@perkinscoie.com

*Attorneys for Appellant-Respondent
U.S. Bank N.A., solely in its
capacity as NIM Trustee for the
Poetic and Prophet Trusts (the
“Prophet and Poetic Parties”)*

PATTERSON BELKNAP WEBB
& TYLER LLP
1133 Avenue of the Americas
New York, New York 10036
(212) 336-2000
pwtomlinson@pbwt.com
dconner@pbwt.com

*Attorneys for Respondents Olifant Fund,
Ltd., FFI Fund Ltd. and FYI Ltd.
(the “Olifant Funds”)*

(For Continuation of Appearances See Inside Cover)

New York County Clerk’s Index No. 657387/17

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”)

KOBRE & KIM LLP
800 Third Avenue
New York, New York 10022
(212) 488-1200
danielle.rose@kobrekim.com

– and –

PERKINS COIE LLP
1155 Avenue of the Americas, 22nd Floor
New York, New York 10036
(212) 262-6900
mgilmore@perkinscoie.com

*Attorneys for Appellant-Respondent U.S.
Bank N.A., solely in its capacity as
NIM Trustee for the HBK Trusts (the
“HBK Parties”)*

AXINN, VELTROP & HARKRIDER LLP
114 West 47th Street
New York, New York 10036
(212) 728-2200
dhawthorne@axinn.com
fgilman@axinn.com

*Attorneys for Appellants-Respondents
Prophet Mortgage Opportunities
LP, Poetic Holdings VI LLC and
Poetic Holdings VII LLC*

BAILEY DUQUETTE P.C.
104 Charlton Street, Suite 1-W
New York, New York 10014
(212) 658-1946
david@baileyduquette.com

– and –

PERRY, JOHNSON, ANDERSON, MILLER
& MOSKOWITZ LLP
438 First Street, 4th Floor
Santa Rosa, California 95401
(707) 525-8800
gradman@perrylaw.net
nicholls@perrylaw.net
allinson@perrylaw.net
*Attorneys for Appellants-Respondents
DW Partners LP and Ellington
Management Group, L.L.C. (the
“Ellington and DW Parties”)*

PATTERSON BELKNAP WEBB
& TYLER LLP
1133 Avenue of the Americas
New York, New York 10036
(212) 336-2000
hjrlicardo@pbwt.com

*Attorneys for Appellant-Respondent
Ambac Assurance Corporation
(“Ambac”)*

MCKOOL SMITH, P.C.
One Manhattan West
395 Ninth Avenue, 50th Floor
New York, New York 10001
(212) 402-9400
gklein@mckoolsmith.com
dschiefelbein@mckoolsmith.com
*Attorneys for Respondent Nover
Ventures, LLC (“Nover”)*

PATTERSON BELKNAP WEBB
& TYLER LLP
1133 Avenue of the Americas
New York, New York 10036
(212) 336-2000
pwtomlinson@pbwt.com
dconner@pbwt.com

*Attorneys for Respondents Olifant Fund,
Ltd., FFI Fund Ltd. and FYI Ltd.
(the “Olifant Parties”)*

QUINN EMANUEL URQUHART
& SULLIVAN, LLP
51 Madison Avenue
New York, New York 10017
(212) 849-7000
kevinreed@quinnemanuel.com

*Attorneys for 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, The Variable
Annuity Life Insurance Company
(the “AIG Parties”)*

SCHINDLER COHEN & HOCHMAN LLP
100 Wall Street, 15th Floor
New York, New York 10005
(212) 277 6330
jhochman@schlaw.com
avinogradov@schlaw.com

– and –

KRAMER LEVIN NAFTALIS
& FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9100
pbentley@kramerlevin.com
apollack@kramerlevin.com

*Attorneys for 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”)*

JONES DAY
250 Vesey Street
New York, New York 10281
(212) 326-3939
nyadava@jonesday.com

– and –

JONES DAY
100 High Street, 21st Floor
Boston, Massachusetts 02110
(617) 960-3939
kkollmeyer@jonesday.com
*Attorneys for Petitioner U.S. Bank
National Association*

ALSTON & BIRD LLP
90 Park Avenue, 15th Floor
New York, New York 10016
(212) 210-9400
alexander.lorenzo@alston.com
*Attorneys for Petitioner Wilmington
Trust, National Association*

HAHN & HESSEN LLP
488 Madison Avenue
New York, New York 10022
(212) 478-7200
znewman@hahn Hessen.com
sgrable@hahn Hessen.com
brose@hahn Hessen.com

– and –

FAEGRE DRINKER BIDDLE
& REATH LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
(612) 766-6000
stephen.mertz@faegredrinker.com
michael.doty@faegredrinker.com
julie.landy@faegredrinker.com
*Attorneys for Petitioner Wells Fargo
Bank, National Association*

GOULSTON & STORRS PC
885 Third Avenue, 18th Floor
New York, New York 10022
(212) 878-6900
cjacob@goulstonstorrs.com
*Attorneys for Respondent D.E. Shaw
Refraction Portfolios, L.L.C.
("D.E. Shaw")*

DAVIS POLK & WARDELL LLP
450 Lexington Avenue
New York, New York 10017
(212) 450-4000
joshua.sturm@davispolk.com
*Attorneys for Respondent GMO
Opportunistic Income Fund and
GMO Global Real Return
(the "GMO Parties")*

DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, New York 10036
(212) 698-3500
mauricio.espana@dechert.com
*Attorneys for Respondent Strategos
Capital Management, LLC
("Strategos")*

MAYER BROWN LLP
1221 Avenue of the Americas
New York, New York 10020
(212) 506-2500
jatamian@mayerbrown.com
*Attorneys for Petitioner HSBC Bank
USA, N.A.*

MAYER BROWN LLP
1221 Avenue of the Americas
New York, New York 10020
(212) 506-2500
mingber@mayerbrown.com
choupt@mayerbrown.com
jrussell@mayerbrown.com
*Attorneys for Petitioners The Bank of
New York Mellon and The Bank of
New York Mellon Trust
Company, NA*

WARNER PARTNERS, P.C
950 Third Avenue, 32nd Floor
New York, New York 10022
(212) 593-8000
kwarner@warnerpc.com

– and –

GIBBS & BRUNS LLP
1100 Louisiana, Suite 5300
Houston, Texas 77002
(713) 650-8805
dsheeren@gibbsbruns.com

Attorneys for 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, Western Asset Mgmt. Co.
(the “Institutional Investors”)

TABLE OF CONTENTS

	Page
Excerpts from Pooling and Servicing Agreement ("PSA") for BSABS 2005-AQ2	SR-1
Excerpts from PSA for BSABS 2006-IM1	SR-4
Excerpts from PSA for SACO 2005-WM3.....	SR-6
Certification Pursuant to CPLR 2105	SR-9

EXCERPTS FROM POOLING AND SERVICING AGREEMENT ("PSA")
FOR BSABS 2005-AQ2 [SR- 1 - SR- 3]

11/28/2020

https://www.sec.gov/Archives/edgar/data/1345041/000088237705003556/d401865_ex4-1.htm

EX-4.1 2 d401865_ex4-1.htm POOLING AND SERVICING AGREEMENT
BEAR STEARNS ASSET BACKED SECURITIES I LLC,

Depositor,

EMC MORTGAGE CORPORATION,

Seller and Master Servicer,

and

LASALLE BANK NATIONAL ASSOCIATION,

Trustee

POOLING AND SERVICING AGREEMENT

Dated as of November 1, 2005

BEAR STEARNS ASSET BACKED SECURITIES I TRUST 2005-AQ2
ASSET-BACKED CERTIFICATES, SERIES 2005-AQ2

Section 10.02 Final Distribution on the Certificates.

If on any Determination Date, (i) the Master Servicer determines that there are no Outstanding Mortgage Loans and no other funds or assets in the Trust Fund other than the funds in the Protected Account, the Master Servicer shall direct the Trustee to send a final distribution notice promptly to each Certificateholder or (ii) the Trustee determines that a Class of Certificates shall be retired after a final distribution on such Class, the Trustee shall notify the Certificateholders within five (5) Business Days after such Determination Date that the final distribution in retirement of such Class of Certificates is scheduled to be made on the immediately following Distribution Date. Any final distribution made pursuant to the immediately preceding sentence will be made only upon presentation and surrender of the related Certificates at the Corporate Trust Office of the Trustee. If the Majority Class CE Certificateholder or the Master Servicer, as applicable, elects to terminate the Trust Fund pursuant to Section 10.01, at least 20 days prior to the date notice is to be mailed to the Certificateholders, the Majority Class CE Certificateholder or the Master Servicer, as applicable, shall notify the Depositor and the Trustee of the date the Majority Class CE Certificateholder or the Master Servicer, as applicable, intends to terminate the Trust Fund. The Master Servicer shall remit the Mortgage Loan Purchase Price to the Trustee on the Business Day prior to the Distribution Date for such Optional Termination by the Majority Class CE Certificateholder or the Master Servicer, as applicable.

Notice of any termination of the Trust Fund, specifying the Distribution Date on which Certificateholders may surrender their Certificates for payment of the final distribution and cancellation, shall be given promptly by the Trustee by letter to Certificateholders mailed not later than two Business Days after the Determination Date in the month of such final distribution. Any such notice shall specify (a) the Distribution Date upon which final distribution on the Certificates will be made upon presentation and surrender of Certificates at the office therein designated, (b) the amount of such final distribution, (c) the location of the office or agency at which such presentation and surrender must be made and (d) that the Record Date otherwise applicable to such Distribution Date is not applicable, distributions being made only upon presentation and surrender of the Certificates at the office therein specified. The Trustee will give such notice to each Rating Agency at the time such notice is given to Certificateholders.

In the event such notice is given, the Master Servicer shall cause all funds in the Protected Account to be remitted to the Trustee for deposit in the Distribution Account on the Business Day prior to the applicable Distribution Date in an amount equal to the final distribution in respect of the Certificates. Upon such final deposit with respect to the Trust Fund and the receipt by the Trustee of a Request for Release therefor, the Trustee or the Custodian shall promptly release to EMC as applicable the Mortgage Files for the Mortgage Loans and the Trustee shall execute and deliver any documents prepared and delivered to it which are necessary to transfer any REO Property.

Upon presentation and surrender of the Certificates, the Trustee shall cause to be distributed to Certificateholders of each Class the amounts allocable to such Certificates held in the Distribution Account in the order and priority set forth in Section 5.04 hereof on the final Distribution Date and in proportion to their respective Percentage Interests.

In the event that any affected Certificateholders shall not surrender Certificates for cancellation within six months after the date specified in the above mentioned written notice, the Trustee shall give a second written notice to the remaining Certificateholders to surrender their Certificates for cancellation and receive the final distribution with respect thereto. If within six months after the second notice all the applicable Certificates shall not have been surrendered for cancellation, the Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining Certificateholders concerning surrender of their Certificates, and the cost thereof shall be paid out of the funds and other assets that remain a part of the Trust Fund. If within one year after the second notice all Certificates shall not have been surrendered for cancellation, the Class R Certificateholders shall be entitled to all unclaimed funds and other assets of the Trust Fund that remain subject hereto.

Section 10.03 Additional Termination Requirements.

(a) Upon exercise by the Majority Class CE Certificateholder or the Master Servicer, as applicable, of its purchase option as provided in Section 10.01, the Trust Fund shall be terminated in accordance with the following additional requirements, unless the Trustee has been supplied with an Opinion of Counsel addressed to the Trustee, at the expense of the Majority Class CE Certificateholder or the Master Servicer, as applicable, to the effect that the failure of the Trust Fund to comply with the requirements of this Section 10.03 will not (i) result in the imposition of taxes on "prohibited transactions" of a REMIC, or (ii) cause a REMIC to fail to qualify as a REMIC at any time that any Certificates are outstanding:

(1) The Majority Class CE Certificateholder or the Master Servicer, as applicable, shall establish a 90-day liquidation period and notify the Trustee thereof, and the Trustee shall in turn specify the first day of such period in a statement attached to the tax return for each of REMIC I, REMIC II, REMIC III, REMIC IV, REMIC V and REMIC VI pursuant to Treasury Regulation Section 1.860F-1. The Majority Class CE Certificateholder or the Master Servicer, as applicable, shall satisfy all the requirements of a qualified liquidation under Section 860F of the Code and any regulations thereunder, as evidenced by an Opinion of Counsel obtained at the expense of the Majority Class CE Certificateholder or the Master Servicer, as applicable;

(2) During such 90-day liquidation period, and at or prior to the time of making the final payment on the Certificates, the Trustee shall sell all of the assets of REMIC I for cash; and

(3) At the time of the making of the final payment on the Certificates, the Trustee shall distribute or credit, or cause to be distributed or credited, to the Holders of the Residual Certificates all cash on hand (other than cash retained to meet claims), and REMIC I shall terminate at that time.

(b) By their acceptance of the Certificates, the Holders thereof hereby authorize the adoption of a 90-day liquidation period and the adoption of a plan of complete liquidation for REMIC I, REMIC II, REMIC III, REMIC IV, REMIC V and REMIC VI, which authorization shall be binding upon all successor Certificateholders.

EXCERPTS FROM PSA FOR BSABS 2006-IM1 [SR-4 - SR-5]

11/28/2020

Unassociated Document

EX-4.1 3 d496155_ex4-1.htm POOLING AND SERVICING AGREEMENT

BEAR STEARNS ASSET BACKED SECURITIES I LLC,
Depositor,

EMC MORTGAGE CORPORATION,
Sponsor,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
Master Servicer and Securities Administrator,

and

U.S. BANK NATIONAL ASSOCIATION,
Trustee

POOLING AND SERVICING AGREEMENT

Dated as of April 1, 2006

BEAR STEARNS ASSET BACKED SECURITIES I TRUST 2006-IM1

ASSET-BACKED CERTIFICATES, SERIES 2006-IM1

11/28/2020

Unassociated Document

ARTICLE XI

TERMINATION

Section 11.01 Termination upon Liquidation or Repurchase of all Mortgage Loans.

Subject to Section 11.03, the obligations and responsibilities of the Depositor, the Master Servicer, the Securities Administrator and the Trustee created hereby with respect to the Trust Fund shall terminate upon the earlier of (a) the exercise of the Majority Class CE Certificateholder (or its designee) or the Master Servicer, as applicable, of its right to repurchase all of the Mortgage Loans (and REO Properties) remaining in the Trust Fund at a price (the "Mortgage Loan Purchase Price") equal to the sum of (i) 100% of the Stated Principal Balance of each Mortgage Loan (other than in respect of REO Property), (ii) accrued interest thereon at the applicable Mortgage Rate to, but not including, the first day of the month of such purchase, (iii) the appraised value of any REO Property in the Trust Fund (up to the Stated Principal Balance of the related Mortgage Loan), such appraisal to be conducted by an appraiser mutually agreed upon by the Master Servicer and the Trustee, and (iv) unreimbursed out-of-pocket costs of the Servicers or the Master Servicer, including unreimbursed servicing advances and the principal portion of any unreimbursed Advances, made on the Mortgage Loans prior to the exercise of such repurchase right, (v) any unreimbursed costs and expenses of the Trustee and the Securities Administrator payable pursuant to Section 10.05, (vi) any Swap Termination Payment (which shall include any Net Swap Payment payable to the Swap Provider which remains unpaid or which is due to the exercise of such option (the "Swap Optional Termination Payment") and (b) the later of (i) the maturity or other liquidation (or any Advance with respect thereto) of the last Mortgage Loan remaining in the Trust Fund and the disposition of all REO Property and (ii) the distribution to Certificateholders of all amounts required to be distributed to them pursuant to this Agreement, as applicable. In no event shall the trusts created hereby continue beyond the earlier of (i) the expiration of 21 years from the death of the last survivor of the descendants of Joseph P. Kennedy, the late Ambassador of the United States to the Court of St. James, living on the date hereof and (ii) the Latest Possible Maturity Date.

The right to repurchase all Mortgage Loans and REO Properties by the Majority Class CE Certificateholder pursuant to clause (a) in the preceding paragraph shall be conditioned upon the Stated Principal Balance of all of the Mortgage Loans in the Trust Fund, at the time of any such repurchase, aggregating 10% or less of the aggregate Cut-off Date Principal Balance of all of the Mortgage Loans. If the Majority Class CE Certificateholder does not exercise this option, the Master Servicer has the right to repurchase all Mortgage Loans and REO Properties pursuant to clause (a) in the preceding paragraph, conditioned upon the Stated Principal Balance of all of the Mortgage Loans in the Trust Fund, at the time of any such repurchase, aggregating 5% or less of the aggregate Cut-off Date Principal Balance of all of the Mortgage Loans.

Only an amount equal to the Mortgage Loan Purchase Price less any Swap Optional Termination Payment (the "REMIC Termination Payment") shall be made available for distribution to the Regular Certificates. The Swap Optional Termination Payment shall be withdrawn by the Securities Administrator from the Distribution Account and remitted to the Supplemental Interest Trust to be paid in accordance with Section 3.21(c). The Swap Optional Termination Payment shall not be part of any REMIC and shall not be paid into any account which is part of any REMIC.

Section 11.02 Final Distribution on the Certificates.

If on any Determination Date, (i) the Master Servicer determines that there are no Outstanding Mortgage Loans and no other funds or assets in the Trust Fund other than the funds in the Distribution Account, the Master Servicer shall direct the Securities Administrator to send a final distribution notice promptly to each Certificateholder or (ii) the Securities Administrator determines that a Class of Certificates shall be retired after a final distribution on such Class, the Securities Administrator shall notify the Certificateholders within five (5) Business Days after such Determination Date that the final distribution in retirement of such Class of Certificates is scheduled to be made on the immediately following Distribution Date. Any final distribution made pursuant to the immediately preceding sentence will be made only upon presentation and surrender of the related Certificates at the Corporate Trust Office of the Securities Administrator. If the Majority Class CE Certificateholder or the Master Servicer, as applicable, elects to terminate the Trust Fund pursuant to Section 11.01, at least 20 days prior to the date notice is to be mailed to the Certificateholders, the Majority Class CE Certificateholder, the Swap Provider or the Master Servicer, as applicable, shall notify the Depositor, the Securities Administrator and the Trustee of the date the Majority Class CE Certificateholder or the Master Servicer, as applicable, intends to terminate the Trust Fund. The Master Servicer shall remit the Mortgage Loan Purchase Price to the Securities Administrator on the Business Day prior to the Distribution Date for such Optional Termination by the Majority Class CE Certificateholder or the Master Servicer, as applicable.

Notice of any termination of the Trust Fund, specifying the Distribution Date on which Certificateholders may surrender their Certificates for payment of the final distribution and cancellation, shall be given promptly by the Securities Administrator by letter to Certificateholders mailed not later than two Business Days after the Determination Date in the month of such final distribution. Any such notice shall specify (a) the Distribution Date upon which final distribution on the Certificates will be made upon presentation and surrender of Certificates at the office therein designated, (b) the amount of such final distribution, (c) the location of the office or agency at which such presentation and surrender must be made and (d) that the Record Date otherwise applicable to such Distribution Date is not applicable, distributions being made only upon presentation and surrender of the Certificates at the office therein specified. The Securities Administrator will give such notice to each Rating Agency at the time such notice is given to Certificateholders.

In the event such notice is given, the Master Servicer shall remit all funds in the Distribution Account to the Securities Administrator for deposit in the Distribution Account on the Business Day prior to the applicable Distribution Date in an amount equal to the final distribution in respect of the Certificates. Upon such final deposit with respect to the Trust Fund and the receipt by the Custodian of a Request for Release therefor, the Custodian shall promptly release to the Master Servicer, as applicable the Mortgage Files for the Mortgage Loans and the Trustee shall execute and deliver any documents prepared and delivered to it which are necessary to transfer any REO Property.

Upon presentation and surrender of the Certificates, the Securities Administrator shall distribute to Certificateholders of each Class the amounts allocable to such Certificates held in the Distribution Account in the order and priority set forth in Section 5.04 hereof on the final Distribution Date and in proportion to their respective Percentage Interests.

In the event that any affected Certificateholders shall not surrender Certificates for cancellation within six months after the date specified in the above mentioned written notice, the Securities Administrator shall give a second written notice to the remaining Certificateholders to surrender their Certificates for cancellation and receive the final distribution with respect thereto. If within six months after the second notice all the applicable Certificates shall not have been surrendered for cancellation, the Securities Administrator may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining Certificateholders concerning surrender of their Certificates, and the cost thereof shall be paid out of the funds and other assets that remain a part of the Trust Fund. If within one year after the second notice all Certificates shall not have been surrendered for cancellation, the Class R Certificateholders shall be entitled to all unclaimed funds and other assets of the Trust Fund that remain subject hereto.

Section 11.03 Additional Termination Requirements.

(a) Upon exercise by the Majority Class CE Certificateholder or the Master Servicer, as applicable, of its purchase option as provided in Section 11.01, the Trust Fund shall be terminated in accordance with the following additional requirements, unless the Trustee and the Securities Administrator have been supplied with an Opinion of Counsel addressed to the Trustee and the Securities Administrator at the expense of the Majority Class CE Certificateholder or the Master Servicer, as applicable, to the effect that the failure of the Trust Fund to comply with the requirements of this Section 11.03 will not (i) result in the imposition of taxes on "prohibited transactions" of a REMIC, or (ii) cause a REMIC to fail to qualify as a REMIC at any time that any Certificates are outstanding:

(1) The Majority Class CE Certificateholder or the Master Servicer, as applicable, shall establish a 90-day liquidation period and notify the Securities Administrator thereof, and the Securities Administrator shall in turn specify the first day of such period in a statement attached to the tax return for each of REMIC I, REMIC II, REMIC III, REMIC IV, REMIC V and REMIC VI pursuant to Treasury Regulation Section 1.860F-1. The Majority Class CE Certificateholder or the Master Servicer, as applicable, shall satisfy all the requirements of a qualified liquidation under Section 860F of the Code and any regulations thereunder, as evidenced by an Opinion of Counsel addressed to the Securities Administrator and the Trustee obtained at the expense of the Majority Class CE Certificateholder or the Master Servicer, as applicable;

(2) During such 90-day liquidation period, and at or prior to the time of making the final payment on the Certificates, the Securities Administrator on behalf of the Trustee, shall sell all of the assets of REMIC I for cash; and

(3) At the time of the making of the final payment on the Certificates, the Securities Administrator shall distribute or credit, or cause to be distributed or credited, to the Holders of the Residual Certificates all cash on hand (other than cash retained to meet claims), and REMIC I shall terminate at that time.

(b) By their acceptance of the Certificates, the Holders thereof hereby authorize the adoption of a 90-day liquidation period and the adoption of a plan of complete liquidation for REMIC I, REMIC II, REMIC III, REMIC IV, REMIC V and REMIC VI, which authorization shall be binding upon all successor Certificateholders.

EXCERPTS FROM PSA FOR SACO 2005-WM3 [SR-6 - SR-8]

11/28/2020

https://www.sec.gov/Archives/edgar/data/1342887/000088237705003251/d391525_exh4-1.htm

EX-4.1 2 d391525_exh4-1.htm POOLING AND SERVICING AGREEMENT

EXHIBIT 4.1

BEAR STEARNS ASSET BACKED SECURITIES I LLC,

Depositor,

EMC MORTGAGE CORPORATION,

Seller and Master Servicer,

and

LASALLE BANK NATIONAL ASSOCIATION,

Trustee

POOLING AND SERVICING AGREEMENT

Dated as of October 1, 2005

SACO I TRUST 2005-WM3

MORTGAGE-BACKED CERTIFICATES, SERIES 2005-WM3

ARTICLE X

TERMINATION

Section 10.01 Termination upon Liquidation or Repurchase of all Mortgage Loans.

Subject to Section 10.03, the obligations and responsibilities of the Depositor, the Master Servicer, the Seller and the Trustee created hereby with respect to the Trust Fund shall terminate upon the earlier of (a) the purchase by the Majority Class C Certificateholder (or its designee) or the Master Servicer, as applicable, of all of the Mortgage Loans (and REO Properties) remaining in the Trust Fund at a price (the "Mortgage Loan Purchase Price") equal to the sum of (i) 100% of the Stated Principal Balance of each Mortgage Loan (other than in respect of REO Property), (ii) accrued interest thereon at the applicable Mortgage Rate to, but not including, the first day of the month of such purchase, (iii) the appraised value of any REO Property in the Trust Fund (up to the Stated Principal Balance of the related Mortgage Loan), such appraisal to be conducted by an appraiser mutually agreed upon by the Master Servicer and the Trustee, (iv) unreimbursed out-of pocket costs of the Master Servicer, including unreimbursed servicing advances and the principal portion of any unreimbursed Advances, made on the Mortgage Loans prior to the exercise of such repurchase right and (v) any unreimbursed costs and expenses of the Trustee payable pursuant to Section 9.05, and (b) the later of (i) the maturity or other liquidation (or any Advance with respect thereto) of the last Mortgage Loan remaining in the Trust Fund and the disposition of all REO Property and (ii) the distribution to Certificateholders of all amounts required to be distributed to them pursuant to this Agreement, as applicable. In no event shall the trusts created hereby continue beyond the earlier of (i) the expiration of 21 years from the death of the last survivor of the descendants of Joseph P. Kennedy, the late Ambassador of the United States to the Court of St. James, living on the date hereof and (ii) the Latest Possible Maturity Date.

The right to repurchase all Mortgage Loans and REO Properties by the Majority Class C Certificateholder pursuant to clause (a) in the preceding paragraph shall be conditioned upon the Stated Principal Balance of all of the Mortgage Loans in the Trust Fund, at the time of any such repurchase, aggregating 20% or less of the aggregate Cut-off Date Principal Balance of all of the Mortgage Loans.

Section 10.02 Final Distribution on the Certificates.

If on any Determination Date, (i) the Master Servicer determines that there are no Outstanding Mortgage Loans and no other funds or assets in the Trust Fund other than the funds in the Protected Account, the Master Servicer shall direct the Trustee to send a final distribution notice promptly to each Certificateholder or (ii) the Trustee determines that a Class of Certificates shall be retired after a final distribution on such Class, the Trustee shall notify the Certificateholders within five (5) Business Days after such Determination Date that the final distribution in retirement of such Class of Certificates is scheduled to be made on the immediately following Distribution Date. Any final distribution made pursuant to the immediately preceding sentence will be made only upon presentation and surrender of the related Certificates at the Corporate Trust Office of the Trustee. If the Majority Class C Certificateholder or the Master Servicer, as applicable, elects to terminate the Trust Fund

11/28/2020

https://www.sec.gov/Archives/edgar/data/1342887/000088237705003251/d391525_exh4-1.htm

pursuant to Section 10.01, at least 20 days prior to the date notice is to be mailed to the Certificateholders, the Majority Class C Certificateholder or the Master Servicer, as applicable, shall notify the Depositor and the Trustee of the date the Majority Class C Certificateholder or the Master Servicer, as applicable, intends to terminate the Trust Fund. The Master Servicer shall remit the Mortgage Loan Purchase Price to the Trustee on the Business Day prior to the Distribution Date for such Optional Termination by the Majority Class C Certificateholder or the Master Servicer, as applicable.

Notice of any termination of the Trust Fund, specifying the Distribution Date on which Certificateholders may surrender their Certificates for payment of the final distribution and cancellation, shall be given promptly by the Trustee by letter to Certificateholders mailed not later than two Business Days after the Determination Date in the month of such final distribution. Any such notice shall specify (a) the Distribution Date upon which final distribution on the Certificates will be made upon presentation and surrender of Certificates at the office therein designated, (b) the amount of such final distribution, (c) the location of the office or agency at which such presentation and surrender must be made and (d) that the Record Date otherwise applicable to such Distribution Date is not applicable, distributions being made only upon presentation and surrender of the Certificates at the office therein specified. The Trustee will give such notice to each Rating Agency at the time such notice is given to Certificateholders.

In the event such notice is given, the Master Servicer shall cause all funds in the Protected Account to be remitted to the Trustee for deposit in the Distribution Account on the Business Day prior to the applicable Distribution Date in an amount equal to the final distribution in respect of the Certificates. Upon such final deposit with respect to the Trust Fund and the receipt by the Trustee of a Request for Release therefor, the Trustee or the Custodian shall promptly release to EMC as applicable the Mortgage Files for the Mortgage Loans and the Trustee shall execute and deliver any documents prepared and delivered to it which are necessary to transfer any REO Property.

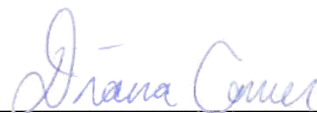
Upon presentation and surrender of the Certificates, the Trustee shall cause to be distributed to Certificateholders of each Class the amounts allocable to such Certificates held in the Distribution Account in the order and priority set forth in Section 5.04 hereof on the final Distribution Date and in proportion to their respective Percentage Interests.

In the event that any affected Certificateholders shall not surrender Certificates for cancellation within six months after the date specified in the above mentioned written notice, the Trustee shall give a second written notice to the remaining Certificateholders to surrender their Certificates for cancellation and receive the final distribution with respect thereto. If within six months after the second notice all the applicable Certificates shall not have been surrendered for cancellation, the Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining Certificateholders concerning surrender of their Certificates, and the cost thereof shall be paid out of the funds and other assets that remain a part of the Trust Fund. If within one year after the second notice all Certificates shall not have been surrendered for cancellation, the Class R Certificateholders shall be entitled to all unclaimed funds and other assets of the Trust Fund that remain subject hereto.

CERTIFICATION PURSUANT TO CPLR § 2105

I, Diana M. Conner, an attorney of the firm of Patterson Belknap Webb & Tyler LLP, attorneys for Respondents Olifant Fund, Ltd., FFI Fund Ltd. and FYI Ltd. (the “Olifant Parties”), hereby certify pursuant to Section 2105 of the CPLR that the foregoing papers constituting the Supplemental Record on Appeal have been personally compared by me with the originals filed herein and have been found to be true and complete copies of said originals and the whole thereof, all of which are now on file in the office of the Clerk of the County of New York.

Dated: December 2, 2020



Attorney for Respondents Olifant
Fund, Ltd., FFI Fund Ltd. and FYI Ltd.
(the “Olifant Parties”)