

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 30th day of November, 2023

PRESENT : Hon. Melissa A. Crane, Justice.

In the matter of the application of

WELLS FARGO BANK, NATIONAL ASSOCIATION, U.S. BANK NATIONAL ASSOCIATION, U.S. BANK TRUST COMPANY, 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~~ **FINAL JUDGMENT AND ORDER FOR 20 TRUSTS THAT REMAIN DISPUTED BY CERTAIN PARTIES (20 DISPUTED TRUSTS)**

MS 19

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] Final Judgment and Order (the "Order") concerns the distribution (payment) of the Subject Allocable Shares (as defined below) as if they were

Subsequent Recoveries pursuant to the Settlement Agreement and their associated allocation (write-ups, if any) with respect to the 20 Settlement Trusts identified in Exhibit A hereto (the “Disputed Subject Trusts”), in accordance with the Merits Ruling, as defined below; and

WHEREAS, all capitalized terms used and not otherwise defined in this Order 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, 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 2017 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 2017 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 2017 Orders; and

WHEREAS, under the December 2017 Orders, the Court directed the Petitioners to provide notice of this proceeding pursuant to the notice program described in the December 2017 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

¹ Additionally, the term “certificate” as used herein refers to certificates, notes, or other applicable securities.

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

WHEREAS, the following are the only remaining parties with standing to appear with respect to one or more Disputed Subject Trusts: 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 Advisors, 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"); 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; Nover Ventures, LLC; 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, Ellington Management Group, L.L.C.; U.S. Bank National Association, solely in its capacity as Indenture Trustee for certain NIM Trusts holding direct interests in the HBK Trusts and

solely at the direction of HBK Master Fund L.P.²; U.S. Bank National Association, solely in its capacity as Indenture Trustee for certain NIM Trusts, and solely at the direction of Poetic Holdings VI LLC, Poetic Holdings VII LLC, and Prophet Mortgage Opportunities Fund LLP; DW Partners LP; and Strategos Capital Management, LLC (collectively, “Interested Persons”); and

WHEREAS, on February 13, 2020, the Court issued a Decision and Order (NYSCEF No. 843) (the “Merits Ruling”) concerning settlement payment administration and distribution issues for the Settlement Trusts, including the Disputed Subject Trusts; and

WHEREAS, the Merits Ruling was affirmed by the First Department, Appellate Division on August 19, 2021; and

WHEREAS, on April 26, 2022, the New York Court of Appeals denied motions seeking permission to appeal to the Court of Appeals on the grounds that “the order sought to be appealed from [did] not finally determine the proceeding;” and

WHEREAS, the Court of Appeals subsequently denied motions seeking reargument with respect to those motions for permission to appeal on September 15, 2022; and

WHEREAS, the outcome of any further appellate proceedings may impact the administration and distribution of Allocable Shares for the Disputed Subject Trusts pursuant to the Settlement Agreement (the “Subject Allocable Shares”); and

WHEREAS, this Order is not a waiver of any Interested Person’s rights to take an appeal from, or seek further review of, this Order; and

² As set forth in the applicable agreements, U.S. Bank’s capacity in its roles as NIM Trustee is separate and distinct from U.S. Bank’s capacity in its role as Trustee and/or Payment Administrator for the Settlement Trusts, and these separate roles were created at the closing of the applicable transactions. In this proceeding, U.S. Bank has separate counsel for its NIM Trustee roles and Trustee/Payment Administrator roles.

WHEREAS, in the Affirmation of Clay J. Pierce in Partial Opposition to the Institutional Investors' Order to Show Cause Seeking Entry of Final Judgment and Order for 37 Trusts (NYSCEF No. 988) (the "Wells Fargo Objection"), Wells Fargo Bank, National Association ("Wells Fargo") raised issues concerning the "Cross-Over Date" and regarding allocation in connection with distributions in some of the Settlement Trusts (the "Cross-Over Date Issue" and the "Allocation Issue")³; and

WHEREAS, the provisions in the relevant Governing Agreements related to the Cross-Over Date Issue and the Allocation Issue for which Wells Fargo sought instruction in the Wells Fargo Objection are present in the Governing Agreements for the two Disputed Subject Trusts identified in Exhibit A hereto for which Wells Fargo acts as Payment Administrator and/or Trustee (the "Wells Fargo Trusts"); and

WHEREAS, the Interested Persons holding interest in the Wells Fargo Trusts have informed Wells Fargo that they are unable to reach a negotiated resolution of the Cross-Over Date Issue, and that a dispute remains regarding how Wells Fargo should treat the Cross-Over Date Issue in connection with the distribution of the Allocable Shares and normal course distributions; and

WHEREAS, the Interested Persons holding interest in the Wells Fargo Trusts have requested that this Order be entered notwithstanding the parties' continued dispute regarding the Cross-Over Date Issue; and

³ The Interested Persons subsequently negotiated a resolution of the issues for the Settlement Trusts which were the subject of the Wells Fargo Objection, and the Court entered the Final Judgment and Order Concerning 24 Trusts (NYSCEF No. 1043) and the Amended Final Judgment and Order Concerning 24 Trusts (NYSCEF No. 1045), which resolved the Cross-Over Date Issue and Allocation Issue in those Settlement Trusts.

WHEREAS, the Interested Persons holding interest in the Wells Fargo Trusts have indicated that they will not oppose or otherwise challenge Wells Fargo's right to later seek instruction in a separate proceeding regarding the Cross-Over Date Issue or other unforeseen consequences regarding the implementation of the Merits Ruling and this Order, including with respect to the distribution of the Allocable Shares and normal course distributions; and

WHEREAS, the Interested Persons holding interest in the Wells Fargo Trusts agree that they will not seek sanctions or any other relief against Wells Fargo based on it initiating a separate proceeding on the Cross-Over Date Issue raised in the Wells Fargo Objection or on any other unforeseen consequences that may arise due to the implementation of the Merits Ruling or this Order; and

WHEREAS, as identified in Exhibit A hereto, the following Petitioners have contractual roles with respect to the Disputed Subject Trusts: The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A. (collectively, "BNYM"), U.S. Bank National Association ("USBNA"), U.S. Bank Trust Company, National Association ("USBTC"), Wilmington Trust, National Association ("Wilmington"), HSBC Bank USA, N.A., and Wells Fargo are the trustees, successor trustees, and/or indenture trustees for the Disputed Subject Trusts (in such capacities, collectively, the "Subject Trustees") and Wells Fargo, USBNA, and USBTC are the securities administrator, paying agent, and/or calculation agent for the Disputed Subject Trusts (in such capacities, the "Subject Payment Administrator") (the Subject Payment Administrator and the Subject Trustees collectively, the "Subject Petitioners"); and

WHEREAS, the "Designated Date" means the first date upon which both the Merits Ruling *and* this Order become fully non-appealable following the exhaustion of all appeals and/or expiration of time to appeal or to seek further review, including any appeal to the

Appellate Division, First Department and any appeal or motion for permission to appeal to the New York Court of Appeals; and

WHEREAS, a “Reversal Ruling” means any judgment, order, or other ruling that reverses, denies, or otherwise alters or modifies, in whole or in part, the terms of this Order or the Merits Ruling (any such judgment, order, or other ruling, a “Reversal Ruling”); and

WHEREAS, for the avoidance of doubt, the Designated Date shall be deemed to not have occurred if a Reversal Ruling is issued; and

WHEREAS, as used herein the term “Transfer Month” means the second month after the month in which the Designated Date occurs; 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 Disputed Subject Trusts occurring in the Transfer Month; and

unopposed
NOW, THEREFORE, on the [^]motion of the Subject Petitioners, it is hereby

1. ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Trustees (each with respect to the Disputed Subject 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 investment earnings thereon, and (ii) cause the Subject Allocable Shares and investment earnings thereon to be deposited in the respective distribution accounts of the Disputed Subject Trusts. From the time of the aforescribed deposit, the amount so deposited shall be deemed the Subject Allocable Shares for the

Disputed Subject Trusts for all purposes under the Settlement Agreement and this Order;
and it is further

2. 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 Disputed Subject 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, on the Distribution Date for the immediately following month or (ii) for Disputed Subject 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 Subject 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 it is further

3. ORDERED, ADJUDGED and DECREED that the Subject Payment Administrator shall administer and distribute the Subject Allocable Shares for the Disputed Subject Trusts on the AS Distribution Date; and it is further

4. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for the Disputed Subject Trusts in Exhibit B hereto, the Subject Payment Administrator (i) shall first increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up or a portion thereof (the "Written-Up Certificate Principal Balances"), and, after applying the Settlement Payment Write-Up, (ii) shall then distribute the Subject Allocable Shares to certificateholders based on the Written-Up Certificate Principal Balances, in each of the cases of (i) and (ii) above in a manner consistent with the other terms of this Order; and it is further

5. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Disputed Subject Trust included in Exhibit C 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 instructions for writing up certificates in the applicable Governing Agreement Write-Up Instructions as construed by the Merits Ruling, including by applying language in the Governing Agreement Write-Up Instructions that the Merits Ruling construed as rendering certain classes of certificates ineligible to be increased by the Settlement Payment Write-Up; and it is further

6. ORDERED, ADJUDGED, and DECREED that in administering and distributing the Subject Allocable Shares for each Disputed Subject Trust included in Exhibit D hereto, the

Subject Payment Administrator 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, which generally provide for certificate write-ups to be performed according to “payment priority,” “order of seniority,” or “sequentially,” and the Subject Payment Administrator shall not use the Settlement Agreement Write Up Instruction, which generally provides for write ups to be performed in the reverse order in which Realized Losses were allocated; and it is further

7. ORDERED, ADJUDGED, and DECREED that in administering and distributing the Subject Allocable Shares for each Disputed Subject Trust included in Exhibit E hereto, the Subject Payment Administrator shall increase the certificate principal balances for the applicable classes of certificates eligible to be written up consistent with this Order in the amount of the Settlement Payment Write-Up using the applicable Governing Agreement Write-Up Instructions. Where the Governing Agreements provide for certificate write-ups to be performed according to “payment priority,” “order of seniority,” or “sequentially,” the terms “payment priority,” “order of seniority,” or “sequentially” shall be construed by the Subject Payment Administrator to mean in the reverse order in which Realized Losses have been allocated under the Governing Agreement, as it has construed such write-up terms historically. The provisions of this paragraph were not expressly addressed by, and thus do not implement or modify, the Merits Ruling, and accordingly this paragraph is strictly limited to, and will have no application beyond, the distribution of the Allocable Shares to the trusts in Exhibit E; and it is further

8. ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Disputed Subject Trust included in Exhibit F hereto, the

Subject Payment Administrator shall write up classes of certificates with aggregate certificate principal balances that were reduced to zero dollars (\$0.00) prior to the AS Distribution Date ("Zero Balance Classes") in the amounts authorized by the Governing Agreements for the Trusts, whereby (a) if the Write-Up First Method is required by the Governing Agreement, the Zero Balance Classes will be entitled to receive the Settlement Payment to the extent of the amounts authorized by the Governing Agreements, and/or (b) if the Pay First Method is required, or if the Write-Up First Method is required but other classes of certificates receive the Settlement Payment, the Zero Balance Classes will be entitled to receipt of future principal and interest distributions solely by virtue of their written-up certificate balances, where applicable, to the extent of the amounts authorized by the Governing Agreements (and without considering such written-up Zero Balance Classes to be retired); and it is further

9. ORDERED, ADJUDGED and DECREED that the entry of this Order, or any Interested Person's joining in the motion for the entry of this Order, shall not be deemed or argued to constitute a waiver of any Interested Person's rights to appeal from this Order or the Merits Ruling as permitted under New York law, including without limitation the right to file any appeal to the Appellate Division, First Department, and any appeal or motion for permission to appeal to the New York Court of Appeals; and it is further

10. 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

11. ORDERED, ADJUDGED, and DECREED that, for the avoidance of doubt, the Subject Petitioners shall not distribute any of the Subject Allocable Shares for the Disputed Subject Trusts in any circumstances prior to the Designated Date and/or if a Reversal Ruling is issued; and it is further

12. ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in any of the Disputed Subject 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 the Subject Petitioners' administration and distribution of the Subject Allocable Shares, so long as such conduct is performed in accordance with the terms of this Order; and it is further

13. For the avoidance of doubt, nothing in this Order should be read to alter or otherwise supersede the Merits Ruling; and it is further


14. ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in any of the Disputed Subject Trusts are barred from seeking sanctions or any other relief against Wells Fargo based on its initiation of a new Petition seeking instruction regarding the Cross-Over Date Issue raised in the Wells Fargo Objection or any other unforeseen consequences that may arise due to the implementation of the Merits Ruling or this Order. For the avoidance of doubt, the provisions of this paragraph were not expressly addressed by, and thus do not implement or modify, the Merits Ruling; and it is further

15. ORDERED, ADJUDGED and DECREED that following the entry of this Order on the Court's docket, the Subject Petitioners shall promptly post a copy of this Order, bearing

the Court's signature, on <http://rmbtrusteesettlement.com/>, the website established by Petitioners; and it is further

16. 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
November 30, 2023



Hon. Melissa Crane, J.S.C.

Judgment signed and entered this 10 th day of Jan. 2024



Clerk of New York County

FILED
JAN 10 2024
AT 12:23 P M
N.Y. CO. CLK'S OFFICE

FILED
Jan 10 2024
NEW YORK
COUNTY CLERK'S OFFICE

EXHIBIT A**Subject Trusts**

Trust Name	Subject Trustee	Subject Payment Administrator
BALTA 2005-4	BNYM	Wells Fargo
BSABS 2005-AQ2	USBTC	USBTC
BSABS 2005-EC1	USBNA	USBNA
BSABS 2005-FR1	USBTC	USBTC
BSABS 2005-HE11	USBNA	USBNA
BSABS 2005-HE2	USBTC	USBTC
BSABS 2006-AQ1	USBTC	USBTC
BSABS 2006-EC1	USBTC	USBTC
BSABS 2006-EC2	USBTC	USBTC
BSABS 2006-HE1	USBTC	USBTC
BSABS 2006-HE10	USBTC	USBTC
BSABS 2006-HE3	Wilmington	USBNA
BSABS 2006-HE5	USBNA	USBNA
BSABS 2006-HE8	USBTC	USBTC
BSABS 2006-PC1	USBTC	USBTC
BSABS 2007-HE1	USBTC	USBTC
BSABS 2007-HE3	USBNA	USBNA
BSABS 2007-HE5	USBNA	USBNA
GPMF 2005-AR4	Wells Fargo	Wells Fargo
JPALT 2007-A1	HSBC	USBNA

EXHIBIT B

Write-Up First

Trust Name
BALTA 2005-4
BSABS 2005-AQ2
BSABS 2005-EC1
BSABS 2005-FR1
BSABS 2005-HE11
BSABS 2005-HE2
BSABS 2006-AQ1
BSABS 2006-EC1
BSABS 2006-EC2
BSABS 2006-HE1
BSABS 2006-HE10
BSABS 2006-HE3
BSABS 2006-HE5
BSABS 2006-HE8
BSABS 2006-PC1
BSABS 2007-HE1
BSABS 2007-HE3
BSABS 2007-HE5
GPMF 2005-AR4

EXHIBIT C

No Write-Ups to Senior Classes

Trust Name
BALTA 2005-4
GPMF 2005-AR4

EXHIBIT D

Write-Up Instructions in Governing Agreements Control

Trust Name
BSABS 2005-AQ2
BSABS 2005-EC1
BSABS 2005-FR1
BSABS 2005-HE11
BSABS 2005-HE2
BSABS 2006-AQ1
BSABS 2006-EC1
BSABS 2006-EC2
BSABS 2006-HE1
BSABS 2006-HE10
BSABS 2006-HE3
BSABS 2006-HE5
BSABS 2006-HE8
BSABS 2006-PC1
BSABS 2007-HE1
BSABS 2007-HE3
BSABS 2007-HE5
JPALT 2007-A1

EXHIBIT E

**Governing Agreements Construed to Provide
Only For Write Up of Subordinate Certificates**

Trust Name
BALTA 2005-4
GPMF 2005-AR4

EXHIBIT F

Write Up of Zero Balance Certificates

Trust Name
BSABS 2005-AQ2
BSABS 2005-EC1
BSABS 2005-FR1
BSABS 2005-HE11
BSABS 2005-HE2
BSABS 2006-AQ1
BSABS 2006-EC1
BSABS 2006-EC2
BSABS 2006-HE1
BSABS 2006-HE10
BSABS 2006-HE3
BSABS 2006-HE5
BSABS 2006-HE8
BSABS 2006-PC1
BSABS 2007-HE1
BSABS 2007-HE3
BSABS 2007-HE5