

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 \_\_\_\_\_, 2018

**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  
(26 TRUSTS)**

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, all capitalized terms used and not otherwise defined herein 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 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;<sup>1</sup> 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

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<sup>1</sup> The term “loan pool” as used herein refers to any loan group, loan subgroup, loan pool, loan subpool, or any other applicable grouping, pooling, or other assemblage of loans. Additionally, the term “certificate” as used herein refers to certificates, notes, or other applicable securities.

WHEREAS, the Notice Program directed that interested persons respond to the Petition on or before January 29, 2018, and the Institutional Investors<sup>2</sup> and the AIG Parties<sup>3</sup> have asserted an interest in the 26 Settlement Trusts identified in Exhibit A hereto (the “Undisputed Trusts”); and

WHEREAS, Nover Ventures, LLC and/or Axonic Capital LLC (the “Indirect Holders”) asserted an interest in the Undisputed Trusts through ownership interests in other structures, either CDO, re-REMIC, or NIM trusts, but not in certificates issued by the Settlement Trusts;

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

WHEREAS, in the Standing Decision, the Court afforded the Indirect Holders an opportunity to substitute into the proceeding the trustees of the other CDO, re-REMIC, or NIM trust structures through which they asserted an interest in the Undisputed Trusts;

WHEREAS, on September 14, 2018, the Court so-Ordered a Stipulation and Order Regarding Trustee Substitutions, under which the Indirect Holders did not substitute into this case the trustees of the other CDO, re-REMIC, or NIM trust structures for the

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<sup>2</sup> All references to the “Institutional Investors” in this Partial Severance Order and Partial Final Judgment include each and every one of the sixteen institutions identified in the Institutional Investors’ Notice of Appearance (Dkt. No. 135).

<sup>3</sup> All references to the “AIG Parties” in this Partial Severance Order and Partial Final Judgment include each and every one of the AIG-affiliated entities identified in the AIG Parties’ Notice of Appearance (Dkt. No. 48).

Undisputed Trusts in which they had asserted an interest (Dkt. No. 514) (the “Trustee Substitution Stipulation”);

WHEREAS, after giving effect to the Standing Decision and the Trustee Substitution Stipulation, the Institutional Investors and the AIG Parties are the only parties with standing to appear with respect to the Undisputed Trusts;

WHEREAS, by Notice of Appeal dated September 6, 2018, Nover Ventures, LLC (“Nover”) appealed the Standing Decision to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department;

WHEREAS, Nover has not requested or received a stay of the Standing Decision during the pendency of its appeal;

WHEREAS, the Institutional Investors and the AIG Parties agree and consent to this [proposed] Partial Severance Order and Partial Final Judgment (the “Order”), which resolves the issues for which judicial instruction were sought concerning the administration and distribution of the Allocable Shares for the Undisputed Trusts (the “Subject Allocable Shares”); and

WHEREAS, as identified in Exhibit A hereto, The Bank of New York Mellon (“BNYM”), HSBC Bank USA, N.A., U.S. Bank National Association (“U.S. Bank”), and Wilmington Trust, National Association are the trustees, successor trustees, and/or indenture trustees for the Undisputed Trusts (in such capacities, the “Subject Trustees”) and BNYM, U.S. Bank, and Wells Fargo are the securities administrators, paying agents, and/or calculation agents for the Undisputed Trusts (in such capacities, the “Subject Payment Administrators”) (the Subject Payment Administrators and the Subject Trustees collectively, the “Subject Petitioners”); and

WHEREAS, as used herein, the term “Judgment Entry Date” means the date on which the Clerk’s docketing of this Order first appears publicly on the New York State Court Electronic Filing System, without regard to when the Court actually signs or the Clerk actually enters this Order; and

WHEREAS, for each Undisputed Trust included in Exhibit B hereto, the term “Overcollateralization Amount Calculation” is used herein to refer to the terms in the applicable Governing Agreements prescribing that the “overcollateralization amount” is equal to the excess of the aggregate balances of the mortgage loans held by the Undisputed Trust over the aggregate certificate principal balances of certain designated classes of certificates, as more fully defined and described in the applicable Governing Agreements; and

WHEREAS, as used herein the term “Transfer Month” means the second month after 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 (as that term is defined in the applicable Governing Agreements) for each of the Undisputed Trusts occurring in the Transfer Month, and

NOW, THEREFORE, on the motion of Warner Partners, P.C., Gibbs & Bruns LLP, attorneys for the Institutional Investors and Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for the AIG Parties, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Trustees (each with respect to the Undisputed 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 investments earnings thereon, and (ii) cause the Subject Allocable Shares and investment earnings thereon to be deposited in the respective distribution accounts of the Undisputed Trusts. From the time of the aforescribed deposit, the amount so deposited shall be deemed the Subject Allocable Shares for the Undisputed Trusts 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 Shares not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall (i) for Undisputed Trusts where the Subject Trustee and Subject Payment Administrator are the same party, be distributed on the Distribution Date for the month following the month such Trailing Interest is received by the Subject Trustee or (ii) for Undisputed Trusts where the Subject Trustee and Subject Payment Administrator are different parties, be distributed on the Distribution Date for the month following the month such Trailing Interest is transferred from the Subject Trustee to the Subject Payment Administrator (which transfer shall take place promptly following the Subject Trustee's receipt of such Trailing Interest). Any Trailing Interest shall be deemed a Subject Allocable Share for the Undisputed 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

ORDERED, ADJUDGED and DECREED that the Subject Payment Administrators shall distribute the Subject Allocable Shares to certificateholders of the Undisputed Trusts on the AS Distribution Date; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust, the Subject Payment Administrators (i) shall first distribute the Subject Allocable Shares 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 in the amount of the Settlement Payment Write-Up in a manner consistent with this Order; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust identified in Exhibit B hereto, the Subject Payment Administrators shall account for both the distribution of the Subject Allocable Shares and accompanying Settlement Payment Write-Up when performing the Overcollateralization Amount Calculation; and it is further

ORDERED, ADJUDGED and DECREED that to effectuate the immediately preceding paragraph, the Subject Payment Administrators shall calculate the aggregate certificate principal balances used for the Overcollateralization Amount Calculation by (i) first increasing such certificate principal balances by the amount of the Settlement Payment Write-Up and (ii) then reducing such certificate principal balances by an amount equal to the applicable Subject Allocable Share, and this paragraph and the immediately preceding paragraph shall have no application to the calculation of certificate principal balances for any purposes other than performing the Overcollateralization Amount Calculation, and, further, for the avoidance of doubt, with respect to the Distribution Date on which the Subject Allocable Shares are distributed, the instructions in this paragraph and the immediately preceding paragraph are intended to and shall prevent the Undisputed Trusts from being

overcollateralized as a result of the receipt, administration, and/or distribution of the Subject Allocable Shares (but shall not impact whether the Undisputed Trusts are overcollateralized on such Distribution Date as result of anything unrelated to the receipt, administration, and/or distribution of the Subject Allocable Shares); and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust included in Exhibit C hereto, the applicable Subject Payment Administrator shall increase the certificate principal balances of the applicable classes of certificates in the amount of the Settlement Payment Write-Up in accordance with the subsequent recovery write-up provisions in the applicable Governing Agreements (the “Governing Agreement Write-Up Instructions”); *provided, however*, that the Governing Agreement Write-Up Instructions shall be applied in conjunction with the Settlement Agreement Write-Up Instruction in a manner that causes all classes of certificates with outstanding unpaid realized losses to be eligible to be increased by the amount of the Settlement Payment Write-Up under the same order and priority scheme provided for in the Governing Agreement Write-Up Instructions (without regard to any language in the Governing Agreement Write-Up Instructions that could be construed as rendering any classes of certificates ineligible to be increased by the Settlement Payment Write-Up); and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust included in Exhibit D hereto, the applicable 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 applicable Governing Agreement Write-Up Instructions; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for each Undisputed Trust included in Exhibit E hereto, the applicable Subject Payment Administrator shall (i) apply the Retired Class Provision to prevent the distribution of the Subject Allocable Shares to any applicable class of certificates with aggregate certificate principal balances of zero dollars (\$0.00) at the time of the distribution of the Subject Allocable Shares (“Retired Classes”), (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) at the time of the distribution of the Subject Allocable Shares (the “Outstanding Classes”); *provided, however,* that if the Settlement Payment Write-Up exceeds the aggregate unpaid realized losses of all Outstanding Classes of an Undisputed Settlement Trust or of an individual loan group of an Undisputed Settlement Trust with multiple loan groups therein, such excess amount of the Settlement Payment Write-Up shall be applied to Retired Classes in such Undisputed Trust or loan group in a manner consistent with this Order; and (iii) if the Class A Redirection Provision is in the applicable Governing Agreement for an Undisputed Trust and the aggregate certificate principal balance of the Class A certificates in a loan group in such Undisputed Trust is zero dollars (\$0.00) at the time of the distribution of the Subject Allocable Shares, (the “Zero Balance Loan Group”), apply the Class A Redirection Provision to cause the Subject Allocable Share assigned to the Zero Balance Loan Group to be distributed to Class A certificates that are both from a different loan group (or loan groups) and have an aggregate certificate principal balance greater than zero dollars

(\$0.00) (the “Outstanding Class A Certificates”), and cause the accompanying Settlement Payment Write-Up to be applied to the certificates in the same loan group (or loan groups) as the Outstanding Class A Certificates in a manner consistent with this Order; and it is further

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

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 Trusts, or (iii) any applications to certificate balances (*e.g.*, write-ups) or distributions of payments or funds other than the Subject Allocable Shares; and it is further

ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in any of the Undisputed Trusts are barred from asserting claims against any Subject Petitioner with respect to any conduct taken to implement and comply with the terms of this Order and with respect to such Subject Petitioner’s administration and distribution of the Settlement Payment with respect to such Undisputed Trust, so long as such conduct is performed in accordance with the terms of this Order; 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.

Dated: New York, New York  
\_\_\_\_\_, 2018

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Hon. Marcy Friedman. J.S.C.

Judgment signed and entered this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

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Clerk of New York County

**EXHIBIT A**

<b>Trust</b>	<b>Trustee</b>	<b>Payment Administrator</b>
BALTA 2005-8	BNYM	Wells Fargo
BSABS 2005-AC9	U.S. Bank	Wells Fargo
BSABS 2005-SD1	BNYM	Wells Fargo
BSABS 2006-4	BNYM	Wells Fargo
BSABS 2007-1	BNYM	Wells Fargo
BSABS 2007-2	Wilmington Trust	Wells Fargo
BSABS 2007-SD2	Wilmington Trust	Wells Fargo
BSARM 2007-1	Wilmington Trust	Wells Fargo
CFLX 2005-1	U.S. Bank	BNYM
CFLX 2006-2	U.S. Bank	BNYM
CHASE 2006-S4	BNYMTC	BNYM
CHASE 2007-S1	BNYMTC	BNYM
CHASE 2007-S2	BNYMTC	BNYM
CHASE 2007-S3	BNYMTC	BNYM
CHASE 2007-S5	BNYMTC	BNYM
JPALT 2006-A7	HSBC	U.S. Bank
JPALT 2006-S1	U.S. Bank	Wells Fargo
JPMMT 2005-A8	U.S. Bank	Wells Fargo
JPMMT 2005-S1	U.S. Bank	Wells Fargo
JPMMT 2005-S2	U.S. Bank	Wells Fargo
JPMMT 2006-A4	U.S. Bank	Wells Fargo
JPMMT 2007-A4	U.S. Bank	Wells Fargo
JPMMT 2007-S1	U.S. Bank	Wells Fargo
LUM 2006-3	HSBC	Wells Fargo
PRIME 2005-1	BNYM	Wells Fargo
PRIME 2005-5	U.S. Bank	Wells Fargo

**EXHIBIT B**

<b>Trust</b>
BALTA 2005-8
BSABS 2005-AC9
BSABS 2005-SD1
BSABS 2006-4
BSABS 2007-1
BSABS 2007-2
BSABS 2007-SD2
CFLX 2006-2
JPALT 2006-A7
JPALT 2006-S1
LUM 2006-3

**Exhibit C**

<b>Trust</b>
BALTA 2005-8
BSARM 2007-1
LUM 2006-3
PRIME 2005-5

**Exhibit D**

<b>Trust</b>
BSABS 2006-4
BSABS 2007-1
CFLX 2005-1
CFLX 2006-2
CHASE 2006-S4
CHASE 2007-S1
CHASE 2007-S2
CHASE 2007-S3
CHASE 2007-S5
JPALT 2006-A7
JPALT 2006-S1
JPMMT 2005-A8
JPMMT 2005-S1
JPMMT 2005-S2
JPMMT 2006-A4
JPMMT 2007-A4
JPMMT 2007-S1
PRIME 2005-1

**Exhibit E**

<b>Trust</b>
BSABS 2005-AC9