

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
2005-5)**

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 2005-5 (the “SACO 2005-5 Allocable Share”) identified in the proposed judgment attached as Exhibit A. The Undersigned comprise all certificateholders claiming an interest in the SACO 2005-5 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 SACO 2005-5 or the entry of this judgment, the Undersigned request that the judgment be entered without further delay so that the Subject Allocable Share can promptly be paid to SACO 2005-5. The undersigned have conferred with the Trustee, Wilmington Trust,

National Association, and the Payment Administrator, U.S. Bank National Association, which have confirmed that they can implement the proposed judgment and have no objection to it.

Dated: New York, NY
October 22, 2019

**PATTERSON BELKNAP WEBB & TYLER
LLP**

By: /s/ Peter W. Tomlinson
Peter W. Tomlinson
1133 Avenue of the Americas
New York, NY 10036-6710
Tel: (212) 336-2000
Fax: (212) 336-2222
pwtomlinson@pbwt.com

*Attorney for Olifant Fund, Ltd., FFI Fund Ltd.
and FYI Ltd.*

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 _____, 2019

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**

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, 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

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 laws; and

WHEREAS, the Notice Program directed that interested persons respond to the Petition on or before January 29, 2018, and only Olifant Fund, Ltd., FFI Fund Ltd. and FYI Ltd. (the “Olifant Funds”), Nover Ventures, LLC (“Nover”), and 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”) asserted an interest in the Settlement Trust SACO 2005-5 (the “Undisputed Trust”); and

WHEREAS, on October 18, 2019, the Institutional Investors withdrew their appearance as to the Undisputed Trust (NYSCEF No. 833); and

WHEREAS, Nover asserted an interest in the Undisputed Trust through ownership interests in other structures, either CDO, re-REMIC, or NIM trusts, but not in certificates issued by the Undisputed Trust; and

WHEREAS, on August 7, 2018, by Decision/Order, the Court ordered that “Nover . . . [is] dismissed as respondent[] with respect to any Settlement Trust in which [it] do[es] not hold certificates” (NYSCEF No. 471) and that Decision/Order was affirmed on appeal (NYSCEF No. 826) (the “Standing Decision”); and

WHEREAS, in the Standing Decision, the Court afforded Nover an opportunity to substitute into the proceeding the trustees of the other CDO, re-REMIC, or NIM trust structures through which it asserted an interest in the Undisputed Trust; and

WHEREAS, on September 13, 2018, the Court so-ordered a Stipulation and Order Regarding Trustee Substitutions, under which Nover did not substitute into this case the trustee(s) of the other CDO, re-REMIC, or NIM trust structures for the Undisputed Trust (NYSCEF No. 514) (the “Trustee Substitution Stipulation”); and

WHEREAS, in light of (i) the Standing Decision and the Trustee Substitution Stipulation, and (ii) the Institutional Investors’ withdrawal with respect to the Undisputed Trust, the Olifant Funds (the “Subject Investor”) is the only remaining party in the proceeding with standing to appear with respect to the Undisputed Trust; and

WHEREAS, the Undisputed Trust is governed by a Pooling and Servicing Agreement (the “Subject PSA”); and

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

WHEREAS the Subject Investor agrees and consents to this [proposed] Partial Severance Order and Partial Final Judgment (the “Order”), which resolves the issues for which judicial instruction was sought concerning the administration and distribution of the Allocable Shares for the Group I Certificates and Group II Certificates of the Undisputed Trust (separately, the “Group I Allocable Share” and “Group II Allocable Share,” and each a “Subject Allocable Share” and together, the “Subject Allocable Shares”); and

WHEREAS, as identified on Exhibit A of the Petition, U.S. Bank National Association is the payment administrator for the Undisputed Trust (the “Subject Payment Administrator”) and Wilmington Trust, National Association is the trustee for the Undisputed Trust (the “Subject Trustee”) (the Subject Payment Administrator and Subject Trustee together, 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, as used herein, the term “Transfer Month” means the 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; 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, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Trustee is 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 Distribution Account of the Undisputed Trust. From the time of the aforementioned deposit, the amounts so deposited shall be deemed the Subject Allocable Shares 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 Shares not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall be transferred from the Subject Trustee to the Subject Payment Administrator promptly following the Subject Trustee’s receipt of such Trailing Interest, and the Trailing Interest shall 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, the Trailing Interest shall be distributed on the Distribution Date for the immediately following month. Any Trailing Interest shall be deemed 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 Payment Administrator shall distribute the Subject Allocable Shares 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 Group II Allocable Share, the Subject Payment Administrator will treat the Group II Allocable Share as Subsequent Recoveries included in the Available Principal Payment Amount; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for the Undisputed Trust, the Subject Payment Administrator (i) shall first increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up (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 in this Order; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Group I Allocable Share, the Subject Payment Administrator shall treat the Retired Class Provision as inapplicable to the Group I Allocable Share and, as a result, (x) shall apply the Settlement Payment Write-Up or a portion thereof to classes of Group I Certificates with aggregate certificate principal balances of zero dollars (\$0.00) as reported on the monthly distribution report for the Undisputed Trust for the Distribution Date immediately prior to the AS Distribution Date (the “Group I Zero Balance Classes”) that would otherwise be written up

in the amount of the Settlement Payment Write-Up or a portion thereof but for application of the Retired Class Provision in a manner that would prevent write-ups from being applied to the Group I Zero Balance Classes and (y) shall distribute the Group I Allocable Share or a portion thereof to the Group I Zero Balance Classes that are written up as described in (x) hereof *if and to the extent* such Group I Zero Balance Classes are entitled to a distribution of the Group I Allocable Share under the order and priority for distributions set forth in the Subject PSA without regard to the Retired Class Provision; 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 Subject PSA and the Settlement Agreement; and it is further

ORDERED, ADJUDGED and DECREED that this Order is not applicable to, 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 for the Settlement Trusts for which there is a dispute among the parties regarding how the Settlement Payment should be administered or 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 Shares; 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 Petitioners 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 Shares, 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

_____, 2019

Hon. Marcy Friedman. J.S.C.

Judgment signed and entered this _____ day of _____ 2019.

Clerk of New York County