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VIA NYSECF

Hon. Melissa A. Crane
Supreme Court of the State of New York
New York County, Commercial Division
60 Centre Street
New York, NY 10007

Re: *In re: Wells Fargo Bank, N.A.*, Index No. 657387/2017

Dear Justice Crane:

Respondent Ambac Assurance Corporation ("Ambac") writes to object to entry of the Proposed Partial Severance Order and Partial Final Judgment for GPMF 2006-AR2 Loan Groups III and IV, NYSCEF Doc. 963 (the "Proposed Order"), and respectfully requests that it not be entered.

The Proposed Order is one of many partial severance orders submitted to resolve the status of individual trusts *by agreement* before the Trustee submits final judgments implementing this Court's Decision and Order dated February 13, 2020, NYSCEF Doc. 843 (the "Decision"), which the First Department affirmed on August 19, 2021.[1] But unlike all previous severance orders, the Proposed Order has been submitted over the objection of a respondent that appeared for the trust in question -- GPMF 2006-AR2. This approach is inconsistent with this Court's practice, inconsistent with the terms of the Decision, and should not be permitted.

Before the Court issued its Decision, many trusts were resolved through severance orders entering agreed-to partial final judgments for individual trusts. Justice Friedman's Decision allowed this practice to continue after her ruling on the merits, but only with the consent of all interested respondents for a given trust:

> "[It is hereby] ORDERED that, as to any Settlement Trust in which all interested respondents are able, after the issuance of this decision and in consultation with the Trustees, to resolve a dispute as to any issue that is the subject of this proceeding, they may do so independently of the court's ultimate determination as to how such issue should be resolved among the parties that continue to dispute the issue;"

Decision at 45. Absent such consensual resolution, the Trustees were directed to administer and distribute the settlement payment in accordance with the Decision.

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[1] The Court of Appeals denied the pending motions for leave to appeal from the First Department's ruling on April 26, 2022. Ambac assumes the Trustee is preparing suitable judgments to implement the Decision for all trusts that remain in this proceeding.

The Proposed Order treats the settlement payment for GPMF 2006-AR2 in a manner that is directly contrary to the Decision. More specifically, the Decision held that, for the "Exhibit E Trusts" (which includes GPMF 2006-AR2), the governing agreements limit certificate balance write-ups to the *subordinate certificates*, and do not permit the write-up of *senior certificates*. Decision at 31-35. The Proposed Order expressly contradicts this ruling, providing that the trustee shall write up the balances of "all classes of certificates, specifically including any senior certificates . . . without regard to any language in the Governing Agreement that could be construed as rendering any classes of certificates [*i.e.*, senior certificates] ineligible" for write-up. This overriding of the Decision would be permissible if all respondents appearing for GPMF 2006-AR2 had agreed to it, but Ambac did not agree and affirmatively objects.

Ambac has good reason to object. While the proponents of the Proposed Order suggest that it would not affect Ambac because it addresses the Allocable Shares for Loan Groups III and IV, when the certificates that Ambac insures are connected to Loan Groups I and II, this ignores the actual effect of the Proposed Order. The Decision requires the Allocable Shares for Loan Groups III and IV – roughly $16 million – to write up the subordinate certificates in GPMF 2006-AR2. This write-up of subordinate certificates would provide a buffer protecting *all senior certificates*, including the senior certificates that Ambac insures in Groups I and II, from further realized losses. Ambac has a clear interest in avoiding additional losses to the insured senior certificates because Ambac must pay claims when realized losses are allocated to the senior certificates that it insures. The Proposed Order would divert $16 million in write-ups away from the subordinate certificates, where they would benefit Ambac and holders of all senior certificates, and would use them instead to benefit only holders of senior certificates in Groups III and IV.[2]

None of this is news to the proponents of the Proposed Order. Ambac explained its position back in September after a group of respondents sought Ambac's consent. Ambac refused, and some follow-up negotiations ensued, but Ambac assumed that was the end of the matter when the parties were unable to reach agreement. Ambac was therefore surprised to see the Proposed Order submitted to the Court without prior notice to Ambac and without affirmatively disclosing that Ambac had opposed the Proposed Order.

The notice accompanying the Proposed Order, NYSCEF Doc. 962, suggests in a footnote that Ambac cannot be heard to object due to a statement made in a footnote in its merits brief. To start, the notice takes Ambac's statement out of context. Ambac was advancing an argument that it was entitled to the entire Allocable Shares for Groups I and II "off-the-top," and entirely independent of the waterfall or the write-up provisions. In presenting this argument, which was unsuccessful, Ambac clarified that it did not apply to the Allocable Shares for Groups III and IV,

[2] The proponents of the Proposed Order have apparently concluded that the benefit they stand to gain from writing up senior certificates in Groups III and IV outweighs the benefit provided to all senior certificates, including those in Groups I and II, from writing up subordinate certificates. Or they simply wish to reach a compromise for other reasons. Either way, this does not negate that Ambac reasonably concluded it is better-off under the Court's Decision than it would be under the Proposed Order.

and thus did not affect how they would be distributed. This argument had nothing to do with write-up provisions or which certificates are eligible for write-up.

But more fundamentally, the notice is misguided because it suggests that Ambac forfeited its right to consent (or not) to a *settlement* based on arguments it made litigating the merits. Any such notion is antithetical to the existing severance order regime in which respondents regularly agree to outcomes that are directly contrary to positions they advanced in merits briefing. The Proposed Order is no exception. For example, the group referred to as the Institutional Investors advocated for a "Pay First Method" (*see* Decision at 4-10), yet now seeks entry of the Proposed Order, which adopts a "Write-Up First Method" (*see* Proposed Order at 5). There is nothing improper about this apparent reversal. Indeed, in order to encourage respondents to reach agreements that are contrary to the positions they had advocated for, the Proposed Order states that it is "not applicable to, and shall be without prejudice to and shall have no precedential effect on . . . any argument of any party concerning any other issue in this proceeding . . . ." Proposed Order at 6. If proponents of severance orders are free to ask the Court to disregard contrary arguments they advanced in merits briefing before the Court issued its Decision, they cannot complain when Ambac, after analyzing the net impact of the interconnected and multifaceted Decision, determines that the outcome provided by the Decision, which is the default option, is a better result than the Proposed Order, even though Ambac once advocated – unsuccessfully – for a different, more-favorable outcome.

Respectfully submitted,

Henry J. Ricardo