

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, 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

Hon. Melissa A. Crane, Part 60

**SUPPLEMENTAL 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**

CLAY J. PIERCE, an attorney duly admitted to practice before the courts of the State of New York, affirms under penalty of perjury as follows:

1. I am a Partner with the firm Faegre Drinker Biddle & Reath LLP, counsel for petitioner Wells Fargo¹ in the above-captioned matter.² I submit this affirmation to supplement

¹ Capitalized terms not otherwise defined herein shall have the meanings provided for those terms in the Partial Objection (defined below) or in the Petition.

² As described in the Partial Objection, Faegre also represents CPU.

Wells Fargo's response of September 14, 2022, at NYSCEF No. 988 (the "Partial Objection"), to the Institutional Investors' motion, brought by the Order to Show Cause, seeking entry of a proposed Final Judgment and Order (the "Proposed Order" or the "Order") for 37 trusts encompassed by this proceeding.³ I have personal knowledge of the facts set forth herein.

2. By its Partial Objection, Wells Fargo sought to defer its obligation to make distributions to the Affected Trusts listed in attached **Table A**,⁴ until Wells Fargo could obtain Court instruction concerning how to apply provisions in the Affected Trusts' Governing Agreements (i) allocating write-ups of Subsequent Recoveries to different classes of certificate holders based on undefined terms such as "payment priority," and (ii) regarding payments to subordinate certificates after what the Governing Agreements define as the "Cross-Over Date," which occurs on the date when the outstanding balance owed to subordinate certificate holders is reduced to zero. For the reasons set forth in the Partial Objection, these provisions could have a substantial effect on the allocation of Subsequent Recovery write-ups and distributions of the Allocable Shares across different certificate classes in the Affected Trusts.

3. After Wells Fargo filed the Partial Objection, counsel for certain senior investors contacted counsel for Wells Fargo and all other parties to this proceeding (including subordinate investors) regarding concerns about the delays that would result from Wells Fargo obtaining the requested instructions.

³ The Proposed Order appears at Docket No. 982 on NYSCEF. The Institutional Investors include the sixteen parties identified in Docket No. 135.

⁴ Table A revises the list of trusts included on page 22 of Exhibit A to the Original Objection, at Docket No. 989 on NYSCEF, to remove three trusts that were incorrectly listed in the prior filing.

4. To date, Wells Fargo has not received a response from any other holder, including subordinate certificate holders subject to the Proposed Order. In light of the concerns raised by certain senior investors and the lack of response by the subordinate certificate holders, Wells Fargo is prepared to consider an alternative plan than that proposed in the Partial Objection.

5. Specifically, Wells Fargo proposes to proceed with the distributions of the Allocable Shares as directed by the Proposed Order by applying its historical interpretations of provisions concerning “payment priority” and “Cross-Over Dates.” Thus, in the Affected Trusts Wells Fargo would apply Subsequent Recovery write-ups in the reverse order in which Realized Losses were allocated when the Affected Trusts’ Governing Agreements direct write-ups to be applied in order of “highest payment priority,” “payment priority,” “seniority,” or similar terms not defined⁵ in the Affected Trusts’ Governing Agreements. Likewise, Wells Fargo would continue to treat the Cross-Over Date as a one-time occurrence that cannot be reversed; as a result, where the Affected Trusts condition distributions to subordinate certificates on the Cross-Over Date not having occurred, Wells Fargo will not make distributions to those certificates once their principal balance is written down to zero. This would be the case even when those subordinate certificates are subsequently written up as a result of Subsequent Recoveries received in the normal course or as a result of the Proposed Order.⁶

⁵ For example, the heading to Exhibit F to the original JPM Petition contains the term “sequentially.”

⁶ There is one Affected Trust, JPALT 2006-A1, where the applicable Governing Agreement contains different payment instructions for before and after the Cross-Over Date. Wells Fargo intends to use the post-Cross-Over Date instructions in the Governing Agreement to distribute the Allocable Share. There are also three Affected Trusts, JPMMT 2006-S2, JPMMT 2007-S2, and LUM 2005-1, where the applicable Governing Agreements include the same payment instructions for before and after the Cross-Over Date. Wells Fargo intends to use the post-Cross-Over Date instructions for these Trusts, but notes that it will not impact distributions. These Trusts were included in the Partial Objection because of the “payment priority” question.

6. The attached Table A sets forth the approach Wells Fargo would take on both the “payment priority” and Cross-Over Date issues for the Affected Trusts.

7. Wells Fargo reserves the right to seek further judicial guidance from the Court in the event Wells Fargo receives any objections from affected respondents to the proposed application and interpretation of the Affected Trusts’ Governing Agreements as set forth in this supplemental affirmation.

8. In addition, Wells Fargo reserves the right to reverse and/or revise distributions made pursuant to the Proposed Order (if necessary, pursuant to a further petition for court instruction) if, after the distributions set forth in the Proposed Order are made, Wells Fargo receives objections from any investors concerning its application and interpretation of “payment priority” and Cross-Over Date provisions.

9. By modifying its Partial Objection, Wells Fargo intends to avoid, to the extent possible, delaying distributions being made to investors in the Affected Trusts, while ensuring that judicial guidance can still be obtained should a material concern be raised by affected investors.

Dated: September 19, 2022
New York, New York

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Table A

Trusts	Distribution Methodology where Subordinate certificate holders are eligible for write-ups and CSD has occurred	Writeup Methodology where PSA uses “payment priority,” “highest payment priority,” or “seniority”
BSABS 2005-AC3	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken
BSABS 2005-AC5	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken
BSABS 2005-AC6	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken
BSABS 2006-AC1	Subordinate certificate holders will not receive distribution of the Allocable Share (Group II Only)	Write-ups to occur in the reverse order that Realized Losses were taken
BSABS 2006-AC2	Subordinate certificate holders will not receive distribution of the Allocable Share (Group II Only)	Write-ups to occur in the reverse order that Realized Losses were taken
BSABS 2006-SD3	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken
BSABS 2006-SD4	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken
BSABS 2007-SD1	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken*
BALTA 2005-2	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken*
BALTA 2005-3	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken*
BALTA 2005-9	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken*
BALTA 2005-10	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken*

BALTA 2006-1	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken
BALTA 2006-2	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken
BALTA 2006-3	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken
BSARM 2005-1	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken
BSARM 2005-3	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken
BSARM 2005-4	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken
GPMF 2005-AR5	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken*
JPMMT 2006-S2	Distributions will be made using the post-CSD instructions in the Governing Agreements	Write-ups to occur in the reverse order that Realized Losses were taken
JPMMT 2007-S2	Distributions will be made using the post-CSD instructions in the Governing Agreements	Write-ups to occur in the reverse order that Realized Losses were taken
JPALT 2006-A1	Distributions will be made using the post-CSD instructions in the Governing Agreements	Write-ups to occur in the reverse order that Realized Losses were taken
LUM 2005-1	Distributions will be made using the post-CSD instructions in the Governing Agreements	Write-ups to occur in the reverse order that Realized Losses were taken
SAMI 2005-AR7	Subordinate certificate holders will not receive distribution of the Allocable Share	Write-ups to occur in the reverse order that Realized Losses were taken*

*Trusts marked with an asterisk were not included on Exhibit F to the Petition (which listed those settlement trusts originally identified by Wells Fargo with Realized Loss allocation methods that differed from Subsequent Recovery write-up methods). Regardless, and consistent with its current policies, Wells Fargo intends to write up the certificates in these Trusts in the reverse order that Realized Losses were taken.