

At IAS Part 53 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 \_\_\_\_\_, 202\_\_

**P R E S E N T:** Hon. Andrew S. Borrok, Justice.

<p>In the matter of the application of</p> <p>U.S. BANK NATIONAL ASSOCIATION and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION (each separately as Trustee, Securities Administrator, Paying Agent, and/or Calculation Agent, as applicable, under various Pooling and Servicing Agreements),</p> <p style="text-align: center;">Petitioner,</p> <p>for judicial instructions pursuant to CPLR Art. 77.</p>
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Index No. 656028/2021

**[PROPOSED] PARTIAL SEVERANCE ORDER AND PARTIAL FINAL JUDGMENT (BSMFT 2006-SL3, BSMFT 2006-SL4, BSMFT 2006-SL5, BSMFT 2006-SL6, BSMFT 2007-SL1, BSMFT 2007-SL2, SACO I 2005-7, SACO I 2005-WM3, SACO I 2006-6, SACO I 2006-9)**

WHEREAS petitioners U.S. Bank National Association and U.S. Bank Trust Company, National Association (collectively, “Petitioners”) through a petition under CPLR Article 77 (as subsequently amended at NYSCEF Doc. No. 33, the “Petition”) are seeking judicial instruction concerning the interpretation and application of certain provisions of the contracts governing seventy-seven residential mortgage-backed securitization trusts identified in Exhibit A to the Petition at NYSCEF Doc. No. 34 (the “Subject Trusts”); and

WHEREAS, this [proposed] Partial Severance Order and Partial Final Judgment (the “Order”) concerns BSMFT 2006-SL3, BSMFT 2006-SL4, BSMFT 2006-SL5, BSMFT 2006-SL6, BSMFT 2007-SL1, BSMFT 2007-SL2, SACO I 2005-7, SACO I 2005-WM3, SACO I 2006-6, and SACO I 2006-9 (collectively, the “Undisputed Subject Trusts”); and

WHEREAS, the Undisputed Subject Trusts are governed by separate pooling and servicing agreements (the “Undisputed Subject PSAs”), pursuant to which Petitioners are the securities administrators and/or trustees; and

WHEREAS, all capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Undisputed Subject PSAs; and

WHEREAS, each of the Undisputed Subject Trusts issued classes of Class A, M, and/or B certificates (the “Primary Classes”) along with various other classes of certificates, entitling the holders thereof to certain distributions derived from mortgage loan collections as provided for under the Undisputed Subject PSAs; and

WHEREAS, the Undisputed Subject PSAs set forth payment waterfalls governing the distribution of principal, interest, and Excess Cashflow to the certificateholders; and

WHEREAS, each of the Undisputed Subject Trusts contain a so-called “Retired Class Provision,” which appears in Section 5.04(a) or 6.04(a) for the Undisputed Subject PSAs, as applicable, and provides as follows: “In addition, notwithstanding the foregoing, on any Distribution Date after the Distribution Date on which the Certificate Principal Balance of a Class of Class A, Class M or Class B Certificates has been reduced to zero, that Class of Certificates will be retired and will no longer be entitled to distributions, including distributions in respect of Prepayment Interest Shortfalls or Basis Risk Shortfall Carry Forward Amounts;” and

WHEREAS, as set forth in the Petition, master servicers and/or servicers periodically authorize loan modification agreements with borrowers under which borrowers may be permitted to defer scheduled payments of principal, interest, or other amounts, and master servicers and/or servicers typically include all amounts that are deferred under modification agreements in a non-

interest-bearing component of the mortgage loan's principal balance ("Deferred Principal Amounts"); and

WHEREAS, as set forth in the Petition, master servicers and/or servicers generally report and treat Deferred Principal Amounts as losses on the mortgage loans;<sup>1</sup> and

WHEREAS, in certain instances, borrowers may eventually pay back Deferred Principal Amounts according to a schedule set forth in the applicable modification agreement, and these amounts are remitted to Petitioners for distribution to certificateholders ("Deferred Principal Collections"); and

WHEREAS, the Undisputed Subject PSAs provide that certain amounts remitted by master servicers and/or servicers to Petitioners constitute Subsequent Recoveries related to mortgage loans and may result in the application of write-ups, or increases, to the certificate principal balances of the Primary Classes as provided for in the Undisputed Subject PSAs; and

WHEREAS, as set forth in the Petition, Petitioners' current practice is to not treat Deferred Principal Collections as Subsequent Recoveries for the Undisputed Subject Trusts, and Petitioners do not otherwise apply write-ups, or increases, to the certificate principal balances of the Primary Classes when distributing Deferred Principal Collections; and

WHEREAS, as further explained and described in the Petition, Petitioners are seeking judicial guidance with respect to the Subject Trusts (including the Undisputed Subject Trusts) concerning the following: (1) the proper allocation and distribution under the waterfalls of any collections from mortgage loans following the reduction of the certificate principal balances of all

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<sup>1</sup> However, certain master servicers and/or servicers may not treat Deferred Principal Amounts as losses. For example, for loan modifications stemming from the COVID-19 pandemic, Nationstar Mortgage, LLC d/b/a Mr. Cooper ("Mr. Cooper") has not reported or treated Deferred Principal Amounts as losses, and Mr. Cooper services loans for the following Undisputed Subject Trust: SACO I 2005-7.

Primary Classes to zero dollars (\$0.00) (“Post-Zero Balance Collections”); (2) the manner in which the Retired Class Provision should be applied with respect to any Primary Classes with certificate principal balances of zero dollars (\$0.00); and (3) whether Petitioners should continue their current practice of not treating Deferred Principal Collections as Subsequent Recoveries for certain applicable Subject Trusts (including the Undisputed Subject Trusts) and not applying corresponding write-ups in connection with such collections; and

WHEREAS, the Court entered Orders to Show Cause on November 29, 2021 (NYSCEF Doc. No. 30) and on January 10, 2022 (NYSCEF Doc. No. 55) (collectively, the “Orders to Show Cause”) which required Petitioners to conduct notice programs (the “Notice Programs”) to provide notice of the proceeding to holders and any other persons claiming an interest in the Subject Trusts (“Potentially Interested Persons”); and

WHEREAS, the Orders to Show Cause required all Potentially Interested Persons to appear in the proceeding, respectively, by January 18, 2022 and January 24, 2022, so that any Potentially Interested Persons could assert why an order and judgment should not be entered granting the relief sought in the Petition; resolving the questions presented by the Petition and directing Petitioners as the Court may so order; permanently barring litigation outside the context of this proceeding on any question, issue, objection, claim, or concern related to the matters in the Petition; and for such other and further relief as this Court deems just and proper; and

WHEREAS, the Orders to Show Cause provide that the Notice Programs were reasonable, adequate, and the best notice practicable, reasonably calculated to put interested parties on notice of this action, and constitute due and sufficient notice of this proceeding in satisfaction of federal and state due process requirements and other applicable law; and

WHEREAS, the Orders to Show Cause provide that any Potentially Interested Person who

has failed to answer the Petition in the manner described therein shall be deemed to have waived the right to be heard on the questions presented by the Petition and from appealing any order, resolution, or judgment issued in the proceeding and shall be forever and finally barred from raising the right to be heard on such questions in this or any other action or proceeding, unless ordered otherwise by the Court; and

WHEREAS, the Court issued a Case Management Order (NYSCEF Doc. No. 93) ordering that the deadline for Potentially Interested Persons to appear in this proceeding expired on January 24, 2022; and

WHEREAS, the following certificateholders collectively constitute all Potentially Interested Persons appearing in the proceeding asserting interests in the Undisputed Subject Trusts: Olifant Fund, Ltd., FFI Fund Ltd., and FYI Ltd. (the “Olifant Funds”), Taconic Master Fund 1.5 LP, Taconic Opportunity Master Fund LP, and Park Royal II LLC (the “Taconic Funds”) and Poetic Holdings VII LLC, Poetic Holdings 8 LP, and Poetic Holdings IX LP (the “Poetic Funds”); and

WHEREAS, the Orders to Show Cause directed Petitioners to cause Post-Zero Balance Collections, net of any expenses and other fees payable under the applicable governing contracts, to be maintained on deposit, escrowed in a subaccount of the distribution account associated with each Subject Trust on an invested basis, until such time that the Court enters an order concerning the appropriate distribution of such funds and directing such distribution in accordance therewith; and

WHEREAS, the Orders to Show Cause directed that the investment earnings accrued on the escrow funds be treated as principal amount received on the mortgage loans; and

WHEREAS, pursuant to the Orders to Show Cause, funds are currently being held in escrow for certain of the Undisputed Subject Trusts (the “Undisputed Escrowed Funds”); and

WHEREAS, the Olifant Funds, the Taconic Funds, the Poetic Funds, and Petitioners agree and consent to this Order, which resolves the issues for which judicial instructions were sought in the Petition concerning the Undisputed Subject Trusts and provides instructions concerning the administration of the payment waterfalls for the Undisputed Subject Trusts; and

NOW, THEREFORE, on the motion of Petitioners, with the consent of the Olifant Funds, the Taconic Funds, and the Poetic Funds, it is hereby

1. ORDERED, ADJUDGED, and DECREED that in administering and distributing available funds to certificateholders for the Undisputed Subject Trusts, any Deferred Principal Collections derived from Deferred Principal Amounts that master servicers and/or servicers reported and treated as losses shall be treated by Petitioners as though such amounts are Subsequent Recoveries in accordance with Section 5.04(b) or 6.04(b) of the Undisputed Subject PSAs as well as any other applicable provisions therein; and it is further

2. ORDERED, ADJUDGED, and DECREED that in administering and distributing available funds to certificateholders for the Undisputed Subject Trusts, Petitioners shall apply the Retired Class Provision in a manner that: (i) permits the application of increases, or write-ups, to the Certificate Principal Balance of any Primary Class, on an individual class basis, with an aggregate Certificate Principal Balance of zero dollars (\$0.00) at any time (“Zero Balance Primary Class”) *so long as* any portion of the Initial Certificate Principal Balance of such class remains unpaid (including, without limitation, as a result of unreimbursed losses outstanding on such class) or there is any interest due on such class that has not been paid in full (including, without limitation, as a result of any shortfalls), and (ii) permits distributions to any Zero Balance Primary Class *so*

*long as* any portion of the Initial Certificate Principal Balance of such class remains unpaid (including, without limitation, as a result of unreimbursed losses outstanding on such class) or there is any interest due on such class that has not been paid in full (including, without limitation, as a result of any shortfalls); and it is further

3. ORDERED, ADJUDGED, and DECREED that in administering and distributing available funds to certificateholders for the Undisputed Subject Trusts, Petitioners shall (i) treat all Post-Zero Balance Collections as Principal Distribution Amounts to be distributed in accordance with the applicable provisions of the Undisputed Subject PSAs, and (ii) prior to such distribution, increase, or write up, the Certificate Principal Balances of the Primary Classes in the amount of any Post-Zero Balance Collections as though such amounts are Subsequent Recoveries in accordance with Section 5.04(b) or 6.04(b) of the Undisputed Subject PSAs as well as any other provisions therein concerning the application of write-ups for Subsequent Recoveries; *provided, however,* that if no portion of the Initial Certificate Principal Balance of any of the Primary Classes remains unpaid (including, without limitation, as a result of unreimbursed losses outstanding on such class), then (x) any remaining Post-Zero Balance Collections shall be treated as though they were Excess Cashflow and distributed in accordance with the applicable provisions in the Undisputed Subject PSAs, and (y) no increases, or write-ups, shall be applied to the certificate principal balances of the Primary Classes for any remaining Post-Zero Balance Collections; and it is further<sup>2</sup>

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<sup>2</sup> As required under this Paragraph 3 of the Order, the treatment of Post-Zero Balance Collections as deemed Subsequent Recoveries may result in non-payment of interest shortfalls or carry-forward amounts for the Primary Classes of the Undisputed Subject Trusts.

4. ORDERED, ADJUDGED, and DECREED that any aspects of the administration and distribution of available funds not expressly addressed in this Order shall be performed as provided for in the Undisputed Subject PSAs; and it is further

5. ORDERED, ADJUDGED, and DECREED that, for Undisputed Subject Trusts that have more than one loan group, the provisions of this Order shall be implemented with respect to each separate loan group independently, and Petitioners shall make any necessary adjustments to the instructions in this Order (but in a manner otherwise consistent with the terms of this Order) to comply with the terms of this paragraph; and it is further

6. ORDERED, ADJUDGED, and DECREED that with respect to the Undisputed Subject Trusts, Petitioners are hereby exculpated and protected from liability for placing, receiving, holding, investing, and/or reinvesting any Undisputed Escrow Funds held in escrow in accordance with the Orders to Show Cause; and it is further

7. ORDERED, ADJUDGED, and DECREED that nothing herein shall rescind, annul, limit, modify, or alter the Ex Parte Order and Partial Final Judgment entered on August 22, 2022 (NYSCEF Doc. No. 151); and it is further

8. ORDERED, ADJUDGED, and DECREED that certificateholders and any other parties claiming rights or interests (whether past, present, or future, or known or unknown) in the Undisputed Subject Trusts are forever barred from asserting claims against Petitioners with respect to any conduct taken by Petitioners to comply with the terms of this Order, so long as such conduct is performed in accordance with the terms of this Order; and it is further

9. ORDERED, ADJUDGED, and DECREED that on the first distribution date in the month immediately following the month in which this Order is entered and appears on the New York State Court Electronic Filing System (the "Effective Distribution Date") and all distribution dates



thereafter, Petitioners shall comply with the terms of this Order in administering and distributing any available funds to certificateholders for the Undisputed Subject Trusts; and

10. ORDERED, ADJUDGED, and DECREED that the escrow instructions in the Orders to Show Cause are hereby terminated with respect to the Undisputed Subject Trusts as of the Effective Distribution Date (provided, for avoidance of doubt, that Petitioners shall continue to comply with the escrow instructions on any distribution date preceding the Effective Distribution Date regardless of whether such distribution date occurs after this Order is entered and appears on the New York State Court Electronic Filing System), and Petitioners shall distribute any Undisputed Escrow Funds for the Undisputed Subject Trusts on the Effective Distribution Date in accordance with the terms of this Order; and it is further

11. ORDERED, ADJUDGED and DECREED that this Order is not applicable to, and shall be without prejudice to and shall have no precedential effect on, any trust, indenture, or other securitization other than the Undisputed Subject Trusts; and it is further

12. ORDERED, ADJUDGED, and DECREED that this Order is prospective such that it shall not have any application to the Undisputed Subject Trusts prior to the Effective Distribution Date; and

13. ORDERED, ADJUDGED, and DECREED that Petitioners' consent to this Order does not constitute an admission or agreement concerning the legally proper or valid meaning or interpretation of any aspects of the Undisputed Subject PSAs, and Petitioners do not waive or forfeit any arguments concerning the same with respect to Petitioners' historical application of the terms of the Undisputed Subject PSAs; and it is further

14. ORDERED, ADJUDGED, and DECREED that following the date on which this Order is entered and appears on the New York State Court Electronic Filing System, Petitioners shall promptly post a copy of this Order at <http://www.usbbearsacoarticle77.com>; and it is further

15. ORDERED that the Clerk of New York County be, and hereby is, directed to enter this Order forthwith and without delay.

Dated: New York, New York

\_\_\_\_\_, 202\_\_

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Hon. Andrew Borrok, J.S.C.

Judgment signed and entered this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_.

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Clerk of New York County