

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of the Application of

U.S. BANK NATIONAL ASSOCIATION (as Trustee,  
Securities Administrator, Paying Agent, and/or Calculation  
Agent under various Pooling and Servicing Agreements),

*Petitioner,*

For Judicial Instructions Under CPLR Article 77.

Index No. 656028/2021

Justice Andrew Borrok

IAS Part 53

**OPENING MERITS BRIEF OF U.S. BANK NATIONAL ASSOCIATION SOLELY IN  
ITS CAPACITY AS NIM TRUSTEE AT THE DIRECTION  
OF HBK MASTER FUND L.P.**

U.S. Bank National Association (“U.S. Bank”), solely in its capacity as trustee (in such capacity, the “NIM Trustee”) of the NIM trusts BSABS NIM 2003-HE1, BSABS NIM 2004-FR3N, BSABS NIM 2004-HE11, BSABS NIM 2004-HE6N, BSABS NIM 2004-HE9N, BSABS NIM 2005-AQ2N, and BSABS NIM 2005-FR1 (the “NIM Trusts”) and solely at the direction of HBK Master Fund L.P. (“HBK”),<sup>1</sup> respectfully submits this opening brief in support of its response to the First Amended Petition, NYSCEF No. 33 (“Petition”), of U.S. Bank National Association, as trustee for the Subject Trusts. Capitalized terms used but not defined herein have the meaning given in the Petition.

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<sup>1</sup> This brief sets forth the positions of HBK, as a holder of certificates issued by the NIM Trusts. U.S. Bank, solely in its capacity as NIM Trustee, submits this brief on behalf of the NIM Trusts at the direction of HBK pursuant to a direction and indemnity agreement between U.S. Bank, as NIM Trustee, and HBK, as a certificateholder in the NIM Trusts. As set forth in the applicable agreements, U.S. Bank’s capacity in its role as NIM Trustee is separate and distinct from U.S. Bank’s capacity in its role as trustee and/or payment administrator for the Subject Trusts, and these separate roles were created at the closing of the applicable transactions. In this proceeding, U.S. Bank has separate counsel for its NIM Trustee roles and trustee/payment administrator for the Subject Trusts roles.

The NIM Trusts hold an interest in Certificates issued by the following Subject Trusts: BSABS 2003-HE1, BSABS 2004-FR3, BSABS 2004-HE11, BSABS 2004-HE6, BSABS 2004-HE9, BSABS 2005-AQ2, and BSABS 2005-FR1 (collectively, the “Trusts”). Solely with respect to the Trusts, the NIM Trustee joins, adopts, and incorporates by reference the positions and arguments in HBK’s opening merits brief filed today.

DATED: New York, New York  
April 3, 2023

Respectfully submitted,

PERKINS COIE LLP

/s/ Martin Gilmore

Martin Gilmore

Sean Connery

1155 Avenue of the Americas, 22nd Floor

New York, NY 10036

Telephone: (212) 261-6814

E-mail: [mgilmore@perkinscoie.com](mailto:mgilmore@perkinscoie.com)

*Attorneys for U.S. Bank National Association,  
solely in its capacity as Trustee of the NIM Trusts*