

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 4 day of June, 2024

PRESENT: Hon. Andrew S. Borrok, Justice.

In the matter of the application of
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 under various Pooling and Servicing Agreements),

Petitioners,

for judicial instructions pursuant to CPLR Art. 77.

Index No. 656028/2021

[PROPOSED] PARTIAL SEVERANCE ORDER AND PARTIAL FINAL JUDGMENT (BSABS 2005-HE3)

WHEREAS, petitioners U.S. Bank National Association and U.S. Bank Trust Company, National Association (together, "Petitioner"), commenced this proceeding under CPLR Article 77 by filing a petition (as subsequently amended, the "Petition") seeking judicial instruction concerning the interpretation and application of certain provisions of the contracts governing 77 residential mortgage-backed securitization trusts identified in Exhibit A to the Petition (the "Subject Trusts"); and

WHEREAS, this ~~proposed~~ Partial Severance Order and Partial Final Judgment (the "Order") concerns BSABS 2005-HE3 (the "Trust"); and

WHEREAS, the Trust is governed by a Pooling and Servicing Agreements (the "PSA"), pursuant to which Petitioner is the payment administrator, master servicer and trustee; and

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

WHEREAS, the term “Post-Zero Balance Amounts” shall mean all Principal Funds and Interest Funds required to be distributed under the PSA on any Distribution Date when the Certificate Principal Balances of the Primary Classes are equal to zero (after giving effect, for purposes of this calculation, to such distribution); and

WHEREAS, the Trust contains a so-called “Retired Class Provision,” which appears in Section 5.04(a) of the PSA 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; 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 Petitioner for distribution to certificateholders (“Deferred Principal Collections”); and

WHEREAS, the PSA provides that certain amounts remitted by master servicers and/or servicers to Petitioner 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 PSA; and

WHEREAS, as set forth in the Petition, Petitioner's current practice is to not treat Deferred Principal Collections as Subsequent Recoveries for the Trust, and Petitioner does 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, Petitioner is seeking judicial guidance with respect to the Subject Trusts (including the Trust) 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 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) the manner in which Deferred Principal Collections should be treated for certain applicable Subject Trusts (including the Trust); and

WHEREAS, by Orders to Show Cause dated November 29, 2021 (NYSCEF Doc. No. 30) and January 10, 2022 (NYSCEF Do. No. 55) (collectively, the "Orders"), the Court directed the Petitioner to provide notice of this proceeding pursuant to the notice program described in the 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 law; and

WHEREAS, the Orders directed that interested persons respond to the Petition on or before the dates set forth in the Orders, and Poetic Holdings VII LLC and Pacific Investment Management Company LLC (“PIMCO”) and no other party asserted an interest in the Trust; and

WHEREAS, Poetic Holdings VII LLC, PIMCO, and the Petitioner (“the parties”) agree and consent to this Order, which resolves the issues for which judicial instructions were sought in the Petition concerning the Trust; and

NOW, THEREFORE, on the motion of Greene Espel PLLP, attorneys for Poetic Holdings 8 LP, Poetic Holdings IX LP, and Poetic Holdings VII LLC (together, “Poetic 7–9”), it is hereby

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) of the PSA as well as any other applicable provisions therein; and it is further

ORDERED, ADJUDGED, and DECREED that in administering and distributing available funds to certificateholders for the Trust, Petitioner 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

ORDERED, ADJUDGED, and DECREED that in administering and distributing available funds to certificateholders for the Trust, Petitioner shall first (i) distribute all Post-Zero Balance Collections as reimbursements of Interest Carry Forward Amounts in accordance with the applicable provisions of the Undisputed Subject PSA until all outstanding Interest Carry Forward Amounts are reduced to zero, and then (ii) distribute all Post-Zero Balance Collections as reimbursements of Basis Risk Shortfall Carry Forward Amounts in accordance with the applicable provisions of the Undisputed Subject PSA until all outstanding Basis Risk Shortfall Carry Forward Amounts are reduced to zero; and then (iii) treat all remaining Post-Zero Collections as Principal Distribution Amounts to be distributed in accordance with the applicable provisions of the Undisputed Subject PSA, and, *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) of the PSA as well as any other provisions therein concerning the application of write-ups for Subsequent Recoveries (for the avoidance of doubt, for the Trust, such increases or write-ups to begin with the Class M6 Certificates until the Applied Realized Loss Amount has been reduced to zero, followed by the other Primary Classes as applicable); *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

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 PSA; and it is further

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

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 Trust are forever barred from asserting claims against Petitioner with respect to any conduct taken by Petitioner 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

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, Petitioner shall comply with the terms of this Order in administering and distributing any available funds to certificateholders for the Trust and

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 Trust; and it is further

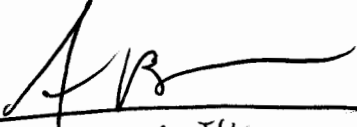
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ORDERED, ADJUDGED, and DECREED that this Order is prospective such that it shall not have any application to the Trust prior to the Effective Distribution Date; and it is further

ORDERED, ADJUDGED, and DECREED that the parties' 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 PSA, and the parties do not waive or forfeit any argument concerning the same with respect to Petitioner's historical application of the terms of the PSA; and it is further

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, the Petitioner shall promptly post a copy of this Order bearing the Court's signature on the Petitioner's investor portal; 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.

So ordered


Hon. Andrew Borrok, JSC
Hon. Andrew Borrok

6/4/24

Dated: New York, New York

_____, 2024

Hon. Andrew Borrok, J.S.C.

Judgment signed and entered this _____ day of _____ 2024.

Clerk of New York County