

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

**ANSWER TO THE PETITION FILED BY 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 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”),¹ respectfully submits this answer to the Petition (“Petition”) filed by U.S. Bank, in its capacity as trustee (in such capacity, the “Petitioner”) of the 77 residential mortgage-backed securitization trusts at issue in the Petition (the “Subject Trusts”), and alleges as follows. Capitalized terms used but not defined herein have the meaning given in the Petition.

¹ This answer 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 answer 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 (the “Trusts”): BSABS 2003-HE1, BSABS 2004-FR3, BSABS 2004-HE11, BSABS 2004-HE6, BSABS 2004-HE9, BSABS 2005-AQ2, and BSABS 2005-FR1. The NIM Trustee joins, adopts, and incorporates by reference the positions and arguments in HBK’s answer to the Petition with respect to the Trusts.

The NIM Trustee therefore respectfully requests an order with respect to the Trusts instructing the Petitioner that: after the principal balance of the Primary Classes is reduced to zero, those Classes should receive no distributions (or write-ups) and the remaining funds in the Trusts should be distributed through the excess cashflow waterfall to the C and CE Classes and other subordinate Classes; that Deferred Principal Collections are not Subsequent Recoveries, as that term is defined in the relevant Pooling and Servicing Agreements, and therefore cannot be used to write up any Certificates; that the Retired Class Provision prohibits distributions and write-ups to Certificates whose balance reaches zero; and that, accordingly, after the Primary Classes in the Trusts are reduced to zero, the Deferred Principal Collections and other applicable collections should be distributed as excess cashflow pursuant to the excess cashflow waterfall without any write-ups to any Certificates.

DATED: New York, New York
January 18, 2022

Respectfully submitted,

PERKINS COIE LLP

/s/ Martin Gilmore _____

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solely in its capacity as Trustee of the NIM Trusts*