

At IAS Part 60 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 14th day of September, 2023

**P R E S E N T** : Hon. Melissa Crane, Justice.

In the matter of the application of

U.S. BANK NATIONAL ASSOCIATION,  
WELLS FARGO BANK, NATIONAL ASSOCIATION,  
WILMINGTON TRUST, NATIONAL ASSOCIATION,  
WILMINGTON TRUST COMPANY, and CITIBANK,  
N.A. (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  
Administration and Distribution of a Settlement Payment.

Index No. 651625/2018

**ORDER TO SHOW CAUSE**

**MS 11**

Upon the annexed Affirmation of Jarman D. Russell, sworn to on September 13, 2023 (the "Russell Affirmation"), counsel for Citibank, N.A., and upon the pleadings and proceeding heretofore had herein;

LET all parties, or their attorneys, show cause before the Hon. Melissa A. Crane at IAS **\*\*VIRTUALLY OVER MICROSOFT TEAMS - NO APPEARANCE UNLESS DIRECTED\*\*** Part 60, ~~Room 607~~, of the Supreme Court of the State of New York for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York, on October 25, 2023 at 9:30 a.m./~~pm~~, or as soon thereafter as counsel can be heard, why an Order should not be made and entered:

(a) Granting the [Proposed] Partial Severance Order and Partial Final Judgment concerning the LXS 2005-8 trust, attached as Exhibit 1 to the Russell Affirmation; and

(b) Granting such other and further relief as this Court deems just and proper.

**BEING ALLEGED,**  
**SUFFICIENT REASON APPEARING THEREON,** let service of a copy of this Order to Show Cause, together with the papers upon which it is based, be made upon all appearing counsel for the parties, no later than September 15, 2023 by e-filing and by email, and such service shall be deemed sufficient; and it is further

ORDERED that opposition papers, if any, to the entry of said [Proposed] Partial Severance Order and Partial Final Judgment concerning the LXS 2005-8 trust are to be served ~~at least two~~  
**by 10/16/23**  
~~business days prior to the return date of this motion,~~ by e-filing and by email upon all appearing counsel for the parties, and such service shall be deemed sufficient.

**ENTER:**

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**HON. MELISSA A. CRANE, J.S.C.**

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

In the matter of the application of

U.S. BANK NATIONAL ASSOCIATION, WELLS FARGO BANK, NATIONAL ASSOCIATION, WILMINGTON TRUST, NATIONAL ASSOCIATION, WILMINGTON TRUST COMPANY, and CITIBANK, N.A. (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 Administration and Distribution of a Settlement Payment.

Index No. 651625/2018

Assigned to: Crane, J.

**AFFIRMATION OF JARMAN D. RUSSELL**

I, Jarman D. Russell, an attorney duly admitted to practice law in the State of New York, hereby affirm under penalties of perjury, pursuant to CPLR § 2106, as follows:

1. I am a Counsel with the firm Mayer Brown LLP, counsel for petitioner Citibank, N.A. (“Citibank”) in this proceeding. I am familiar with the proceedings in this case.

2. I have personal knowledge of the facts stated in this affirmation, and they are all true and correct. I make this application in support of the Proposed Order to Show Cause (the “Proposed OSC”) filed by Citibank contemporaneously herewith.

3. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Petition ([NYSCEF No. 1](#)).

4. On April 20, 2018, the Court entered an Order to Show Cause (the “Show Cause Order”) ([NYSCEF No. 37](#)) directing the Petitioners to provide notice of this proceeding pursuant to the notice program described in the Show Cause Order (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.

5. The Notice Program directed that interested persons respond to the Petition on or before May 30, 2018.

6. The Institutional Investors (AEGON USA Investment Management, LLC, BlackRock Financial Management, Inc., Cascade Investment, LLC, the Federal Home Loan Bank of Atlanta, Goldman Sachs Asset Management L.P., Voya Investment Management LLC, Invesco Advisers, Inc., Kore Advisors, L.P., Metropolitan Life Insurance Company, Pacific Investment Management Company LLC, The TCW Group, Inc., Thrivent Financial for Lutherans, and Western Asset Management Company), Nover Ventures, LLC, and Poetic Holdings VII LLC (collectively, the “Responding Parties”) have asserted an interest in LXS 2005-8 (the “Undisputed Trust”).

7. The Responding Parties agree and consent to this Partial Severance Order and Partial Final Judgment (the “Order”), which resolves the issues for which judicial instructions were sought concerning the administration and distribution of the Settlement Payment for the Undisputed Trust (the “Subject Allocable Shares”).

8. Prior to this filing, I circulated a copy of the Order to all parties in this matter, and inquired as to whether each party with an interest in the Order consents to the entry of the same. Each interested party responded to my inquiry and confirmed that they consent to the entry of the Order. Nevertheless, consistent with prior instructions of this Court, the Proposed OSC filed herewith provides an opportunity for parties to file opposition papers to the Order if they so wish.

9. For the reasons set out herein and subject to my understanding that no party opposes the Order, Citibank respectfully requests that the Court enter the Order.

10. No prior application for the relief herein requested has been made to this Court or to any other Court.

Dated: September 13, 2023  
New York, New York

/s/ Jarman D. Russell  
Jarman D. Russell

**RULE 17 CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMIT**

I hereby certify that the foregoing document complies with the word count limit set forth in Rule 17 of the Rules of Practice for the Commercial Division of the Supreme Court because it contains 490 words, excluding the caption and signature block.

In making this calculation, I have relied on the word count of the word-processing system used to prepare the document.

Dated: September 13, 2023  
New York, New York

/s/ Jarman D. Russell  
Jarman D. Russell

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

In the matter of the application of  
U.S. BANK NATIONAL ASSOCIATION, WELLS  
FARGO BANK, NATIONAL ASSOCIATION,  
WILMINGTON TRUST, NATIONAL ASSOCIATION,  
WILMINGTON TRUST COMPANY, and CITIBANK,  
N.A. (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  
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Crane, J.

**NOTICE OF  
[PROPOSED] PARTIAL  
SEVERANCE ORDER  
AND PARTIAL FINAL  
JUDGMENT (LXS 2005-8)**

PLEASE TAKE NOTICE that the attorneys for the undersigned parties (the “Undersigned”) jointly move for the entry of judgment issuing a judicial instruction to Petitioners concerning the distribution of the Allocable Shares of the Settlement Payment for LXS 2005-8 (the “Undisputed Trust”).

The Undersigned comprise the Petitioners and all parties who have filed responses claiming an interest in the Undisputed Trust in this proceeding, and each respectfully urges the Court to enter the attached proposed judgment. As there is no triable issue of fact as to the Undisputed Trust or the entry of this judgment, the Undersigned request that the judgment be entered without delay so that the Allocable Shares of the Settlement Payments can promptly be paid to the Undisputed Trust.

Dated: September 23, 2023  
New York, New York

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/s/ Jarman D. Russell

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*Counsel for Petitioner Citibank, N.A.*

*Counsel for Petitioner Wilmington Trust,  
National Association*

At IAS Part 60 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 \_\_\_\_, 2023

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

In the matter of the application of  
U.S. BANK NATIONAL ASSOCIATION, WELLS  
FARGO BANK, NATIONAL ASSOCIATION,  
WILMINGTON TRUST, NATIONAL ASSOCIATION,  
WILMINGTON TRUST COMPANY, and CITIBANK,  
N.A. (as Trustees, Indenture Trustees, Securities  
Administrators, Paying Agents, and/or Calculation Agents  
of Certain Residential Mortgage-Backed Securitization  
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Crane, J.

**[PROPOSED] PARTIAL  
SEVERANCE ORDER  
AND PARTIAL FINAL  
JUDGMENT (LXS 2005-8)**

WHEREAS, the Petitioners identified in the above case caption commenced this proceeding under CPLR Article 77 by filing a petition (the “Petition”) seeking judicial instructions concerning the administration and distribution of settlement payments (the “Settlement Payments”) for 208 residential mortgage-backed securities trusts identified in Exhibit A to the Petition (the “Subject Settlement Trusts”) under a Covered Loan Settlement Agreement dated as of November 30, 2016 and modified as of March 17, 2017 and a Transferor Loan Settlement Agreement dated September 5, 2017 and executed and accepted on October 13, 2017 (together with the Covered Loan Settlement Agreement, the “Settlement Agreements”); and

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

WHEREAS, pursuant to the Settlement Agreements, the Settlement Payments are to be apportioned among the Subject Settlement Trusts; and

WHEREAS, by Order dated May 30, 2018 (the “Escrow Order”), the Court authorized and directed the Petitioners to place the Settlement Payments for the Subject Settlement Trusts in escrow; and

WHEREAS, the Petitioners represent that they have complied with the escrow provisions of the Escrow Order and that the Settlement Payments for the Subject Settlement Trusts, plus any investment earnings thereon, are currently invested as directed in the Escrow Order; and

WHEREAS, under the Order to Show Cause dated April 20, 2018 (the “Show Cause Order”), the Court directed the Petitioners to provide notice of this proceeding pursuant to the notice program described in the Show Cause Order (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 Notice Program directed that interested persons respond to the Petition on or before May 30, 2018; and

WHEREAS, the Institutional Investors (AEGON USA Investment Management, LLC, BlackRock Financial Management, Inc., Cascade Investment, LLC, the Federal Home Loan Bank of Atlanta, Goldman Sachs Asset Management L.P., Voya Investment Management LLC, Invesco Advisers, Inc., Kore Advisors, L.P., Metropolitan Life Insurance Company, Pacific Investment Management Company LLC, The TCW Group, Inc., Thrivent Financial for Lutherans, and Western Asset Management Company), Nover Ventures, LLC, and Poetic Holdings VII LLC

(collectively, the “Responding Parties”) have asserted an interest in LXS 2005-8 (the “Undisputed Trust”); and

WHEREAS, the Responding Parties agree and consent to this Partial Severance Order and Partial Final Judgment (this “Order”), which resolves the issues for which judicial instructions were sought concerning the administration and distribution of the Settlement Payment for the Undisputed Trust (the “Subject Allocable Shares”); and

WHEREAS, Wilmington Trust National Association and Wilmington Trust Company, and any successors thereto, are the trustees, successor trustees, and/or indenture trustees for the Undisputed Trust (in such capacities, the “Subject Trustee”) and Citibank, N.A., and any successors thereto, is the securities administrator, paying agent, and/or calculation agent for the Undisputed Trust (in such capacities, the “Subject Payment Administrator”); and

WHEREAS, as used herein, the term “Judgment Entry Date” means the date on which the Clerk’s docketing of this Order first appears publicly on the New York State Court Electronic Filing System, without regard to when the Court actually signs or the Clerk actually enters this Order; and

WHEREAS, as used herein the term “Transfer Month” means the first calendar month after the Judgment Entry Date; and

WHEREAS, as used herein, the term “AS Distribution Date” means the Distribution Date (as that term is defined in the Governing Agreement) for the Undisputed Trust occurring in the Transfer Month; and

WHEREAS, as used herein, the term “Transfer Target Date” means the 15<sup>th</sup> day of the Transfer Month; and

WHEREAS, the Governing Agreement provides that Assured Guaranty Corp., as successor to CIFG Assurance North America, Inc. (the “Certificate Insurer”), is a subrogee of the Class 2-A3 Certificates (the “Insured Certificates”) in respect of Applied Realized Loss Amounts (as that term is defined in the Governing Agreement) that were reimbursed by the Certificate Insurer under the related Certificate Insurance Policy (as that term is defined in the Governing Agreement)<sup>1</sup>; and

WHEREAS, the Certificate Insurer is not one of the Responding Parties, has asserted an economic interest in in the Undisputed Trust, and agrees and consents to this Order; and

WHEREAS, the term “Overcollateralization Amount Calculation” is used herein to refer to the terms in the Governing Agreement prescribing that the “overcollateralization amount” is equal to the excess of the aggregate balances of the mortgage loans held by the Undisputed Trust over the aggregate certificate principal balances of certain designated classes of certificates and the term “Undercollateralization Amount Calculation” is used herein to refer to the terms in the Governing Agreement prescribing that the “undercollateralization amount” is equal to the excess of the aggregate certificate principal balances of certain designated classes of certificates over the aggregate balances of the mortgage loans held by the Undisputed Trust, in each case as more fully defined and described in the Governing Agreement; and

NOW, THEREFORE, on the motion of the Petitioners and the Responding Parties, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Trustee is to (i) cause escrowed assets to be liquidated to cash with a value equal to the Settlement Payment for the Undisputed Trust (the “Subject Allocable Shares”) plus any investments earnings thereon, and (ii) cause the Subject Allocable Shares and investment earnings thereon to be

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<sup>1</sup> As of September 8, 2023, the unreimbursed Insured Amounts (as that term is defined in the Governing Agreements) for the Undisputed Trust, as provided by the Certificate Insurer, total \$23,724,038.

deposited in the distribution account of the Undisputed Trust. From the time of the aforescribed deposit, the amount so deposited shall be deemed the Subject Allocable Shares for the Undisputed Trust for all purposes under the Settlement Agreements and this Order; and it is further

ORDERED, ADJUDGED and DECREED that sums representing investment earnings accrued on the Subject Allocable Shares not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall be distributed on the later of the AS Distribution Date or the Distribution Date for the month following the month such Trailing Interest is transferred from the Subject Trustee to the Subject Payment Administrator (which transfer shall take place within five days after the Subject Trustee receives such Trailing Interest). Any Trailing Interest shall be deemed a Subject Allocable Share for the Undisputed Trust on whose Allocable Share such Trailing Interest was accrued, and any Trailing Interest shall be administered and distributed as a Subject Allocable Share subject to the terms of the Settlement Agreements and this Order; and it is further

ORDERED, ADJUDGED and DECREED that the Subject Payment Administrator shall distribute the Subject Allocable Shares to (i) the holders of the certificates of the Undisputed Trust other than the Insured Certificates (the “Uninsured Certificates”) and (ii) the Certificate Insurer, as subrogee of the Insured Certificates, on the AS Distribution Date; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Share for the Undisputed Trust, the applicable Subject Payment Administrator (i) shall first increase the applicable certificate principal balances of the Uninsured Certificates (but not the Insured Certificates) in the amount of the Settlement Payment Write-Up in a manner consistent with this Order; and, after such write-up, (ii) shall distribute the Subject Allocable Shares to holders of the Uninsured Certificates and to the Certificate Insurer based on (1) in the

case of the Uninsured Certificates, the certificate principal balances of the Uninsured Certificates that have been adjusted by the Settlement Payment Write-Up, and (2) in the case of the Certificate Insurer, the sum of the unreimbursed Insured Amounts (as that term is defined in the Governing Agreement) and the certificate principal balance of the Insured Certificates; and it is further

ORDERED, ADJUDGED and DECREED that following the distribution of the Subject Allocable Shares, the Subject Payment Administrator shall (i) decrease the applicable post-Settlement Payment Write-Up certificate principal balances of the Uninsured Certificates by the amount of the Subject Allocable Shares paid to them, and (ii) reduce the balance of unreimbursed Insured Amounts owed to the Certificate Insurer by the amount of the Subject Allocable Shares paid to the Certificate Insurer, as subrogee of the Insured Certificates; and it is further

ORDERED, ADJUDGED and DECREED that any aspects of the administration and distribution of the Subject Allocable Shares not expressly addressed in this Order shall be performed as provided for in the Governing Agreement and the Settlement Agreement; and it is further

ORDERED, ADJUDGED and DECREED that this Order is not applicable to, and shall be without prejudice to and shall have no precedential effect on, (i) any argument of any party concerning the appropriate administration and distribution of the Settlement Payments where there is a dispute among the parties regarding how the Settlement Payments should be administered and distributed, (ii) the Subject Settlement Trusts for which no parties have appeared in this proceeding or any trust, indenture, or other securitization other than the Undisputed Trust, or (iii) any applications to certificate balances (*e.g.*, write-ups) or distributions of payments or funds other than the Subject Allocable Shares; and it is further

ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in any of the Undisputed Trust are barred from asserting claims against any Petitioner with respect to any conduct taken to implement and comply with the terms of this Order and with respect to such Petitioner’s administration and distribution of the Settlement Payments with respect to such Undisputed Trust, so long as such conduct is performed in accordance with the terms of this Order; and it is further

ORDERED, ADJUDGED and DECREED that upon the occurrence of the Judgment Entry Date, Petitioners shall promptly post a copy of this Order, bearing the Court’s signature, on <http://www.lbhirmssettlement.com/>, the website established by Petitioners; and it is further

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

Dated: September \_\_, 2023

\_\_\_\_\_  
Hon. Melissa A. Crane, J.S.C.

Judgment signed and entered this \_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Clerk of New York County