

As to the remaining 15 Trusts (the “Disputed Trusts”), two certificateholders, Prosirris Capital Management LP (“Prosirris”) and Tilden Park Capital Management LP (“Tilden”), argue that 14 of those Trusts “are structured in a fundamentally different way than the other Covered Trusts.” Memorandum of Law filed by Prosirris and Tilden (Dkt. 32), at 16. Specifically, Prosirris and Tilden argue that those 14 Trusts “only require an overcollateralization *target*, not an overcollateralization *amount*, to determine principal distributions.” *Id.* at 14 (emphasis in original). Based upon the “unique wording” of the 14 Trusts’ Pooling and Servicing Agreements (“PSAs”), Prosirris and Tilden claim that the Settlement Payment should flow to more junior holders, even if the most senior bondholders have not yet been fully repaid (notwithstanding that the essential purpose of a senior-subordinate structure is to protect the senior bonds from losses). *Id.* at 13.² In addition, Prosirris and Tilden raise an issue that neither the Trustee nor any other holder has raised, claiming that the Settlement Payment should be treated as if it were received by the Disputed Trusts on or about February 10, 2016, rather than the date on which it actually will be received. *Id.* at 20-22.

These newly raised issues are complex and go beyond the issues that are the subject of the Verified Petition. Moreover, the Trustee has not yet responded to the issues in Prosirris and Tilden’s Answer and Memorandum of Law. Dkts. 31-32. For these reasons, AIG respectfully requests that the Court direct those certificateholders who have appeared in this Article 77 proceeding (the “Interested Certificateholders”), to the extent they wish to be heard on this issue,

terms not otherwise defined herein shall have the meanings ascribed in the Verified Petition (Dkt. 1) or Joint Reply.

² A third holder, TIG Securitized Asset Management Fund LP (“TIG”), raised a related dispute in discussions with other signatories to the Joint Reply. TIG asserts that as to the one Trust it holds, the waterfall provisions permit the payment of the Allocable Share to more junior bonds prior to the most senior bonds being repaid.

to identify any potential areas of dispute as to these 15 Disputed Trusts, and then to set a briefing schedule in which these issues can be adequately argued and considered by the Court.

In any event, Prosirris and Tilden's request that this Court should order the Trustee to treat the Settlement Payment as having been received by the Disputed Trusts as of a date other than when it is eventually received (Dkt. 32, at 20-22) would violate the Governing Agreements. Accordingly, for the reasons set forth below, AIG respectfully requests that this Court require any distribution of the Settlement Payment to be made as of the date that the Settlement Payment is actually received by the respective Trusts.

ARGUMENT

I. THIS COURT SHOULD INSTRUCT THE TRUSTEE TO DISTRIBUTE THE SETTLEMENT PAYMENT IMMEDIATELY AS TO THE 515 UNDISPUTED TRUSTS, AND SHOULD ORDER TARGETED BRIEFING ON THE DISCRETE ISSUES RAISED IN THE PROSIRIS, TILDEN, AND TIG RESPONSES AS TO THE 15 DISPUTED TRUSTS.

For the reasons set forth in the Joint Reply, the Trustee should be instructed to distribute the Settlement Payment immediately as to the 515 Undisputed Trusts. For these 515 Trusts, the Trustee should be ordered to follow the “pay first, write-up second” order of operations required under the Settlement Agreement and this Court's Final Judgment in the prior Article 77 proceeding.³ The Trustee should further be instructed, as to these 515 Undisputed Trusts, not to consider any “temporary” or “illusory” overcollateralization that could be argued to occur in between the first step (“payment”) and the second step (“writing up of losses in certificate balances”) with respect to any overcollateralization Trust.

³ Modified Judgment Upon Remittitur, *In the Matter of the Application of The Bank of New York Mellon*, Index. No. 651786-2011 [Final Judgment] (Doc. No. 1148) at ¶ 1 (N.Y. Sup. Ct. Apr. 27, 2015).

With respect to the 15 Disputed Trusts, however, Prosirir and Tilden have argued that 14 of those Trusts are “unique” and operate in a “fundamentally different way than the other Covered Trusts.” Dkt. 32, at 13, 16. It appears that TIG has raised a similar argument as to the one Trust it holds. Because the issues raised as to these 15 Disputed Trusts are different than the “transitory” overcollateralization issue raised in the Trustee’s petition, AIG respectfully requests that the Court direct any Interested Certificateholders who wish to be heard on this issue to identify any potential areas of dispute as to these 15 Disputed Trusts, and then to set a briefing schedule in which these issues can be adequately argued and considered by the Court.

II. THE TRUSTEE SHOULD BE INSTRUCTED TO DISTRIBUTE THE SETTLEMENT PAYMENT AS OF THE DATE IT IS RECEIVED, AND NOT AS OF AN EARLIER HYPOTHETICAL DATE.

With respect to the two Disputed Trusts in which AIG holds certificates (the “AIG Disputed Trusts”), which are among the 14 Disputed Trusts identified by Prosirir and Tilden,⁴ no authority permits the Trustee to distribute the Allocable Shares as of a date other than the date the Trusts receive the Allocable Shares. The Allocable Shares for the AIG Disputed Trusts remain in escrow, per this Court’s February 5, 2016, Order. Dkt. 14. Once this proceeding is resolved, the funds will be removed from escrow and returned to the Trustee, which will then distribute the Allocable Shares to the Trusts. The Governing Agreements for the AIG Disputed Trusts require that these funds be allocated to the individual certificates based on their Certificate Balances *at the time of distribution*, and not as of an earlier hypothetical distribution date that may benefit Prosirir and Tilden while disadvantaging other holders.

Prosirir and Tilden argue that the Settlement Payment should be treated as a Subsequent Recovery, and that such Subsequent Recoveries are included in the definition of “Available

⁴ Those Trusts are CWALT 2006-OA10 and CWALT 2007-OA3.

Funds” that are distributed to certificateholders through the PSAs’ waterfall. Dkt. 32, at 7-8. From the definition of Available Funds, it is clear that the funds available for distribution are determined by the amount of money included in the Trusts’ Certificate Accounts as of the *prior* Determination Date:

Available Funds: *As to any Distribution Date* and each Loan Group, the sum of (a) *the aggregate amount held in the Certificate Account at the close of business on the related Determination Date, including any Subsequent Recoveries*, in respect of such Mortgage Loans net of the related Amount Held for Future Distribution and net of Prepayment Charges and amounts permitted to be withdrawn from the Certificate Account pursuant to clauses (i) - (viii) of Section 3.08(a) in respect of such Mortgage Loans and amounts permitted to be withdrawn from the Distribution Account pursuant to clauses (i) - (iii) of Section 3.08(b) in respect of such Mortgage Loans, (b) the amount of the related Advance and (c) in connection with Defective Mortgage Loans in such Loan Group, as applicable, the aggregate of the Purchase Prices and Substitution Adjustment Amounts deposited on the related Distribution Account Deposit Date.

CWALT 2006-OA10 PSA, Definitions, “Available Funds” (attached as Ex. A) (emphasis added); *see also* CWALT 2007-OA3 PSA, Definitions (attached as Ex. B).⁵ The PSAs for the AIG Disputed Trusts further specify that the Available Funds are to be distributed on each Distribution Date, which is the 25th day of the month. *See id.*, Definitions, “Distribution Date”; *id.* § 4.02(a).

Distributions are calculated based on “the aggregate amount held in the Certificate Account at the close of business on the related Determination Date, including any Subsequent Recoveries.” The “related Determination Date” is the 22nd day of each month. *Id.*, Definitions, “Determinate Date.” Accordingly, funds (including Subsequent Recoveries) that are in the Certificate Account as of the 22nd day of any month must be distributed to certificateholders on the 25th day of that same month.

⁵ “Exhibits” shall refer to exhibits to the Affirmation of Jordan A. Goldstein filed concurrently herewith.

In addition to requiring the Trustee to distribute the Settlement Payment as of the next Distribution Date following the related Determination Date on which the funds are available for distribution, the PSAs also require the distribution under Section 4.02 to be calculated based upon the Certificate Balances in effect *as of that date*:

Certificate Balance: With respect to any Certificate (other than the Class X and Class C Certificates) at any date, the maximum dollar amount of principal to which the Holder thereof *is then entitled under* this Agreement, such amount being equal to the Denomination of that Certificate (A) plus, with respect to the Subordinated Certificates, any increase to the Certificate Balance of such Certificate pursuant to Section 4.02 due to the receipt of Subsequent Recoveries and (B) minus the sum of (i) all distributions of principal *previously made* with respect to that Certificate and (ii) with respect to the Subordinated Certificates, any Applied Realized Loss Amounts allocated to such Certificate *on previous Distribution Dates* pursuant to Section 4.02 without duplication. The Class X Certificates do not have Certificate Balances.

Id., Definitions, “Certificate Balance” (emphasis added). Accordingly, to the extent that Prosirir and Tilden are correct that the Settlement Payment is distributed through the waterfalls of the Disputed Trusts as a Subsequent Recovery, *see* Dkt. 32, at 8, that distribution must occur based upon the Certificate Balances in effect *as of* the Distribution Date, and *not* based on Certificate Balances in effect as of an earlier hypothetical Distribution Date.

Prosirir and Tilden do not cite any PSA provisions that would permit the Trustee to freeze Certificate Balances, realized losses, or other distribution factors as of February 25, 2016—because no such provision exists. Moreover, Prosirir and Tilden’s requested relief of a February 25, 2016, record date is unworkable, as the composition of the Trusts and the identity of the certificateholders are fluid and will likely have changed between February 25, 2016, and the resolution of this Article 77 proceeding.

The waterfall provisions that Prosirir and Tilden invoke require the distribution of the Settlement Payment to be made based upon the Certificate Balances in effect as of the

Distribution Date. To calculate those Certificate Balances as of some other date in order to advantage Prosirris and Tilden, and thereby prejudice other holders, is improper and would violate the PSAs.

CONCLUSION

For the reasons set forth above, AIG respectfully requests that the Court enter the judgment described in the Joint Reply. AIG further respectfully requests that the Court order additional targeted briefing as to any disputes among the Interested Certificateholders concerning the Disputed Trusts. And AIG respectfully requests that the Court deny with prejudice Prosirris and Tilden's request to distribute the Allocable Shares as if they were received on February 10, 2016, a date prior to when the Allocable Shares will actually be received by the Trusts.

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