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THIS NOTICE CONTAINS IMPORTANT INFORMATION THAT MAY BE OF INTEREST TO THE BENEFICIAL OWNERS OF THE SUBJECT SECURITIES. IF APPLICABLE, ALL DEPOSITORIES, CUSTODIANS AND OTHER INTERMEDIARIES RECEIVING THIS NOTICE ARE REQUESTED TO EXPEDITE RE-TRANSMITTAL TO SUCH BENEFICIAL OWNERS IN A TIMELY MANNER.

Dated: February 24, 2016

**NOTICE OF TRUST INSTRUCTION COURT HEARING**

**To the Holders of the National Collegiate Student Loan Trusts 2003-1, 2004-1, 2004-2, 2005-1, 2005-2 and 2005-3 (the “Trusts”) and the Additional Addressees Identified on Schedule A Hereto**

**CUSIPS<sup>1</sup>**

63543PAG1 63543PAJ5 63543PAK2 63543PAM8 63543PAN6  
63543PAP1 63543PAQ9 63543PAR7 63543PAS5 63543PAT3  
63543PAX4 63543PAY2 63543PBC9 63543PAZ9 63543PBA3  
63543PBB1 63543PBG0 63543PBM7 63543PBN5 63543PBP0  
63543PBK1 63543PBL9 63543PBT2 63543PBU9 63543PBY1  
63543PBV7 63543PBW5 63543PBX3 63543TAD0 63543TAE8  
63543TAF5 63543TAG3 63543TAH1 63543TAJ7 63543TAK4

This notice is given to you by U.S. Bank National Association, not in its individual capacity, but solely in its capacity as indenture trustee (the “Indenture Trustee”) under certain Indentures related to the National Collegiate Student Loan Trusts 2003-1, 2004-1, 2004-2, 2005-1, 2005-2 and 2005-3 (the “Indentures”).<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Indentures.

**The purpose of this notice is to inform you that on February 18, 2016, the Indenture Trustee filed a trust instruction petition (the “Petition”) in the District Court of Ramsey County, Minnesota (the “Court”) (Case No. 62-TR-CV-16-5). In the Petition, the Indenture Trustee has requested instructions from the Court concerning the validity of Odyssey Education Resources LLC's ("Odyssey") purported**

<sup>1</sup> Any CUSIP numbers appearing in this Notice or in its exhibits, schedules or attachments have been included solely for convenience. The Indenture Trustee assumes no responsibility for the selection or use of such numbers and makes no representations as to the correctness of the CUSIP numbers appearing herein.

<sup>2</sup> The "Indentures" are those (i) dated December 1, 2003 by and between the National Collegiate Student Loan Trust 2003-1 and U.S. Bank National Association, as Indenture Trustee; (ii) dated June 1, 2004 by and between the National Collegiate Student Loan Trust 2004-1 and U.S. Bank National Association, as Indenture Trustee; (iii) dated October 1, 2004 by and between the National Collegiate Student Loan Trust 2004-2 and U.S. Bank National Association, as Indenture Trustee; (iv) dated February 1, 2005 by and between the National Collegiate Student Loan Trust 2005-1 and U.S. Bank National Association, as Indenture Trustee; (v) dated June 1, 2005 by and between the National Collegiate Student Loan Trust 2005-2 and U.S. Bank National Association, as Indenture Trustee; and (vi) dated October 1, 2005 by and between the National Collegiate Student Loan Trust 2005-3 and U.S. Bank National Association, as Indenture Trustee.



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appointment as Servicer for the Trusts under the Indentures and the Trusts' other governing agreements. If the Court determines that Odyssey was validly appointed as Servicer for the Trusts, the Petition also seeks instruction regarding the payment of certain invoiced expenses to Odyssey, resolution of certain inconsistencies between the Odyssey Servicing Agreement and the Trusts' existing Servicing Agreements and other related issues. A copy of the Petition (without exhibits) is attached as Appendix I hereto. The Petition sets forth a detailed description of the relief sought by the Indenture Trustee, and the Noteholders should review it carefully. Noteholders can access information related to the Petition by entering the case number listed above into the appropriate field in the Court's website.<sup>3</sup> On February 22, 2016 the Court entered an Order for Hearing (the "Order for Hearing"), attached as Appendix II hereto, scheduling a hearing on the Petition for 1:45 p.m. (central time) on April 18, 2016, at the following address:

**Courtroom 650  
Ramsey County District Courthouse  
15 West Kellogg Blvd.  
St. Paul, Minnesota 55102**

Noteholders are hereby referred to the Petition and the Court's Order for Hearing for additional information concerning the factual background that gave rise to the Petition, as well as the instructions sought therein. In accordance with the Order for Hearing, parties in interest may object to the Petition, or any of the relief being sought therein, by filing and serving a memorandum of law setting forth their respective positions not later than five business days before the hearing. **THE OUTCOME OF THE HEARING ON THE PETITION MAY AFFECT YOUR LEGAL RIGHTS AND YOUR POTENTIAL RECOVERY ON THE NOTES. THE INDENTURE TRUSTEE URGES THE NOTEHOLDERS TO REVIEW THE PETITION CAREFULLY.**

The Indenture Trustee has filed the Petition seeking instructions with respect to Odyssey's purported appointment as Servicer because these determinations are important to the administration of the Trusts, including how the Trusts' delinquent loans are serviced in the future. Additionally, the Petition is important because the Administrator has expressed reservations about Odyssey's entitlement to certain invoiced expenses from January 2015-January 2016 (the "Disputed Funds"), and the Disputed Funds have been held back from distribution to the Noteholders until the Court resolves these issues. Further, the Petition is necessary because the Indenture Trustee has not been directed by Noteholders in accordance with the Indentures to take any specific action with respect to the underlying dispute. The Indenture Trustee has reserved all rights with respect to the Disputed Funds and any direction that it may receive in accordance with the Indentures.

Noteholders wishing to contact the Indenture Trustee to share their views about the matters described in this notice or to provide directions to the Indenture Trustee in accordance with the Indentures should direct their communications in writing to:

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<sup>3</sup> <http://pa.courts.state.mn.us/Search.aspx?ID=200>



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**David Duclos**  
**U.S Bank National Association**  
**One Federal Street, 3<sup>rd</sup> Floor**  
**Boston, MA 02110**  
**Email: david.duclos@usbank.com**

In addressing communications that may be directed to it, the Indenture Trustee may conclude that a specific response to particular communications from individual Noteholders is not consistent with equal and full dissemination of information to all Noteholders.

Please be further advised that the Indenture Trustee reserves all of the rights, powers, claims, and remedies available to it under the Indentures and applicable law. No delay or forbearance by the Indenture Trustee to exercise any right or remedy accruing upon the occurrence of a default, or otherwise under the terms of the Indentures, other documentation relating thereto or under applicable law, shall impair any such right or remedy or constitute a waiver thereof or acquiescence therein. The Indenture Trustee expressly reserves all rights in respect of the Indentures including, without limitation, its right to recover in full its fees and costs (including, without limitation, fees and costs incurred or to be incurred by it in performing its duties, indemnities owing or to become owing to it, compensation for its time spent and reimbursement for fees and costs of counsel and other agents it employs in performing its duties or to pursue remedies) and its right, prior to exercising any rights or powers in connection with the Indentures at the request or direction of any Noteholder, to receive security or indemnity satisfactory to it against all costs, expenses and liabilities which might be incurred in compliance therewith, and all rights that may be available to it under applicable law or otherwise.

This notice references the Indentures, the Petition and the Order for Hearing, and it is not a complete summary or statement of the material terms thereof, of relevant law or of relevant legal procedures. Noteholders and other persons interested in the Trusts should not rely on the Indenture Trustee or advisors retained by the Indenture Trustee as their sole source of information.

Please note that this notice is not intended and should not be construed as investment, accounting, financial, legal, tax or other advice by or on behalf of the Indenture Trustee, or its directors, officers, affiliates, agents, attorneys or employees. In respect of all matters set forth herein, each person or entity receiving this notice should seek advice from its own legal counsel and financial advisors based on its particular circumstances.

**U.S. BANK NATIONAL ASSOCIATION,**  
*acting solely in its capacity as Indenture Trustee*



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**Schedule A**

**Additional Addressees**

**BY FIRST CLASS OR CERTIFIED MAIL**

**Owner Trustee**

Wilmington Trust Company  
Attn: Corporate Trust Administration  
Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890-0001

**Administrator**

GSS Data Services, Inc.  
401 West A Street, Suite 1300  
San Diego, CA 92101

**Servicer**

Pennsylvania Higher Education Assistance Agency  
Attn.: Senior Vice President, Marketing & Client Affairs  
1200 North Seventh Street  
Harrisburg, Pennsylvania 17102

**Special Sub-Servicer**

Turnstile Capital Management, LLC  
Attn: Alan Amico  
401 W. A Street, Suite 1300  
San Diego, CA 92101

**Sub-Servicer**

NCO Financial Systems, Inc.  
Attn: Joshua Gindin, Esq.  
Executive Vice President and General Counsel  
507 Prudential Road  
Horsham, Pennsylvania 19044

**Special Servicer**

U.S. Bank National Association  
Attn: Brian Tri  
60 Livingston Ave.  
St. Paul, Minnesota 55107



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Odyssey

Odyssey Education Resources LLC  
Attn: Tom Glanfield  
800 Corporate Drive  
Ft. Lauderdale, FL 33334

Rating Agencies

Moody's Investors Service, Inc.  
ABS Monitoring Department  
99 Church Street  
New York, New York 10007

Standard & Poor's Ratings Services

Attn: ABS Surveillance Group  
55 Water Street  
41st floor  
New York, NY 10041-0003

Fitch Ratings

Attn: ABS Surveillance Group  
One State Street Plaza  
New York, NY 10004

With a copy to:

VCG Securities LLC

407 SE 1st Street  
Delray Beach, FL 33483

Cook and Sadorf, PL

1744 N. Belcher Rd., Suite 150  
Clearwater, FL 33765  
Attn: Rick Sadorf

Lance Gotthoffer

Chaitman LLP  
465 Park Avenue  
New York, NY 10022

Neil L. Arney

Kutak Rock LLP  
1801 California Street, Suite 3000  
Denver, CO 80202-2626



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**Appendix I**

**Petition**

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In the Matter of the National Collegiate  
Student Loan Trusts 2003-1, 2004-1,  
2004-2, 2005-1, 2005-2 and 2005-3.

Case Type: Other

File No. **62-TR-CV-16-5**

**PETITION OF U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE  
TRUSTEE, FOR INSTRUCTIONS IN THE ADMINISTRATION OF TRUSTS  
PURSUANT TO MINN. STAT. § 501C.0201**

TO THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT:

1. Petitioner U.S. Bank National Association (“U.S. Bank”) files this petition (the “Petition”) solely in its capacity as indenture trustee (the “Indenture Trustee”) acting for the benefit of the holders of notes issued through certain securitization trusts (the “Indenture Trusts”) in connection with the following Delaware Statutory Trusts: National Collegiate Student Loan Trust 2003-1, National Collegiate Student Loan Trust 2004-1, National Collegiate Student Loan Trust 2004-2, National Collegiate Student Loan Trust 2005-1, National Collegiate Student Loan Trust 2005-2 and National Collegiate Student Loan Trust 2005-3 (the “Issuers”).

2. The Indenture Trustee seeks the Court’s instruction regarding VCG Securities LLC’s (“VCG”) attempt to appoint Odyssey Education Resources LLC (“Odyssey”) as a servicer or special servicer for each Issuer under a December 30, 2014 servicing agreement (the “Odyssey Agreement”).<sup>1</sup> VCG holds all, or the majority, of the beneficial interest in each Issuer and is attempting to act through the owner trustee to (1) appoint Odyssey as servicer or special servicer and (2) direct

<sup>1</sup> A true and correct copy of the Odyssey Agreement is attached as Exhibit 1.

approximately \$1.46 million in indenture trust funds to Odyssey.

3. The Indenture Trustee's rights and responsibilities are contained in an indenture entered into with each Issuer (the "Indentures"). Under the Indentures, the Indenture Trustee maintains certain trust accounts that hold funds for payments to Noteholders and other parties including servicers. In this case, the Indenture Trustee has been instructed to release trust funds to pay numerous invoices from Odyssey, but is concerned that payment of such funds may violate the terms of the Indentures and harm the Noteholders.

4. Among the Indenture Trustee's concerns is the fact that Odyssey does not appear to have actually performed any services to benefit the Noteholders. Additionally, Odyssey's appointment appears to alter the current servicing arrangements in a way that requires, at the very least, Rating Agency Confirmation and Noteholder consent. Lastly, the Odyssey Agreement grants Odyssey the power to purchase trust assets at below-market value, which creates a potential for self-dealing.

5. The Indenture Trustee seeks the Court's instruction on three issues. First, the Indenture Trustee seeks instruction regarding whether, under the Governing Agreements,<sup>2</sup> Odyssey was properly appointed as a Servicer or Special Servicer and whether the Odyssey Agreement is valid and binding, such that the Indenture Trustee should release funds necessary to compensate Odyssey for any future services performed.

6. Second, to the extent Odyssey was properly appointed as Servicer or Special Servicer and the Odyssey Agreement is valid and binding under the Governing Agreements, the Indenture Trustee seeks instruction regarding how to resolve certain conflicts between the Odyssey Agreement and the Governing Agreements.

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<sup>2</sup> The "Governing Agreements" include, for each Issuer respectively, the Trust Agreement, Indenture, the Servicing Agreement, the Administration Agreement and the Special Servicing Agreement.

7. Third, to the extent Odyssey was properly appointed as Servicer or Special Servicer and the Odyssey Agreement is valid and binding under the Governing Agreements, the Indenture Trustee seeks instruction regarding whether to release the funds necessary to pay Odyssey's outstanding invoices, although Odyssey has not provided the Administrator or Indenture Trustee any evidence that it has performed any services for the Issuers, and the Indenture Trustee has not received any funds for forwarding to Noteholders generated by Odyssey's alleged servicing activities.

### **Jurisdiction and Venue**

8. The Indenture Trustee is a national banking association and has its principal corporate trust office in St. Paul, Minnesota. This Court has jurisdiction *in rem* over this Petition under Minn. Stat. § 501C.0201 because the Indenture Trusts' assets are administered by and through the Indenture Trustee's St. Paul corporate trust office.

9. This petition is properly venued in this Court pursuant to Minn. Stat. § 501C.0207(2)(ii).

### **Issuance of Student Loan-Backed Notes**

10. Each Issuer is a Delaware Statutory Trust for which Wilmington Trust Company acts as the current trustee (the "Owner Trustee").

11. The Issuers were created to facilitate the issuance and sale of notes (the "Notes") backed by private student loans (the "Loans") to investors (the "Noteholders"). To facilitate this process, each Issuer pledged its interest in the Loans to the Indenture Trustee under an Indenture.<sup>3</sup> The Notes entitle the Noteholders to a portion of the cash flows generated by repayment of the Loans.

12. Each Issuer also retained an interest in any residual cashflow generated

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<sup>3</sup> A true and correct copy of the Indenture relating to National Collegiate Student Loan Trust 2005-3 is attached as Exhibit 2. The terms of the 2005-3 Indenture relevant to this Petition are substantially similar to those of the other Indentures.

by the Loans after the Notes are paid in full.

### **Additional Relevant Parties**

13. In addition to the Owner Trustee, the operations of each Issuer and Indenture Trust are carried out by numerous parties including the Indenture Trustee, Servicers, a Special Servicer, and an Administrator.

14. U.S. Bank is the Indenture Trustee of, and is responsible for administering, each Indenture Trust. This includes holding deposits received from the Servicers or Special Servicer, making distributions to Noteholders in accordance with reports received from the Administrator, and making reports or other information received from various parties available to Noteholders.

15. The Pennsylvania Higher Education Assistance Agency (“PHEAA”) acts as the primary Servicer for each Issuer. Each Servicer collects principal and interest payments on the Loans from the borrowers and remits those payments to the Indenture Trustee for distribution to Noteholders.

16. First Marblehead Education Resources, Inc. (“First Marblehead”) was the original Special Servicer and U.S. Bank was the back-up Special Servicer for each Issuer under the Special Servicing Agreement dated March 1, 2009 (the “Special Servicing Agreement”).<sup>4</sup> When First Marblehead later resigned, U.S. Bank succeeded First Marblehead as Special Servicer. Under the Special Servicing Agreement, the Special Servicer provides certain services for Loans that are more than 30 days delinquent. U.S. Bank later contracted with Transworld Systems Inc. (“TSI”) to act as Sub-Servicer and with Turnstile Capital Management, LLC (“TCM”) to act as Special Sub-Servicer for each Issuer.

17. GSS Data Services Inc. (“GSSDS”) acts as the Administrator for each Issuer (the “Administrator”) under an Administration Agreement (collectively, the “Administration Agreements”).<sup>5</sup> The Administrator performs certain duties under

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<sup>4</sup> A true and correct copy of the Special Servicing Agreement is attached as Exhibit 3.

<sup>5</sup> A true and correct copy of the Administration Agreement relating to National Collegiate Student Loan

the Governing Agreements including directing payment of expenses of the Issuers and creating monthly reports to Noteholders.

18. VCG holds all, or the majority, of the beneficial interest in each Issuer. As the Issuers' owner, VCG has instructed the Owner Trustee to take certain actions with respect to Odyssey and the Odyssey Agreement. Upon information and belief, VCG owns, controls, or is otherwise affiliated with Odyssey.

### **The Odyssey Agreement**

19. On December 30, 2014, VCG directed the Owner Trustee to enter into the Odyssey Agreement, which purports to appoint Odyssey as a "Servicer" for each Issuer. Before this, neither the Administrator nor the Indenture Trustee was involved in or aware of the negotiation or execution of the Odyssey Agreement.

20. While the Odyssey Agreement purports to appoint Odyssey as a "Servicer," the Odyssey Agreement allows Odyssey to perform certain collection and enforcement services with respect to Loans that are more than 30 days delinquent. The Special Servicing Agreement also provides for U.S. Bank as the Special Servicer to perform similar services with respect to Loans that are more than 30 days delinquent. As a result, it is unclear whether the Odyssey Agreement appoints Odyssey as a Servicer or replacement Special Servicer. This distinction is significant because the procedures for appointing a Servicer differ from those for appointing a replacement Special Servicer.

21. A Servicer cannot be properly appointed unless 10 days' prior notice of the appointment is provided to the Rating Agencies and, during the 10 days, none of the Rating Agencies notify the Administrator or the Indenture Trustee in writing that the appointment will result in a reduction or withdrawal of the Notes' current rating.<sup>6</sup>

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Trust 2005-3 is attached as Exhibit 4. The terms of the 2005-3 Administration Agreement relevant to this Petition are substantially similar to those of the other Administration Agreements.

<sup>6</sup> See, e.g., Ex. 2 at A-20, A-23 (defining "Rating Agency Condition" and "Servicer"). Additionally, to the extent the Odyssey Agreement would increase the amount of servicing fees being paid, the Indentures require that the Rating Agencies be given 10 days' prior notice and, during the 10 days, none of the

22. A replacement Special Servicer cannot be properly appointed without written confirmation from each Rating Agency (other than Fitch, Inc.) that the appointment will not result in a reduction or withdrawal of the Notes' current rating.<sup>7</sup> Here, to the extent Odyssey is able to service Loans pursuant to the Odyssey Agreement, it will effectively replace U.S. Bank as Special Servicer as to such Loans.<sup>8</sup>

23. On February 4, 2015, the Administrator received a letter from VCG requesting that the Administrator acknowledge the Odyssey Agreement.<sup>9</sup> This letter stated that "the Rating Agency Condition has been satisfied." This letter, however, did not attach or describe the purported notice and did not attach or describe any confirmation from the Rating Agencies that the appointment would not result in a rating reduction or withdrawal. Neither the Administrator nor the Indenture Trustee was involved in or aware of the purported satisfaction of the Rating Agency Conditions with respect to the Odyssey Agreement. Thus, it is unclear if the Rating Agency Conditions for appointment of Odyssey as a Servicer have been satisfied, much less the more stringent conditions for replacement of a Special Servicer.

24. The Odyssey Agreement also materially alters how Loans may be released from the Indentures. The Odyssey Agreement permits Odyssey to purchase defaulted Loans at below-market prices, which is not allowed by any of the other servicing agreements.

25. Another potential defect in Odyssey's appointment as Servicer is that Odyssey never obtained Noteholder consent of the appointment. To the extent that Odyssey's appointment would waive, amend, modify, supplement, or terminate the current Servicing or Special Servicing Agreements, the Indentures require Noteholder

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Rating Agencies notify the Administrator or the Indenture Trustee in writing that such action will result in a reduction or withdrawal of the Notes' current rating. *See id.* at A-23 (defining "Servicing Fees").

<sup>7</sup> *See, e.g.*, Ex. 3 at § 6(E).

<sup>8</sup> Additionally, a failure by the Issuers to send Loans that are more than 30 days delinquent to U.S. Bank as Special Servicer would violate the Special Servicing Agreement.

<sup>9</sup> A true and correct copy of this letter is attached as Exhibit 5.

consent.<sup>10</sup> Here, because all Loans are currently being serviced by the current Servicer and Special Servicer, it is unclear what Loans would be available for Odyssey to service. To the extent Odyssey's servicing would amend, modify, or terminate the current Servicing or Special Servicing Agreements, the Indentures require Noteholder consent.

26. On February 10, 2015, the Administrator responded to VCG's letter by informing VCG that Odyssey was not an approved servicer because various preconditions to its appointment had not been fulfilled.

27. On March 23, 2015, the Owner Trustee, on behalf of the Issuers, sent a letter to the Administrator stating that it was forbidden from having any communication regarding Odyssey with PHEAA or any Rating Agency. The letter also stated that the Administrator should not take any action that would cause or allow any defaulted Loan to be transferred to the Special Servicer, and that it should not hire any entity to service defaulted Loans.

28. On October 1, 2015, the Owner Trustee, on behalf of the Issuers, sent a letter to the Administrator instructing it to "cease and desist" with giving PHEAA any direction with respect to the servicing of defaulted Loans.

### **The Odyssey Invoices**

29. On December 8, 2015 the Issuers' /VCG's counsel, Mr. Lance Gotthoffer, emailed the Administrator invoices that sought "Reimbursement of Expenses" purportedly incurred by Odyssey for each Issuer during each month of 2015.<sup>11</sup>

30. On December 10, 2015, the Administrator responded to Mr. Gotthoffer's email by requesting a detailed description of the expenses for which Odyssey was seeking reimbursement.<sup>12</sup>

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<sup>10</sup> See, e.g., Ex. 2 at § 3.07(c) ("Issuer shall not waive, amend, modify, supplement or terminate any Basic Document or any provision thereof without the consent of the Indenture Trustee and the Interested Noteholders"); see also *id.* at A-4 (defining "Basic Documents" to include "Servicing Agreements").

<sup>11</sup> True and correct copies of this email and all of the 2015 invoices are attached hereto as Exhibit 6.

<sup>12</sup> A true and correct copy of this email is attached as Exhibit 7.

31. Mr. Gotthoffer responded on December 11, 2015 that further detail was not required under the Odyssey Agreement, and that none would be provided unless the Administrator could direct him “to a provision in [the Odyssey Agreement] requiring Odyssey to provide the detailed explanation of expenses requested in [the Administrator’s] email[.]”<sup>13</sup>

32. The Administrator’s outside counsel, Kutak Rock LLP, wrote Mr. Gotthoffer on December 16, 2015, stating that Odyssey had not been validly appointed as Servicer and, therefore, Odyssey’s invoices would not be paid.

33. In addition to Odyssey’s 2015 invoices, Odyssey has subsequently sent the Administrator invoices for January and February of 2016.<sup>14</sup> The Odyssey invoices received to date total \$1.46 million.<sup>15</sup>

34. No documentation or backup for the expenses allegedly incurred by Odyssey has been provided to the Administrator as of the date this Petition was filed.

35. As of the filing of this Petition, the Indenture Trustee has not received any proceeds from Odyssey’s purported servicing of the Loans. If Odyssey serviced any Loans during 2015 or later, it should have remitted monies collected to the Indenture Trustee for disbursement to the Noteholders.

### **Threatened Litigation**

36. On December 23, 2015, Mr. Gotthoffer sent a draft complaint to Kutak Rock LLP, counsel to the Administrator, naming the Administrator and the Indenture Trustee as defendants. Mr. Gotthoffer stated that the complaint would be filed unless the Odyssey invoices were paid by December 28, 2015.

37. The draft complaint sought to compel the Indenture Trustee and

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<sup>13</sup> *See id.*

<sup>14</sup> A true and correct copy of the January 2016 invoices are attached hereto as Exhibit 8. The February 2016 invoices were received too late to be included in the Monthly Issuer Order for the February distribution date.

<sup>15</sup> The invoices attached as Exhibits 6 and 8 total \$1.35 million through January, 2016. With the addition of the February, 2016 invoices, Odyssey’s outstanding invoices to date total \$1.46 million.

Administrator to pay Odyssey's outstanding invoices. The draft complaint also asserted a claim against the Administrator seeking indemnification under the Administration Agreement. Lastly, the draft complaint asserted a tortious interference claim against the Indenture Trustee for "tortiously interfer[ing] with, and caus[ing] [the Administrator] to breach, the Administration Agreement."

### **Orders to Pay Odyssey Invoices**

38. On January 14, 2016, VCG sent an "Officers Certificate" to the Indenture Trustee attesting that the all conditions precedent for the execution of the Odyssey Agreement had been satisfied and requesting that the Indenture Trustee acknowledge the Odyssey Agreement.<sup>16</sup>

39. Also on January 14, 2016, Mr. Gothoffer's law firm, Chaitman LLP, sent an "Opinion of Counsel" to the Indenture Trustee in which Chaitman LLP opined that "the execution of the Odyssey Agreement is authorized and/or permitted by the applicable Indentures and that all conditions precedent to such execution have been complied with."<sup>17</sup>

40. On January 20, 2016, the Owner Trustee, at the direction of the Issuers/VCG, sent an "Issuer Order" to the Administrator that instructed the Administrator to (1) acknowledge the Odyssey Agreement, (2) cause the payment of the Odyssey invoices that had been submitted, (3) cause the payment of all future Odyssey invoices, and (4) prepare and execute all additional documents and take all action necessary to cause the payment of all current and future Odyssey invoices.<sup>18</sup> Under Section 1(c) of the Administration Agreements, the Administrator is not obligated to take any action with respect to a non-ministerial action unless the Administrator shall have received instructions from the Indenture Trustee under the Indenture or from the Owner Trustee or the owners of the respective Issuer under the

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<sup>16</sup> A true and correct copy of this letter is attached as Exhibit 9.

<sup>17</sup> See *id.* at Exhibit C.

<sup>18</sup> A true and correct copy of this Issuer Order is attached as Exhibit 10.

Trust Agreement.

41. Based solely upon the “Issuer Order” instruction to cause the payment of the Odyssey invoices, on February 17, 2016, the Administrator sent the Indenture Trustee a Monthly Issuer Orders (“MIOs”) to release the funds necessary to pay the Odyssey invoices.<sup>19</sup> In a letter accompanying the MIO, the Administrator also expressed its concerns as to whether Odyssey was validly appointed as a Servicer or a replacement Special Servicer under the Indentures or the Special Servicing Agreement and that the Odyssey invoices lack sufficient authorization, detail, and backup to warrant payment. The Administrator stated that, “[a]bsent the Issuer Order, the Administrator would not have submitted the Invoices for payment[.]”

#### **Request for Relief**

**WHEREFORE**, pursuant to the provisions of Minn. Stat. §§ 501C.0201, 501C.0202 and all other applicable law, the Indenture Trustee respectfully requests that this Court:

- a. Make and enter herein an Order designating the time and place when the respective parties in interest may be heard upon the matters set forth in this Petition, and that notice of the hearing be served in the manner specified in the accompanying Order and as provided by Minn. Stat. § 501C.0203 subdivision 1.
- b. Undertake to represent all parties in interest who are unascertained or not in being, or who are minors or incapacitated, pursuant to the provisions of Minn. Stat. § 501C.0305.
- c. At such designated time and place make a further Order as follows:
  - i. Determining whether, under the Governing Agreements, Odyssey was properly appointed as a Servicer or Special Servicer and whether the Odyssey Agreement is valid and binding;

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<sup>19</sup> A true and correct copy of the MIO and accompanying letter (absent attachments) are attached as Exhibit 11.

- ii. If Odyssey was properly appointed as Servicer or Special Servicer and the Odyssey Agreement is valid and binding under the Governing Agreements, resolving the conflicts and inconsistencies that arise between the Governing Agreements and the Odyssey Agreement.
- iii. Determining that the Administrator should not provide for payment of the Odyssey invoices in its Monthly Issuer Orders submitted as of the date this Petition was filed;
- iv. Determining that the Administrator should not provide for the payment of any Odyssey invoices submitted in the future unless the Odyssey Agreement is determined to be valid and binding under the Governing Agreements and Odyssey provides to the Administrator invoices that contain documented, verifiable descriptions of the work performed by Odyssey and funds are received by the relevant trust;
- v. Determining that the Indenture Trustee should not pay, or cause the release of, any funds to Odyssey pursuant to the Odyssey Agreement or any Monthly Issuer Order;
- vi. Determining that the Indenture Trustee has acted without willful misconduct, negligence or bad faith in ascertaining whether the requirements under the applicable Indentures have been satisfied;
- vii. Directing that the Indenture Trustee and the Issuers shall not be subject to the continuing supervision of the Court for the purposes of Minn. Stat. § 501C.0205 or General Rule of Practice 417.02; and
- viii. Granting such other and further relief as the Court may deem

lawful, just and proper.

DATED: February 18, 2016

By:     /s/ Thomas F. Berndt    

Michael A. Collyard (302569)

Thomas F. Berndt (389080)

Peter C. Ihrig (390392)

**ROBINS KAPLAN LLP**

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*Attorneys for U.S. Bank National Association, as  
Indenture Trustee*

### **Acknowledgement**

The undersigned hereby acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

DATED: February 18, 2016

By:     /s/ Thomas F. Berndt    

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[usbank.com](http://usbank.com)

**Appendix II**

**Order for Hearing**

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**FILED**

FEB 22 2016

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

COURT ADMINISTRATOR

BY KA DEPUTY SECOND JUDICIAL DISTRICT

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Case Type: Other

In the Matter of the National Collegiate  
Student Loan Trusts 2003-1, 2004-1,  
2004-2, 2005-1, 2005-2 and 2005-3.

File No. 62-TR-CV-16-5

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**ORDER FOR HEARING ON PETITION OF U.S. BANK NATIONAL  
ASSOCIATION, AS INDENTURE TRUSTEE, FOR INSTRUCTION PURSUANT  
TO MINN. STAT. § 501C.0201**

Petitioner U.S. Bank National Association, in its capacity as indenture trustee as described in the Petition (the "Indenture Trustee"), having filed its Petition for Instructions in the Administration of Trusts Pursuant to Minn. Stat. § 501C.0201 (the "Petition") and the Court having assumed jurisdiction of the proceeding *in rem* under Minnesota Statute § 501C.0201, now, upon motion of Robins Kaplan LLP, attorneys for petitioner, hereby directs as follows:

IT IS ORDERED THAT:

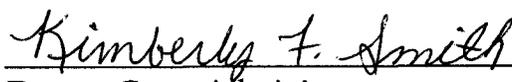
1. A hearing upon the Petition will be held before the Honorable David C. Higgs, District Court Judge, Probate Division, at the Ramsey County District Courthouse, Room 650, St. Paul, Minnesota on April 18, 2016 at 1:45 p.m., or as soon thereafter as counsel can be heard.
2. Notice of such hearing shall be given by publishing a copy of this Order one time in a legal newspaper of Ramsey County, Minnesota, at least twenty (20) days before the date of the hearing.
3. The Indenture Trustee is further directed to send both this Order and the Petition (exclusive of the exhibits), without duplication, to all registered

noteholders under the indentures by first class or certified mail, postage pre-paid, at the address of such holder as shown in the note register, at least fifteen (15) days prior to the hearing date. To the extent that any of the notes are held through The Depository Trust Company, mailing of this Order and the Petition (exclusive of the exhibits) to The Depository Trust Company at least fifteen (15) days prior to the hearing date shall be sufficient. Upon mailing of this Order and the Petition to the registered noteholders, the Indenture Trustee shall complete the Affidavit of Mailing attached hereto as Exhibit A and such affidavit shall constitute sufficient evidence of mailing, so as to comply with the notice requirements of Minnesota Statutes §§ 501C.0201 and 501C.0203.

4. Parties in interest may object to the Petition, or any of the relief being sought herein, by filing a memorandum of law setting forth their respective positions regarding the issues presented by the Petition, and serve therewith all counsel then of record in the matter, not later than five (5) days before the hearing date set forth above.

5. The parties in interest are hereby referred to the Petition provided to them and on file in the office of the Court Administrator for a specification of the matters to be considered at the hearing.

Dated: February 22, 2016

  
\_\_\_\_\_  
Deputy Court Administrator  
Ramsey County District Court

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