Proposed Revisions to Regulation AB File Number S7-08-10

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August 2, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Subject: Proposed Revisions to Regulation AB
File Number S7-08-10

Dear Ms. Murphy:

The Mortgage Bankers Association[1] (MBA) welcomes the opportunity to present the two attached comment letters that individually address MBA's residential and commercial members' perspectives regarding the Securities and Exchange Commission's (SEC) proposed revisions to Regulation AB[2] and other rules regarding the offering process, disclosure, and reporting for asset-backed securities[3] (ABS), (Proposed Rule).

As the voice of the real estate finance industry, MBA represents a broad and diverse range of member perspectives. Several thematic concepts emerged during the course of MBA's review of the Proposed Rule from the perspectives of the commercial and residential real estate finance sectors. These common themes are noted below. However, in separate comment letters, MBA presents more specific observations of the residential and commercial real estate finance sectors that reflect the respective priorities of each sector. Consequently, the SEC should look to these comment letters for specific responses to questions posed in the Proposed Rule.

General Themes

MBA agrees with the SEC's goal of modernizing the offering process and building more robust disclosure standards in order to increase market confidence and re-start the securitization markets. Where appropriate, MBA offers constructive alternatives to the Proposed Rule that in some instances would not be as challenging or financially

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

[2] 17 C.F.R. 229.
[3] 75 Fed Reg 84, 23327-23514, (May 3, 2010).

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burdensome to implement, and with respect to commercial mortgage-backed securities, reflect the existing, robust information reporting structure.

We also note that the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")[4] calls upon the relevant federal agencies to work collaboratively to improve the asset-backed securitization process. Therefore, MBA urges the SEC to be guided in its rule making process by the Dodd-Frank Act when addressing elements of the Proposed Rule that overlap with this legislation.

Risk Retention

The Proposed Rule would require the sponsor to retain an economic interest of not less than five percent of the credit risk of financial assets securitized, as a condition to ABS shelf eligibility. MBA urges the SEC to work with other federal regulatory agencies to harmonize risk retention regulations based upon Sec. 941 of the Dodd-Frank Act. The merits of the options for risk retention are discussed separately in the submissions from the commercial and residential sectors.

Timing and Transition

Given the breadth and scope of the Proposed Rule, one of the SEC's primary challenges will be to strike the appropriate balance between the timely implementation of the Proposed Rule and the real estate finance industry's capacity and resources to implement the Proposed Rule. Given these challenges, MBA encourages the SEC take into account the following considerations when establishing an implementation timeframe for the Proposed Rule:

- **Implementation Period for Each Regulatory Addition or Change**. The SEC should take into consideration how long each new proposed change will take to implement on an individual basis.

- **Aggregate Implementation Timeframe**. After establishing a reasonable implementation period for each proposed change on a one-off basis, the SEC should then take into account the totality of all changes in the final rule and the ability of an MBS issuer to implement them in a simultaneous manner, not an aggregation of the time required if the proposed changes were being implemented on a one-off basis.

- **Holistic Approach to Implementation**. When establishing an implementation timeframe, the SEC should also take into consideration how the final rule's new and revised regulations are interconnected with other new and revised regulations.

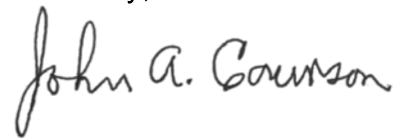
[4] Pub. L. 111-203, July 21, 2010.

Taking this into consideration, as specifically discussed in the submissions from each sector, MBA recommends that the SEC consider implementing different time tables for different aspects of the Proposed Rule.

Conclusion

MBA looks forward to working with the SEC to finalize the Proposed Rule in a manner that protects investors and reinvigorates the securities markets. MBA appreciates the opportunity to comment and requests that you consider our perspectives.

Sincerely,



John A. Courson
President and Chief Executive Officer

Attachments

August 2, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549–1090

Subject: Proposed Revisions to Regulation AB
File Number S7–08–10

Dear Ms. Murphy:

The commercial real estate ("CRE") side of the Mortgage Bankers Association[1] ("MBA") welcomes the opportunity to respond to the Securities and Exchange Commission's (the "Commission") request for comment on proposed revisions to Regulation AB and other rules, set forth in the Federal Register, Vol. 75, No. 84, dated May 3, 2010 (the "Federal Register"), regarding the offering process, disclosure, and reporting for asset-backed securities ("ABS"), including commercial mortgage-backed securities ("CMBS"), (together, the "Proposed Rule").

In preparing this response, the MBA has worked with its entire CRE membership, including mortgage bankers, portfolio lenders, commercial loan master, primary and special servicers, investors, attorneys and accountants. MBA makes this submission in two parts, first our general response to the proposal and second answers to specific questions asked in the proposal. MBA notes that we did not answer all the questions; only those of most concern to CRE MBA members.

The primary issues of focus for the CRE MBA membership are:

- Risk retention;
- Other proposed shelf eligibility requirements;

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- Proposed changes to the offering process;
- Proposed enhancement to disclosure;
- CMBS disclosures on Schedule L and Schedule LD, including the proposal to require XML format for reporting;
- The proposal for ongoing SEC reporting for the life of the transaction;
- The proposal with respect to Private Placements; and
- The timing and implementation process for the proposed changes.

MBA shares the Commission's goals of improved underwriting standards, enhanced and transparent disclosure and most importantly reviving the secondary market for CMBS. MBA hopes our comments will help the Commission achieve these goals and offer these comments to assist in that process.

General Comments

Risk Retention
With respect to CRE, MBA believes that the Proposed Rule to require a sponsor of a CMBS securitization to hold a 5% vertical strip of bonds issued (i) is unnecessary to encourage lenders to maintain high underwriting standards, (ii) will have a detrimental effect on the CMBS market and the availability of credit and (iii) is now inconsistent with the spirit of the financial services reform legislation passed by Congress, H.R. 4173, the "Dodd-Frank Wall Street Reform and Consumer Protection Act" (the "Financial Reform Legislation"); the Proposed Rule having been drafted prior to the legislation, but nonetheless should now be conformed. MBA believes a more flexible standard that takes into account a number of factors would have the desired effect of maintaining asset quality without impeding the market and would be more consistent with the legislation, which calls for a "menu" of options for commercial mortgages. These alternative factors could include: 1) ownership of the non-rated securities (the "B Piece") by a third party investor with a true economic stake in the first loss piece; 2) representations and warranties with respect to the mortgage loans being placed into the securitization; or 3) minimum underwriting standards for loans being sold into the securitization.

The cost to the industry of requiring a 5% vertical hold by securitization sponsors would be significant. To account for the additional capital required to maintain the 5% position, lenders would have no choice other than to raise the cost of borrowing, and certain lenders would simply decline to participate in the market. In a follow up submission to this letter, the MBA will provide specific data on the additional capital that would have been required in past markets to meet this criteria.

While MBA is aware that certain investors have expressed a preference for a vertical hold by a sponsor of the securitization, investors are always free to decline to invest in transactions that do not meet their own investment standards. Although requiring the sponsor to maintain such an investment would be an indication of the sponsor's belief in the asset quality being sold, there are other asset quality indicators.

Due diligence by a third party holder of a B Piece is a strong indicator of asset quality. Unlike the investment grade investor, the first loss holder has, by definition, the most at risk with respect to the assets. Most B Piece investors will perform site visits to large assets and have frequently required lower quality assets to be removed from the mortgage pool before issuance. While in the past B Piece investors have been able to remove much of their risk of loss through leverage or resale, MBA believes rules can be put in place to align such interest while providing some flexibility for B Piece buyers to manage their portfolios. MBA will work to supplement this letter with a more specific description of the "B" piece selection process, their due diligence process and the business profile of typical "B" piece buyers.

Strong representations and warranties and minimum underwriting standards (e.g., loan to value and debt service coverage ratios) could also be effective as methods to achieve the Commission's policy objectives. Strong representations and warranties would require a sponsor to make investors whole for breaches of underwriting standards. If combined with minimum underwriting standards, much of what is accomplished with a 5% vertical hold could be accomplished without the capital commitment of such investments and the adverse impact to the market. MBA will supplement this letter with more specific descriptions, representations and warranties and underwriting criteria that should be considered as viable options to the 5% vertical hold form of risk retention.

MBA notes that in the Financial Reform Legislation it calls for studies to be performed with respect to the impact of risk retention on accounting issues and credit availability and that Financial Regulators need to coordinate rules so that rules are consistent. The MBA would appreciate the opportunity to work with the Commission and other regulatory agencies to perform these studies and achieve this goal of providing a coordinated response.

Shelf Eligibility Requirements Other Than Risk Retention

In addition to the risk retention requirement, shelf eligibility for delayed offerings under the Proposed Rule would be conditioned on a number of other criteria, namely the issuer's undertaking to furnish third party opinions regarding repurchase performance, delivery by the depositor's chief executive officer of a certificate regarding adequacy of cash flows, and issuer's undertaking to file ongoing reports for so long as any of its ABS are held by non-affiliated third parties. According to the Commission, these criteria are intended to provide investors with greater confidence in information already required to be included in the offering documents and to provide transparency regarding ongoing performance of an issuance. For the reasons set forth below, MBA is concerned that

these shelf eligibility requirements would ultimately impose undue costs and burdens upon issuers of ABS and would offer relatively little benefit, at least in the context of CMBS, to investors.

MBA notes that the Proposed Rule's opinions would be very fact-driven, relating primarily to a determination of whether there were breaches of certain representations or warranties relating to the collateral. Furthermore, such opinions would only be relevant when the factual circumstances surrounding a failure to repurchase were closely contested. In this context it is unlikely that a legal or accounting opinion could be given without heavy qualifications and/or assumptions relating to the very facts at the crux of the opinion. Such an opinion would likely do little to buttress investor confidence in the representations and warranties relating to the financed assets. Moreover, any opinion not heavily limited as to factual matters would likely be difficult to obtain from independent sources. MBA is concerned that the costs and consequences of this requirement would far outweigh its limited benefit to investors.

Under the Proposed Rule, shelf eligibility for delayed offerings would also be conditioned on delivery by the depositor's Chief Executive Officer (the "CEO") of a certificate regarding the adequacy of the cash flows anticipated from the assets underlying the offering. The Proposed Rule acknowledges that the certification would be an "explicit representation…of what is already implicit…in the registration statement" (Proposed Rule, Federal Register, 23345) but concludes that such certification, by focusing the CEO's attention on such matters, would improve asset quality and related disclosure. MBA considers the certification requirement unhelpful in this regard in that it is duplicative of existing or proposed investor protection. The CEO of the depositor is already responsible, as a signatory of the registration statement, for the ABS issuer's disclosure in the prospectus and, under the federal securities laws, can be liable for material misstatements or omissions, including with regard to the comprehensive disclosure relating to cash flows and underlying pool assets already required in the Proposed Rule. It is difficult to see how the certification would create additional incentive to focus on disclosure issues.

The inclusion in the Proposed Rule of the waterfall computer program as part of the required disclosure would interfere with, or at least substantially contribute to the burdens of, CEO certification since the depositor's CEO will likely be poorly positioned to be able to assess whether the waterfall computer program is free of coding errors that could lead to misleading cash flow disclosure. For example, the program may be vulnerable to changes by users and technological errors outside the issuer's control. If the program's code uses an open source language like Python, all portions of the program could be accessible, thereby permitting accidental or intentional tampering. For issuers to provide a program whose output is represented and warranted to be correct, accessibility to a program's execution steps presents a problem, as even a minor modification or compiling error could alter the output, hence change the projected

cash flow. This presents a risk for both the companies that issue the waterfall programs which model their bonds and those investors who rely upon the output.

Concerns over the resulting liability could, in turn, drive issuers away from more complex capital structures. Some transaction structures may be too complex to be effectively modeled in the waterfall computer program without creating a significant risk that the program's output in response to at least some parameters selected by investors would be misleading in isolation. Likewise, continued referral to the program's output could be or unhelpful or even misleading over a transaction's lifespan in certain circumstances. For these reasons, MBA also opposes the requirement that a waterfall program be provided to investors.

MBA is also generally concerned that the Proposed Rule increases the frequency and detail of filing burdens on CMBS issuers while at the same time imposing more severe penalties for missteps by CMBS issuers that do not necessarily result in a commensurate disadvantage to CMBS investors. MBA is particularly concerned that under the Proposed Rule an issuer could find itself ineligible to offer CMBS publicly for failure to make a timely filing on an unrelated CMBS offering under what would effectively become life-of-the-transaction periodic reporting under the Exchange Act or to timely file under Item 6.05 of Form 8-K (the latter being a reversal of a carve out that MBA believes should be maintained). As discussed above, new requirements regarding representation and warranty breaches and depositor CEO certifications may be of less value than hoped to investors due to practical considerations and may therefore not warrant status as a condition to shelf eligibility. MBA also believes that the proposed quarterly evaluation of shelf eligibility imposes a compliance burden that is unnecessary given the practical need to confirm eligibility before any offering that already exists. While MBA understands and respects the Commission's seriousness of purpose with respect to ongoing reporting and the new certification requirements, MBA would urge the Commission to consider whether less severe penalty options than the loss of shelf eligibility for a year may be appropriate for a single violation of what will be a significantly increased number of requirements.

Offering Process Changes
CMBS offerings have historically been characterized by thorough disclosure to investors in prospectuses from issuers and by comprehensive investor reporting through servicers and trustees. The delivery of a preliminary prospectus has been and remains the typical procedure in most CMBS offerings and, as such, MBA anticipates no objection from its CMBS members to formalizing the delivery of a preliminary prospectus as a required element of any ABS offering. MBA is concerned, however, that the details of the procedures as proposed will result in unnecessary delays in the offering process. MBA would ask the Commission to consider whether practices already developed in the CMBS market around the delivery and updating of preliminary prospectuses might be workable not only for CMBS but other ABS categories as well. For example, under the Proposed Rule, a preliminary prospectus must be updated for any material change, and such update then requires another minimum 5-day waiting

period until the first sale. Not all material changes take a week for an investor to understand, particularly if they have already had the original preliminary prospectus for a week. CMBS issuers frequently issue “pre-pricing updates” to investors prior to pricing to convey any material changes since the preliminary prospectus. MBA members’ experience is that few such changes are complicated or far-reaching. Often the updates require no more than a page or two, and are delivered (and filed in public transactions) prior to pricing. Rather than impose a strict 5-day waiting period for changes to preliminary prospectuses and require the redelivery of a completely new preliminary prospectus, MBA urges the Commission to make provisions for such updates and either adopt a shorter required review period for such updates, such as one day, or adopt an approach that focuses more on the length of time necessary for an investor to understand the change rather than the materiality of the change.

Enhanced Disclosure

MBA believes that static pool data is irrelevant and immaterial to CMBS investors. Because of the unique nature of the limited number of properties represented in any particular CMBS transaction, information relating to the historical performance of loans on a wholly separate set of properties has almost no value for investors seeking to evaluate the potential performance of that CMBS transaction. Accordingly, we believe that CMBS issuers will continue to conclude that static pool data is not material for most transactions.

In addition, MBA does not believe that it is necessary to highlight any specific representation or warranty. As the Commission notes in the Proposed Rule, Item 1111(e) currently requires summary disclosure regarding any representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction.

Disclosure of Asset Level Performance Information – Schedule L and Schedule L-D

Schedule L

In the Proposed Rule, the Commission has proposed that CMBS issuers in the securitization market provide the asset-level data on Item 1 and Item 3 of Schedule L to investors prior to issuance. The CMBS industry currently provides asset-level disclosure to investors on the schedules attached to the prospectus (typically called “Annex A”), based on the specific types of commercial loans in the transaction. As the commercial assets are unique, and are not generally uniform like many other asset types, the type of asset-level reporting may vary based on the properties and loans offered in the transaction. Often the issuer will provide additional separate spreadsheets to augment the general asset-level data to highlight unique attributes of its transaction, including for example, information on the debt service payment schedule for the largest loans, detailed reserve account information, detailed characteristics of the multifamily loans and/or information at the pooled level on the loans (including cut off balances, mortgage rates, terms to maturity, debt service coverage ratio (DSCR), cut off and maturity date

loan to value (LTV), etc.). In addition, the CMBS industry typically will also provide significant details, including asset-level data, on the top ten loans (by unpaid principal balance) in the prospectus. Accordingly, MBA believes that use of Schedule L would provide little additional benefit to investors. MBA believes it is preferable that the Commission require asset-level disclosure generally, but allow the industry to set the requirements for disclosure in the prospectus; thereby allowing for flexibility in the marketplace to provide the information and data that is commensurate with the actual assets offered in the pool.

To the extent the Commission believes more standardized terminology and a defined core of shared data fields for Schedule L would be beneficial to CMBS investors, MBA recommends the Commission adopt the CMBS core data points from the current industry Annex A schedules and leverage the definitions already provided in the Commercial Real Estate Finance Council's ("CREFC") Investor Reporting Package (the "IRP").

In order to provide additional specificity with respect to MBA's position related to the adoption of Schedule L, MBA will establish a task force of subject matter experts to develop a comparison of the data points on the proposed Schedule L to the current industry accepted Annex A fields and the terms and definitions already developed for the IRP.

Schedule L-D

MBA does want to thank the Commission for acknowledging the extensive work done by the CMBS industry, which independently established and developed the IRP. The IRP is a consensus standard; it encompasses the culmination of viewpoints from all CMBS industry participants, including primary servicers, master servicers, special servicers, trustees and the investors and has been widely adopted. Further, the IRP is an organic, living and evolving document, where the industry dictates changes to reflect the current market standards in reporting; the IRP is currently on version 5. The CMBS industry has and will continue to modify the IRP when data points and other information become more or less relevant to investors, as an example, based on the data points proposed by the Commission and an industry review of what is currently available on the IRP, the CMBS industry has elected to add Item 1(g)(2), request for the current servicer, and the Item 3(c)(6), request for the modified amortization period to a future release of the IRP.

The IRP already provides extensive monthly reporting on asset performance. The CMBS industry will continue to provide all of the data points and information available in IRP to the CMBS investors. It is MBA's belief that CMBS investors will continue to look to the IRP and its third party data providers for information on asset performance. The Commission's proposed data points significantly overlap the IRP, but the IRP offers substantially more information and gives investors a more robust look at the assets.

Further, the CMBS industry, based on the contractual obligations in the pooling and servicing agreements, typically provides the IRP to the CMBS investors on the same day as the monthly distribution, therefore, based on the submission timing of the information suggested by the Commission (filed with the Form 10-D filing), the investors will receive the IRP 15 days prior to the receipt of the Commission reports.

Based on the overlap of the data suggested by the Commission, coupled with the Schedule L-D reporting timing, MBA believes the IRP will continue to be the CMBS industry standard and the most appropriate vehicle for reporting asset-level performance information to CMBS investors. MBA believes the CMBS industry does not require different and new regulation to increase monthly disclosure. Instead the Commission should adopt specific portions of the IRP that meet the Commission's objective to provide greater transparency to the cash flow analysis and process, but does not create investor confusion and separate reporting standards for CMBS loans.

To that end, MBA requests the Commission consider using the standard codes established by the IRP. As the IRP has already defined many of the same or similar terms used by the Commission in the proposed rule, MBA recommends the Commission adoption of the exact IRP terms, definitions and format for responses, especially when considering CMBS specific data requirements that do not impact other asset types. Further, the IRP codes are used on multiple IRP data files, reports and templates; thereby creating consistency across the entire IRP. To use separate or different codes for the Commission requested data points on Schedule L-D would interrupt that consistency of the information on the IRP and could create confusion for the CMBS investor. Further, the use of new or different codes will not allow the CMBS investor to compare its past deals (with IRP codes) to its future deals (with the new Commission suggested codes). Ultimately, MBA is concerned about the inconsistency and lack of comparable data that will be created by adopting the Commission's suggestion to introduce new terms on Schedule L-D.

MBA participated in the CREFC working group that mapped Schedule L-D data points to the corresponding IRP data points; which sets forth the differences in the reporting terms, responses and definitions. MBA endorses the CREFC's mapping and exhibit to its response letter.

XML Adoption

The MBA supports the use of XML as the regulatory reporting format to enhance the utility and transparency of data provided to investors in asset-backed securities.

The MBA understands the value of XML reporting and is in favor of XML adoption. The MBA, principally through its not-for-profit subsidiary, the Mortgage Industry Standards Maintenance Organization, Inc. (MISMO®), has been creating and promoting XML standards for over 10 years. XML standards have been created by MBA / MISMO and are successfully used today in both the residential and commercial real estate finance

markets. MISMO is separately commenting in detail on the Commission's proposal and expressing its strong support for the use of XML.

To highlight the use of MISMO standards in our industry, MBA points out that Fannie Mae and Freddie Mac recently announced that they will be phasing out their respective proprietary formats and migrating to a common loan delivery file for the residential mortgage finance industry based on the MISMO Version 3.0 XML standards.

MBA believes that the CMBS industry, as users of the existing IRP, view the IRP as the best standard for monthly investor reporting and will continue to look to IRP. The CMBS industry would like to avoid having two standards for reporting, both a separate Schedule L-D and the IRP.

With respect to the IRP and in an effort to make the IRP more transparent, starting in 2007, MBA / MISMO joined forces with the IRP Committee to create the XML data schema to convert the existing IRP v.5 to XML. After two years of committee work, the finished product, IRP v.6 (also known as IRPx), was released for comments in January 2009 and is based on solid MISMO XML schema.

A principal reason that IRPx is not being utilized today is the cost to the industry to convert to XML from existing systems used to report the IRP, including the time required to allow for the development of an XML "reader" to properly display the data in an XML file. MBA believes the CMBS industry participants would need significant time to implement industry-wide adoption of XML as the standard for the IRP. Even if only considering the Proposed Rule's requirement for Schedule L and Schedule L-D in XML, the MBA believes that a two year requirement for compliance would be necessary.

For these reasons and others that are discussed in the Timing and Transition section below, MBA believes the Proposed Rule suggestion for a one year compliance timetable is not long enough and should be longer.

On-Going Reporting

MBA generally supports the Commission's desire to provide investors with more access to information on an ongoing basis. However, it is important that the reporting burden be manageable and not routinely result in shelf ineligibility. MBA understands that Financial Reform Legislation has granted the Commission broad discretion in allowing securitization issuers in delayed shelf offerings to delist and that the suggestion in the Proposed Rule is to not allow a transaction to delist until no classes of securities are held by non-affiliates. This will effectively require "life of the transaction" reporting since almost without exception one or more classes of CMBS securities will be held by non-affiliates of the depositor. Such continued reporting is expensive and burdensome and serves little purpose given the low number of investors and CMBS investor's general sophistication.

MBA believes the better approach is to maintain the current rules permitting reporting to be terminated after one year under the standard criteria of Section 15(d). This will strike a balance between protecting the interests of the investor, on the one hand, and the burden on, and expense to, issuers in preparing and filing such reports, on the other hand.

As the Commission itself observed in the Proposed Rule, CMBS transactions generally provide investors with robust reporting, usually in the standardized IRP format. Requiring issuers to file ongoing reports will not improve the information received by CMBS investors, but will burden CMBS issuers with the added expense and administrative duties related to the preparation and filing of separate reports.

The pooling and servicing arrangements pursuant to which the CMBS are issued customarily require a third-party trustee (meeting certain eligibility requirements), together with the master servicer and the special servicer, to provide this reporting on a periodic basis (indeed monthly with respect to certain reports). Most, if not all, of the information that would be required to be included in the Section 15(d) reports would therefore already be readily available to investors. MBA therefore believes that additional undue burden and cost and expense to CMBS issuers outweigh any benefit to CMBS investors from on-going Section 15(d) reporting.

Additionally, MBA notes that under the Proposed Rule, failure to timely file a report can result in loss of shelf eligibility and that some events that trigger such reporting are outside the control of the issuer and may not be known to the issuer prior to the reporting deadline.

Accordingly, the loss of shelf use for one full year due to a single late Exchange Act report by the depositor or an affiliate is an extremely harsh and draconian result.

The Private Placement Market Does Not Require Additional Regulation
The Commission's proposed revisions to the private placement market would effectively operate to require that privately placed asset backed securities be subject to certain disclosure requirements that transactions registered under the Securities Act of 1933, as amended (the "Securities Act") and the reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") are subject. Among other changes, issuers would need to provide disclosure in the form required by Form S-1 or Form SF-1, as the case may be, under the Securities Act, and provide periodic reporting as would be required under the Exchange Act if requested by investors. MBA believes that the Commission's proposals to overhaul the offering of and the reporting requirements related to privately placed asset backed securities, are more than just "significant" as the Commission itself notes in the Proposed Rule. Indeed, these proposals would fundamentally alter the mechanics of these transactions by mandating the provision of information that traditionally these types of transactions would not require.

MBA believes the net effect of the proposals will be to further curtail activity in a market that is just starting to revive itself. For example, transactions such as resecuritizations[2] would become unviable if the disclosure requirements were governed by the requirements of Form S-1 or Form SF-1 or subject to the ongoing periodic reporting requirements of Section 15(d). Nothing precludes an investor from obtaining all of the information that would otherwise be included by either of the Forms if such investor were so inclined. Furthermore, in the context of the privately placed asset backed market, a CMBS investor generally is able to receive more information without any changes in the current rules and/or regulations during the offering process than it would be during the offering process of a registered transaction. The proposals will not materially benefit investors and would be needlessly onerous and expensive to issuers.

Timing and Transition

Given the breadth and scope of the Proposal, over 300 questions covering over 70 topic areas, one of the Commission's primary challenges will be to strike the appropriate balance between the timely implementation of the Proposed Rule and the CMBS industry's capacity and resources to implement the Proposed Rule. Striking this appropriate balance has significant consequences for the CMBS industry. Should the implementation timeframe for the Proposed Rule be too rapid, the finite resources of CMBS issuers could be overwhelmed, which would materially impact the recovery of the CMBS market. However, should the Proposed Rule implementation period be too long, the benefits to the CMBS market of the Proposed Rule's changes would not be realized in a timely manner.

MBA also recommends that the Commission consider the totality of the effects of implementation and timing of the Proposed Rule on all industry participants. The CMBS industry includes a vast array of participants: local, regional and national firms; large and small firms; loan level originators, such as mortgage bankers and brokers providing local market, property and borrower knowledge; property management companies, primary servicers, environmental/property condition engineers, inspectors, appraisers, due diligence and underwriting firms; and software and hardware vendors. All these parties use a variety of loan servicing and accounting systems, from basic to highly sophisticated, and have either built or bought specialized analytical tools, portfolio/asset management, and property management software specifically oriented to serve the contractual and reporting requirements of investors.

Given these challenges, MBA encourages the Commission take into account the following considerations when establishing an implementation timeframe for the Proposed Rule:

[2] A resecuritization in the context of CMBS is where the asset pool is comprised of one or more securities of a different CMBS issuer and is sometimes referred to as a "Re-REMIC".

- Implementation Period for Each Regulatory Addition or Change. The Commission should take into consideration how long each new proposed change will take to implement on an individual basis. The Commission should address how long each proposed change will take to implement if it was being introduced on a singular basis.

- Aggregate Implementation Timeframe. After establishing a reasonable implementation period for each proposed change on a one-off basis, the Commission should then consider an implementation timeframe based upon the total number of regulatory modifications and additions in the Final Rule. Given the large number of potential regulatory changes and additions, the finite regulatory compliance resources of a CMBS issuer will act as a governor for the speed in which regulatory changes can be reasonability implemented. Consequently, the time to implement the final rule may exceed the sum of the time required if the proposed changes and additions were implemented on a one-off basis. When establishing an implementation timeframe, the Commission should take into consideration the totality of the all of the proposed changes in the final rule and the ability of a CMBS issuer to implement them on a simultaneous manner, not an aggregation of the time required if the proposed changes were being implemented on a one-off basis. For example, although the burden of some of the proposed depositor CEO certificates falls nominally on the depositor, the source of the property level data addressed in these certificates is gathered from multiple other sources. The ability and willingness of these CMBS participants to provide the source data to support the Proposed Rule's requirements and certificates depends on the expense and potential liability of doing so. An unintended side effect, then, of a regulation that ranges too far from current industry practice may well be withdrawal of many firms from CMBS and the concentration of the CMBS business in a limited number of large firms for whom CMBS is a core product.

- Interconnection Amongst the Regulatory Changes. When establishing an implementation timeframe, the Commission should also take into consideration how the Final Rule's new and revised regulations are interconnected with other new and revised regulations. The Commission should give consideration to the fact that CMBS issuers will have to address the implementation of the Final Rule's regulatory changes and additions in a staggered cadence.

Taking into consideration the above, MBA recommends that the implementation of the proposed rules should be staggered in one and two year increments. Regulation changes and additions that can be implemented in the near-term should be implemented in a one-year timeframe. The regulations requiring more elaborate implementation measures should have a two-year implementation period. However, as previously addressed, when establishing the regulations that fall under the one-year implementation timeframe, the Commission should take into consideration the

aggregate number of regulations and the corresponding level of complexity that is required to implement the required regulations. In a supplemental submission, MBA will provide a table that shows the implementation time required in one-year or two-year increments for each element of the Proposed Rule that MBA addresses in this comment letter.

All of the CMBS industry participants have invested years of time and money into policies, procedures, compliance checks, quality control and systems to serve their clients. There are several different widely used third party mortgage loan servicing systems, as well as home-grown proprietary systems. In addition, industry participants have built adjunct specialized systems to feed data to and from the servicing and other systems. All of these are coordinated with issuer, surveillance, and investor and regulatory requirements and procedures.

Consequently, MBA recommends that the adopted rules leverage this extensive existing technological, organizational/compliance and human infrastructure and expertise rather than require significant changes from it. Doing so will ease the ability for industry participants to implement the rules as well as maximize the ongoing participation in the CMBS industry of all the firms nationwide that now serve it.

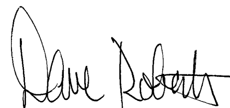
Conclusion

In summary, MBA shares the Commission's desire to revive a vibrant capital markets for commercial real estate finance. MBA understands that protecting investors is both necessary and part of restoring confidence in those markets. MBA very much appreciates the depth of the investigation the Commission undertook into CMBS in developing the proposed rules. Our goal in making this submission is to make recommendations that strengthen these rules. MBA will follow up where noted with even more specific recommendations and supporting data to assist the Commission in evaluating some alternatives.

Thank you again for giving the MBA the opportunity to submit comments.

Sincerely,

John. A. Courson
President and Chief Executive Officer
Mortgage Bankers Association



David A. Roberts
Chair, Mortgage Bankers Association
Commercial Real Estate/Multifamily Finance
Board of Governors

Attachment

Attachment A

MBA's Responses to Specific SEC Questions

SEC Question. We request comment on our proposal to establish a minimum period of time available to investors to review registered ABS offering prospectuses. Are we correct that investors need additional time? Would the proposed timeline for filing the proposed preliminary prospectus at least five business days prior to the date of first sale pose problems for market participants? If so, how could we address those concerns while still providing investors with sufficient time to analyze the securities? [23336]

MBA's Response: CMBS issuers and their underwriters already typically produce a preliminary prospectus prior to any sale. However, many also update that preliminary prospectus with a short (less than 10 pages) update at some point after the preliminary prospectus but prior to the first sale. We suggest making an allowance in the new rules for such updates and either not imposing any minimum time period between the filing of an update and the first sale or alternatively imposing a much shorter minimum review time for such updates, such as one day, as more time is usually not needed to digest the information provided in such updates.

SEC Question. Is the proposed five business days sufficient time for investors? Should the required minimum number of days that the Rule 424(h) filing must be filed before the first sale be longer (e.g., six, seven, eight, or ten business days) or shorter than what we are proposing (e.g., two or four business days)? Given the increased amount of information that would be made available to investors under this proposal, would investors need more time to consider transaction specific information? Is our belief that the filing of standardized and tagged asset-level information and a computer program that gives effect to the cash flow provisions of the transaction agreement could reduce the amount of time investors need to consider transaction-specific information correct? [23336]

MBA's Response: Five business days, essentially a working week, seems reasonable if some ability to update without restarting the clock is available as discussed above. While the increased information requirements may pose practical problems for issuers, CMBS investors are unlikely to need more time to consider transaction-specific information as a result of the proposal. As we indicate in our response regarding the waterfall computer program itself, MBA believes the waterfall computer program is problematic for a number of reasons.

SEC Question. We are cognizant that having a transaction exposed to the markets for some period of time causes concerns to some issuers and underwriters in some instances. However, we also note situations in which transaction-specific information regarding ABS is provided to other deal participants for a longer period prior to selling the securities seemingly with no or minimal effect on the issuer's ability to sell securities.

We note, in particular, that the Federal Reserve Board requires information to be provided to it regarding the assets pledged to the Term Asset-Backed Securities Loan Facility (TALF) at least three weeks prior to the subscription date. Similarly, rating agencies receive information prior to rating transactions. If there are issues raised by exposing the transaction publicly to the markets, please provide us with specific information about the concerns and ways we can revise the proposal to address them. [23336])

MBA's Response: If the Proposed Rules were modified to allow for updating without restarting the entire process, the process contemplated by the Proposed Rules would not result in an unreasonable length of market exposure.

SEC Question. Under our proposal, the Rule 424(h) filing would not be required to include information dependent on pricing. Is that appropriate? If not, what information should be required to be included and how would an issuer have access to the information in the timeframe that we are proposing? [23336]

MBA's Response: It is appropriate and, practically speaking necessary, not to require pricing information in the 424(h) filing. Rule 159 concerns, in addition to the requirement that a 424(h) preliminary prospectus be delivered prior to the first sale, effectively prevent pricing until after the 424(h) preliminary prospectus has been produced and filed.

SEC Question. Under our proposal, if a material change to the disclosure other than to pricing information occurs, the issuer would be required to file a new Rule 424(h) prospectus with updated information. Is this requirement specific enough? Should we, instead or in addition, specify particular changes that would trigger a filing, or conversely, that would not trigger a filing? Should we, for example, provide that a new Rule 424(h) filing would be required if the asset pool has changed by a certain amount? If so, what should that amount be (e.g., 1%, 5%, or 10% of the final asset pool)? How would other changes be described, such as changes to the waterfall? Would it be appropriate to allow a material change without requiring a new Rule 424(h) filing and a new five-day waiting period? Should the new Rule 424(h) filing be required as proposed to reflect the change and contain substantially all the information required to be in the prospectus, except for pricing information? Should we only require that the change be reflected in a supplement? [23336]

MBA's Response: The Commission should provide for an ability to supplement the preliminary prospectus without triggering another 5 day waiting period or alternatively, to state clearly what very major changes would trigger such a period. If the latter approach is chosen, the Commission should not focus so much on the materiality of the change in terms of its economic impact or importance, but rather on the likely extent of the effect of such a change on the disclosure itself and the resulting need for more time to review. Many changes that are material are nonetheless quickly understood, particularly if one

has already received a preliminary prospectus. A change in payment priority, for example, would obviously be important but can typically be easily described. On the other hand, a change in excess of 10% of the asset pool would typically affect tabular information and references throughout the preliminary prospectus, and may require more time for an investor to digest – though even the effect of that change might be quickly understood, for example, if caused by the addition or elimination of only one or two large loans.

SEC Question. The requirement to file a new Rule 424(h) filing would trigger another five-day waiting period before the first sale. Is this approach appropriate and workable? If the issuer is required to re-file the preliminary prospectus, as proposed, should the issuer be required to wait another five business days before the first sale, as proposed? If not, how long should the issuer be required to wait? [23336]

MBA's Response: The potential to trigger an additional 5-day waiting period is not appropriate. Even if it takes a week to consider the preliminary prospectus, it does not take a week to consider a handful of updates to that prospectus, even material updates. We would urge either no additional waiting requirement or a requirement of not more than one business day.

SEC Question. Are there any aspects of the Rule 424(h) filing that we should specify must be substantially set at the time it is required to be filed? [23337]

MBA's Response: It is not practical or necessary in light of the other aspects of the Proposed Rules to specify any aspect of an offering that must be substantially set at the time a 424(h) filing is made. An issuer should have the flexibility either to allow for subsequent disclosure of items by an update or simply to respond to changing market conditions, and it should be enough that the issuer files a new or corrected 424(h) or an update to reflect any changes prior to the first sale.

SEC Question. Are there any changes, other than the ones we are proposing, to the Item 512 undertaking that should be made? Is our proposed change to incorporate the Rule 424(h) filing in the undertakings relating to liability so that the Rule 424(h) filing shall be deemed part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement appropriate? [23337]

MBA's Response: No other changes to the Item 512 undertaking should be made. Incorporating the 424(h) preliminary prospectus as proposed is appropriate.

SEC Question. We have designed the proposed process for ABS shelf registration to strike a balance between facilitating registered ABS offerings and providing investors a meaningful opportunity to analyze the securities. Would our proposal to require that the Rule 424(h) prospectus be filed at least five business days before the first sale make shelf registration sufficiently less attractive to issuers that they would avoid the

registered market? If so, are there ways to address this concern? Below, we are proposing to require more disclosure for private offerings of asset-backed securities that rely on the Commission's safe harbors that allow issuers to rely on an exemption from registration. Should we impose even more restrictions on private offerings of asset-backed securities than what is proposed below? For example, should we condition reliance on Rule 506 of Regulation D on a limitation of the total number of purchasers in an ABS offering, even for offerings to accredited investors or qualified institutional buyers? Alternatively, should we impose fewer restrictions on private offerings of asset-backed securities? [23337]

MBA's Response: The distribution of a substantial preliminary prospectus has already been the typical market practice for registered CMBS offerings. Although a strict five business day minimum filing requirement prior to the first sale will occasionally impose an unwelcome timing constraint, it is unlikely to make shelf registration sufficiently less attractive if flexibility to provide updates with a shorter waiting period is provided as we suggest. More restrictions on private offerings are not warranted generally, and no investor protection purpose would be served by limiting the number of accredited investors and qualified institutional buyers that can be purchasers.

SEC Question. Should we also require, or require instead, that the initial purchaser or investor hold the securities for a period of time prior to resales in reliance on Rule 144A to better ensure that such resales of asset-backed securities are not a distribution? Could that better ensure that the public registered ABS market operates appropriately and that the existing safe harbors do not inappropriately erode the public markets? If we were to add these additional restrictions on private offerings, what would be the impact on the broader market for structured securities? Would requiring a holding period discourage investors from purchasing ABS in exempt private placements? Would these offerings all be done as public deals, or would these offerings cease to be conducted at all? Should we provide for fewer restrictions – for example, should we require a subset of loan-level disclosures in the context of an exempt private offering? Should issuers or sponsors have the option of providing only certain information? Or would these rules reduce the aggregate amount of transactions? What would be the economic effect? [23337]

MBA's Response: The proposed method focused on disclosure is preferable to an approach that would impose a restricted holding period and impair the liquidity of the security in the investor's hands. It is possible some transactions may not be done if the typically higher transaction costs associated with registered offerings and/or the adverse pricing impact of a holding period make them prohibitive. Fewer restrictions and greater flexibility are appropriate in private offerings to sophisticated investors. Among the economic effects could be to close certain asset classes from securitization, and therefore to reduce the market liquidity of such assets.

SEC Question. We request comment on our proposal to move the registration statement item requirements for ABS offerings into new forms that would apply only to asset backed issuers. Would the proposed new forms create any difficulties? If so, please specify. [23338]

MBA's Response: The new forms that would apply only to asset-backed securities would be a useful way to distinguish the ABS registration system from the registration system for other securities.

The use of new forms that would apply only to asset-backed securities would not in and of itself create any difficulties.

SEC Question. We are proposing to move the items applicable to asset-backed securities from Forms S-1 and S-3 to proposed Forms SF-1 and SF-3, with some exceptions noted. Do the proposed forms omit any requirement for asset-backed issuers that should be included? Do any of the requirements need further revisions? [23338]

MBA's Response: The new forms, together with the amendments to Regulation AB and the offering process proposed by this Release, provide for a comprehensive disclosure regime. We will address issues in connection with these proposals in response to the specific questions with respect to each proposal.

SEC Question. The proposed Form SF-1 would not include the instructions as to summary prospectuses that are included in Form S-1. Is there any reason we should provide these instructions in proposed Form SF-1 for ABS issuers? [23338]

MBA's Response: It is not necessary in our view to include in the proposed Form SF-1 the instructions as to summary prospectuses that are included in Form S-1. However, because of the length and complexity of the typical prospectus relating to an ABS offering, we believe that it would be appropriate for ABS issuers to continue to include summary sections in ABS prospectuses.

SEC Question. Are our proposed instructions for incorporation by reference appropriate? [23338]

MBA's Response: We believe that the proposed instructions for incorporation by reference that are tailored to asset-backed securities are appropriate.

SEC Question. Should we repeal the existing carve-out for the untimely filing of an Item 6.05 Form 8-K, as we are proposing to do? Why or why not? [23338]

MBA's Response: We would recommend that the Commission not repeal (as proposed) the existing carve-out for the untimely filing of an Item 6.05 Form 8-K,

particularly in light of the proposal to lower the threshold amount of change that would trigger a filing requirement for Item 6.05 Form 8-K reports from 5% of any material pool characteristic to 1%. The combination of the elimination of the carve-out and the lower threshold of change that would trigger a filing would increase the frequency and detail of the filing burdens on CMBS issuers while simultaneously imposing more serious penalties for filing errors. This would be the case even when such errors did not result in significant disadvantages to investors.

While we recognize that the Item 6.05 Form 8-K reports provide important information relating to the composition of the pool assets, we believe that the bases for the carve-out remain valid and that the denial of shelf eligibility for an untimely filing would be a harsh penalty.

SEC Question. Should we continue to condition shelf eligibility on requirements that are related to the quality of an ABS offering? [23341]

MBA's Response: MBA believes that the asset quality should continue to be a criteria for registered securities in CMBS. MBA, however, does not believe that investors rely on the registration process in making investment decisions. Investors in investment grade CMBS are highly sophisticated investors. The short form registration process has worked well in CMBS and the MBA sees no reason to discontinue the process.

SEC Question. Should we, as proposed, replace references to investment grade credit ratings with a risk retention requirement and/or the other criteria discussed below, which are intended to increase the likelihood of higher quality securities than securities that are not required to meet such criteria? [23341]

MBA's Response: MBA agrees credit ratings should not be the sole criteria. We think ratings are valuable indicators for investors. Given the current regulatory and rating agency Environment, we do not think ratings need to be a shelf eligibility criteria. Risk retention is only one method to align interests and achieve credit quality and alternatives should be available.

SEC Question. Is there a possibility that, by establishing a risk retention requirement or any other criteria based on quality, investors may unduly rely on an appearance that incentives are aligned or that the security has greater quality and consequently be less inclined to expend effort to perform their own analyses creating a similar situation that over-reliance on ratings created? [23341]

MBA's Response: CMBS investors are sophisticated investors that do not be rely on a single factor in making investment decisions.

SEC Question. Conversely, are expedited offerings inconsistent with an attempt to promote independent analysis of asset-backed securities and reduce the likelihood of

undue reliance by investors on credit ratings and therefore, should we not allow ABS offerings to be shelf registered? [23341]

MBA's Response: Market practice in CMBS, which has typically included delivery of a preliminary prospectus, has demonstrated that shelf registration is consistent with offerings that provide investors opportunities to conduct their own independent analysis. As noted above, CMBS investors typically do not rely on a single factor in making investment decisions.

SEC Question. Should we continue to allow short-form registration for asset-backed securities? Given that each asset-backed security offering off the shelf is akin to an initial public offering with respect to the particular issuer, is the premise of most other short form registration (i.e., that an eligible issuer enjoys a widespread market following) applicable to issuers of asset-backed securities? [23341]

MBA's Response: CMBS typically uses Form S-3. The MBA does not see any reason, however, to eliminate the ability to use the short form.

SEC Question. We request comment on risk retention as a condition to eligibility for a delayed ABS shelf offering. Would the proposed risk retention condition address concerns relating to the misalignment of incentives and lead to higher quality securities in registered ABS shelf offerings? Is this an appropriate condition for shelf eligibility? Would the requirement incentivize sponsors to consider the quality of the assets being underwritten and sold into the securitization vehicle? [23342]

MBA's Response: The MBA believes there are effective alternatives to risk retention to address asset quality, such as a strong subordinate ("B Piece"), ratings, and representations and warranties. Risk retention can be valuable as an option. MBA believes this is consistent with Congress' intent in the "Dodd Frank Wall Street Consumer Protection Act", H.R. 4173 (the "Financial Reform Bill").

SEC Question. Is five percent an appropriate amount of risk for the sponsor to retain in order for the offering to be shelf eligible? Should it be higher (e.g., ten or 15%)? Should it be lower (e.g., one or three percent)? Should the amount of required risk retention be tied to another measure? [23342]

MBA's Response: See answers above. The MBA believes the amount of risk retention should be deal specific and believe there should be discretion to use alternatives to risk retention to align interests and assure credit quality, depending on the asset class.

SEC Question. Should the risk retention condition require retention of risk by sponsors (as proposed) or by originators? [23342]

MBA's Response: MBA believes both options should be available.

SEC Question. Are there other better ways to address alignment of incentives, and thus quality of the securities, in the aggregator situation? Should we require in that situation that all originators and the sponsor retain some risk? [23342]

MBA's Response: MBA believes there are different forms of alignment of interests and safeguards for asset quality. The Financial Reform Bill suggest a "B piece" and representations and warranties are appropriate option for CMBS. MBA agrees with this. MBA also believes ratings should play a role.

SEC Question. Should sponsors be permitted to satisfy the risk retention condition through a different form of risk retention than what is proposed (e.g., retention of first loss position or retention of first loss position in conjunction with retention of some form of vertical slice of the securitization)? [23342]

MBA's Response: Consistent with the Financial Reform Bill risk retention should not be the only option to achieve alignment of interests and credit quality for CMBS. The SEC should have flexibility for different asset classes to permit other mechanisms, such as the first loss piece as credit support or a combination of factors of which risk retention was one.

SEC Question. Should the risk retention condition relate to retention of the mezzanine tranche? [23342]

MBA's Response: MBA does not believe the issuer or sponsor retention of any piece should be the exclusive criteria for Shelf Eligibility.

SEC Question. How could we structure a shelf eligibility condition to take those variables into account? [23342]

MBA's Response: MBA believes there should be flexibility in structuring mechanisms for asset quality and alignment of interests that would take into account a variety of factors including risk retention, a "B piece" and, representations and warranties and to some degree ratings of the senior securities.

SEC Question. We considered but are not proposing an alternative way to satisfy the risk retention shelf eligibility condition based on retention of randomly-selected exposures. We are concerned about the ability to subsequently demonstrate the randomness of the random selection process, including for purposes of monitoring or auditing. Should we include this alternative? Are there any mechanisms that we could adopt that would ensure adequate monitoring of the randomization process if such an alternative were permitted? For example, would our concerns be addressed if the sponsor was required to provide a third party opinion that the selection process has been random and that retained exposures are equivalent (i.e., share a similar risk

profile) to the securitized exposures? Would this be sufficient? Would this opinion resemble a credit rating, raising the same issues that rule reliance on credit ratings has had? If this approach were taken, should we impose any requirements on the characteristics of such a third party? Should that third party be considered an expert for purposes of the registration statement? [23342]

MBA's Response: MBA believes that flexibility is important for sponsors to address investor needs. Accordingly, assuming risk retention was part of a particular transaction, random selection should be an alternative. Third party control of the random selection process would seem sufficient to prevent abuse. A universally accepted computer model may also provide this protection.

SEC Question. If we adopted a random selection alternative, should we require the same disclosure regarding the securitized exposures that are subject to risk retention that is required for the assets in the pool at the time of securitization and on an ongoing basis? Should the shelf eligibility condition require that the retained exposures be subject to the same servicing as the securitized exposures? [23342]

MBA's Response: MBA does not see any reason to differentiate with respect to disclosure. The information will be available and therefore should be disclosed. MBA believes that many investors look to the disclosure regardless of what method is used to satisfy shelf eligibility.

SEC Question. Instead of requiring risk retention as a condition for shelf eligibility, should risk retention be made voluntary for shelf-eligible offerings and issuers only be required to add specified disclosure on the interest that the sponsor or other transaction participants retain? In other words, instead of mandating a certain amount of risk retention, should the requirement be that issuers disclose the percentage of risk retained and in what form? As discussed in greater detail in section III.C.3 of the release, we are also proposing to revise Items 1104, 1108 and 1110 of Regulation AB to require disclosure regarding the sponsor's, a servicer's or a 20% originator's interest retained in the transaction, including amount and nature of that interest. This information would be required for both shelf and non-shelf offerings. If those proposed risk retention disclosure requirements were adopted, would there be a need for or a significant incremental benefit from mandating specific minimum risk retention as a condition of shelf eligibility? Could this incremental benefit be achieved strictly through a market-based mechanism – for example, through fully-disclosed ABS covenants in which the sponsor pre-commits to retain a minimum percentage of the risk of the deal, as opposed to a regulatory requirement? Is the disclosure proposed to be required below sufficient to achieve such a benefit, and if not, what additional disclosures should we require? Would disclosure of the risk retention be a sufficient indicator of shelf-eligible offerings? Should we condition shelf eligibility on requiring the sponsor to covenant that it would maintain a minimum percentage of risk retention? If so, should we provide any limitations on the covenant (e.g., what percentage of tranche or assets must be

retained, manner of sponsor's retention, no hedging)? What are the limitations to a market-based mechanism for risk retention? Would such a transaction covenant be credible and enforceable? Would requiring this transaction covenant, along with disclosure of risk retention pursuant to the covenant, sufficiently distinguish those offerings that should be made shelf eligible from those that should not? [23342]

MBA's Response: MBA believes the market should be allowed to operate with maximum flexibility. MBA believes that in CMBS investors can be sufficiently informed as to asset quality to make informed investment decisions with or without specifically mandated risk retention. Consistent with the Financial Reform Bill, and in any case, we believe alternatives should be available or taken into account for Shelf Eligibility.

SEC Question. Should net economic interest be measured at the time of origination/issuance as proposed? Would a different measurement date be more appropriate (e.g., the securitization cut-off date)? If the interest were measured at the time of securitization cut-off date, could this cause issuers to change various terms? Is the amount of retention that is required to be retained on an ongoing basis appropriate? Why or why not? [23342]

MBA's Response: MBA thinks origination/issuance is as good a date as any to measure economic interest.

SEC Question. Are the proposed netting provisions appropriate? Do we need to provide more guidance on what kind of hedges would be netted against the retained risk? Is the proposed "directly related" standard appropriate? Is it sufficiently clear what type of hedges would be allowed? Are there certain forms of hedges that we should indicate would not be netted against the retained risk? Is there any concern that sponsors may inadvertently hedge the economic risk required to be retained? If so, do we need to address that and what is the best way for us to address it? Should we expand the proposed netting provisions to other types of hedging? Should we narrow the proposed netting provisions in any way? [23342]

MBA's Response: Financial institutions need to have the ability to hedge risk without concern that a specific macro hedge would have the unintended consequence of violating an anti hedging rule. Accordingly, any prohibition should be only for "directly related" hedges. Guidance must be sufficiently clear for institutions to hedge in the ordinary course of business and satisfy any risk retention requirement.

SEC Question. Should the sponsor be allowed to sell off the retained interest after a certain point in time while non-affiliates of the depositor still hold securities and still remain shelf eligible? If so, when? Would that undermine the purpose of the condition? If not, why not? [23342]

MBA's Response: Requiring indefinite holding periods can only inhibit the market with little benefit to the quality of the transactions. Holding periods need to take into account a sponsor's need to manage its risk and react to economic conditions unrelated to asset quality. The interest in risk retention expressed by investors is to obtain loan asset quality an originator or sponsor would require for its own portfolio. The MBA recognizes that achieving a perfect balance between investor interests and an originators and sponsors need to manage their portfolio is difficult. However, the MBA believes that both interests need to be addressed in Regulations and market forces and enhanced disclosure permitted to bridge any gaps.

SEC Question. Minimum credit score, or the terms of the loan do not involve balloon payments? Would such requirements for the mortgages in the pool be a better condition to shelf eligibility than the proposed risk retention shelf eligibility condition? Would such a shelf eligibility condition be difficult to implement? Should we instead condition shelf eligibility on risk retention for loans with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first lien on a dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling? How would we structure a condition that relates to specified characteristics of the assets for other asset classes that may not have those variables or those industry standards or have different underwriting standards? What would be the appropriate categories and thresholds? Do those appropriate categories and thresholds differ for different classes? If so, how? Are there securitized asset classes that have no clear or established standards that could demarcate assets meriting shelf eligibility and those that do not?

MBA's Response: MBA does not believe any asset type or particular asset characteristic should disqualify a transaction from shelf eligibility. Credit support from first loss pieces can sufficiently mitigate risk for shelf registered classes to maintain the quality of the security.

SEC Question. Should any asset classes or types of securities be exempt from the proposed risk retention shelf eligibility condition or have different risk retention requirements apply? Because of the unique nature of residential mortgages in the financial markets, should risk retention apply to shelf offerings of residential mortgage-backed securities (RMBS) but not offerings of other ABS? If so, what would be an appropriate partial substitute for investment grade rating for shelf eligibility for those other asset classes? [23343]

MBA's Response: The MBA believes that CMBS, as a whole, has performed well for investment grade securities.

- MBA supports risk retention as one support mechanism to enhance asset quality; and

- Consistent with the Financial Reform Bill, MBA believes the SEC should provide the flexibility to substitute other risk mitigants to maintain asset quality for registered securities.

SEC Question. How would the proposed risk retention shelf eligibility condition impact how sellers account for the transfer of assets in a securitization transaction? Is it desirable to revise the proposal to lessen that impact and if so, how? [23343]

MBA's Response: While this is developing, we do not see a current impact. Because Accounting Firms and FASB are still watery on standards we believe this must be monitored closely.

SEC Question. Is this proposed condition an appropriate shelf eligibility condition for ABS offerings? [23344]

MBA's Response: MBA does not think this is appropriate for shelf eligibility. Repurchase of commercial mortgages based on representation and warranty claims is rarely clear cut. Accordingly, this requirement would be difficult to meet unless every claim was accepted or opinions were issued with significant caveats. The only appropriate forum is court or other dispute resolution process. A third party opinion would simply force inappropriate repurchases.

SEC Question. Should we provide more guidelines in this shelf eligibility condition regarding the specifics of the provision that would be required to be included in the pooling and servicing or other agreement? If so, what should be detailed?

MBA's Response: CMBS pooling and servicing agreements already have adequate mechanisms for repurchase. These provisions have been negotiated at length between investors, servicers and issuers. MBA believes that if repurchase guidelines were provided they should be based on the existing model.

SEC Question. Based on existing attestation standards of either the PCAOB or AICPA, we do not believe that the proposed opinion could be provided by a public accountant. Would a public accountant be able to provide the proposed opinion under existing attestation standards? If so, which standard or standards should be applied, what level of assurance should be provided and how should the third party opinion be reported? [23345]

MBA's Response: Again because representation and warranty claims in CMBS are rarely clear cut, it is difficult to see any third party credibly providing an opinion without caveats significantly limiting the opinion. Accordingly, it would not achieve the purpose for which it was intended.

SEC Question. How costly or burdensome would it be for an issuer to be required to have a third party provide an opinion to satisfy the proposed shelf eligibility condition? Would this impose too much burden on ABS issuers? Are there ways to lessen the cost? [23345]

MBA's Response: It could be costly and would most likely lead to more claims, including frivolous claims. The opinion provider would become the substitute for the courts in determining the merits of a claim.

SEC Question. We are aware of some insurance providers that have offered to insure in the context of mergers and acquisitions any breach of the representations and warranties in the transaction agreement. As an alternative to conditioning ABS shelf eligibility on an undertaking in the transaction agreement that the issuer furnish a third party opinion on assets not repurchased (or instead of the proposed condition), should we allow the issuer to purchase insurance to insure a minimum amount or percentage of the sponsor or originator's obligations under the transaction agreement? If so, what kind of disclosure should we require about the insurance provider? How can we ensure that this alternative method of meeting shelf eligibility adequately improves the incentive structure and therefore the quality of the securities? [23345]

MBA's Response: MBA does not think insurance would be a viable option in CMBS. We think a corporate certification would be a better alternative.

SEC Question. Is our proposal to require certification appropriate as a condition to shelf eligibility? Would investors find the certification valuable? [23346]

MBA's Response: We do not believe that the proposal to require certification of the Depositor's Chief Executive Officer as a condition to shelf eligibility is appropriate. The proposed certification, as written, indicates that the Commission intends for the certification to address the credit quality of the underlying securitized assets, and it could be construed, absent an express disclaimer, as a guarantee by the CEO of the performance of the underlying pooled assets. We do not believe that requiring the proposed certification from the Depositor CEO is necessary, because comprehensive disclosure to enable investors to analyze projected cash flow and the underlying pool assets is already being required by the proposals in the Release and (as noted by the Commission in the Release) the CEO of the Depositor is already responsible, as a signatory of the registration statement, for the ABS issuer's disclosure in the prospectus and can be liable for material misstatements or omissions under the federal securities laws

A significant proposal in the Release would require ABS issuers to provide investors with a computer program (the "Waterfall Computer Program") in downloadable format, which would be required to be filed as an Exhibit to Form 8-K. The Waterfall Computer Program would replicate the flow of funds provisions from the transaction documents in

an interactive format. However, the inclusion of the Waterfall Computer Program as part of the required disclosure would interfere with, or at least add to the burdens of, CEO certification, since the Depositor's CEO would likely be poorly positioned to assess whether the Waterfall Computer Program is free of coding errors that could lead to misleading cash flow disclosure. Concerns over the resulting liability could drive issuers away from more complex capital structures.

The proposal to require standardized specific asset level information regarding each asset in the pool, which would be required to be filed as an exhibit to Form 8-K, would provide investors with detailed asset level disclosure. When combined with the information relating to the asset pool required by Regulation AB and the Static Pool Information, which the proposal would require to be filed as an Exhibit to Form 8-K, investors will be provided with comprehensive disclosure to enable them to analyze the transaction structure and make an informed investment decision as to the credit quality of the pooled assets and projected cash flows with which to make payments on the securitization. We believe that a required disclosure regime that enables investors to make informed investment decisions is preferable to requiring a CEO certification as to cash flow sufficiency.

SEC Question. Should we identify the level of inquiry required by the executive officer? Should we specify which documents (other than the prospectus) would need to be reviewed for purposes of the certification, and, if so, which ones should we specify? [23346]

MBA's Response: While we recommend that the Commission not require the Depositor CEO Certification, to the extent that the Commission does adopt this proposal, we would recommend that the CEO not be required to identify the level of inquiry, but rather certify as to his "reasonable basis to believe". We would further recommend that the CEO certification contain a disclaimer to the effect that the certification does not constitute a guarantee of future performances of the pooled assets.

SEC Question. Under the proposal, the certifying officer could take into account internal credit enhancements for purposes of evaluating whether the assets have characteristics that provide a reasonable basis to believe they will produce cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus. Should we also permit the certifying officer to also take into account external credit enhancements that may be utilized in the securitization? [23346]

MBA's Response: While MBA recommends that the Commission not require the Depositor CEO Certification, to the extent that the Commission does adopt this proposal, we believe that it would be appropriate for the certifying officer to take into account all forms of credit enhancement that are legally obligated to support the transaction. We believe that the form of certification should permit the certifying officer

to make the certification based on reasonable assumptions regarding the performance of the entities providing any external credit enhancement.

SEC Question. Are there concerns that it is not possible for any individual to be in a position to certify that the assets in the pool have characteristics that provide a reasonable basis to believe they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus? If so, how can we address those concerns or are there steps we should take to ensure that the level of uncertainty in the structure and assets is clear to investors? [23346]

MBA's Response: See response to Question 49. We believe that there are such concerns. We believe that, instead of requiring the Depositor CEO to provide a certification as to cash flow sufficiency, the better approach is to require ABS issuers to provide disclosure that is sufficient (both in terms of scope and the time frame in which it is provided) to enable potential investors to analyze projected cash flow and to make an informed investment decision.

SEC Question. Instead of, or in addition to, requiring a certification, should we require the sponsor to disclose its estimates of default probability for all tranches in the transaction, default probability of loans in the pool, and/or the expected recovery rate on the loans conditional on default? Such estimates would be expected to be consistent with assumptions used in sponsors' internal modeling. Would this disclosure potentially provide investors useful insights into the sponsor's view of the creditworthiness of pool assets and the securitization overall? Would it convey information similar to that contained in credit ratings, which also have, historically, reflected beliefs about default probabilities and expected recovery rates? Do sponsors currently have internal models, or make internal assumptions for valuation purposes, that could be used to readily produce these numbers? If so, should we require that disclosed estimates be consistent with those used in sponsors' internal models? Should we indicate whether or not such disclosures constitute forward-looking statements? [23346]

MBA's Response: We do not believe that it would be appropriate to require the sponsor to make estimates of default rates and to disclose such estimates. Instead, as stated in our response to Question 49, we believe that a preferable alternative would be to put prospective investors in a position to make their own informed decisions as to projected levels of default and the impact of these upon each tranche of securities based upon the enhanced disclosure regime proposed in the Release.

In doing this analysis with respect to a rated security, potential investors could also take into consideration the ratings assigned by the applicable credit rating agencies and their requirements as to credit enhancements to support each rated tranche and their assumptions as to default levels.

SEC Question. Should the chief executive officer of the depositor, as proposed, be required to sign the certification, or should an individual in a different position be required to certify? Which individual should be required to sign the certification? Should we instead require that the certification be signed by the senior officer of the depositor in charge of securitization, consistent with other signature requirements for ABS? Given that the depositor is often a special purpose subsidiary of the sponsor, would it be more appropriate to have an officer of the sponsor sign the certification? If so, should it be the senior officer in charge of securitization or some other officer of the sponsor? [23346]

MBA's Response: While MBA recommends that the Commission not require such certification, to the extent that the Commission does adopt this proposal, we would recommend that the certification be required to be signed by the senior officer of the Depositor in charge of securitization, which would be consistent with other signature requirements for ABS.

SEC Question. Is it appropriate to require the certification be filed as an exhibit to the registration statement at the time of the final prospectus by means of a Form 8-K? [23346]

MBA's Response: While MBA recommends that the Commission not require the Depositor CEO Certification, to the extent that the Commission does adopt this proposal, we do not believe that it is necessary to have the certification filed by means of a Form 8-K, since the CEO of the Depositor as a signatory of the registration statement is already responsible for the ABS issuer's disclosure in the prospectus.

SEC Question. We request comment on our proposal to require ABS issuers who wish to conduct delayed shelf offerings to undertake to file reports that would be required under Section 15(d) of the Exchange Act for as long as non-affiliates of the depositor hold any securities that were sold in registered transactions. Should we require, as proposed, the disclosure of any failure in the last year of an issuing entity established by the depositor or any affiliate of the depositor to file, or file in a timely manner, an Exchange Act report that was required either by rule or by virtue of the proposed undertaking? [23347]

MBA's Response: We believe that the proposal to require CMBS issuers in delayed shelf offerings to continue to file reports required under Section 15(d) of the Exchange Act as long as non-affiliates of the depositor hold any of the issued securities would create an undue burden on CMBS issuers without significantly enhancing protections already available to investors in these transactions. Since almost without exception one or more classes of CMBS securities will be held by non-affiliates of the depositor, linking the on-going Section 15(d) reporting requirements to this condition effectively requires "life-of-the-transaction" Section 15(d) reporting. We believe the better approach is to maintain the current rules permitting Section 15(d) reporting to be terminated after one year. This, we believe, strikes a balance between protecting the interests of the

investor, on the one hand, and the burden on and expense to CMBS issuers in preparing and filing Section 15(d) reporting on the other hand. As the SEC itself has observed elsewhere in this Notice of Proposed Rulemaking, CMBS transactions generally provide investors with robust reporting, usually in a standardized reporting format promulgated by the CRE Finance Council. The pooling and servicing arrangements pursuant to which the CMBS are issued customarily require a third-party trustee (meeting certain eligibility requirements), together with the master servicer and the special servicer, to provide this reporting on a periodic basis (indeed monthly with respect to certain reports). Most, if not all, of the information that would be required to be included in the Section 15(d) reports would therefore already be readily available to investors. We therefore believe that additional undue burden and cost and expense to CMBS issuers outweigh any benefit to CMBS investors from on-going Section 15(d) reporting.

SEC Question. Should we require, as proposed, the disclosure of any failure in the last year of an issuing entity established by the depositor or any affiliate of the depositor to file, or file in a timely manner, an Exchange Act report that was required either by rule or by virtue of the proposed undertaking? [23347]

MBA's Response: Situations where an entity fails to file, or fails to file in a timely manner, an Exchange Act report are varied. While some may be important to investors in reaching an investment decisions, others will be immaterial to an investor's assessment of a transaction. The latter will especially be the case where the failure relates to an unrelated transaction or an affiliate of the depositor that is not involved in the platform seeking shelf eligibility. For these reasons, we feel that a blanket requirement for disclosure of any failure to file or timely file any Exchange Act report would not be appropriate. A more narrowly tailored disclosure requirement, reflecting missed filings bearing a close relation to the platform seeking shelf eligibility, would be more useful to investors.

SEC Question. We request comment on all of the four new proposed shelf eligibility conditions in general. Are the proposed shelf eligibility conditions appropriate alternatives to the existing investment grade ratings requirement? If one or more of these proposed criteria are not adopted, should an investment grade rating continue to determine whether or not an ABS issuer is eligible for shelf registration? Or should we prohibit ABS issuers from using shelf registration altogether? What would the impact be if ABS issuers were prohibited from utilizing shelf registration? Do the proposed changes to the shelf registration procedures described above, coupled with the proposed shelf eligibility conditions, mitigate concerns about ABS issuers using shelf registration? [23347]

MBA's Response: As discussed in the specific responses to each of the proposed shelf eligibility requirements, we are generally concerned that these shelf eligibility requirements would ultimately impose undue costs and burdens upon issuers of ABS

and would offer relatively little benefit, at least in the context of CMBS, to investors. While we agree that credit ratings should not be the only criteria for determining shelf eligibility, we do think that credit ratings are valuable to investors and should continue to affect eligibility. While the proposed conditions to shelf eligibility may be effective at promoting their respective goals, their effectiveness would be achieved at a cost to securitizers' efficient access to credit markets, consumers' access to credit on reasonable terms. For this reason, we recommend consideration of the alternatives set out in our responses to the specific proposals.

We do not believe that a general prohibition against shelf registration by ABS issuers would be appropriate. Such prohibition would add to the costs and inefficiencies associated with securities offerings for issuers of certain asset classes of ABS traditionally reliant on frequent issuances under standardized platforms with which investors are familiar.

SEC Question. Should our proposed shelf eligibility conditions (or some subset of them) be used in addition to the existing investment grade ratings requirement rather than replace it? [23347]

MBA's Response: We think that credit ratings are valuable to investors and should continue to affect eligibility for shelf registration. Credit ratings should not be the only criteria and could be effectively employed in concert with other criteria.

SEC Question. What is the aggregate effect of the proposed revisions to shelf eligibility criteria and the shelf registration process for ABS offerings? If these revisions are adopted, would this make using non-shelf registration (Form SF-1) more attractive to an ABS issuer? How would this change the costs and benefits analysis for using shelf registration for ABS issuers? Would this change cause shelf registration to be less attractive or become uneconomic? [23347]

MBA's Response: See responses above. As discussed in our specific responses to the individual proposals, we think the proposals as drafted would tend to make shelf registration relatively less attractive to an ABS issuer and could drive more issuers to non-shelf registered or private offerings. We are concerned that, operating collectively, the proposals would add to the costs and burdens of shelf registration.

SEC Question. If we continue to condition shelf eligibility, in part, on characteristics of the securities that relate to quality, should we establish shelf eligibility based on different criteria than the four proposed criteria? Should shelf eligibility be conditioned on a limitation of the capital structure of ABS offerings? For instance, should shelf offerings not be allowed to include leveraged tranches or should we limit the number of tranches? If so, how many (e.g., five, six, or seven)? Should we put restrictions on the size of each tranche? If so, how should we do that? Should we limit ABS shelf eligibility to offerings backed by assets that are seasoned for some period of time? If so, how much time for

each asset class (e.g., six months, one year, or two years)? Are there certain standardized structures that we should use as a requirement for shelf offering? [23347]

MBA's Response: As suggested in our responses to the four proposed shelf registration requirements, we would recommend that eligibility for shelf registration should require: that the offering involve asset backed securities, that the securities have investment grade credit ratings and that the offering be subject to a customized risk retention requirement. We think that this combination would be the best approach to promote credit quality of the securities without imposing undue burdens on issuers.

SEC Question. Should we add, as proposed, registrant requirements that would require, as a condition to form eligibility, affiliated issuers of the depositor that had offered securities of the same asset class that were registered on Form SF-3 to have complied with the risk retention, third party opinion, certification and ongoing reporting shelf eligibility conditions that replace the investment grade ratings requirement? Will these requirements lead to better compliance by ABS issuers with the new shelf eligibility conditions that we are proposing? [23349]

MBA's Response: We reiterate the same comments and concerns with respect to the substance of the Form SF-3 registrant requirements as those set forth above for the shelf eligibility requirements. There is already an eligibility review conducted at the time of each takedown in order for the securities to be eligible for delayed shelf offerings. The proposed addition of the registrant requirements appears to permit the Commission to conduct more frequent testing of eligibility by requiring an annual check on the registrant or affiliated issuers' compliance with Exchange Act periodic reporting requirements and quarterly checks on compliance with the four new shelf eligibility requirements. Failure of the registrant, or its affiliated issuers, to comply with these required items during the prior corresponding period will result in the registrant's loss of shelf use for that fiscal year or quarter. The imposition of this more frequent testing on issuers and its affiliates will create unnecessary and duplicative requirements and potentially create a draconian result as further explained in our earlier responses.

SEC Question. Should we require disclosure, as proposed, in the registration statement that the registrant requirements have been complied with? Should we specify a location in the registration statement for such disclosure? [23349]

MBA's Response: Disclosure of compliance with registrant requirements in the registration statement is not necessary or appropriate. Failure to meet registrant requirements will result in loss of shelf use, which should be a sufficient consequence. Disclosure liability should be related to the information investors need to make informed decisions regarding whether to invest in the securities and not tied to compliance with shelf eligibility or registrant requirements.

SEC Question. In our proposed registrant requirements for Form SF-3, we are proposing to require that sponsors of affiliated issuers have retained the required risk at the time of filing the registration statement. Is that appropriate? Should we require continued monitoring of risk retention compliance instead? Should we provide the loss of shelf eligibility if the sponsor of a previously established affiliated issuer has not retained at any time during the previous twelve months all of the risk that it was required to retain during that time? Or would such a requirement be overly burdensome? [23349]

MBA Response: Please see our earlier responses to questions above. Additionally, any risk retention requirements applicable to sponsors of affiliated issuers should be informed by, and harmonized with, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") which has recently been signed into law by the President. In particular, we note that the Act permits alternatives to risk retention by CMBS securitizers, including permitting retention by a third-party purchaser that has negotiated for purchase of a first-loss position and has provided due diligence on the individual assets in the CMBS pool. As we stated in the beginning of our letter, we would support a more flexible standard that is consistent with the Act which takes into account factors to achieve the desired goal of maintaining asset quality without impeding the market.

SEC Question. Is it appropriate to require, as proposed, that the certifications and the transaction agreement containing the required third party opinion provision that are required to be filed pursuant to our proposed shelf eligibility conditions be filed on a timely basis? Why or why not? We are proposing to require an affiliated issuer that has undertaken to file Exchange Act reports in the last twelve months to have filed such reports as required pursuant to the Exchange Act rules. Is this an appropriate additional registrant requirement for proposed Form SF-3? Should we also specify that such reports must have been filed on a timely basis? [23349]

MBA Response: Please see our response to questions above. Additionally, we would note that the proposed penalties for compliance failures are extremely harsh. Loss of shelf use for an entire year due to a single late Exchange Act filing or a single late filing of a CEO certification or transaction document will produce a draconian result. There exists a strong public policy goal in favor of preserving reasonable liquidity and funding options for financial institutions and the Commission should consider its proposals for registrant requirements with this public policy goal in mind.

SEC Question. Should we require, as proposed, that the evaluation of whether the registrant requirements relating to risk retention, third party opinions, certification, and the issuer's undertaking to file ongoing reports be made as the last day of the most recent fiscal quarter? Should that evaluation be made at different periods, such as monthly or annually? [23349]

MBA Response: Please see responses above. To the extent the Commission feels that a periodic evaluation is required, we believe an annual evaluation is appropriate. More frequent evaluations, such as monthly or quarterly, will be overly burdensome.

SEC Question. We are proposing to require that delayed offerings of mortgage related securities be registered on proposed Form SF-3, the same registration form for delayed offerings of other asset-backed securities. Is there any reason to permit delayed offerings of mortgage related securities on either proposed Form SF-1 or proposed Form SF-3? [23350]

MBA Response: Permitting delayed offerings of mortgage related securities on either proposed Form SF-1 or Form SF-3 appears to be appropriate to accommodate issuers or transactions that may not have a need for an SF-3 registration or assets that are unique and better suited for an SF-1 filing.

SEC Question. Should we adopt a 48-hour preliminary prospectus delivery requirement for all ABS issuers, as proposed? Should we instead provide a different application of the 48-hour preliminary prospectus delivery requirement for ABS issuers? Should a broker or dealer be required to deliver a preliminary prospectus for an ABS offering at a different time from initial public offerings, such as 48 hours before the first sale in the offering (instead of 48 hours before confirmation)? [23351]

MBA's Response: The 48 hour prospectus delivery requirement is acceptable.

SEC Question. Does our proposal to require filing of a preliminary prospectus pursuant to proposed Rule 424(h) at least five business days before the first sale in the offering make the proposed changes to Rule 15c2-8(b) unnecessary? Or is delivery of the preliminary prospectus, as contemplated by Rule 15c2-8(b), important? Would the proposed amendment to 15c2-8(b) provide a meaningful change in the information and time that investors are given to consider offering materials? [23351]

MBA's Response: Under the Proposed Rule, a preliminary prospectus must be updated for any material change, and such update then requires another minimum 5-day waiting period until the first sale. Not all material changes take a week for an investor to understand, particularly if they have already had the original preliminary prospectus for a week. CMBS issuers frequently issue "pre-pricing updates" to investors prior to pricing to convey any material changes since the preliminary prospectus. MBA members' experience is that few such changes are complicated or far-reaching. Often the updates require no more than a page or two, and are delivered (and filed) prior to pricing. Rather than impose a strict 5-day waiting period for changes to preliminary prospectuses and require the redelivery of a completely new preliminary prospectus, MBA urges the Commission to make provisions for such updates and either adopt a shorter required review period, such as one day, or adopt an approach that

focuses more on the length of time necessary for an investor to understand the change rather than the materiality of the change.

SEC Question. As proposed, there are no specific disclosure requirements applicable to the 48 hour preliminary prospectus. Do we need to specify further how much asset or other information should be contained in the 48-hour preliminary prospectus? Or is that unnecessary in light of proposed Rule 430D and the proposed Rule 424(h) filing requirements? [23351]

MBA's Response: It seems unnecessary given the specificity provided for the final prospectus and the proposed rules.

SEC Question. Is the proposed change to presentation of disclosure in the prospectus appropriate? Would investors benefit from the proposed change? Would it be unduly burdensome for issuers to prepare the disclosure in a single document? If so, how can we better mandate clear and concise documents so that investors are able and encouraged to analyze the investment? [23353]

MBA's Response: We support the proposed requirement to file one integrated prospectus rather than a base prospectus and a prospectus supplement for each takedown.

SEC Question. Is our proposal to require issuers to file a post-effective amendment to reflect new structural features or credit enhancements and provide a related undertaking appropriate? [23353]

MBA's Response: Yes, this position is a codification of the existing SEC position and current best practice.

SEC Question. Is our proposal for a pay-as-you go fee alternative for ABS issuers appropriate? Should ABS issuers be able to register offerings of an unspecified amount of securities on Form SF-3? [23354]

MBA's Response: Yes. This proposal provides additional flexibility to issuers.

SEC Question. Would this help with the management of multiple shelves for asset-backed issuers? Are there other steps we could take to help sponsors and depositors manage shelves for ABS? [23354]

MBA's Response: If asset backed issuers are required to file separate registration statements for each potential structural variation it would be helpful if they were not also required to pay registration fees for each potential variation.

SEC Question. Should we revise Rule 457(p), as proposed, to clarify that if an ABS offering is not completed after the fee is paid, the fee could be applied to future registration statements by the same depositor or affiliates of the depositor across asset classes? [23354]

MBA's Response: Yes, particularly if asset backed issuers are required to file separate registration statements for each potential structural variation.

SEC Question. Is our proposed amendment to the registration statement signature requirements appropriate? Is there any reason we should not exempt, as we are proposing to do, ABS issuers from the requirement that the depositor's principal accounting officer or comptroller sign the registration statement? [23354]

MBA's Response: Yes, the proposed amendment to the registration statement signature requirements is consistent with the other signature requirements for ABS issuers and hence appropriate.

Requiring ABS issuers to comply with the Commission's signature requirement would serve no purpose, since asset-backed issuers are not required to file financial statements.

SEC Question. Is our proposal to require the senior officer in charge of securitization of the depositor to sign the registration statement for ABS issuers appropriate? [23354]

MBA's Response: Yes, this is consistent with the other signature requirements for ABS issuers and hence appropriate.

SEC Question. Is our proposal to require asset-level disclosure with data points identified in our rules appropriate? [23356]

MBA's Response: Most CMBS transactions include asset-level information as part of the prospectus, typically referred to as "Annex A," therefore MBA believes it is appropriate to require asset-level information at the time of disclosure.

SEC Question. Is a different approach to asset-level disclosure preferable, such as requiring it generally, but relying on industry to set standards or requirements? If so, how would data be disclosed for all the asset classes for which no industry standard exists or for which multiple standards may exist? To the extent multiple standards exist, how would investors be able to compare pools? Please be detailed in your response. [23356]

MBA's Response: The CMBS industry currently provides asset-level disclosure on the Annex A, based on the specific types of commercial loans in the transaction. As the commercial assets are unique, and are not generally uniform like many other asset

types, the type of asset-level reporting may vary based on the properties and loans offered in the transaction. MBA believes it is preferable that the SEC require asset-level disclosure generally, but allow the industry to set the requirements for disclosure in the prospectus.

SEC Question. Should we instead amend our current requirements regarding pool-level disclosure by requiring issuers to present certain pool-level tables in a standardized manner? For instance, should we specify how statistical data should be presented by defining the groups or incremental ranges that must be presented? What would those appropriate groups or incremental ranges be for an individual table? For instance, what would be the appropriate range for obligor income and why? Please be specific in your response. [23356]

MBA's Response: MBA believes it is preferable that the SEC maintain the current pool-level disclosure requirements and that the SEC not specify how statistical data is presented.

SEC Question. Is the proposed requirement to provide Schedule L data with the proposed Rule 424(h), prospectus, the final prospectus under 424(b) and for changes under Item 6.05 of Form 8- K appropriate? Should Schedule L data be required at any other time? If so, please tell us when and why. [23356]

MBA's Response: With respect to CMBS, the MBA notes that most CMBS transactions feature an annex to the related prospectus that already contains a great deal of the information required by the proposed Schedule L. The MBA believes that the Commission should not require such a Schedule. As noted information akin to Schedule L is already included in large part in most standard disclosure documents. If the Commission should require such a Schedule L, then the MBA does not recommend the inclusion of Schedule L data at other times and feels the SEC's proposal sufficient. In particular, the SEC's proposal seems to cover the period of offering sufficiently.

SEC Question. Are the proposed measurement dates appropriate? Are there any data fields that would be inappropriate or too burdensome to supply as of two different measurement dates (i.e., the measurement date and the cut-off date)? If so, please specify the data field and provide a detailed explanation. [23356-23357]

MBA's Response: With respect to CMBS, the MBA recommends that two different measurement dates not be utilized. Rather, the cut-off date should apply both at the filing of the 424(h) prospectus as the "measurement date" and the 424(b) final prospectus as proposed. This is consistent with standard CMBS industry practice as well as CMBS investor expectations.

SEC Question. Are the proposed coded responses contained in the attached tables appropriate? Please be specific in your responses by commenting on specific proposed line items and codes**.** [23358]

MBA's Response: MBA recommends the Commission adopt the CMBS core data points from the current industry Annex A schedules and leverage the definitions already provided in the IRP. In order to provide additional specificity with respect to MBA's position related to the adoption of Schedule L, MBA will establish a task force of subject matter experts to develop a comparison of the data points on the proposed Schedule L to the current industry accepted Annex A fields and the terms and definitions already developed for the IRP.

SEC Question. Are the general data points that would apply to all securitizations (other than credit cards, charge cards and stranded costs) appropriate? Should any be deleted or made applicable only to certain asset classes? If so, what data points? Are there any other data points that should apply to all asset classes? Please provide a detailed explanation of the reasons why or why not. [23359]

MBA's Response: MBA recommends the Commission permit a CMBS industry-led standardization process, based on the information currently provided on Annex A and the needs of CMBS investors, which will create a standard template that leverages off the current terms and definitions already defined in the IRP.

SEC Question. Is the approach to asset number identifier workable? Should we only require or permit one type of asset number for all asset classes? If so, which one would be most useful? It appears that our proposed naming convention of "[CIK-number]-[Sequential asset number]" would be applicable to all asset classes. Does the use of an asset number alleviate potential privacy issues for the underlying obligor? Why or why not? What issues arise if the asset number is determined by the registrant? Would there be any issues with investors being able to specifically identify each asset and follow its performance through periodic reporting? [23359]

MBA's Response: With respect to CMBS assets, the Issuer assigns each loan a prospectus number, which can be found on Annex A. That prospectus number is used continuously throughout the life of the transaction on the IRP reporting to identify the asset. MBA requests that the SEC recognize the use of the prospectus number as an acceptable asset number identifier. MBA would disagree with the suggestion to only permit one type of asset number for all asset classes. It doesn't appear necessary that all assets should have to require a single numbering system, as their should be no cross comparison amount assets that are not alike and the CMBS market has already created and implemented a numbering system that works for CMBS assets.

SEC Question. Should we require a data point to disclose the CIK number of the sponsor? Would all sponsors have a CIK number? If not, in what other ways could we require standardized disclosure of the identity of sponsors? [23359]

MBA's Response: In CMBS transactions, not all sponsors will have their own CIK number. Therefore, the MBA would recommend not requiring a CIK number to identify the sponsor. MBA would suggest the SEC simply require the disclosure of the sponsor and not dictate how this is completed. The best option for CMBS, the depositor adding a data field on the Annex A to identify the sponsor.

SEC Question. Should we define delinquency in order to provide comparable delinquency disclosure across issuers and asset classes? If so, how should it be defined and why? Would market participants be able to make changes to their current systems to capture information to satisfy a standardized delinquency disclosure requirement? Would such a requirement be burdensome? Is there another way to provide comparable delinquency disclosure across issuers and asset classes? Please be detailed in your response. [23359]

MBA's Response: MBA believes the SEC should not define delinquency across all asset classes. The term delinquency can vary based on asset types and MBA believes the SEC should not attempt to redefine delinquency to meet the requirements of all assets. The term would simply end up being defined broadly and generally, which will not tie into any asset type definition, or as identified already in your question, could potentially be defined in a manner not congruent with the current servicing systems of record. The CMBS industry has already developed a definition of delinquency for its reporting requirements under the IRP on the Loan Periodic Update data file, the response options for the data field of "Payment Status of Loan" include:

IRP Code	IRP Description
5	Non Performing Matured Balloon
4	Performing Matured Balloon
3	90+ Days Delinquent
2	60-89 Days Delinquent
1	30-59 Days Delinquent
0	Current
B	Late Payment But Less Than 30 days Delinquent
A	Payment Not Received But Still In Grace Period or Not Yet Due

In the instance that the SEC does elect to define delinquency for all asset types, the MBA recommends using the CMBS industry's established definitions.

SEC Question. The response to some data points requires the identification of a party (e.g., originator or servicer) or the MERS generated number of the organization. Is this

approach to identification workable? Do any issues arise with allowing a text response to these types of data points? What alternatives would alleviate such issues? What if the organization does not have a MERS number? [23359]

MBA's Response: Currently, the CMBS industry does not have a party identification data point. The CMBS industry does not uniformly utilize the MERS system and therefore each organization will not have a MERS number. MBA would not recommend selecting an identification system that requires organizations to join or purchase the number from a vendor company.

SEC Question. Are the definitions of terms in the proposed instruction to Schedule L appropriate? Are there any other terms that should be included in the instruction? [23360]

MBA's Response: The proposed division of Schedule L is generally consistent with the asset types that comprise different ABS issues and will allow investors and issuers to focus only on those data points relevant for the particular asset class. However, with respect to CMBS transactions, we would recommend, as set forth in the cover letter included with these answers, that the Commission utilize the existing data provided in Annex A to the Prospectus Supplement and in the Loan Set-up File included in the IRP instead of imposing the largely duplicative, but potentially confusing for investors, requirements of Schedule L.

SEC Question. Should we require aggregated asset level data in a machine-readable form for issuers of ABS backed by stranded costs so that investors may download the data and input it into a waterfall computer program? If so, please specify the characteristics, the appropriate distributional groups and related definitions and formulas, if applicable. [23361]

MBA's Response: The SEC proposes that bond issuers would provide a software program written in Python that would generate the cashflow ('waterfall') for a particular bond. To do so, the program would have to be 'executable', that is, capable of being run to generate output. Ordinarily, IT systems administrators avoid allowing executable code to be placed on servers, as the possibility exists that if such program code would 'execute' or run in the server environment, such an action could compromise the operation of the server. To safely post executable code to a server, it would have packaged in such a way as to prevent its being run accidentally. This could be accomplished by compression ('zipping' the file) and encrypting the program which would prevent its accidental execution except by authorized persons with a decryption key.

If the program's code uses an open source language like Python, all portions of the program could be accessible, thereby permitting accidental or intentional tampering. For issuers to provide a program whose output is represented and warranted to be

correct, accessibility to a program's execution steps presents a problem, as even a minor modification or compiling error could alter the output, hence change the projected cash flow. This presents a risk for both the companies that issue the waterfall programs which model their bonds and those investors who rely upon the output.

The format and structure of the output from any bond cashflow program would have to be standardized. If each issuer is permitted to write their own program and output, investors will have to be prepared to manage bond data in multiple ways, which would add unnecessary confusion to the market. To be most successful, a single, open source bond-modeling program would have to be written and adopted by all participants in the mortgage industry. In addition, the issuers should disclose the data used to generate the program so the assumptions can be verified and presented in a human readable format.

Although there are open source programs in many U.S. businesses, financial programs tend not to be supported by open source communities, but by individual companies whose software products and formats are proprietary.

SEC Question. Are all of the CMBS data points appropriate? Is there any reason not to incorporate any of the requirements for commercial mortgage-backed securities into Schedule L? Are there any additional fields we should include? Are there any changes we should make for specific types of commercial properties? [23364]

MBA's Response: As set forth more fully in the cover letter included with these answers, we recommend for CMBS transactions that the Commission, instead of requiring Schedule L, allow the CMBS industry an the opportunity to revise and standardize Annex A via a similar process used to create the IRP.

If the Commission decides to adopt Schedule L despite the advantages afforded by continued use of Annex A, we would recommend that the Commission modify Schedule L (i) to conform as fully as possible to typical Annex A data points and to the terminology of the IRP and (ii) to delete any data points used in Item 1 or Item 3 that are not directly applicable to CMBS transactions. We further recommend that the Commission provide the CMBS industry with opportunity to review any such revised form of Schedule L before it is made final.

SEC Question. Should we include the current Item 1111(b)(9)(i) asset-level disclosure requirement for CMBS in Schedule L, as proposed? Should we eliminate the requirement to provide the asset-level information in narrative form? If so, would any material information relating to a commercial mortgage be lost? [23364]

MBA's Response: As set forth more fully in the cover letter included with these answers, we recommend for CMBS transactions that the Commission, instead of requiring Schedule L, allow the CMBS industry an the opportunity to revise and

standardize Annex A. In the event the Commission decides to adopt Schedule L, we believe that that the information contained in Item 1111(b)(9)(i) should be included in Schedule L, as it makes sense to consolidate asset-level data in one place. In this event, the requirement to provide such information in narrative form should be deleted as redundant.

SEC Question. We are proposing to require an indicator that shows how net operating income and net cash flow were calculated for commercial mortgages. The code options for this indicator would show whether these items were calculated using a CMSA standard, using a definition in the pooling and servicing agreement, or using an underwriting method. Are these appropriate codes? Are there any additional codes that should be included? [23364]

MBA's Response: As set forth more fully in the cover letter included with these answers, we recommend for CMBS transactions that the Commission, instead of requiring Schedule L, allow the CMBS industry an the opportunity to revise and standardize Annex A. In the event the Commission decides to adopt Schedule L, we believe that the proposed code delineation may need to be revised. Most commercial mortgages are underwritten using the IRP standards for net operating income and net cash flow, and these standards are typically reflected in the related pooling and servicing agreement definitions. In this situation, it is unclear which proposed Schedule L code option should be referenced.

SEC Question. We are proposing to require an indicator that shows how the debt service coverage ratio was calculated for commercial mortgages. The code options for this indicator would be: (1) Average—not all properties received financial statements, and the servicer allocates debt service only to properties where financial statements are received; (2) Consolidated—all properties reported on one ''rolled up'' financial statement from the borrower, (3) Full—all financial statements collected for all properties, (4) None Collected—no financial statements were received; (5) Partial—not all properties received financial statements and servicer to leave empty; and (6) ''Worst Case''—not all properties received financial statements, and servicer allocates 100% of debt service to all properties where financial statements are received. Are these codes appropriate? Are there additional codes that should be included? [23364]

MBA's Response: As set forth more fully in the cover letter included with these answers, we recommend for CMBS transactions that the Commission, instead of requiring Schedule L, allow the CMBS industry an the opportunity to revise and standardize Annex A. In the event the Commission decides to adopt Schedule L, we believe that the numerical designation of these codes should be revised to conform to the alphabetical designation used by the IRP.

SEC Question. We currently require disclosure of the three largest tenants that occupy the underlying property in the prospectus. Should we also require issuers to disclose

whether the named tenants are affiliated with the obligor as a data point in Schedule L and in narrative form in the prospectus? Should we require a description of the relation in narrative form? [23364]

MBA's Response: As set forth more fully in the cover letter included with these answers, we recommend for CMBS transactions that the Commission, instead of requiring Schedule L, allow the CMBS industry an the opportunity to revise and standardize Annex A. In the event the Commission decides to adopt Schedule L, we believe that requiring disclosure of an affiliation between the obligor and any named tenants, both in Schedule L and in narrative form in the prospectus, would make sense only where the loan in question is recourse to the obligor.

SEC Question. Is our proposal for resecuritizations appropriate? What other data points should be required by all issuers of that asset class? Please provide a detailed explanation of the reasons why or why not. [23367]

MBA's Response: The Commission's proposal for resecuritizations should be revised to take account of the following issues:

- For bonds in a resecuritization that are taken from transactions which closed prior to the effectiveness of Reg AB II, no asset-level data would be available for the related underlying assets. Accordingly, in the event the Commission adopts its proposal for resecuritizations, it should exempt from such asset-level disclosure and reporting requirements all bonds in resecuritizations which are taken from transactions which closed prior to implementation of Reg AB II.
- With respect to bonds in a resecuritization taken from transactions which closed after implementation of Reg AB II, the asset-level data required to be provided under the Commission's proposal for the related underlying assets would be of little benefit to investors, because of the limited correlation between loan performance and bond performance. Typically when bonds are resecuritized, only certain classes from an underlying transaction are taken. However, the loans backing such underlying transaction typically support the entire transaction, and do not correlate to specific classes of bonds. Thus, the Schedule L data required under Reg AB II would relate to the entire underlying transaction, instead of being linked to the specific class or classes of bonds included in the resecuritization. As a result, such data would not allow purchasers of the resecuritization bonds to identify which loans in the underlying transaction directly affect the performance of their bonds.
- In our view, the Commission's proposals will not materially benefit investors and will be needlessly onerous and expensive to issuers. This burden will

adversely affect the resecuritization market, and could potentially impair the viability of resecuritization transactions.

SEC Question. Should we require disclosure of the ratings of the resecuritized securities in Schedule L? [23367]

MBA's Response: Disclosure of the ratings of resecuritized securities would improve transparency; provided however, Schedule L would not be the appropriate means to disclose such ratings. See our response to question above.

SEC Question. Is the proposed requirement to provide Schedule L-D data with Form 10-D appropriate? Should Schedule L-D data be required at any other time, such as daily or monthly for all asset classes? Please tell us why. [23368]

MBA's Response: As stated earlier, the CMBS industry will provide the IRP along with the monthly distribution to the investors, so the Schedule L-D information will be available 15 business days after the IRP information.

The MBA believes that no additional or supplemental timing is necessary for filing the Schedule L-D data. While there may be some changes in the loan performance that may occur between monthly reports, most of the information requested by the SEC will remain static between each monthly period and will only require an update based on the payment schedule for the loan. Reporting more than once a month would be unduly burdensome for commercial servicers and for very little benefit to the investor.

SEC Question. Are the general data points appropriate for Form 10-D? What other data points would apply to all asset classes? Please provide a detailed explanation of the reasons why or why not. [23356]

MBA's Response: The CMBS industry independently established a strong foundation for monthly reporting on asset performance. The IRP is a consensus standard; it encompasses the culmination of viewpoints from all CMBS industry participants, including primary servicers, master servicers, special servicers, trustees and the investors and has been widely adopted. Further, the IRP is an organic, living and evolving document, where the industry dictates changes to reflect the current market standards in reporting, as an example, the IRP is currently on version 5. The CMBS industry has and will continue to modify the IRP when data points and other information become more or less relevant to investors. It is MBAs belief that CMBS investors will continue to look to the IRP and its third party data providers for information on asset performance.

The SEC proposed data points significantly overlap the IRP, but do not exactly match the IRP terms or definitions. As the IRP has already defined many of the same or similar terms used by the SEC in the proposed rule, the MBA recommends the SEC adoption

of the IRP definition of terms, especially when considering CMBS specific item requirements.

The MBA is concerned about the inconsistency, as the investors have received IRP reporting for over 13 years, they can currently look at their entire portfolio and review the assets based on any standard reports they have developed. With the SEC proposed changes to the codes (numbers versus letters), the titles and the definitions, the past transactions will no longer mirror the new transactions, thereby will not be an equal comparison across the investor's entire portfolio. Further, using similar terms, but with a different meaning, even if just slightly different, may cause confusion in the CMBS market.

- Examples of data that is inconsistent:
    - See definition of "delinquency" question below.
    - Item 1(g)(7) - Stop principal and interest advance rate, which requests a date response. The IRP instead has a field for "Non-Recoverability Determined," which requires a yes or no answer to whether the Servicer has made such a determination.
    - Item 1(h) - Modification indicator, which requests a yes or no answer. The IRP instead has a field for "Date of Last Modification," which requires a date answer.
    - Item 1(j) - Liquidated indicator, which requests a yes or no answer and Item 1(i)(1) - Paid-in-full indicator, which also requests a yes or no answer. The IRP instead offers the "Liquidation/Prepayment Code," with the following multiple options:

IRP Code	IRP Description
1	Partial Liquidation (Curtailment)
2	Payoff Prior to Maturity
3	Disposition/Liquidation
4	Repurchase/Substitution
5	Full Payoff at Maturity
6	Discounted Payoff (DPO)
8	Payoff w/ penalty
9	Payoff w/ Yield Maintenance
10	Curtailment w/ Penalty
11	Curtailment w/Yield Maintenance

    - Item 3(c)(ii) - Modification note rate, which requests a percentage. The IRP instead has a field for "Modified Note Rate," which requires a numeric answer.

The MBA is also concerns about information requested from the CMBS industry that is not currently tracked on the servicer systems of record or is not applicable to CMBS.

- Examples data that is not tracked or not applicable for CMBS:
    - Item 1(f)(1)-(4) – Request for Actual Amounts. This would be misleading to investors, the CMBS reporting under IRP is reported based on the scheduled amount due because the Servicer will advance the amount due (unless the total advanced amount on a particular loan has reached a determination of non-recoverability) if the funds are not received from the obligor. The actual amount would not assist the investor is its waterfall or payment calculation, as the number may be zero funds received from the obligor, but funds are still received by the certificateholders because the Servicer advanced the funds. MBA recommends removing these items from the general data and instead be requested from ABS areas where actual amounts are appropriate for reporting.
    - Item 1(l)(1)(2)(ii) and (iii) - Pledged prepayment penalty waived and Reason for not collecting pledge prepayment penalty. The servicing systems do not track the fee amount that was waived or provide a place to input the reason for such waiver.
    - Item 1(i)(1) – (4) – Repurchase indictors. The CMBS industry has experienced very few repurchased assets and suggested that monthly reporting on such an infrequent occurrence is unnecessary on the monthly reporting.

SEC Question. Are all of the CMBS data points for periodic reports appropriate? What other data points should be required by all CMBS issuers? Please provide a detailed explanation of the reasons why or why not. [23371]

MBA's Response: MBA requests that the Commission consider using the standard codes and definitions established by the IRP to define any CMBS data points for reporting. The IRP consists of multiple data files, reports and templates, providing investors with a significant amount of information and data on the underlying assets. MBA believes that CMBS investors do not require additional data points at this time.

SEC Question. Should we require more data points relating to foreclosure in CMBS, like we propose for RMBS? If so, please be specific as to which data points should be required and why. [23371]

MBA's Response: MBA notes that the existing IRP already provides extensive monthly reporting on asset performance, including foreclosure. The CMBS industry will continue to provide all of the data points and information available in the IRP to the CMBS investors. This information provides investors with sufficient information.

SEC Question. We are proposing data points for information related to the properties collateralizing each asset in Item 3(d) of Schedule L-D because we note that issuers that currently provide the disclosure in accordance with the CMSA Investor Reporting Package provide property information on a periodic basis. Some of this information is the same disclosure that would have been provided at the time of the offering by proposed Schedule L. Is it appropriate to include all of the data points in proposed Item 3(d) with each Form 10-D filing? In particular, is it useful for investors to receive the Item 3(d)(1) Property name, Item 3(d)(2) Property geographic location, Item 3(d)(3) Property type and Item 3(d)(6) Year built with each Form 10-D filing? Please tell us why or why not. [23371]

MBA's Response: As noted by the SEC, the CMBS industry currently provides as part of the IRP property information on the monthly reports to investors. If this information is helpful to the investors to have on a monthly basis, then the CMBS parties will continue to provide the data.

As stated earlier, the MBA requests the SEC consider using the standard codes established by the IRP, especially since these codes deal specifically with commercial real estate only and do not impact other asset types. Further the IRP codes are used on multiple IRP data files, reports and templates; thereby creating consistency across the entire IRP and to use separate or different codes for the SEC requested data points would interrupt the consistency of the information on the IRP.

- With respect to Item 3(d)(3), Property Type, the IRP codes are:

  MF - Multifamily
  RT - Retail
  HC - HealthCare
  IN - Industrial
  WH - Warehouse
  MH - Mobile Home Park
  OF - Office
  MU - Mixed Use
  LO - Lodging
  SS - Self Storage
  OT - Other
  SE - Securities
  CH - Cooperative Housing

- With respect to Item 3(d)(11), Defeasance Status, the IRP codes are:

  P - Portion of Loan Previously Defeased
  F - Full Defeasance
  N - No Defeasance Occurred
  X - Defeasance not Allowable

- With respect to Item 3(d)(12)(vii), NOI/NCF Indicator, the IRP codes are:

  CMSA - Calculated using CMSA standard
  PSA - Calculated using a definition given in the PSA
  U/W - Calculated using the underwriting method

- With respect to Item 3(d)(12)(x), DSCR Indicator, the IRP codes are:

  A - Average. Not all properties received financials, servicer allocates Debt Service only to properties where financials are received.
  C - Consolidated. All properties reported on one "rolled up" financial from the borrower
  F - Full. All statements collected for all properties
  N - None Collected. No financials were received
  P - Partial. Not all properties received financials, servicer to leave empty
  W - Worst Case. Not all properties received financials, servicer allocates 100% of Debt Service to all properties where financials are received.

SEC Question. Is it appropriate to require the asset data file in XML format? Does XML format most easily facilitate the analysis of the securities and their underlying assets for all market participants? [23376]

MBA's Response: MBA supports the use of XML as the regulatory reporting format to enhance the utility and transparency of data provided to investors in asset-backed securities. However, currently, the CMBS industry does not provide monthly reporting in XML. MBA endorses the idea of a phase-in period for implementing XML or even a test period prior to the actual implementation deadline. MBA believes that a two year requirement for compliance would be necessary.

SEC Question. In what format do issuers currently provide asset data information to investors (as may be required, for example, under transaction agreements)? Do any market participants currently provide asset data in accordance with a technical specification or schema commonly used across a particular asset class? If so, would our data points cause divergence from current practice? Please tell us which specific proposed data points would be of concern and why. How can we address those concerns? Is another format preferable, such as XBRL? [23376]

MBA's Response: The Annex A, which is attached to the prospectus, is most often provided in Excel. XBRL is designed for the financial accounting industry and would require significant modification to be adapted to the U.S. mortgage industry.

SEC Question. We are not proposing changes to Rule 305 of Regulation S-T to exempt the asset data file from the restrictions on the number of characters per line that may be filed on EDGAR in order to prevent issuers from filing the tagged data in one continuous string. We believe the restriction on the number of characters per line will help preparers and validators with their review of the asset data file. Should we exempt the asset data file from Rule 305 of Regulation S-T? If so, why? [23376]

MBA's Response: If XML is adopted as the data format standard, the number of characters per line is superfluous. XML, by its design, can handle data appropriately to convey the necessary information about a real estate asset and its mortgage terms.

SEC Question. Are the proposed blank data tags appropriate? Is ten blank data tags the appropriate number? Should the number be more or less? Would more blank data tags create undue complexity for investors? Are there other ways we could provide for additional disclosure and have that disclosure be standardized? [23376]

MBA's Response: The use of 'blank' tags is not appropriate or consistent with good XML syntax. The use of the 'Other' attribute for an XML data element permits variations from an element's typical attributes which would be already defined in the XML schema.

SEC Question. We propose to use existing submission types in order to enable filers to attach the asset data file as an exhibit. Tagging specifications that explain the requirements of the XML schema would be included in the proposed technical specifications. Are there other specifications that would be helpful that should be provided in the EDGAR Filer Manual for asset data files that are not currently included in other Technical Specifications? Please be specific in your response. [23376]

MBA's Response: An Implementation Guide should accompany the release of SEC data specifications. The data fields proposed by the SEC are not XML. Some fields contain definitions which are inconsistent with industry and regulatory use. For example, see the appraisal terms corrections in italics proposed below.

Item 3(b)(8)	Valuation source. Specify the code that identifies the source of the most recent property valuation.	1 = Broker's price option *(**Opi**nion)* 2 = Certified MAI appraisal *(All appraisals signed by persons with an MAI designation contain a 'Certification', as required by USPAP)* 3 = Non-certified MAI appraisal *(A 'Non-certified' appraisal is a violation of USPAP. No such thing is permitted by regulation!)* 4 = Master servicer estimate 5 = SS estimate *(Special Servicer*	General information about the commercial property

		estimate of value?) 98 = Other	
Item 3(b)(9)	Valuation date. The date the valuation amount was determined.	Date *(<u>Valuation Date</u> and <u>Date the Valuation was Determined</u> [the Date of the Report] are <u>**two**</u> <u>distinctly separate dates</u>, not one. – Valuation Date & Report Date, must be stated <u>separately</u>, per USPAP)*	General information about the commercial property
Item 3(b)(10)	Physical occupancy. Provide the percentage of rentable space occupied by tenants. Should be derived from a rent roll or other document indication occupancy.	% *(Percent Physical Occupancy can be different than Percent of Rentable Space. (e.g. an apartment building may have several units out of use [off line] but the remaining units can all be occupied. <u>**Two** XML elements are appropriate, not one.)</u>*	General information about the commercial property

SEC Question. Should we provide a transition period prior to the required compliance date that would allow filers to submit only test filings? Please be specific in your response. [23376]

MBA's Response: Yes, as discussed in the letter, MBA believes that a longer transition period is necessary for CMBS companies to comply. The idea of allowing for test filings is a good idea to allow companies time to fix any errors in their initial filings before requiring full compliance.

SEC Question. The technical specification will outline in detail the required format of each data point. Are there other validation checks that need to be in place to check compliance? Please be specific in your response. [23376]

MBA's Response: The technical specification could include complete data dictionaries that encompass all the data fields related to residential or commercial mortgages, the schemas that support the residential and commercial data dictionaries and a general implementation guide.

MISMO has a certification program for its data standards and could assist in developing a model for checking compliance.

SEC Question. Above we noted that disclosure regarding risk layering practices is required under existing Item 1111. Is the application of Item 1111 to risk-layering practices clear? Is there some way we can make Item 1111 clearer in that regard? Should we revise any other rule in that regard? [23377]

MBA's Response: We note that "risk-layering" was not a practice in the CMBS market. We believe that Item 1111 would apply to risk-layering practices.

SEC Question. Should we require, as proposed, disclosure on assets that deviate from the disclosed origination underwriting standards that must be accompanied by disclosure of specific data about the amount and characteristics of those assets that did not meet the standards? Should we require, as proposed, that if disclosure is provided regarding compensating or other factors, if any, that were used to determine that the assets should be included in the pool, despite not having met the disclosed underwriting standards, disclosure is required that would describe those factors and provide data on the amount of assets in the pool that are represented as meeting those factors and the amount of assets that do not meet those factors? Should we require any other disclosure with respect to exceptions to or deviations from disclosed origination underwriting standards? Should issuers be required to identify each exception loan by a loan identifier that will be disclosed in the proposed Schedule L discussed above? [23377]

MBA's Response: We believe that the proposed disclosure requirements are appropriate and that issuers should be required to identify each exception loan.

SEC Question. Are the proposed amendments relating to disclosure concerning representations and warranties and modification provisions in the transaction agreements appropriate? [23377]

MBA's Response: We believe that the proposed amendments are appropriate.

SEC Question. Are there other kinds of disclosure relating to representations and warranties and enforcement mechanisms of those representations and warranties that should be required to be provided? If so, please describe in detail. [23377]

MBA's Response: We believe that the proposed disclosure requirements are comprehensive and adequately address these disclosure matters.

SEC Question. A repurchase obligation also may be imposed under other circumstances. Should the rules require prospectus disclosure of other types of repurchase obligations? [23377]

MBA's Response: We believe that it would be appropriate to require prospectus disclosure of all types of repurchase obligations.

SEC Question. We are proposing to require disclosure of whether the transaction agreements include a fraud representation. Is this appropriate? Are there other types of representations and warranties that the prospectus should highlight? [23377]

MBA's Response: As the Commission notes in the Release, Item 1111 (e) currently requires summary disclosure regarding any representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction. We do not believe that it is necessary to highlight any specific representation or warranty.

SEC Question. Should we delete Item 1108(c)(6), as proposed? Is there any type of disclosure that will be omitted if we delete Item 1108(c)(6) in lieu of our proposed revision to Item 1111? [23377]

MBA's Response: We believe that it would be appropriate to replace Item 1108 (c)(6) with the proposed more detailed and specific disclosure requirement in Item 1111.

SEC Question. Is it appropriate for us to require most ABS issuers to file the waterfall computer program? Is there an alternative form of required information filing that would be more useful to investors, subject to the limitation that executable code may not be filed on EDGAR? [23380]

MBA's Response: The filing of a waterfall computer program is not appropriate. Like most ABS investors, CMBS investors are already served by third party modeling and pricing services, and the use of such services by such investors is routine. However, computer models do not on their face disclose the risks associated with a transaction or other non-quantitative information (e.g., the legal rights of parties, tax characteristics, etc.) material to an investor's decision.

If anything requiring a waterfall computer program will delay the investor's consideration and/or the offering process generally. Many investors do not support, and in fact discourage, the use of certain technologies, or simply cannot afford to support and maintain multiple environments. Given the prevalence of third party services, it is unlikely that an investor would analyze the waterfall computer program on its own; indeed, we would be concerned that an investor's attention would be inappropriately focused on the coding in a computer program rather than on understanding the characteristics of, and the risks associated with, its investment in the securities. Given the need to consider non-quantitative information and the use of third party servicer, the waterfall computer program is not likely to have any significant effect on the overall time required for review of transaction-specific information.

More significantly, any computer program will be only a model limited by the constraints of the program will not capture every possible outcome and may be misleading. As

discussed in the MBA cover letter, transaction structures may be too complex to be effectively modeled in the waterfall computer program without creating a significant risk that the program's output in response to at least some parameters selected by investors would be misleading in isolation. Likewise, continued referral to the program's output could be unhelpful or misleading over a transactions' lifespan in certain circumstances. The use of open source code also raises significant technology concerns. The code could very easily become corrupted through the process of transfer onto EDGAR and then downloading to the investor's local computer. There are no effective steps to take against this absent regulating the operating systems and programming of all investors' computers. Even with an error-free transmission, in open source code, the program will be subject to unrestricted alteration by the user.

Finally, it is inappropriate and unfair to attach legal liability to the issuer for a computer model under these circumstances where the program is unnecessary given existing market practices, the program will inherently be constrained and subject to yielding inaccurate or misleading results, the program may experience transmission or execution errors and the program will be subject to manipulation by the user. Accordingly, we urge the Commission to consider eliminating the waterfall computer program requirement from the Proposal.

SEC Question. Is our proposal to require that the narrative description of the waterfall be presented in one location appropriate? Are there any reasons not to require this? [23381]

MBA's Response: CMBS transactions presently provide a narrative description of the waterfall generally in a single location**.**

SEC Question. Should we amend Item 1110 to require identification of originators even if no single originator comprises 10% or more of the pool? Is it appropriate to require identification of originators, as proposed, if the cumulative amount of originated assets by parties other than the sponsor (or its affiliates) comprises 10% or more of the total pool asset? [23381]

MBA's Response: We believe that the proposed amendment is appropriate as drafted and would not create an undue burden on issuers.

SEC Question. Are the proposed revised thresholds for originator identification appropriate? Should they be different (e.g., 5%)? [23381]

MBA's Response: We believe that the proposed 10% threshold is a good benchmark of materiality for this issue. We do not believe that a lower threshold would be appropriate.

SEC Question. Is the proposed amendment requiring disclosure regarding amount of assets that were not repurchased appropriate? Should we also require, as proposed, disclosure of the percentage of that amount that was not then repurchased or replaced by the sponsor or 20% originator? Should we also, as proposed, require disclosure whether an opinion of a third party not affiliated with the obligated party had been furnished to the trustee that confirms that the assets that were not repurchased or replaced did not violate a representation or warranty? [23382]

MBA's Response: MBA disagrees with any proposals that require disclosure of repurchase demands which can include frivolous or illegitimate requests that do not reflect a credible claim or are supported by evidence of an actual breach. Additionally, as the Commission appropriately suggests in Question 240 below, disclosure of all such claims can incentivize transaction parties to pursue illegitimate repurchase requests, which ultimately has no correlation to an originator or sponsor's practices. MBA further notes that representations and warranties and corresponding repurchase remedies are used to mitigate operational risks created by informational asymmetries that exist between buyers and sellers. Such remedies, however, are not intended to constitute direct credit substitute or credit enhancement which would directly contravene existing legal, accounting, and regulatory standards.

SEC Question. Should we also require disclosure of the percentage of assets that have been repurchased by a 20% originator or the sponsor? [23382]

MBA's Response: Provided the disclosure is required on a pool by pool basis, we believe that disclosure of the percentage of assets that have been repurchased by a 20% originator or sponsor is appropriate.

SEC Question. Should disclosure be required regarding demands to repurchase in the last three years, as proposed? Should the timeframe be different (e.g., one year, two years, four years, or five years)? [23382]

MBA's Response: To the extent that repurchase demands are required to be disclosed, the three years appear to be appropriate. However, we would propose that the beginning of such a three-year period begin on the effective date of the Commission's proposed rules so that issuers have time to appropriately and accurately track such information according to the requirements and standards set by the Commission without having to retroactively identify such repurchase demands/requests for disclosure.

SEC Question. Are there parties other than 20% originators or sponsors that may have a repurchase obligation under the transaction agreements for breach of the representations and warranties? If so, should similar disclosure about these parties be required? [23382]

MBA's Response: There may be other originators or sponsors that hold less than 20% that have a repurchase obligation although we believe that 20% is the appropriate threshold for disclosure.

SEC Question. Are the proposed amendments relating to disclosure of the financial condition of the obligated party appropriate? Should we specify further when disclosure of the financial condition would be required such as a certain level of financial concentration? If so, what should that level be? Should we require financial information about 20% originators and sponsors for other circumstances? Should we require financial information for 20% originators and sponsors for all securitizations? [23382]

MBA's Response: The disclosure of the financial condition of the obligated party is not appropriate. As we explained earlier in our responses, the repurchase remedy is meant to act as incidental recourse to address operational risks and is not intended to provide credit or liquidity support to the transaction. Investors should not be encouraged to rely on any perception of financial backing or guarantees by the sponsor or another party due to the provisions of representations and warranties. Additionally, from a broader policy perspective, financial information disclosure should not be established as a prerequisite to entry for participation in the securitization markets and enjoyment of the resulting liquidity benefits. This is an unreasonably high bar especially for smaller, private companies whose securities are not publicly traded.

SEC Question. Should our disclosure requirements be consistent with existing thresholds (i.e., when the originator has originated 20% or more of the assets) for when disclosure relating to an originator is required? Should we instead require disclosure of the proposed items for any originator required to be identified? Should we require disclosure of the proposed items for originators of more than ten percent of the assets? [23382]

MBA's Response: As we noted in our earlier response, we believe the 20% threshold is appropriate.

SEC Question. Is our proposed disclosure requirement relating to retained economic interest appropriate? Is there any additional information that would aid investors' analysis? [23383]

MBA's Response: MBA believes the disclosure proposed makes sense.

SEC Question. Should we require, as proposed, disclosure that the sponsor is not required by law to retain any risk in the securities and may sell any interest initially retained at any time for any offering registered on Form SF-1? [23383]

MBA's Response: Yes.

SEC Question. Are there any changes we should make to Item 1108(b)(2) to clarify what disclosure should be included? [23383]

MBA's Response: We support the Proposed Rule's standards to require disclosure in the prospectus concerning material instances of noncompliance that are noted in servicers' Item 1122 or Item 1123 reporting, as well as disclosure of measures taken to remedy these instances of noncompliance. However, we believe any such reporting obligation itself would be subject to standards of materiality relative to the transaction for which such disclosure is proposed. For example, in a transaction where there are several servicers under Item 1108 for a single transaction and one of the servicers has a single instance of material noncompliance related to a function, we believe such instance of noncompliance could be immaterial to the transaction as a whole and may not need to be disclosed.

SEC Question. Item 1108(b)(4)367 requires information regarding the servicers' financial condition to the extent there is a material risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the securities. Should we revise this requirement? [23383]

MBA's Response: We see no reason to revise.

SEC Question. For example, should we require financial statements or other financial information be provided with respect to the servicer in all asset-backed transactions, regardless of whether there is a material risk that servicing resulting from the financial condition could have a material impact on pool performance or performance of the securities? If the servicing function is divided among different unaffiliated parties, should disclosure of a servicer's financial statements depend on how much of the pool a servicer is servicing? What about a special servicer? Should we take into account any other considerations? [23383]

MBA's Response: Many servicers are not public companies and they should not be compelled to provide financials to the market regardless of their financial condition.

SEC Question. Is our proposed instruction to require summary statistical information regarding the types of underwriting or origination programs, exceptions to underwriting and origination criteria and, if applicable, modifications made to the pool assets after origination appropriate? [23384]

MBA's Response: CMBS disclosures presently provide information on exceptions to the general underwriting and origination criteria disclosed in the prospectus.

SEC Question. Should we specify line item disclosure requirements for the summary section? If so, are the pool characteristics identified in the proposed new instruction

appropriate? Would those characteristics be common across all asset classes, or only apply to a specific asset class? [23384]

MBA's Response: We do not think line item disclosure requirements would be appropriate given the disparate types of asset classes. Suggested guidelines for such disclosures would be more appropriate.

SEC Question. Are there other features of the transaction that we should specify must be disclosed in the summary? [23384]

MBA's Response: No, there are not any other features.

SEC Question. Should we require all issuers to provide static pool data, whether or not material? [23386]

MBA's Response: We believe that static pool data is irrelevant and immaterial to CMBS investors. Because of the unique nature of the limited number of properties represented in any particular CMBS transaction, information relating to the historical performance of loans on a wholly separate set of properties has almost no value for investors seeking to evaluate the potential performance of that CMBS transaction. Since requiring immaterial information to be provided to investors is contrary to the basic tenets of the securities laws, we believe that CMBS issuers should not be required to provide static pool data.

SEC Question. We are proposing to allow, but not require, registrants to file static pool information on Form 8-K and incorporate it by reference into the prospectus, in lieu of filing it in the prospectus. Is this accommodation appropriate? Should we instead require that all static pool disclosure be filed in the prospectus? [23388]

MBA's Response: Yes, this is appropriate.

SEC Question. Is our proposed amendment to Item 1100(f) appropriate? Is there any reason that exhibits to the registration statement could not be filed by time the final prospectus is required to be filed under Rule 424? [23388]

MBA's Response: We do not think the proposed amendment to Item 1100(f) is appropriate. It should not be necessary to file the final forms of agreement contemporaneously with the final prospectus because the material terms of any material agreement will already be disclosed in the final prospectus. Practically speaking, the offering documents receive priority attention in most transactions. It is also not infrequent that changes to the terms of a transaction will be contemplated in response to market conditions in the course of preparing to market a transaction or indeed during the offering process. These changes will be reflected in the disclosure produced prior to marketing or may appear in a pre-pricing update or even a new preliminary prospectus.

While of course the related agreements must also be revised to reflect these changes, requiring that they be ready simultaneously with the disclosure will effectively require having also to continuously update all the other related documents throughout the process. This will add time and expense for the issuer and the other transaction parties without a corresponding benefit to investors, who will already have been informed of the material terms of the agreements via the prospectus. Accordingly, we would ask the Commission to consider allowing a modest amount of time after the filing of the final prospectus, such as 10 business days, in order to file the final agreements.

SEC Question. Do investors need the complete exhibits sooner? Is it appropriate instead to require filing at the time of filing the Rule 424(h) filing? Could issuers satisfy such a requirement? Should a draft of each material agreement be required to be filed at that time if the final agreement is not available then? [23388]

MBA's Response: For the reasons stated above, we do not think investors need complete exhibits sooner. CMBS offerings, and we think other asset-backed offerings even more so, may change in response to market reaction before their final terms are established. Even under the Commission's proposal without the changes suggested by MBA, there could be multiple 424(h) filings to reflect these changes. We believe the proper focus of attention in connection with an offering should be on whether the material changes have been disclosed to investors (in the prospectus or an update), not on whether the same changes have been replicated simultaneously in other documents.

SEC Question. Should we amend, as proposed, Item 1121 to require disclosure regarding the amount of repurchase demands made of the obligated party during the period covered by the report for the assets in the pool of securities covered by the report? Should we require, as proposed, disclosure regarding the percentage of those assets that were subject to a repurchase demand that were not repurchased? Should we also require, as proposed, disclosure whether an opinion of a third party not affiliated with the obligated party had been furnished to the trustee that confirms that the assets that were not repurchased or replaced did not violate a representation or warranty. [23391]

MBA's Response: There is no reason not to provide this information. MBA would not object to the reporting of repurchase demands with respect to CMBS provided that the materiality threshold for repurchase is set at 10% or greater of the initial total pool balance. The same threshold should apply with respect to demands that were not subject to repurchase. MBA would not object to stating whether an opinion of a third party was or not was delivered.

SEC Question. Should we add, as proposed, an instruction to Item 1121(a)(9) to provide pool-level disclosure in periodic reports in accordance with Item 1100(b) of Regulation AB? [23391]

MBA's Response: The IRP contains the appropriate reporting and disclosure for CMBS. MBA would not object to such proposal as it would provide clarity and consistency in reporting.

SEC Question. Should we specify the format for reports on Form 10-D? Should we specify line items that issuers must disclose in order to meet the requirements in current Item 1121 of Regulation AB (e.g., disclosure of sources and uses of monthly cash flows, changes in asset pool balance from the beginning to the end of the reporting period)? For instance, in the case of a credit card master trust, should we specify line item disclosure for changes in the assets of the trust (e.g., beginning balance, amount of account additions, amount of accounts withdrawn, amounts collected, gross charge-offs, and ending balance)? [23391]

MBA's Response: For CMBS, disclosure should be through the IRP. The MBA believes that the CMBS market should dictate the specific items that the issuer must disclose. If line-item requirements are imposed, they should be qualified according to relevance for the particular asset class.

SEC Question. Would additional disclosure in the body of the Form 10-K as to whether the identified instance of noncompliance involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10-K report, as we are proposing to require, provide investors with meaningful additional disclosure that is not already covered by the existing requirements? Would the proposed requirement to disclose any steps taken to remedy the previously identified instances of noncompliance provide helpful information to investors? [23391]

MBA's Response: MBA believes this information is already captured in the 10-K reporting, the SEC current requirement for servicers is to provide the 1122 servicer assessment at the platform level, accompanied by the 1123 servicer certificate that is specific to the actual assets in the transaction and the servicer's performance of its designated servicing activities. This combination of reporting shows the investor not only how the servicer is performing on a macro-scale, but if there are any instances of noncompliance specifically on the investor's transaction (micro-sale). MBA believes that the reporting currently required already provides the meaningful disclosure to investors.

With respect to the steps taken to remedy any noncompliance, MBA believes the addition of this information on the 10-K report would be helpful to investors, but queries, how much detail and in what context does the SEC propose the servicer show any steps taken? MBA would recommend the response on the 10-K be limited to several sentences briefly describing the new successful process used by the servicer to eliminate the noncompliance and that no additional documentation or third party reporting be required.

SEC Question. Should we, as proposed, add a separate criterion addressing the accurate aggregation and conveyance of information by one servicer to another party who must use the information in the performance of its duties? Would it be better not to add the criterion but instead revise Item 1122 to provide, similar to the staff's position, that accurate conveyance of the information is part of the same servicing criterion under which the activity that generated the information is assessed? Should timeliness of conveyance of this information also be included as part of the proposed servicing criterion? [23392]

MBA's Response: MBA believes the current method of review where the conveyance of the information is part of the same servicing criterion under which the activity that generated the information is assessed is appropriate and captures instances of non-compliance, as it was intended. MBA would recommend codifying the telephonic interpretation. However, while it seems unnecessary, MBA believes the SEC suggestion to add a separate criterion for aggregation and conveyance of information is acceptable. The timing associated with providing such conveyance is already a part of the servicing criterion as well, it will be reviewed as part of the assessment, as typically the CMBS contracts set forth the timing for delivery of reports, and the accountants request proof of the contractual compliance as part of their annual audit.

SEC Question. Should we codify prior staff interpretations relating to the scope of Item 1122 by adding the proposed instruction? Does the proposed instruction to Item 1122 reflect current servicer's practices? Do servicers conduct servicing in any ways different from what is contemplated in the proposed instruction? [23392]

MBA's Response: MBA believes the SEC should codify the prior staff interpretations and add the proposed instruction. With respect to CMBS industry, the proposed instruction does reflect the current servicer practices.

SEC Question. Should we revise Item 6.05 of Form 8-K as proposed? Is 1% an appropriate threshold to trigger disclosure on Form 8-K? Should it be higher or lower such as 0.5% or 2%? [23393]

MBA's Response: While MBA appreciates the need for the SEC as a regulator to draw a line, we respectfully suggest, particularly in light of the proposed new consequences for failure to timely file a Form 8-K, that a 1% variation in a disclosed characteristic-- a level which in some formats might result from rounding-- is too low a threshold to set for purposes of triggering the filing requirement. We urge the Commission to reconsider keeping the existing 5% threshold or, failing that, to set the bar at not less than 2%.

SEC Question. Is the language for the proposed item appropriate? [23393]

MBA's Response: Although MBA urges reconsideration of the percentage level, it believes the language of the proposed item is otherwise appropriate. We would request

clarification that the 1% is measured relative to the aggregate initial principal balance of the asset pool.

SEC Question. Should we also require, as proposed, a description of the changes to the asset pool? [23393]

MBA's Response: MBA believes requiring a description of the changes to the asset pool is appropriate.

SEC Question. Should we provide by rule that changes in pool assets of more than 10% (or some other amount) from the description of the asset pool in the prospectus filed pursuant to Rule 424 must be conveyed to investors for purposes of Rule 159? [23393]

MBA's Response: MBA does not believe it is necessary to set a bright line test for purposes of Rule 159.

SEC Question. How often would ABS issuers cross the 1% threshold? We propose, above, to eliminate the current exception to the shelf eligibility condition that requires timely filing of an Item 6.05 Form 8-K. Is there a risk that pool assets may change by more than 1% without the sponsor being aware soon enough that an issuing entity has crossed this threshold in order to be able to comply with the shelf eligibility criteria, as proposed to be revised? If so, how should we address that risk while still providing incentive for timely compliance? [23393]

MBA's Response: MBA shares the concern expressed in the Commission's question, and believes that the most practical way to address the Commission's concerns for timely filing is to set the threshold higher than 1%. A 1% variance is simply not large enough to warrant the consequences that are proposed to attend a timely failure to file. The market is already accustomed to, and has operated for some time, with the notion that a 5% variance was possible. At least in MBA's experience, there have not been any significant problems created for investors as a result of that possibility. While MBA understands the Commission's increased focus on pool composition and desire to incentivize timely filing, these objectives can still be met under a 5% standard-- or at least under a standard that permits greater than a 1% variation before triggering the filing requirement and the proposed more severe consequences from a failure to file with respect to Item 6.05 of Form 8-K.

SEC Question. Should we require, as proposed, the issuer to file a Form 8-K if there is a material change in the sponsor's interest in the securities? Should we provide a quantitative measure for the trigger for disclosure on Form 8-K? For example, should we require the filing of a Form 8-K if the sponsor's interest has changed by 1%, 5% or 10%? [23393]

MBA's Response: If a risk retention requirement exists in whatever form, its parameters and potential variations will be known as a matter of regulation and disclosed to investors in connection with their purchase. As such, MBA does not see the value in adding a requirement to advise investors of a "material change" in the sponsor's interest, since it would need to be maintained at a certain minimum level or in a certain way in any case. In addition, CMBS transactions often have multiple sponsors. For example, two or three financial institutions may jointly organize a transaction and sell loans to a depositor affiliated with one of the institutions. This allows these institutions to share transaction costs and otherwise achieve economies of scale. Because the requirement to file a Form 8-K is imposed on the issuer, complying with the new requirement will require the issuer to coordinate with non-affiliated sponsors and create a situation where the issuer's ability to comply with depend on contractual relationships with parties it does not otherwise control. Although admittedly CMBS issuers are already used to dealing with similar situations already created by existing requirements of Regulation AB, these situations increase monitoring and compliance costs. MBA would therefore also for this reason ask the Commission to reconsider the value of creating another similar situation under circumstances where the only additional knowledge gained by the investor was that the sponsor was at some level above the minimum required level.

SEC Question. Is the proposed disclosure that would be required to be provided on Form 8-K appropriate? Would other types of disclosure provide more useful information for investors? [23393]

MBA's Response: As discussed above, MBA does not feel imposing a requirement to report a change in the sponsor's interest is appropriate.

SEC Question. Should we also require the issuer to file a Form 8-K if an originator's interest in the securities has changed? If such a requirement were adopted, what would be the costs of monitoring an originator's interest? [23393]

MBA's Response: MBA does not see any value to file a Form 8-K if the originator's interest in the securities has changed. Even under the Proposal as proposed, originators would have no risk retention requirement to monitor, and as discussed above for sponsors, we do not think the information would add any significant value even if they did. The cost of monitoring the interests of originators would be substantial, and as with non-affiliated sponsors, entails the issuer again being dependent on parties it does not control in order to comply with the reporting obligation. While as noted above we recognize that issuers are already in this position under the existing scheme in some situations, we believe it is appropriate to expand the potential number of those situations only when there is a compelling benefit to investors. We do not see such a benefit from monitoring originators' interests in transactions, and believe this view is consistent with the existing scheme under Regulation AB and the changes proposed

under the Proposal, which appropriately focus on sponsors as the parties responsible to investors.

SEC Question. Should we instead require that the issuer file a report each fiscal quarter that discloses the scope of the sponsor's interest in the securities as of a particular date? If so, what date should that be? [23393]

MBA's Response: For the reasons set forth above, we do not feel that a quarterly reporting regime the sponsor's interest is appropriate.

SEC Question. Should we require, as proposed, CIK numbers for the depositor, the issuing entity, and the sponsor (if applicable) on the cover pages of Forms 10-K, 10-D and 8-K for ABS issuers? Should we require, as proposed, CIK numbers for the depositor and the sponsor (if applicable) on the cover pages of proposed Forms SF-1 and SF-3? [23393]

MBA's Response: MBA feels adding the CIK numbers of the depositor and the issuing entity to the cover pages of filings is a good idea and will enhance the accessibility of information to investors. As noted above (and as we presume from the phrasing of this question the Commission understands), sponsors may not have CIK numbers and sponsor CIK numbers should only be required if the sponsor in fact has a CIK number.

SEC Question. Are there any other changes we should make to the forms to make it easier to locate materials related to an ABS offering or ABS issuer? [23393]

MBA's Response: MBA has no further suggestions to make it easier to locate materials related to an ABS offering or an ABS issuer.

SEC Question. We recognize that our proposals would impose significant changes to the existing requirements in the safe harbors for private offers, sales and resales of structured finance products, and we request comment on all aspects of our proposed approach. This will be the first time, for example, that we would require an undertaking to provide information to accredited investors as a condition to the safe harbor in Rule 506 of Regulation D, and the first time we would require an undertaking to provide such specific information to QIBs in Rule 144A transactions. While we recognize that the proposals may impose substantial additional requirements on ABS issuers in the private market, we believe that, if adopted, these proposals would help to provide needed transparency in the private markets for structured finance products. As a practical matter, how feasible will an exempt private offering be in light of the requirements? Is the rationale offered for distinguishing ABS from other securities for purposes of our proposal appropriate? [23397]

MBA's Response: MBA believes that the proposals related to private offerings are too broad and overreaching. The rationales for the Rule 144A safe harbor has always been

that qualified institutional buyers (QIBs) are sufficiently sophisticated investors to evaluate purchases of securities without relying on Commission mandated disclosure. In addition, the other policy underpinning Rule 144A was to promote efficiency and liquidity in the capital . We believe that this underlying principles are still sound – that there is no need for this level of disclosure where resales to QIBs are involved as they are more than capable of evaluating their purchases. In addition, liquidity in the capital markets is always desirable and in the current economic environment, it is required more so than ever.

With respect to necessary transparency, we note that in the context for instance of most standard Rule 144A CMBS transactions, given they are not subject to Securities Act prohibitions on certain materials being made available, often times, investors are entitled and do receive more disclosure materials than they would otherwise receive if conducting a purchase in the registered market.

Accordingly, we view the proposals relating to private offerings as a material and dramatic departure from the purpose of Rule 144A and do not think it appropriate to single out the ABS market generally for punitive treatment relative to all other types of privately placed securities. Indeed, transactions in the private market may become economically unfeasible with the added burden and cost if the proposals are implemented. Innovation and creativity may be stifled (especially as they relate to pool assets that feature "significant obligors" (as defined in Regulation AB)). Furthermore, the perceived problems with the adequacy of disclosure related to the private placements of CDO debt should not be used as the basis for revising the ground rules for every type of ABS.

SEC Question. We request comment on the proposed definition of “structured finance products” for purposes of our proposed revisions to Rule 144A, Regulation D and other rules. Is the proposed definition appropriate? Should other types of securities be included that are not included? Should any types of included securities not be? [23397]

MBA’s Response: For the reasons described in the previous response, MBA believes that it is not necessary to create a definition for structured finance products, but if the proposals were implemented featuring such a definition, then CMBS should not be included in that definition.

SEC Question. Should we require instead that, as a condition of Rule 144A, issuers make the required information (both offering and ongoing information) available at all times, rather than only upon investor’s request? Could an issuer, for example, be required to post the information on a password-protected website? [23397]

MBA’s Response: We do not believe that there should be any SEC-mandated disclosure in connection with an ABS issuance qualifying for the Rule 144A safe harbor. As noted above, industry participants in the CMBS market have developed a

standardized disclosure regime. We think it would be an appropriate condition to Rule 144A eligibility to require disclosure of asset-level information on a password-protected website at the time of the offering and to require that the ongoing information required by the PSA be made available on a password-protected website at all times.

SEC Question. Are our proposals with respect to ongoing information regarding the securities appropriate? Is there any reason that we should not require structured finance product issuers that utilize the safe harbors to comply with the proposed requirements for ongoing information? [23397]

MBA's Response: The CMBS market has already adopted the IRP as a template for providing ongoing information to investors for both public and private transactions. The proposed amendment to require ongoing reporting will not fundamentally alter the current practice of CMBS issuers.

SEC Question. Would additional or other requirements promote greater transparency? For example, should we make the safe harbors, such as Rule 144A, unavailable for offerings of structured finance products? Would this result in structured finance products being offered and sold in registered transactions, or in private transactions without the benefit of the safe harbor? Would a new safe harbor for private ABS offerings designed to make information available to investors and the market (e.g., a limited public offering exemption) be a more appropriate approach? [23397]

MBA's Response: See earlier response to questions. We do not believe that the Rule 144A safe harbor should have any exclusions for structured finance products. The Rule 144A safe harbor is intended to allow sales to QIBs without the need for SEC-mandated disclosures in recognition of such investors' financial sophistication. We believe that this rationale continues to be valid and, as such, there is no reason to single out structured finance products as ineligible for the safe harbor. Nor do we see any productive result from making the safe harbors unavailable to structured finance products. Although some ABS issuers might turn to statutory exemptions from registration, this would represent a less liquid alternative. And even though there have been issues with some private ABS transactions of certain asset classes, we do not believe that these justify undercutting the private ABS market for all asset types.

SEC Question. To the extent we adopt the proposed changes to Rule 144A or Regulation D, we request comment on whether issuers of structured finance products would be more likely to sell such products outside the United States in reliance on the safe harbor provided by Regulation S473 under the Securities Act. Should we adopt similar changes under Regulation S as we are proposing for Rule 144A and Regulation D to cover sales of structured finance products outside the United States? Are there any extra or special considerations relating to offshore sales of structured finance products that are different from considerations under Rule 144A and Regulation D that we should take into account in considering adopting similar changes under Regulation S? [23398]

MBA's Response: See earlier response to questions. We do not believe that it would be appropriate to implement notice and disclosure regimes for sales under Regulation S. The policy behind Regulation S is that the Commission need not regulate offshore sales to non-U.S. persons. Imposing such requirements with respect to ABS issuances would be inconsistent with this policy.

SEC Question. In order to facilitate unsolicited ratings in unregistered transactions, should we require that the issuer also provide information to an NRSRO if the rating agency intends to rate the security? [23398]

MBA's Response: We do not believe it is necessary to impose the proposed disclosure requirements on issuers directly. Under recently enacted rules, a NRSRO is required to publish on its password-protected website notifications indicating that it has been engaged to rate a transaction and identifying the party engaging it. The NRSRO also gets an undertaking from the party that engaged it that such party will make all the information provided to the NRSRO available on its own password-protected website. An additional provision requiring this information would not facilitate unsolicited ratings.

SEC Question. Is our proposal to require a notice of the initial placement of structured finance products that may be resold in reliance on Rule 144A appropriate? [23399]

MBA's Response: We believe that the proposal to require notice of the initial placement of structured finance products that may be resold in reliance on Rule 144A is appropriate.

SEC Question. Instead of, or in addition to, a notice, should we require that the offering circular be filed? If we require that the offering circular be filed, should the filing be with the Commission on a non-public basis? Should it be made available to the public? If so, when should it be made public (e.g., immediately or after some period of time)? If it were made public, would there be any general solicitation concerns? If so, how should we address them? [23399]

MBA's Response: If an offering qualifies for an exemption from registration, then we believe that there should be no requirement that the offering circular be filed with the Commission.

SEC Question. Should proposed Form 144A-SF be required to be filed, as proposed, in XML tagged format? Similar to Form D, should we provide a Web site page where issuers can submit directly to EDGAR the information required by Form 144A-SF, which would automatically tag the information that is delivered? Would issuers of structured finance products benefit from such a webpage? [23399]

MBA's Response: We would propose following the same procedures for filing a Form 144A-SF as apply to filing a Form D. We believe the market as a whole would benefit from having the information described in the notice publicly available in a searchable Web site page.

SEC Question. Are the items of information that are proposed to be required in proposed Form 144A-SF appropriate? Are there other items that are useful and should be required to be provided on proposed Form 144A-SF? Are there particular ways that these items should be required to be tagged? [23399]

MBA's Response: We believe that the proposed contents of Form 144A-SF are appropriate.

SEC Question. Should the Rule 144A safe harbor be conditioned on the filing of this notice, or is it better to require the notice separate from the conditions of the Rule 144A safe harbor, as proposed? Is our proposal relating to the consequences for failure to file the notice appropriate? [23399]

MBA's Response: We agree that the filing of the Form 144A-SF notice should not be a condition to qualifying for the Rule 144A safe harbor. Since investors will have received offering materials prior to the filing of Form 144A-SF, they should be able to rely on the issuance's safe harbor eligibility without the prospect of this being withdrawn. We believe that the proposed consequences for failure to file the notice are appropriate.

SEC Question. Should we require the filing of proposed Form 144A-SF sooner than proposed (e.g., three or four business days from the date of first sale) or should we provide issuers with more time for filing the notice (e.g., 20 calendar days from the date of first sale)? Should we provide a hardship exemption for filing proposed Form 144A-SF, or is our proposal to make the hardship exemptions unavailable appropriate? [23399]

MBA's Response: We believe that the proposed timing requirements for filing Form 144A-SF are appropriate. We do not believe that a hardship extension for filing Form 144A-SF is necessary.

SEC Question. Should we revise Form D, as proposed? Are the proposed revisions to Form D appropriate? [23399]

MBA's Response: We believe the proposed revisions to Form D are appropriate.

SEC Question. Should we also adopt changes under Regulation S to require a notice of sales of ABS that are to be sold in reliance on that safe harbor, similar to the proposed requirement under Rule 144A? Are there any extra or special considerations relating to offshore sales of structured finance products that are different from

considerations under Rule 144A that we should take into account in considering adopting a similar filing requirement under Regulation S? [23399]

MBA's Response: We do not believe that it would be appropriate to require a notice of sales under Regulation S or to require mandated disclosures for sales under Regulation S. The policy behind Regulation S is that the Commission need not regulate offshore sales to non-U.S. persons. Imposing such notice requirements with respect to ABS issuances would be inconsistent with this policy.

SEC Question. Should we codify the above staff positions? [23400]

MBA's Response: The MBA makes no recommendation with respect to codifying the SEC's interpretation of Rule 190 and Rule 457, as they related to collateral certificates or special units of beneficial interests as these structures are not typically utilized in CMBS. The MBA supports the SEC's position that a registration statement may provide that all current reports on Form 8-K filed by a registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to termination of the offering shall be deemed to be incorporated by reference into the prospectus as this is consistent with current industry practice as it relates to CMBS.

SEC Question. Should we make any changes to the staff positions? For example, should we require master trust issuers to state that all Exchange Act reports subsequently filed by the registrant shall be deemed to be incorporated by reference into the prospectus rather allow them to incorporate by reference only Form 8-K? [23400]

MBA's Response: The MBA does not recommend any changes to the staff positions. The MBA makes no recommendation with respect to master trust structures as these structures are not typically utilized in CMBS.

SEC Question. Should we revise any of the positions we are proposing to be codified? Does the proposed language in any of the codifications modify, or create an ambiguity that we should revise? [23400]

MBA's Response: The MBA makes no recommendation for revisions and does not believe that any ambiguity is created.

August 2, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Subject: Proposed Revisions to Regulation AB
File Number S7-08-10

Dear Ms. Murphy:

The Mortgage Bankers Association[1] (MBA) welcomes the opportunity to comment on the Securities and Exchange Commission's (SEC) proposed revisions to Regulation AB[2] and other rules regarding the offering process, disclosure, and reporting for asset-backed securities[3] (ABS), (together Proposal). This letter reflects the perspective of MBA's members in the residential real estate market.

The Proposal would require more transaction-specific information, including asset-level information about each asset in the pool in a specified tagged data format. The Proposal would establish new shelf registration eligibility requirements that would include, among other things, a requirement that the sponsor retain a portion of the credit risk of securities that are sold. Further, the Proposal would require a computer program of the contractual cash flow provisions to be filed along with the prospectus.

Summary of MBA Position

MBA appreciates the SEC's efforts in the Proposal to modernize the offering process and build more robust disclosure standards in order to increase market confidence and re-start the securitization markets. However, MBA questions whether the utility gained by some aspects of the Proposal merit the significant up-front expenditure and increased liability risk profile that would be imposed on issuers and other participants.

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1 The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

2 17 C.F.R. 229.
3 75 Fed. Reg. 84, 23327-23514, (May 3, 2010).

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In Attachment A, MBA provides detailed comments and responses to specific questions that were raised in the Proposal. However, our principal concerns are in the following areas:

1. Proposed revisions may increase consumer costs and reduce liquidity.
2. Proposal may delay the regeneration of the private label ABS market.
3. Risk retention requirement is contrary to congressional intent.
4. Repurchase request disclosure does not properly reflect typical business practices.
5. CEO certification has questionable value.
6. Five-day requirement for new securities may inhibit the flow of credit.
7. New rules for private transactions underestimate purchaser sophistication.
8. Legacy assets should be grandfathered.
9. Allow sufficient implementation and transition time.

MBA notes that the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[4] requires the relevant federal banking agencies to work collaboratively to improve the asset-backed securitization process. In light of this legislative mandate, we urge the SEC to refrain from acting unilaterally regarding such a complex and fundamental component of the financial services system.

General Comments

Proposed Revisions May Increase Consumer Costs and Reduce Liquidity

Securitization is critical to the availability of consumer credit and corporate liquidity because it enables lenders to diversify their sources of funding. The lower costs associated with competitively priced funding channels leads to lower borrowing costs for consumers.

MBA believes that many of the requirements of the Proposal are neither flexible nor principles-based, but rather are highly prescriptive. This may cause lenders with existing secondary market funding channels to reconsider continued participation, especially in light of other options available to satisfy their capital needs. Moreover the compliance costs are formidable barriers to entry for new market participants or those who are interested in expanding their operations. This may result in less credit to the individuals and businesses that need it the most, and increased costs for those still able to obtain credit.

We therefore request the SEC to recalibrate the Proposal and adopt measured changes which incorporate market views. We believe such an approach will more likely result in solutions that are both workable and prudent.

[4] Pub. L. 111-203, July 21, 2010.

Proposal May Delay Regeneration of Private Label ABS Market
Securitization is a crucial driver of the U.S. economy and essential to robust economic growth. A full recovery of the real estate finance system hinges on the return of private investors to the capital markets. We believe the onerous requirements and increased costs associated with the Proposal and discussed below likely will further delay the return to normalcy in this market and stall future economic growth.

The private label MBS market also is critical to affordable housing. There is currently little liquidity for MBS other than Ginnie Mae, Fannie Mae and Freddie Mac securities. The market for such private label MBS has been basically shut down since 2007. Until recently, other than the federal government, there were few market participants even buying Fannie Mae and Freddie Mac MBS which carry an implied government guarantee. This is not an effective or desired long-term scenario.

There are many households that cannot qualify for single family conventional loans eligible for delivery into securities issued by Fannie Mae or Freddie Mac or for loans insured or guaranteed by the Federal Housing Administration (FHA) or Department of Veterans Affairs that are pooled into Ginnie Mae securities. These households include but are not limited to foreign national residents and households requiring loan amounts higher than the Fannie Mae, Freddie Mac or Ginnie Mae maximum levels. They also include families with prior credit histories resulting from past unemployment or large medical bills needed to fight life-threatening illness or injury. In the past, these individuals were served by financial institutions who securitized these loans into private label MBS.

MBA also is concerned that the Proposed Rule may constrict the availability of affordable rental housing since many multifamily housing projects also do not meet the criteria for Fannie Mae, Freddie Mac, or Ginnie Mae multifamily financing programs.

To the extent that the credit crunch in the U.S. has been exacerbated by the loss of access to the securitization markets, the continued loss of access to those markets as funding sources likely will result in significant liquidity issues for financial institutions and borrowers alike.

MBA believes that unless lenders return to more normalized volumes of non-agency securitization activity, we suspect that high concentrations of credit risk will continue to reside with Fannie Mae, Freddie Mac and FHA, and on the balance sheet of the Board of Governors of the Federal Reserve System. Responsible, efficient, and transparent non-agency securitization markets should be viewed as a powerful tool to help gradually reduce concentrations of these risks in governmental agencies. For this reduction to be done in scale, workable modernization to market regulation should be developed in a consistent, coordinated way that balances the needs and desires of issuers, investors, financial intermediaries, supervisory authorities and the public at large.

Risk Retention Requirement Is Contrary to Congressional Intent
The Proposal would require the sponsor to retain an economic interest of not less than five percent of the credit risk of financial assets securitized, as a condition to ABS shelf eligibility. For the reasons mentioned below, MBA requests that the Proposal's risk retention requirement should be withdrawn or, at a minimum, re-issued in a newly proposed rule.

MBA notes that the Dodd-Frank Act includes risk retention requirements. Additionally, the Federal Deposit Insurance Corporation (FDIC) has issued proposed modifications to its securitization safe harbor rule for banks, which also contains provisions concerning the market regulation issues contemplated by the Proposal.[5]

Unfortunately, the Dodd-Frank Act, the FDIC's proposed securitization rule and this Proposal differ as to who retains the credit risk, the method for risk retention and under what circumstances risk retention applies. For example, the Dodd-Frank Act provides for exemptions from risk retention for securitizations of certain high quality residential mortgage loans and for securitizations of certain government insured loans. This is at odds with the blanket five percent risk retention requirement of the Proposal.

MBA is concerned that the failure to harmonize these various mandatory risk retention standards may result in higher risk retention requirements than those called for in the Proposal. Congress mandated that risk retention rulemaking be performed on an interagency basis and centrally coordinated by the Chairperson of the Financial Stability Oversight Council. Additionally, the Dodd-Frank Act mandates two separate studies in order to determine how best to approach risk retention, as well as a review of its potential macroeconomic effects.

In addition to regulatory harmonization, coordination and evaluation by the accounting community and other professionals should be obtained to ensure that proposed market regulatory standards, working together, do not unintentionally frustrate the ability of securitizers to obtain true sale and off balance sheet accounting treatment. For example, the Proposal's risk retention requirements do not appear to provide for a sunset. The cumulative impact of all applicable risk retention and other recourse requirements on Generally Accepted Accounting Principles (GAAP) conclusions regarding sale, consolidation and legal true sale needs to be evaluated together, in a joint, coordinated manner.

Accordingly, we request that joint federal rulemaking be initiated to address these important concerns in a coordinated way that maximizes efficiency and minimizes unintended consequences and regulatory fragmentation.

[5] 75 Fed. Reg. 94, 27471-27487, (May 17, 2010).

However, if the SEC decides to pursue risk retention for shelf registration independently, MBA urges the SEC to adopt the risk retention requirements of the Dodd-Frank Act. Confusion can follow when more than one government process is mandated for the same event or activity. Costs will also rise to manage compliance with multiple sets of regulations. Such an outcome can be avoided if the SEC utilizes the provisions of the Dodd-Frank Act.

Moreover, if the SEC chooses to require risk retention as a condition of shelf eligibility, we urge the SEC to defer finalization of that position pending a congressional review of the relevant reports required by the Dodd-Frank Act. Both reports are sufficiently imminent that a delay of final action by the SEC pending the consideration of those reports will not delay the beneficial effects of the Proposal.

MBA further notes that risk retention has not been effective in the past in preventing credit losses. In the most recent credit crisis, some of the riskiest loans were subprime residential mortgages. Generally, the security sponsor of subprime mortgages retained the tranche that took first losses. This caused many players in that market to go out of business when the real estate bubble burst. It did not prevent the origination and securitization of riskier loans. On the banking side, construction loans are often seen as a riskier asset class in an economic downturn. Those assets are generally not securitized, leaving the originator with 100 percent skin in the game. The point is that the SEC should not focus on risk retention as a loss prevention measure. Risk retention may lead to additional exposure to loss to the issuer, but not necessarily to less overall loss. Rather, the focus of SEC should be effective underwriting standards and appropriate disclosure of risks inherent in the prospective investment.

Repurchase Request Disclosure Does Not Reflect Typical Business Practices
Another proposed condition to shelf eligibility relates to representations and warranties. The Proposal would require the obligated party (i.e. the representing and warranting party) to furnish quarterly unaffiliated third-party opinions relating to any asset for which the trustee has asserted a breach of any representation or warranty and for which the asset was not repurchased or replaced by the obligated party on the basis of an assertion that the asset met the representations and warranties contained in the pooling and servicing or other agreement. The third-party opinion would confirm that the asset did not violate a representation or warranty contained in the pooling and servicing agreement or other transaction agreement.

MBA believes this proposed requirement would be difficult to implement for several reasons. For example, it is unclear what type of entity would be appropriate to provide such an opinion if one were possible. Additionally, repurchase requests based on representation and warranty claims are frequently based on subjective assertions, which are often irrespective of the performance of the loans, causing legitimate disputes regarding the validity of claims. MBA notes that many claims under seller representations and warranties are ultimately found to be without sufficient evidence

that a breach occurred or that a breach led to loss or potential for loss to the bondholder. MBA is concerned that the proposed requirement could increase the rate of repurchase claims, and possibly generate strategic or frivolous claims. The cost associated with these additional risks would ultimately be passed on to the consumer. So too would the costs associated with obtaining the third party opinion and the internal compliance costs of tracking this information.

The SEC also is proposing to add a disclosure requirement to Exchange Act Form 10-D that would require disclosure of the number of loans that have been presented for repurchase to the party obligated to repurchase the assets under the transaction agreements and the number of those assets that have not been repurchased or replaced. MBA opposes this disclosure requirement for the same reasons mentioned above. In addition, such a disclosure requirement could provide misleading results because there would be no qualitative measure of the legitimacy of such repurchase requests.

CEO Certification Has Questionable Value

The SEC also proposes, as a condition to ABS shelf eligibility, to require the issuer to provide a certification signed by the chief executive officer (CEO) of the depositor of the securitization regarding the assets underlying the securities for each offering. The certification would require the depositor's CEO to certify that to his or her knowledge, the assets have characteristics that provide a reasonable basis to believe they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus. This officer would also certify that he or she has reviewed the prospectus and the necessary documents for this certification.[6]

MBA questions the merits of this requirement. As a practical matter, it is unrealistic to expect an officer to certify an asset's future performance since an officer cannot account for unforeseen circumstances like economic downturns, overall declines in market value, legislative and regulatory changes, and other factors.

We believe that, instead of requiring the depositor CEO to provide a certification as to cash flow sufficiency, the better approach is to require ABS issuers to provide disclosure that is sufficient (both in terms of scope and the time frame in which it is provided) to enable potential investors to analyze projected cash flow and to make an informed investment decision.

However, if the SEC does adopt the CEO certification requirement, we would recommend that the CEO not be required to identify the level of inquiry, but rather certify that the disclosure does not misstate a material fact, or omit to state a material

[6] 75 Fed. Reg. 84, 23345 (May 3, 2010).

fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. We would further recommend that the CEO certification contain a disclaimer to the effect that the certification does not constitute a guarantee of future performances of the pooled assets. Additionally, MBA recommends the certification be signed by the senior officer of the depositor in charge of securitization, which would be consistent with other signature requirements for ABS.

Five-day Requirement for New Securities May Inhibit the Flow of Credit
The SEC Proposal would require ABS issuers using a shelf registration statement on proposed Form SF-3 to file a preliminary prospectus containing transaction-specific information at least five business days in advance of the first sale of securities in the offering.

MBA generally supports the SEC's stated goal of allowing investors more time to review transaction-specific information in order to make informed investment decisions. We also appreciate that the SEC is attempting to balance the need of investors with the interest of ABS issuers to have quick access to the capital markets by requiring that the preliminary prospectus be filed five business days before the first sale of securities in the offering.

However, MBA questions the necessity to restart the five business day waiting period when there is a material change to the preliminary prospectus. In most cases, a material change can be easily identified and reviewed and will not take investors the same amount of time to consider as compared to the review of the entire preliminary prospectus. As a result, the additional time that investors do not need becomes an unnecessary obstacle to the flow of liquidity. Therefore, MBA requests the SEC consider adopting a shorter time frame for investors to review material changes to the preliminary prospectus.

New Rules for Private Transactions Underestimate Purchaser Sophistication
Presently, the SEC's rules contain two safe harbors related to privately placed ABS. Rule 506 of Regulation D specifies that investors in privately placed ABS typically qualify as accredited investors, and therefore, issuers are not required to provide the prescribed detailed information that publicly placed security issuers are required to provide. Likewise, Securities Act Rule 144A provides a safe harbor for a reseller of securities from being deemed an underwriter for the offer and sale of non-exchange listed securities to "qualified institutional buyers."

The Proposal would require that the underlying transaction agreement contain a clause granting the purchasers and holders the right to obtain from the issuer of the securities the information, upon request, that would be required if the transaction were registered under the Securities Act. This would include such on-going information as would be required by Section 15 (d) of the Securities Act.

MBA notes that issuers doing private placements are typically smaller or infrequent securitizers because the existing safe harbors allow smaller issuers to issue securities in a cost efficient manner. For example, the size of the asset pool does not have to be as large and costs associated with filing and application fees can be minimized.

Other issuers sell ABS in private transactions because they do not have access to the historical data required for public offerings by Regulation AB. This is the case for issuers that purchased assets from third parties where collateral information is unavailable.

MBA also notes that purchasers in private transactions generally are sophisticated investors that negotiate the terms of the securities directly and conduct their own due diligence in reliance on extensive information provided to them on a confidential basis.

MBA requests the SEC to consider that infrequent issuers may find the additional data accumulation and disclosure requirements prohibitive, especially for smaller sized transactions. The result would be for fewer loan producers to be able to aggregate and securitize their loans. Ultimately, it could result in less competition, more concentration of the industry and less opportunity for small business in the real estate finance industry.

Legacy Assets Should Be Grandfathered

MBA urges the SEC to implement the Proposal prospectively and grandfather not only existing securitization transactions, but also vintage loans originated or acquired prior to the effective implementation date of the Proposal. It may not be possible to satisfy many of the Proposal's requirements for such legacy assets, including those associated with origination loan level data. This impracticability of performance (and, in some cases, impossibility) is exacerbated by the fact that many banks and other organizations own loans that were originated by third parties that may no longer be in business. Accordingly, absent appropriate adjustment, the Proposal would cause otherwise reasonably liquid assets to be illiquid.

Allow Sufficient Implementation and Transition Time

MBA is in favor of a workable time period for implementation of the final rule. It is likely that affected financial institutions will be required to implement new operational procedures and infrastructures to properly comply with the Proposal. In addition to the significant costs associated with establishing these operational procedures and infrastructures, sufficient time needs to be allocated to implement processes and systems for compliance. Throughout the proposed disclosure changes, the SEC requests data that is either not currently available in the system or would require significant re-programming efforts to collect and extract on a loan level basis. The SEC should consider the programming efforts required to extract data into the appropriate reporting systems when contemplating implementation timeframes. Servicers must coordinate efforts with their technology vendors to create new fields and new

functionalities. Moreover, the technology vendors must beta test with their clients to ensure accuracy in reporting. Likewise, primary servicers will need to coordinate efforts with master servicers as the information flows up. Master servicers will most likely be responsible for the significant amounts of cumulative information that requires retooling of their systems for additional data collection and functionalities to perform the various calculations. These processes must also be tested with primary servicers. MBA requests that the SEC consider implementing different time tables for different aspects of the proposed rule. For example, a period of at least 18 months for asset-level disclosures will ensure more compliance and a smoother transition. It is important that at the time of final issuance of the rule, the SEC provide the industry with the detailed file layout that is necessary with XML. Programming cannot begin until these details are released. Any delay will greatly affect the industry's ability to comply in a timely manner. As well, MBA believes that, at a minimum, the transition and implementation period must be in line with the Dodd-Frank Act. For example, for risk retention, regulations are to be jointly prescribed within 270 days after enactment, with effectiveness one year after publication of final rules in the Federal Register for residential MBS and two years after publication for other asset types.

Conclusion

MBA believes the Proposal is a well-intentioned attempt to bring transparency and uniformity to the ABS market. However, by acting unilaterally and contrary to Congress' specific request to collaborate with other federal regulators, the SEC is foregoing the supervisory expertise that could be brought to bear in developing a more comprehensive, interagency approach to securitization oversight.

MBA appreciates the opportunity to comment and requests that you consider our concerns. Any questions about MBA's comments should be directed to Michael Carrier, Associate Vice President, Secondary and Capital Markets (202) 557-2870, mcarrier@mortgagebankers.org; Jim Gross, Associate Vice President and Staff Representative to MBA's Financial Management Committee, at (202) 557-2860 or jgross@mortgagebankers.org; or Vicki Vidal, Associate Vice President, Loan Administration, at (202) 557-2861 or vvidal@mortgagebankers.org.

Sincerely,

John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association

Henry V. Cunningham, Jr.
Vice-Chair, Mortgage Bankers Association
Residential Board of Governors

Attachment

Appendix A
MBA Responses to Specific Subject Matter Areas Addressed in the Proposal

Waterfall Computer Program

The Proposal would require asset-level information related to an offering and ongoing periodic reporting to be filed on EDGAR in XML. ABS issuers also would be required to file a computer program in Python source code that gives effect to the flow of funds or "waterfall" provisions of the transaction. The SEC seeks comment on the appropriateness of these technical specifications.

MBA is concerned that requiring investor disclosures to include modeling tools may produce results that can be misleading and may cause overreliance on the model by investors. Modeling is inherently non-standard and unique and requires specialization to interpret results. Furthermore, risk models need to be customized sufficiently to take into account important nuances of each transaction. MBA believes the standardization the SEC seeks may be unattainable because of the wide range of collateral, structures and investors covered by the Proposal. These limitations and detrimental effects of the waterfall model outweigh the perceived benefits.

MBA also notes that the unique characteristics of each ABS issuance necessitate design, programming, and maintenance costs connected to software development. Furthermore, the program will likely require updates to correct errors. The Proposal is silent as to how technical, logistical queries by the deal participants would be accommodated. All of the maintenance of the waterfall computer program, coupled with the implementation of the program, will be very costly. In the end, these costs are likely to be incurred by borrowers in the form of higher interest rates.

Disclosure of Non-Public Private Information

MBA is also very concerned with reporting information on an asset level in a public data base such as EDGAR. We believe that asset level reporting that is accessible to the public will have unintended users and allow third parties to target borrowers and borrower groups in geographic areas for telemarketing, foreclosure rescue scams, refinancing, identity theft, and larceny.

Given the extreme granularity of the origination information to be released with the Schedule L, third parties will be able to compare public records (origination date, loan size, note rate, loan type, property address) with EDGAR information (origination date, loan size, note rate, loan type, MSA) to identify the borrower and the unique mortgage identifier, especially in lower density MSAs. Once the borrower is identified, the EDGAR information related to non-public private information, including credit score, liquid assets, monthly income, and delinquency status are easily determined. The fact that the SEC would permit income and credit score ranges does not limit the concern because these ranges are so narrowly defined they virtually identify the actual score or dollar amount of income. These ranges do not hide the key determination as to wealth

and creditworthiness of individuals or segments of the population. Once the third party captures the unique mortgage identifier, these parties can also amass lists of borrower performance information from the on-going reports including whether the borrower is delinquent and the severity of the delinquency. We find this very problematic.

We urge the SEC to consider whether alternative disclosure techniques or requirements could satisfy the goal of enhancing transparency in a manner that protects consumers' confidentiality more carefully. We suggest that the SEC remove from the Schedule L and Schedule L-D the property's Metropolitan Statistical Area, Micropolitan Statistical Area and Metropolitan Divisions fields.

The SEC indicates that servicers must be mindful not to violate privacy laws and we request additional guidance as to how servicers should proceed if they feel such loan level reporting will violate a borrower's privacy. MBA requests the SEC to establish protections for servicers against law suits arising from the new regulations.

Disclosure Requirements

The Proposal expands the range and granularity of data points that ABS issuers must disclose. For example, the Proposal includes 137 data points that issuers of residential MBS must disclose on Schedule L. The Proposal also includes 151 data points for residential MBS periodic reports. According to the SEC, the enhanced data disclosure requirements will assist investors in analyzing the future payments on the ABS. The SEC requests comment on the relevancy of such data points, and whether they are overly burdensome to obtain.

Data Standards

The SEC proposes to introduce a significant new data set for on-going reporting to investors. The SEC states in its Proposal that it examined several different standards that are operational today or are in development, namely Fannie Mae and Freddie Mac data sets and the American Securitization Forum's (ASF) Project RESTART respectively. On the whole, however, it appears that neither "standard" is contemplated for adoption by the SEC in any material way. Rather, a significant set of new data elements are proposed or existing data elements reported to other investors are being redefined for Regulation AB purposes. Developing different data fields or definitions than those already in use by the industry causes unnecessary costs and impacts resources that are already stretched thin. Accordingly, we highly recommend that the SEC adopt existing standards and definitions whenever possible, limit the amount of on-going information to only those items that are critical to investors, and work within existing frameworks for any new critical information that must be reported to investors.

MBA supports the MISMO standard. MISMO has been an active presence in the real estate finance industry for more than a decade. It is open, has an inclusive structure that enables the development of high-quality, well-tested, trusted and effective industry data standards. Moreover, access to the information is royalty free.

MISMO Data Standards are developed through an open process through various workgroups. Membership in MISMO work groups is open and voluntary. Participants come from all sections of the residential and commercial real estate industry. Standards developed by the MISMO workgroups are published for comment. Adoption of the standards is voluntary, but various investors do require the use of MISMO standards. For example, On May 24th, 2010, the Federal Housing Finance Agency (FHFA) announced the Uniform Mortgage Data Program[7] – an effort to create improved and uniform data standards and collection processes regarding *appraisals and other loan information.* Fannie Mae and Freddie Mace created a common delivery data set utilizing the standard MISMO Version 3.0 file format.

We believe it is important for the SEC to require the adoption of open, non-proprietary standards. A requirement for use of a proprietary data format and definitions will place industry participants at the will of parties that may have a profit making motive that might place additional expenses on the industry. MISMO standards, like most open standards, are made available on a royalty-free basis.

MISMO Data Standards are based on a data dictionary of over 4,000 data elements. These definitions have been developed and refined over the past eight years by an open group of industry participants, covering the entire mortgage industry. The MISMO Data Standards are used in loan origination systems; in electronic requests for real estate settlement products and services, including title reports, mortgage insurance, credit reports, flood certifications, and appraisals; in delivering loans to investors, and in servicing transfers. The data dictionary is fluid. As the need for new data elements arises, they are incorporated into the data dictionary through MISMO's open protocols. MISMO is solely focused on standardizing electronic data definitions and formats and structures for transmitting data. As the SEC develops its data reporting requirements for residential MBS, it is in the interest of the SEC, other government regulators, the finance industry and the general public that these standards limit the impact on affected parties. Whenever possible, we believe the SEC should choose existing data standards. These data standards can vary across segments of the ABS market as different providers of data sets have already been established that may differ between residential and commercial lending for example. Nonetheless, within each segment of the financial services industry, we believe that the standards should be consistent and compatible with other reporting requirements. MBA believes the Proposal should fulfill the following criteria:

1. Allow standards to vary by industry (e.g. real estate industry).
2. Use a single, existing industry standard wherever possible rather than creating a new standard.
3. Ensure the data sets and definitions are accessible to users without charge.

[7] www.fhfa.gov/webfiles/15748/Uniform_Mortgage_Data_Program.pdf.

The creation of new standards that conflict or differ with existing standards will result in confusion and increased costs to industry participants. Multiple, conflicting standards create confusion among employees trying to comply with the standards, resulting in errors in compliance. Errors result in rework and increased expenses to participants. In addition, errors in the data can adversely affect those who will consume the information as well as subject the providers to liability.

Multiple standards will require additional new development and maintenance work for industry participants. The implementation of new data exchange standards will be more costly to participants than a rule that requires the utilization of well accepted industry standards. A need for industry participants to maintain dual systems will lead to increased costs and inefficiencies as well as potential legal problems due to unintended errors.

The use of industry based standards is already supported by the administration. Significantly, Circular A-119, issued by the Office of Management and Budget on February 10, 1998, "directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. …The policies in this Circular are intended to reduce to a minimum the reliance by agencies on government-unique standards."

Unique Mortgage Identifier

The Proposal calls for the use of a unique mortgage identifier to allow for data distribution and tracking on a loan-level basis. MBA encourages the SEC to adopt the MERS System as the primary loan identifier for MBS. MERS already creates a Mortgage Identification Number (MIN) that is the standard used in the mortgage industry today for a variety of purposes. Most importantly, however, the MERS MIN simplifies the recordation and assignment process by identifying in its database who owns and services the loan as the assets trade hands. The MIN is utilized by the major participants in the residential mortgage industry, including Fannie Mae, Freddie Mac and Ginnie Mae.

The adoption of a new provider of a unique mortgage identifier will result in greater and unnecessary system development costs, longer lead times for compliance and decreased transparency by making it more difficult for industry participants to track assets across multiple data and reporting systems.

In response to concerns over consumer privacy, MERS has developed a new unique mortgage identifier that can be used for Regulation AB reporting. Because the MIN is often placed on the mortgage filed in the public record, MERS will assign a new number for loans that are securitized and subject to Regulation AB reporting. While the securitization unique identifier will be reported in EDGAR, third parties will not be able to cross reference it with the MIN on the mortgage and thus the securitization unique

identifier will not cause the release of non-public information regarding the borrower's credit scores, delinquency status or other sensitive information. The MIN and securitization unique identification numbers will be linked to the loan level file within the MERS database and will not be accessible to anyone other than the current servicer or owner.

Asset-Level Information In Prospectus
We recognize the desire to have full disclosures in the securitization market. There are a very large number of residential MBS data points in the Proposal. MBA urges the SEC to limit the data points to those that are critical to investors and to keep the following principles in mind so that the new data reporting requirements: (1) do not require extensive systems manipulation to create or to maintain, (2) are not changed over time as a matter of course, (3) do not cause the release of or the ability of third parties to determine non-public private information, and (4) address issues of missing data associated with purchased assets or servicing (effectively allowing such information not to be reported),
Regardless of the disclosure requirements that are implemented, MBA urges the SEC to include a transition period of at least 18 months to permit the covered institutions to upgrade and modify their systems and train staff to ensure that at the effective date of the Proposal, they can generate the data that is necessary in a format that is required without countless errors that will be costly and may result in non-compliance. A transition period longer than 18 months may be necessary if the SEC requests data points that are currently not captured within the industry. For example, the longer timeline should recognize the additional development work necessary to obtain new data within the industry. It would also provide the opportunity for industry participants to confer to ensure a consistent understanding of the requested data. This will improve the quality of the disclosed data. It will also ensure comparability of the disclosed data to the investment community.

On-Going Reporting Schedule L-D (Items 1 and 2)
The Proposal calls for 151 data elements that must be reported to investors monthly, provided on a loan level basis and made publicly available through EDGAR. Many of the fields necessitate new data collection requirements. Additionally, some data definitions vary from what is currently reported to other investors and according to industry standards such as MISMO.

In general, the volume of information required to be reported is substantial and appears oriented more to compliance monitoring of the servicer rather than gauging the performance (potential gain or loss) of the loan or pool. The information is extremely granular and MBA questions whether the information will be useful to investors. For example, in addition to the REO sale date and sale amount, the Proposal calls for numerous pieces of information on REO such as original listing date, original list price, current list price, and accepted offer date. This proposed information appears to be designed to assess the diligence of the servicer's marketing of the property or to

question the servicer's pricing decisions rather than gauge actual loss or gain on the sale of the property. If the intent of this information is to identify soft markets, investors should be able to calculate time lapse between the foreclosure sale and REO sale and the difference between the outstanding principal and actual sales price. MBA believes final sales information offers more meaningful performance estimates than intervening steps. Moreover, we believe that providing the public with intervening REO listing prices and dates (Item 2(l)(1)-2(l)(3) and 2(l)(4)-2(l)(9)), will enable real estate investors to determine the mark down strategy of a particular servicer and get the most discounted price on the property. Ultimately, this will impede the ability of investors to maximize recovery on the assets.

The proposed reporting also includes a number of fields that are subjective or require estimation (e.g. estimated foreclosure sale date) on the part of the servicer. The Proposal is silent on the repercussions to the servicer if the information turns out not to be accurate or different in fact from what is estimated. Given the inaccuracies associated with intentional estimations, MBA questions the utility of this information to investors. MBA believes that requiring data fields that are based on reportable known facts provides more reliability than estimations.

Clarity, Accuracy and Appropriateness of Data Elements
Clarity: The SEC requests comment as to the appropriateness of the definitions of terms in Schedule L and L-D. As a general comment, there are many instances where the definition of the field requires additional detail or clarity if the SEC plans to retain its current definitions rather than use existing industry data sets. For example:

- Item 2(d) Loss Mitigation Type Indicator—The Proposal requires the servicer to indicate what type of loss mitigation the servicer is pursuing with the borrower, loan, or property. This implies that an agreement has not been reached. The pursuit of loss mitigation is not the right trigger because the loss mitigation process is fluid and the type of loss mitigation can change depending on information gathered and verified. The more appropriate measure is what type of loss mitigation agreement has been reached. Ideally, MBA recommends removing this field given that the actual execution of a loss mitigation option is reported elsewhere.

- Item 2(d) Loss Mitigation Type Indicator— It is unclear how to correctly report principal deferrals (i.e. partial claims) since a deferral is both a modification and a forbearance. MBA requests the SEC refine its reporting guidelines in order to identify how to account for this type of loss mitigation. MBA recommends it be listed as a modification. Likewise, "first review" needs to be defined.

- Item 2(e)(25) Modification back end DTI – This information is not required in all modification plans. MBA requests the SEC to consider whether this information needs to be collected and retained despite not being used to evaluate the

borrower for the plan. MBA presumes that if the information is not collected, it does not need to be reported. We also presume that the reporting obligations do not create new underwriting or data collection standards that are not required by contract, the pooling and servicing agreement or other pooling document, or servicing practice.

- Item 2(k)(2) First Legal and 2(k)(13) Publication Date – The Proposal requires the reporting of first legal and publication date. Depending on state law, they may be one in the same date. Moreover many jurisdictions require more than one publication in the newspaper. MBA requests that the SEC clarify whether servicers need to update the field to the last publication date. The value of reporting publication dates that do not also represent first legal is questionable and superfluous. It is unlikely that investors find it useful to be informed of one step in a non-judicial foreclosure process. We highly recommend removing the publication date field.

Accuracy: MBA also notes that not all the definitions of the data terms are accurate. We outline several instances of incorrect definitions below. However, we urge the SEC to closely compare its proposed data points with existing industry standards to identify and rectify any discrepancies.

- Item 2(a)(2) Nonpay Status # 62 "Veterans Affairs--No Bid." In February 2008, the Veterans Administration (VA) changed its conveyance process and no longer issues "no-bids." The VA now publishes its net value calculation, which servicers use to reduce or buy down principal in order to convey the property to the VA. Field 62, therefore, should be redefined to identify when a servicer does not convey the property to VA.[8] The VA also changed the timing in which the buydown must occur. Given that the buydown now occurs upon liquidation, it is questionable whether this data element should remain within the "nonpay status" category.

- Item 2(a)(2) Nonpay Status # 63 "Veterans Affairs--Refund." The Proposal requires the servicer to indicate when the VA has requested information about a loan for possible refund. The VA rarely, if ever, requests this information, rather the servicer is required to refer a case to the VA for refunding consideration under specific guidelines.[9] In Circular 26-10-6, however, VA specifically states, "[t]he servicer's referral of a case to VA does not ensure that VA will proceed with refund consideration, nor does VA's decision to consider refunding ensure that a loan will be refunded." Thus, it appears that the more relevant information is whether a refund actually occurs. If so, it is questionable whether the data element belongs in the "nonpay status" category.

[8] 38 C.F.R. 36.4823.) See 73 Fed. Reg. 6328 (Feb. 2, 2008).
[9] Circular 26-10-6 (May 24, 2010).

- Item 2(a)(2) Nonpay Status #64 “Veterans Affairs--Buydown.” This definition must be updated to remove the reference to the “upset price.” Also, given that the buydown now occurs after liquidation sale, the definition should state, “use this code to indicate that a cash contribution was made to reduce the outstanding indebtedness of a VA-guaranteed mortgage in order to convey the property to the VA.” Given the fact that this event also occurs upon liquidation, it is questionable whether this data element should remain in the “nonpay status” category.

- Item 2(a)(3) Reporting Action Code #70 “Uninsured or Partially Uninsured Loan.” Substitute reference to “no-bid” with “buydown” with regard to VA loans.

Appropriateness: The SEC seeks input on whether certain fields are necessary or whether they can be calculated using information reported. There are several fields that MBA questions as necessary for various reasons. Specifically we question the servicer advance methodology in 1(g)(6). This information should be available to the investor through the prospectus. Also we question the relevance of 2(c)(2) Bankruptcy Case Number as being unnecessary. As stated above we believe 2(d) is not the appropriate reporting item since it merely covers the pursuit of loss mitigation not the actual completion. There are also several fields that appear to be for the convenience of the investor, but that are provided in previous monthly reports and can be referenced back to given the unique mortgage identifier, namely these are: 2(e)(4) Pre-modification interest rate; 2(e)(7) Pre-modification P&I payment; 2(e)(18) Pre-modification maturity date; 2(e)(21) Pre-modification next interest rate change date.

Level of Effort to Obtain Data
MBA members have indicated difficulty in providing certain information in the format requested. For example, item 1(g)(4) requires the disclosure of the amount of servicer advances on a loan-level basis. This information is currently not collected and retained on a loan-level basis but is retained on a pool level basis. Likewise, 1(g)(5) calling for cumulative loan level outstanding advance amount will not be available on a loan level basis.

Misstatements
The SEC requests input on whether to require as part of the on-going reporting any loss as a result of intentional misstatement, misrepresentation, or omission by an applicant or other interested parties, relied on by a lender or underwriter to provide funding for, to purchase, or to insure a mortgage loan. MBA suggests that the amount of loss due to misstatement, misrepresentation or omission not be included as a data field. The ability to determine this information with any accuracy is difficult because the reasons for foreclosure are often complex and can be due to multiple factors. If multiple factors played into a default, what percentage is the servicer to assign to the loss? Does the servicer have discretion to determine if the misrepresentation is the cause of the default or even material without repercussion? Moreover, the ability to determine

misstatements or omissions can only result from due diligence reviews which may or may not be conducted depending on whether there is perceived bad faith or fraud on the part of the borrower or whether a particular loan is selected for due diligence.

Credit Scores
The SEC requests input on whether updated information about the obligor should be reported, such as updated credit scoring information. Those servicers who do obtain them may not do so for all borrowers. Rather credit scores are obtained if required by their servicing agreements. Generally credit scores are obtained based on the quality of the portfolio (e.g. subprime) or when the borrower is delinquent to help prioritize collection and loss mitigation calls. When such scores are obtained they are usually done quarterly or less frequently. There is considerable cost to obtain the data and thus servicers often limit when they purchase this information. Requiring updated credit scores monthly and across all securitized loans would be cost prohibitive and the expense would outweigh the benefit especially on high quality portfolios. Such a requirement would also create a barrier for servicers to participate in securitized loan servicing. We recommend that reporting this information be limited to whether the servicer obtains the information. More specifically, the reporting requirement should not mandate that all servicers obtain credit scores on a monthly basis, but that information be remitted if the servicer does obtain it.

Home Affordable Modification Program (HAMP)
The SEC proposes several data points to capture activity specifically related to the HAMP program. MBA believes the specific HAMP data points are not necessary. First, HAMP is temporary and will expire on December 31, 2012. Among other restrictions, the HAMP program is only available if the loan was originated on or before January 1, 2009. Given the prospective nature of the changes to Regulation AB and the fact that the vast majority of securitizations comprise new originations, few loans covered by the proposal will be HAMP-eligible. Even for securitizations backed by pools of seasoned loans, it is doubtful that any securitization issued in the near future will ever reach a material level of HAMP modifications given the 2012 expiration date of the program. Should one or two loans in a pool of seasoned loans actually obtain a HAMP, we find the need to identify it as a “HAMP modification” as opposed to a “modification” of limited value and not material. The most relevant information is whether the borrower has received loss mitigation.

Foreclosures
The SEC proposes, in the case of a foreclosure, that registrants provide the expected date of the foreclosure sale, the date on which the foreclosure sale has been set by the court or the trustee, and the date on which the foreclosure sale occurs. As stated above, MBA is very concerned with the proposed requirement to include the estimated date for foreclosure given the likelihood for delays outside of the servicer’s control. These delays necessarily render the estimates faulty and will thus mislead investors. We also believe that reporting the date of foreclosure set by the court/trustee sale is

unnecessary given that the actual foreclosure sale date—which is most relevant—will be reported. We assume that this information is being proposed to gauge the length of foreclosure and related costs. Certainly the investors will be unable to gather a majority to change any servicer policy, court action or borrower behavior. As a result, it is unclear why these imperfect pieces of information are being requested. If in fact, investors want to gauge foreclosure timelines, there are many sources to estimate state foreclosure timelines that can be accessed without requiring the servicer to gather and remit this information and incur these costs. For example, FHA, Fannie Mae and Freddie Mac publish foreclosure timelines.

- Item 2(l)(1)-2(l)(3) and 2(l)(4)-2(l)(9) - REO list prices, dates, and net proceeds-- The combination of these fields that will be reported monthly will allow any competitor to determine the mark down strategy of a particular servicer. Real estate investors will also be able to tell how to approach the lender to get the most discounted price on the property. Ultimately, we believe this will harm investors.

Cost Benefit Analysis

The SEC provides its analysis of the cost associated with on-going reporting and specifically asks whether the proposed disclosure requirement will impose costs on other market participants, including firms that currently provide asset-level data information and waterfall computer code for a fee. There is no doubt that the proposed disclosure requirements will impose additional costs on third party participants. Most all servicers rely heavily on third party data providers, such as LPS and Fiserv, to store and maintain the data. To ensure compliance by their customers, these providers must develop the fields for the data, store the data, create functionality around the data (e.g. verification, checks, extractability, calculations), remit the information and perform various testing. The cost of these activities is passed on to the clients. Whether the cost is incurred through a license or per transaction, the servicer will bear the cost.

The SEC has not evaluated the entire cost of providing the on-going reporting and specifically has not identified any costs associated with initially establishing the new fields, the cost of redefining many of the data points already in existence, and the labor cost of collecting and inputting significant new data elements into the servicing systems. There will also be costs to validate the new data on an ongoing, operational basis. Controls will need to be placed around the data to ensure its accuracy and completeness. MBA notes that there will be no benefit to the issuer associated with these increased costs.

The Proposal also overlooks the need for servicers and their data providers to build functionality within the project, to test and verify the new on-going reporting. It also does not address the cost of introducing new elements not listed in proposed L-D, such as updated credit scores.