September 12, 2014

Mr. Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Via Email

Re: Notice of Proposed Plan of Distribution Regarding Bulk Settlement and First Payment Default Fair Funds (Administrative Proceeding File No. 3-15098)

Dear Mr. Fields:

The Association of Mortgage Investors ("AMI") welcomes the opportunity to comment on the proposed distribution plans concerning administrative proceedings involving Credit Suisse Securities (USA) LLC and certain affiliates ("Proposed Plans"). To our knowledge, the Proposed Plans are the first Fair Fund distribution plans to be proposed in connection with enforcement proceedings brought by the Securities and Exchange Commission involving offerings of residential mortgage-backed securities ("RMBS").[1]

The AMI was organized as the primary trade association representing investors in mortgage-backed securities, including university endowments and pension funds. The AMI was founded to play a primary role in the analysis, development, and implementation of mortgage and housing policy to help keep homeowners in their homes and provide a sound framework that promotes continued home purchasing. Since its formation, the AMI has been developing a set of policy priorities that we believe can contribute to achieving this goal. We are an investor-only group comprised of a significant number of substantial institutional investors in commercial and residential mortgage-backed (RMBS) and other asset-backed securities (ABS). Collectively, our members manage investments of hundreds of billions of dollars in asset-backed securities and have significant interest in the Proposed Plans and other potential Fair Fund distributions involving RMBS.

[1] The Commission has, however, established Fair Funds related to collateralized debt offerings and similar vehicles that invested in RMBS, though not offerings of the underlying mortgage securities themselves.

The Proposed Plans raise serious concerns for our members, including the following:

- First, by providing for pro-rata allocation of the Fair Fund distributions among the investors in an RMBS trust, the Proposed Plans improperly override the recognized payment priority or "waterfall" established by the governing documents of the RMBS trust among the various classes of RMBS investors, thereby favoring senior certificate-holders, who may not in fact suffer losses, over more junior classes of certificate-holders.

- Second, by limiting recovery to investors who purchased certificates in or immediately after the initial offerings by the trusts, many of our members are concerned that the Proposed Plans arbitrarily exclude nearly all subsequent purchasers, potentially undermining the robust secondary market for RMBS.

- Third, the Proposed Plans fail to take advantage of a method of distribution that is more efficient, fair, and consistent with investor expectations: distribution by the trustees to various classes of certificates in accordance with the priority of distributions in the governing documents of the RMBS trusts.

The Proposed Plans

The enforcement actions that give rise to the Proposed Plans stem from alleged misrepresentations and omissions regarding the residential mortgage loans held by the securitization trusts that issued mortgage-backed securities to investors. The securities issued by each trust were divided into numerous "tranches" or classes that were securitized interests in the assets of the relevant trust. Depending on their investment objectives and risk tolerance, trust investors purchased certificates with varying rights, as set forth in the priority of distributions established pursuant to the governing documents of the RMBS trust.

The stated purpose of the Proposed Plans is to compensate trust investors for the harm caused by the alleged misstatements. To accomplish this objective, the Proposed Plans provide for a two-step allocation of the distribution amount or "Net Available Fair Fund." First, the Proposed Plans allocate the Net Available Fair Fund among the relevant trusts based on each individual trust's percentage of the total proceeds derived from the alleged misstatements. Second, once the Net Available Fair Fund has been allocated among the trusts, the Proposed Plans provide that the amount allocated to a specific trust shall be distributed "on a pro-rata basis" among the investors in the securities issued by that trust for which "Recognized Claims" have been submitted.

Recovery for such claims is limited to "Eligible Claimants," which the Proposed Plans define to include only those investors who purchased certificates within 30 days of the date of the relevant prospectus supplement for each trust. Subsequent transferees of certificates may only recover if three conditions are met: (*i*) the initial purchaser was an "Eligible Claimant"; (*ii*) the transfer was within 30 days of the prospectus supplement; and (*iii*) an agreement establishes that the transferee is deemed to be the assignee for the certificates.

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<u>Discussion of Concerns</u>

As discussed below, many of our members are troubled that the Proposed Plans ignore the fundamental difference between debt and equity instruments and overlook the possibility that simply distributing proceeds to the trusts to flow through established waterfalls is a more fair and efficient means to compensate harmed investors.

By providing for a pro-rata distribution among the investors in the relevant trust, the Proposed Plans do not take into account the most fundamental characteristic of mortgage-backed securities: each trust issued multiple classes of securities, and each class has an associated payment priority with respect to the other classes. The governing documents of each RMBS trust contained detailed inter-creditor arrangements among the classes of securities that were described in the relevant prospectus supplement for the trust. These inter-creditor arrangements were principally embodied in a "priority of distributions" that described in detail how the trustee would allocate the cash collected by the trust among the different classes of securities, with a more senior class receiving priority over a more junior class in the allocation of this cash. Similarly, the governing documents of the RMBS trust provided for the allocation of the losses on the mortgage pool first to a subordinate class before any losses were allocated to a more senior class.

When an investor purchased a mortgage-backed security, it reviewed and relied on this "priority of distributions" to determine what yield it would accept on the mortgage-backed security: an investor would accept a lower yield on a senior mortgage-backed security that receives payments from the trust before more junior classes of securities (and only bears losses after the junior class loses its entire investment), and an investor would require a higher yield on a subordinate mortgage-backed security that receives payments from the trust only after more senior classes have been paid. The pro-rata distribution contemplated by the Proposed Plans is completely inconsistent with the basis on which investors made their decisions to invest in the trusts. Indeed, if the repurchase proceeds for the mortgage loans that provided the trust collateral here had been paid to the trusts, the cash would have been distributed by each trustee in accordance with the priority of distributions.

A simple example illustrates that the pro-rata distribution method is inconsistent with investor expectations and fails to compensate the correct classes of investors. If a trust issued three classes of certificates: Class A with a principal amount of $33.4 million which is senior to Class B and Class C; Class B with a principal amount of $33.3 million which is senior to Class C; and Class C with a principal amount of $33.3 million. If the trust had $100 million of mortgage loans but suffered a loss of $5 million because of the alleged misrepresentations regarding the collateral loans, the investors in the most subordinate class, Class C, would have borne the entire $5 million of losses and the investors in the two more senior classes, Class A and Class B, would not have borne any of these losses.

Moreover, by limiting recovery to investors that purchased certificates within 30 days after the prospectus supplement, the Proposed Plans exclude nearly all subsequent purchasers. Many of our members are concerned that arbitrarily limiting recovery in this way fosters disparate treatment of similarly-situated investors absent *any* reason—much less a compelling reason—to do so. For example, current certificate-holders that bought in the initial offering (and

arguably overpaid due to the alleged misrepresentations regarding the trust assets) would recover under the Proposed Plans, as they should. But the overwhelming majority of current holders that acquired certificates through secondary market purchases may *not* recover, even if they are the ones that suffer the losses as a result of the reduction in the value of the trust assets because of the alleged misrepresentations. Worse, the Proposed Plans would permit an initial purchaser to recover even if that investor subsequently sold certificates before the trusts suffered significant losses (including at inflated values reflecting the alleged misrepresentations, thereby avoiding any purported harm to the initial purchaser) to a subsequent purchaser, even though the subsequent investor may *not* recover despite being harmed by the alleged misrepresentations.

We understand that the complexities of the inter-creditor arrangements among the investors in different classes of mortgage-backed securities issued by the trusts pose difficulties for the Commission in devising a method of distributing the funds among investors. However, there is a simple solution to each of the concerns raised by our member that avoids these complexities while at the same time preserving the expectations that investors had about the allocation of cash flow and losses when they made their investment and providing equitable treatment for all impacted investors. If the portion of the Net Available Fair Fund allocated to the trusts were distributed by the trustee in accordance with the priority of distributions in the governing documents of the RMBS trust, the proceeds would be allocated to the class of investors who suffered the original loss as a result of the alleged misrepresentations.

Conclusion

The AMI appreciates the opportunity to provide its views on the Proposed Plans. Given our understanding that the Commission will issue for comment other RMBS Fair Fund distribution plans, we hope that the Commission will consider the comments made here as applying equally, where appropriate, to these other proposed distribution plans.

The AMI would be pleased to provide further information regarding the concerns raised by this comment letter if doing so would be helpful to the Commission's deliberations.

Sincerely,

Chris Katopis,
Executive Director
Association of Mortgage Investors