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December 22, 2008

**VIA EMAIL**

The Honorable Christopher Cox  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: File No. 4-573, SEC Study on Mark-to-Market Accounting**

Dear Chairman Cox:

The Commercial Mortgage Securities Association (CMSA)<sup>1</sup> greatly appreciates the opportunity to participate in the Commission's November 21, 2008 roundtable on Fair Value Accounting (FVA). CMSA was pleased to be able to share the commercial real estate capital market finance industry's perspective on FVA, and our members hope you consider our recommendations aimed at improving the current standard as you conduct your study on Mark-to-Market Accounting.

Since the creation of CMSA in 1994, the market has grown exponentially (from \$7 billion to almost \$1 trillion), including approximately 40% of all commercial lending in 2007. The Commercial Mortgage-Backed Securities (CMBS) industry takes very seriously the role of transparency. In fact, the crowning achievement of our association has been the creation of a standardized reporting package, known as the "CMSA Investor Reporting Package®." This reporting package has brought unparalleled transparency to our market and is being used as a model by our counterparts in the 'residential' market. The CMBS market is a responsible, healthy and vital contributor to the overall economy, providing low cost access to capital while

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<sup>1</sup> CMSA is dedicated to promoting the ongoing strength, liquidity and viability of commercial real estate capital market finance worldwide. With commercial mortgage backed-securities ("CMBS") in the U.S. currently valued at almost \$1 trillion, CMSA acts as the voice of the marketplace encouraging the development of consensus positions among its diverse membership which encompasses the full range of market participants, including investment banks and commercial banks, rating agencies, insurance companies, service providers and investors at all levels of risk.

offering a valuable investment product with tremendous transparency.

As discussed by CMSA past president Richard Jones at the roundtable, we support the FVA framework. However, our members, particularly investors, have concerns about the current application during times of market disruption. Investors who buy CMBS receive very substantial information, principal and interest each month. At a time of unprecedented market conditions in which previously robust markets have ceased to function, trades are isolated and often driven by motivational factors other than simple risk and reward, determining value does not lend itself to a simple or mechanistic analysis. We are deeply concerned that FVA, as it is currently being implemented, is inappropriately encouraging reporting entities and their auditors to assign fire sale values to securities while a more principle based analysis of the value of such securities, which more expressly requires an assessment of the quality of data and relies on multiple inputs, would lead to a more accurate assessment of value. The highly pro-cyclical impact of the current regime is exacerbating the severe market dislocations we are suffering. In our view, this outcome was neither intended by the policy constituencies that created the FVA framework, nor appropriate.

We support a more principle based assessment of fair value which, in periods of enormous market disruption would encourage reporting entities and their auditors to give more weight to underlying fundamentals of credit and employs modalities such as discounted cash flow analysis to help assess value.

FAS 157, as it is currently being implemented, is, in our judgment, inappropriately discouraging reporting entities and their auditors from looking beyond what only superficially appears to be good Level 1 or Level 2 data while a more reasoned and principle based analysis of the issues would lead to a conclusion that such Level 1 or Level 2 data is not reflective of value. Moreover, FVA, as it is currently being implemented, has inappropriately encouraged reporting entities and auditors to look at synthetic CMBS indexes in lieu of trading activity in the cash market place.

CMSA strongly believes that in order for FVA to work properly in the present environment, there needs to be a recommitment to a principle based inquiry of value to enable reporting entities and auditors in markets, such as that for CMBS, to use the most appropriate data available in making valuation determinations.

Thus, in order for mark-to-market accounting to serve its intended purpose during times of market failure, CMSA urges the SEC to issue guidance on FVA to clarify that in disrupted markets such as those we now face, Level 3 data in the form of the considered judgment of internal management may be relied upon in determining what is an accurate, fair value for assets.

Thank you again for considering our views. We are heartened by the your recent statements on FVA and we look forward to continuing to work with you as you address these issues and consider improvements to the current FVA standard.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dottie Cunningham", with a long horizontal flourish extending to the right.

Dottie Cunningham  
Chief Executive Officer  
Commercial Mortgage Securities Association