



February 3, 2011

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

Regarding: Suspension of the Duty to File Reports Classes of ABS Under Section 15(d) of the Securities Exchange Act of 1934, File Number S7-02-11

Dear Ms. Murphy:

The Mortgage Bankers Association¹ (MBA) welcomes the opportunity to comment on the Securities and Exchange Commission's (Commission) proposed rule related to the suspension of reporting obligations for asset-backed securities (Proposal).² Section 942(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010³ (Dodd-Frank Act) eliminated the automatic suspension of the duty to file under Section 15(d) of the Securities Exchange Act of 1934 (Exchange Act) for asset-backed securities (ABS) issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty. The Commission is proposing to permit suspension of the reporting obligations for ABS issuers when there are no longer asset-backed securities of the class sold in a registered transaction held by non-affiliates of the depositor. The Commission is also proposing to amend its rules relating to the Exchange Act reporting obligations of asset-backed securities issuers in light of these statutory changes.

Background

Section 15(d) of the Exchange Act generally requires an issuer with a registration statement that has become effective pursuant to the Securities Act of 1933⁴ (Securities Act) to file ongoing Exchange Act reports with the Commission. In 2004, the Commission adopted an Exchange Act reporting regime specifically designed for ABS issuers. Under those rules, the Exchange Act reporting requirements for ABS issuers consist of:

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 CFR Parts 240 and 249, [Release No. 34-63652; File No. S7-02-11], RIN 3235-AK89.

³ Pub. L. No. 111-203 (July 21, 2010).

⁴ 15 U.S.C. 77a *et seq.*

- Annual reports on Form 10-K⁵ that include a report on the assessment of compliance with servicing criteria as well as an attestation report on assessments of compliance by a registered public accounting firm;
- Distribution reports on Form 10-D⁶ that include distribution and pool performance information for the distribution period and disclosure regarding the assets filed based on the frequency of distributions on the ABS;
- and Current reports on Form 8-K.⁷

In May 2010, the Commission proposed changes to the ongoing reporting requirements for ABS issuers that would include, among other things, loan-level information in the distribution reports and revised triggering events for current reports⁸ that MBA responded to in its August 2, 2010, letter.⁹ Prior to enactment of the Act, Exchange Act Section 15(d) provided that for issuers without a class of securities registered under the Exchange Act the duty to file ongoing reports is automatically suspended as to any fiscal year, other than the fiscal year within which the registration statement for the securities became effective, if the securities of each class to which the registration statement relates are held of record by less than 300 persons. As a result, the reporting obligations of ABS issuers, other than those with master trust structures, were generally suspended after the ABS issuer filed one annual report on Form 10-K because the number of record holders was below, often significantly below, the 300 record holder threshold.

ABS offerings are typically registered on shelf registration statements and each ABS offering is typically sold in a separate “takedown” off of the shelf. In 2004, the Commission adopted Exchange Act Rule 15d-22, relating to ABS reporting under Exchange Act Section 15(d). Exchange Act Rule 15d-22(b) codified the staff position that the starting and suspension dates for any reporting obligation with respect to a takedown of ABS is determined separately for each takedown. Exchange Act Rule 15d-22 also clarified that a new takedown for a new ABS offering off the same shelf registration statement did not necessitate continued reporting for a class of securities from a prior takedown that was otherwise eligible to suspend reporting.

MBA Position

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

⁵ 17 CFR 249.310

⁶ 17 CFR 249.312.

⁷ 17 CFR 249.308.

⁸ 17 CFR Parts 200, 229, 230 et al., Asset-Backed Securities; Proposed Rule, May 3, 2010

⁹ Proposed Revisions to Regulation AB, File Number S7-08-10, Mortgage Bankers Association, August 2, 2010.

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, CMBS transactions generally provide investors with robust standardized reporting known as the Investor Reporting Package. 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.

MBA appreciates the opportunity to comment and request that you consider our concerns. Any questions about MBA's comments should be directed to George Green, Associate Vice President, Commercial Real Estate, at (202) 557-2840 or ggreen@mortgagebankers.org; or Michael Carrier, Associate Vice President, Secondary and Capital Markets at (202) 557-2870 or mcarrier@mortgagebankers.org.

Sincerely,

A handwritten signature in cursive script that reads "John A. Courson".

John A. Courson
President and Chief Executive Officer