



August 2, 2010

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

Re: Proposed Amendments to Regulation AB Regarding Asset-Backed  
Securities, File Number S7-08-10

Dear Ms. Murphy:

The Consumer Data Industry Association (“CDIA”) appreciates the opportunity to comment on the Securities and Exchange Commission’s (“SEC” or “Commission”) proposed amendments to Regulation AB and other rules regarding asset-backed securities.<sup>1</sup>

CDIA is an international trade association representing the consumer data industry. CDIA’s members provide data and analytics to the consumer financial services industry in accordance with federal and state privacy and security laws, including the Fair Credit Reporting Act (“FCRA”) and the Gramm-Leach-Bliley Act (“GLBA”). With this background, CDIA focuses its comments on the privacy issues that the proposed asset-level data disclosure requirements may raise.

### **Privacy Concerns in the Use of Asset-Level Information**

The SEC’s proposed amendments to the disclosure requirements of Regulation AB would expand the asset-level information required to be submitted by issuers of asset-backed securities and made available to investors and others. This proposal would enhance the information available to investors, allowing for more informed investment decisions about asset-backed securities. More specifically, for many types of loans it

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<sup>1</sup> 75 FR 23328 (May 3, 2010).

would require filing of “asset-level information in a standardized format to be included in the prospectus and periodic reports and filed on EDGAR.”<sup>2</sup>

The Commission’s proposal would accomplish this by adding new 17 C.F.R. § 229.1111A to Regulation S-K. Schedule L, as described in this proposed new provision, would call for disclosure of asset-level information in an Asset Data File. While much of the asset-level data would be obtained from the originator or servicer of the loan, some of the data, and in particular credit scores, would have originally come from a consumer reporting agency.<sup>3</sup> Credit scores, being based on a wide variety of attributes drawn from the consumer report, are themselves considered a consumer report, and restricted in use and dissemination under the FCRA. Most, if not all, of the financial information called for in the Schedule would be data subject to the privacy and safeguards provisions of the GLBA. Of course, under both the FCRA and GLBA, data that is not identified to a particular consumer may be used and transferred to third parties in appropriate situations.

In its proposal, the Commission recognizes the value of the asset-level data with unique identifiers and also the potential privacy issues resulting from their use.<sup>4</sup> CDIA also appreciates the value of this data for investors in the capital markets, and agrees that this data raises privacy concerns.

CDIA applauds the Commission’s evident caution concerning the potential privacy implications to the underlying loan obligors in having detailed personal, financial and credit information published on a publicly accessible Website such as EDGAR. Real harm can befall consumers not only in terms of invasion of privacy, but in potential identity theft and fraud, if their detailed financial information can be identified back to them. Moreover, publishing such data knowing it can be re-identified or without adequate protection may lead to claims of violation of the FCRA and GLBA against the registrant as well as the other entities involved in the collection and dissemination of the consumer data. Therefore it is vital for consumer protection and the assurance of compliance with the regulatory schemes designed to protect consumer privacy that the re-identification of the data published on EDGAR not only be prevented, but the process not be set up to make it possible.

The Commission recognizes that publishing exact data points may allow the re-identification of data published on EDGAR. For example, in some states, public record title data might contain the amount of the original mortgage loan. Other data points might similarly be available from public and private sources. Thus, if the exact mortgage amount and other data points were published on EDGAR, someone wishing to obtain the identity of the obligor may well have the wherewithal to do so, using other available sources of data. Therefore the Commission proposes establishing ranges or categories of

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<sup>2</sup> 75 FR 23328, 23356.

<sup>3</sup> We assume that the reporting entities in possession of credit scores received from credit reporting agencies will act in conformity with all data use and transfer restrictions contained in the agreements pursuant to which they obtain credit scores and other data.

<sup>4</sup> 75 FR at 23357-59.

coded responses in lieu of requiring disclosure of specific locations, credit scores, or exact income or debt amounts.

These proposed ranges or categories may provide some privacy protection, as they may frustrate attempts at re-linking de-personalized information to personally identifiable information. CDIA is concerned, however, that they are not a complete solution. There must not be anything included in Schedule L that would or could provide the means to re-identify the asset data. The seemingly innocuous “asset number” might provide such a link.

Item 1 of Schedule L would require disclosure of, among other things, an “asset number type” (i.e., the source of the asset number used to specifically identify each asset in the pool), an “asset number” (i.e., the unique ID number of the asset), and the asset’s originator. These identifiers would enable investors to specifically identify each asset and follow its performance through periodic reporting. According to the proposed instruction regarding Item 1(a)(1) in Schedule L, the registrant of asset-level information would retain the authority to generate the asset number furnished to EDGAR.<sup>5</sup> A myriad of numbering schemes already exist. They range from account numbers given by the originator and servicer of the loan, to numbering schemes developed by entities that supply loan level performance data and consumer report attributes, as well as by data processing platform providers, who may develop ID numbering schemes to allow users to pull together disparate data sets for further analysis.

For reasons of consumer privacy and compliance with the protections afforded sensitive personal and financial data, the various players in the securitization market generally do not desire to have personally identifiable information (“PII”) associated with asset data. Many of these ID numbering schemes, however, are somewhere linked to PII. This may be out of necessity – the original creator of the scheme at one time had information identified to the consumer – or inadvertence – a public record file containing the property address is appended to other information for review and analysis.

The fact that this linkage exists may be inconsequential. A link between an ID number published on EDGAR and personally identifiable information on the consumer is harmless if that link is carefully controlled and secured by the parties who create, maintain and use it. The Commission would no doubt agree, however, that if such a link were freely available (to picture a worst-case scenario, published on the Internet), little or no protection would have been afforded those consumers whose asset level data was published with such an asset ID on EDGAR.

The same concerns apply to any asset ID number created specifically to facilitate the registration reporting process, such as the Commission’s suggested “[CIK-number]-[Sequential asset number]” protocol. The consumer is only protected to the extent such a number is not subsequently linked back to the consumer’s personally identifiable information. Investors will likely desire to obtain additional data sets and to process and evaluate data on proprietary third party data processing platforms, each of which may

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<sup>5</sup> See 75 FR at 23422.

entail use of proprietary asset identification schemes. Once so associated, the protection of the [CIK-number]-[Sequential asset number] is only as good as the protection of the proprietary asset identifier to which it has been tied.

There is no simple solution that provides for both the transparency required for a vital and well-functioning secondary market and robust protection of consumer privacy. Among the protections the Commission could consider are these: (i) Allow registrants to use only asset numbering schemes with numbers unique to the registrant and the issuer, with an undertaking on the part of the registrant to assure that strict controls are in place to prevent the linking of personal information to the asset number; (ii) If registrant-selected third party asset numbers are allowed, require appropriate representations and warranties by the registrant with respect to the adequacy of the controls over the asset number; and (iii) Recognize the use of asset numbers generated by entities subject to any adequate self-regulatory scheme whereby the creators and users of the numbering scheme agree to police and maintain the anonymous nature of the numbering scheme.

While CDIA understands the goal of open access to data filed on EDGAR, the SEC should also consider restricting access to Regulation AB filings on EDGAR to registered users only. The registration of users would allow the SEC to obtain acknowledgement of the sensitive nature of the data and agreement to maintain its confidentiality. Requiring users to identify themselves and accept appropriate terms of use would provide a repellant to those who may access the data merely to attempt to derive sensitive personal financial data through abuse of the data required to be filed under the revised regulation, and this requirement would allow tracking of users should any such abuse occur.

### **Use of Credit Scores**

CDIA notes that the proposal refers to FICO credit scores, developed by Fair Isaac Corporation. There are many different credit scoring models used by loan originators, investors and others in the marketplace, as well as a variety of scorecards used within a particular brand of scoring model. The FICO score is just one such credit score model.<sup>6</sup> CDIA believes that the availability and use of various credit scores in the marketplace should be reflected in Commission's final regulations.

Other federal agencies have recognized that any rulemaking proceeding should not favor any one credit score provider. The Federal Reserve Board has observed: "[T]he [mortgage] market uses different commercial scores, and choosing a particular score as the benchmark for a regulation could give unfair advantage to the company that provides that score."<sup>7</sup> Similarly in publishing the Enterprise transition affordable housing goals, the Federal Housing Finance Agency (FHFA) stated: "The proposed rule provided a market analysis to support the proposed adjustment of the housing goals levels for 2009,

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<sup>6</sup> VantageScore® is another model available in this marketplace. The VantageScore model is based on consumer credit files across three nationwide consumer credit reporting companies and is used by three of the top ten mortgage originators and two of the top three ratings agencies.

<sup>7</sup> 73 FR 44,522, 44,532-33 (July 30, 2008).

and discussed the effect of tighter underwriting standards of private mortgage insurers and the reduction in mortgage insurance availability for borrowers with low credit scores. A credit reporting corporation and a credit scoring corporation commented that FHFA's analysis should not specifically reference 'FICO' credit scores, stating that the reference implies endorsement of the Fair Isaac Corporation product and creates an unfair advantage. *FHFA did not intend to endorse a specific product. Accordingly the market analysis in the final rule refers generally to credit scores rather than to a specific product.*<sup>6</sup> Finally, in announcing new credit score requirements, HUD recently stated: "While FHA's historical data and analysis is derived from the 'FICO-based' decision credit score, it is *not FHA's intent to prohibit the use of other credit scoring models* to assess an FHA borrower's credit profile. In this notice, FHA seeks comment on the best means for FHA to provide guidance to the industry on acceptable score ranges for other scoring models, to ensure that the scales used for all scoring systems are consistent and appropriate for an FHA borrower."<sup>7</sup> Similarly, CDIA requests that the Commission specifically recognize that there are different credit score models in the marketplace, and that the final rule not refer to any particular brand of model.

In this regard, the Commission could recognize that a consumer's risk of default can be measured by a propensity (such as a percentage probability) without adherence to any specific brand of model that evaluates risk.

Respectfully submitted,

Eric J. Ellman  
Vice President, Public Policy and Legal Affairs

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<sup>6</sup> 74 Fed. Reg. 39,888 (Aug. 10, 2009) (emphasis added).

<sup>7</sup> 75 Fed. Reg. 41,217 (July 15, 2010) (emphasis added).