MEMORANDUM

To: Commission File No. S7-08-10

From: Katherine Hsu
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Office of Rulemaking
Division of Corporation Finance
U.S. Securities and Exchange Commission

Date: November 4, 2010

Re: Proposing Release on Asset-Backed Securities (Release Nos. 33-9117; 34-61858)

On October 18, 2010, Paula Dubberly, Cecile Peters, Katherine Hsu, and Rolaine Bancroft of the Division of Corporation Finance, Adam Glass of the Division of Risk, Strategy and Financial Innovation, Wesley Bricker of the Office of Chief Accountant and other SEC staff met with Dan McLaughlin (MERSCORP, Inc.), RK Arnold (MERSCORP, Inc.), Bill Hultman (MERSCORP, Inc.), John Duncan (Livingston Group) and Rick Hill (Mortgage Bankers Association). Among other things, the participants discussed the Commission's April 7, 2010 proposing release regarding asset-backed securities and the MERS Mortgage Identification Number. Handouts regarding issues raised by MERS with respect to the rulemaking are attached to this memorandum.

Attachment

Message Summary
MERS / SEC Meeting 10/18/10

MERS is an industry-built platform that keeps track of the servicer and owner of mortgage loans. Over 3000 MERS members have registered more than 65 million loans on the MERS® System since its establishment in 1997.

The key tracking instrument is the Mortgage Identification Number (MIN), a unique 18-digit number that attaches to individual mortgage loans and thereby allows the associated data for that loan to be linked in the MERS® System and across other data platforms in the mortgage finance industry. The MIN could be very helpful to the SEC as it seeks to establish standards for tracking ABS and linking data to them.

MERS submitted comments on July 30th on the Commission's proposed rule and responded again on September 29th when mischaracterizations about MERS were noticed in the American Securitization Forum's submission.

The points we want to make are the following:

(1) The ASF would like the Commission to designate their numbering and tracking system as the mandatory means of asset identification. We urge the Commission not to endorse one system over another.

(2) We don't think a single asset identifier for all asset classes is either necessary or desirable. We recognize that the MERS MIN is asset-class specific, but we don't think that is a liability because the practical value of relying on the MIN is overwhelming. The MIN is already integrated with every mortgage origination, servicing, custody and investor delivery system. It is used by virtually everyone in the mortgage industry, including those in both the primary and secondary markets. Other asset classes may also have unique identifiers with similar historical data.

(3) If the Commission elects to endorse a single asset identifier for all asset classes, it should still require the inclusion of any industry standard full-life identification system that may exist for the relevant asset class.

(4) How a system is paid for is important. MERS charges an up-front fee. The ASF doesn't say how their registry system would be paid for. From what is known about it, it seems most likely that they are building a proprietary tracking system that would license the down-stream use of their number, thus creating a captive revenue stream. A proprietary system like this is not good public policy. It inhibits the use of the identifier and the subsequent flow and linking of information.

(5) The MERS MIN is not a proprietary platform. MERS does not charge any fee for generating a MIN. MERS does charge a modest up-front fee of 97 cents for registering the MIN on the MERS® System. The registration process ensures the uniqueness and integrity of the MIN and also associates the MIN with property, borrower and loan level information. But once a mortgage has been registered and the MIN has been assigned, there is no additional charge for the use of that number in other contexts, other than transactional fees to update the MERS® System when the servicing rights to a loan are sold. Similarly MERS does not charge a licensing or other fee to any

software developer or publisher that wishes to incorporate MERS MIN functionality into their product.

(6) To be most effective, the asset identifier must be assigned at the earliest stages of asset creation. This is essential because one of the critical functions of an asset identifier besides tracking for securitization purposes is the detection of fraud and other illegal activities. For real estate, criminal activity like fraud or predatory lending, generally occurs during the application and approval stages of the mortgage loan creation.

(7) The MERS MIN is assigned at the beginning of the mortgage loan creation process. By contrast, the ASF LINC™ number, because the date of loan origination is embedded in the number, can only be assigned after origination, thus rendering it ineffective as a whole life identifier.

(8) We recognize that these issues – the use of a non-proprietary system to encourage the tracking of information for other applications, and the use of a full life identifier for the prevention of mortgage fraud and abuse -- may exceed the Commission's core objectives regarding asset-back securitization disclosures. However we believe that, as there is no detriment to the Commission's core criteria and operational objectives, sound public policy would argue for the adoption of rules and policies that favor systems that offer the greatest flexibility and potential for utility for other users.