

March 28, 2014

Via Electronic Mail (rule-comments@sec.gov)

Securities and Exchange Commission
10 Street, NE
Washington, DC 20549-1090
Attention: Ms. Elizabeth M. Murphy, Secretary

Re: Re-Opening of Comment Period for Asset-Backed Securities Release
Release Nos. 33-9552; 34-71611; File No. S7-08-10 (the "Release")

I. INTRODUCTION

Wells Fargo & Company and its various subsidiaries ("Wells Fargo") welcomes the opportunity to provide comments regarding the Commission's re-opening of the comment period, as outlined in the above-referenced Release, with respect to its proposed revisions to Regulation AB¹ as they relate to the dissemination of potentially sensitive asset-level data. Simultaneously with the publication of the Release, the Commission released staff memorandum, dated February 25, 2011 (the "Memorandum") which provides, in relevant part, that potentially sensitive asset-level information should be provided to investors and potential investors through an issuer or issuer-sponsored website. While we have prepared this letter as a response to the Commission's approach detailed in the Memorandum, we would like to re-iterate our previously submitted comments to the 2010 ABS Proposing Release and 2011 ABS Re-Proposing Release.² Particularly, in connection with this correspondence, we would like to note our prior comments and the prior comments of the various industry groups of which we are a member, relating to the applicability of enhanced requirements with respect to the disclosure of asset-level information to various asset classes other than residential mortgages, such as in the auto space, where such information would provide little to no incremental value to investors. In view of these prior comments that are still under consideration (to the best of our knowledge) by the Commission, we are limiting the scope of our comments on the Memorandum to our concerns on the impact of the proposed approach in the residential mortgage backed securities ("RMBS") market. As described in greater detail below, Wells Fargo, as the largest originator of residential mortgage loans and the entity that will (i) establish the issuer in connection with a Wells Fargo sponsored residential mortgage securitization program and (ii) furnish potentially sensitive information to such issuer in connection with residential securitization, believes that the proposed approach would significantly and negatively

¹ Asset-Backed Securities, Securities Act Release Nos. 33-9117; 34-61858; File No. S7-08-10, dated April 7, 2010, 75 Fed. Reg. 23328 (the "2010 ABS Proposing Release") and Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities, Securities Act Release No. 33-9244, dated July 26, 2011, 76 Fed. Reg. 47948 (the "2011 ABS Re-Proposing Release").

² See Wells Fargo Comment Letters, dated August 2, 2010 and October 4, 2011.

impact our customers, expose the issuer and have the potential to expose Wells Fargo to significant unknown liability and reputational damage.

We would also like to highlight that our commentary on the Memorandum is being made without the knowledge of any decisions that have or may be made by the Commission in the context of other asset classes in response to the industry's prior commentary, or decisions made in other contexts addressed by the 2011 ABS Proposing Release and the 2011 ABS Re-Proposing Release. Given that the prior proposals were issued more than two years ago, we urge the Commission to re-publish Regulation AB and allow all industry participants an opportunity to provide comments on the Memorandum and any other topic on which the Commission may be open to additional commentary, in context of any decisions already made or under serious consideration by the Commission. The industry is thinking hard about solutions but we need time and the cooperation of the Commission to develop those ideas.

II. COMMENTARY

Footnote 2 of the Memorandum provides that, pursuant to Section 7(c), the Commission is required to "adopt regulations requiring an issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security, including asset-level or loan-level data, if such data is necessary for investors to independently perform due diligence". While Wells Fargo understands the value of the information to investors and supports the conceptual disclosure of such information in connection with RMBS transactions, first and foremost, Wells Fargo is concerned that providing various types of potentially sensitive loan-level information directly to investors and potential investors through an issuer or issuer-sponsored website could expose consumers to a heightened risk of identity theft or other related fraud.³ Wells Fargo, as the largest residential mortgage loan originator, is highly sensitive to this risk as we are committed to safeguarding the privacy of personally identifiable financial information of our customers. In addition, we are concerned that issuers will be exposed to a significant and unknown amount of liability and expense as result of borrower action and/or regulatory action, expenses that would be borne by investors and/or have negative impact on the RMBS market generally. Finally, Wells Fargo, as the entity that will (i) form issuers to engage in residential mortgage securitizations which contain pools of mortgage loans originated by Wells Fargo and (ii) furnish potentially sensitive loan-level information to such issuers, may also be exposed to enforcement actions and be at risk to suffer serious reputational damage as result of potential or actual misuse or misappropriation of such potentially sensitive data.

Our more specific concerns regarding the Release are summarized below. In view of the serious consequences inherent in the Commission's approach, we urge the Commission to assist in resolving the issues raised in this comment letter in advance of issuing any rule on this topic by (i) participating with the industry to coordinate with other federal regulators, including, without limitation the Consumer Financial Protection Bureau ("CFPB") and the Federal Trade Commission ("FTC"), in order to alleviate

³ We are particularly concerned about the following data fields: the zip code of the mortgaged property and the credit score, monthly income and monthly debt of the related borrower.

any risks associated with conflicting regulations and related unintended consequences of the approach outlined in the Memorandum and (ii) working with the industry to address the serious privacy concerns related to any disclosure of sensitive customer data as described more fully below to facilitate our mutual goal of building a strong, liquid and sustainable RMBS market.

1. Clarification of Data Fields.

The Release and Memorandum create an ambiguity with respect to the data fields that will be required by the Commission in connection with a registered offering. While Schedule L Item 2 (Residential Mortgages Item Requirements) included in the 2010 ABS Proposing Release required the disclosure of ranges with respect to credit scores, monthly income and monthly debt, the Memorandum indicates that actual credit scores and monthly income and debt amounts would be required to be disclosed on an issuer or issuer-sponsored website. As you will note from our comments below this type of more specific information raises additional privacy concerns. Clarity on this topic is imperative, and therefore we request that the Commission rectify the ambiguity and allow industry participants to provide additional comments on the data fields in the context of that clarification.

2. Privacy Considerations.

The Commission proposes that each issuer establish and maintain, or cause a third party to establish and maintain on its behalf, a website in order to provide potentially sensitive asset-level information to investors and potential investors. The Memorandum contends that this approach would permit an issuer to design and implement whatever safeguards and protocols the issuer determines would be required to protect borrowers by complying with privacy laws. Given the nature of the information implicated by the data fields in the Memorandum, Wells Fargo has serious concerns with this approach.

First, prior to disseminating any potentially sensitive information, protective measures in the form of required agreements and/or due diligence on an investor or potential investor related to their system security and other privacy controls and safeguards, as well as background information, would be necessary, prior to investment, in order to provide a sufficient level of comfort that the customer data disclosed to such party would be fully protected while being used for an investment decision and disposed of appropriately to alleviate the risk of misappropriation. Reliance solely on a user's registration to the website and required certification related to the intention of the user to only use the information in context of evaluating the deal as suggested by the Commission guidance does not seem adequate. Wells Fargo has established policies that comply with the Gramm-Leach-Bliley Act ("GLB") and address enterprise concerns regarding the safety of personally identifiable financial information of its customers. These policies are designed to gain a high level of comfort that an entity gaining access and possession of the information have appropriate systems, protocols and safeguards in place to avoid the information being "hacked" or other unauthorized access. Obtaining the necessary representations and other protective measures consistent with these

policies, based on our experience of negotiating these requirements with our various business counter-parties, will be difficult and could substantially negatively impact both the size and characteristics of the acceptable investor community as well as the liquidity of the securities. Failing to require the representations and other protective measures consistent with Wells Fargo policy could place Wells Fargo customers at risk and subject the Wells Fargo issuer and Wells Fargo itself, as the sponsor of the entity and the securitization transaction, to potential enforcement action, legal liability and significant reputational damage.

Second, we have received some guidance that the compilation of the asset-level information required by the Commission in the Memorandum could be considered a consumer report and that providing such information could, therefore, cause the issuer to be a consumer reporting agency under the Fair Credit Reporting Act ("FCRA"). The Memorandum understates the risk posed by FCRA by referencing a permissible purpose under FCRA for furnishing a consumer report. Section 604 of FCRA provides that a consumer report can be furnished by a consumer reporting agency "[t]o a person which it has reason to believe intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation". That a permissible purpose exists does not address the issue that the issuer may be considered a consumer reporting agency and that serious consequences result from such a characterization. Consumer reporting agencies have a variety of obligations under FCRA which may be costly and require personnel to perform. Examples of these obligations include establishing a notification system, which includes a toll free number and produces an annual publication which states that information in consumer files may be used in connection with transactions; handling requests from consumers to elect to have their names excluded from any list of transactions; handling disputes with respect to inaccurate information; and performing re-investigations of disputed information. Issuers are generally formed as special purpose entities with limited charters to initiate the securitization and perform other limited activities that are incidental to such securitization. Those clearly defined activities are primarily delegated by the issuer to third parties for an established fee (such as a trustee or servicer since the issuer does not have employees). The securitizations are structured with cash flows to account for those fees. Additional, potentially significant, costs associated with compliance with FCRA will have the impact of either reducing subordination to the investors or returns, or both, or, alternatively, increased pricing and therefore making securitization an unworkable financing solution for deal sponsors. Violations of FCRA would expose the issuer to damages and legal fees in individual enforcement actions or class actions and statutory damages in connection with enforcement actions by the CFPB, FTC and state attorneys general. We believe causing issuers to become consumer reporting agencies is an unintended consequence of the approach described in the Memorandum.

Additionally, if a Wells Fargo sponsored issuer is considered a consumer reporting agency, Wells Fargo, as the entity furnishing potentially sensitive information to such issuer, will have a duty to update and correct the information to the extent of any inaccuracy and investigate any disputed information. It is unclear to us how Wells Fargo would have access to such information and failure to

comply with these duties could subject Wells Fargo to borrower actions and CFPB enforcement actions which could result in significant liability.

3. Associated Costs.

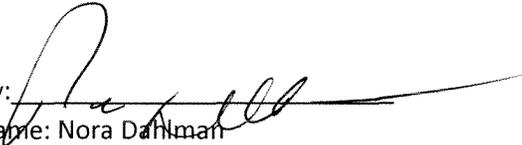
The Memorandum contains a brief discussion of the costs associated with the issuer's compliance. The Memorandum states "[p]ossible litigation and liability costs are also difficult to estimate because the nature and extent of legal challenges and any ultimate liability will depend on how issuers handle the potentially sensitive data and the nature of the harm caused". The issues in the approach described in the Memorandum that may give rise to such actions are discussed above. Unfortunately this language in the Memorandum as it leads us to conclude that the Commission may not understand how critical and potentially unsurmountable these issues may be if the Commission does not modify its proposal. The Commission appears to be of the view that the legal and reputational risks associated with their proposal may be sufficiently mitigated to permit an ongoing securitization market, or alternatively, that the nature of the risks permit the risks to be absorbed without material harm. Accordingly, while acknowledging the very significant concern, the Commission makes no attempt to reconcile the Commission's disclosure requirements as articulated in the Memorandum with the existing legal and regulatory environment associated with the disclosure of highly sensitive customer data. In our view, because of these issues, the potential for legal liability, regulatory actions and material reputational damage make the proposed approach very difficult and potentially unworkable. Special purpose issuers will be subject to legal costs not associated with the securitization and transaction party performance that will be borne by the investors. Bank sponsors would be at risk, not only for significant legal costs but profound reputational damage may well result which could have a material economic impact. The cost will ultimately be the impact to the RMBS market. Issuers and their related sponsors may not be in a position to comply with the proposed requirements which has the potential to create a barrier to the re-emergence of the RMBS market.

III. CONCLUSION.

For the above reasons, we urge the Commission to assist in resolving the issues raised in this comment letter in advance of issuing a final rule with respect to the dissemination of potentially sensitive asset-level data by (i) participating with the industry to coordinate with other federal regulators and (ii) working with the industry to address the serious privacy concerns and unintended consequences that are inherent in the approach described in the Memorandum.

We appreciate the opportunity to provide comments on the Release. We are available to answer any questions you may have with respect to the foregoing and to provide additional information.

WELLS FARGO & COMPANY

By: 
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