

COMMITTEE ON CAPITAL MARKETS REGULATION

April 28, 2014

Via Electronic Delivery:

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attention: 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 “**Proposed Rule**”)

Dear Ms. Murphy:

The Committee on Capital Markets Regulation (the “**Committee**”) welcomes the opportunity to provide comments regarding the Securities and Exchange Commission’s (the “**Commission**”) proposed revisions to Regulation AB¹ (“**Reg AB**”).

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes thirty-three leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Dean, Columbia Business School) and John L. Thornton (Chairman, The Brookings Institution) and directed by Hal S. Scott (Nomura Professor and Director of the Program on International Financial Systems, Harvard Law School). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

In May 2009, the Committee released a comprehensive report entitled *The Global Financial Crisis: A Plan for Regulatory Reform*² (the “**2009 report**”), which contains recommendations for making the U.S. financial regulatory structure more integrated, effective, and protective of investors in the wake of the financial crisis of 2008. In preparing the 2009 report, the Committee studied the loan-level disclosures for residential mortgage-backed-securities (“**RMBS**”) issued in 2006, finding that numerous loan-level disclosures that investors considered critical were omitted from RMBS offerings.³ The Committee thus recommended in its 2009 report that the Commission revise Reg AB to increase loan-level disclosure requirements for RMBS and specify and standardize the particular fields of loan-level data that must be disclosed.⁴ The Committee further recommended that these fields should largely be based on investor demand and inputs and that the Commission should periodically refine this standardized list with input from issuers and investors.⁵

¹ Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities, 76 Fed. Reg. 47,948 (proposed Aug. 5, 2011).

² Comm. on Capital Mkts. Reg., *The Global Financial Crisis: A Plan for Regulatory Reform* 1 (May 2009), available at <http://capmktreg.org/2009/05/the-global-financial-crisis-a-plan-for-regulatory-reform/>.

³ *Id.* at ES-22-ES-24.

⁴ *Id.* at ES-24.

⁵ *Id.* at ES-24.

The Proposed Rule was initially released in early 2010,⁶ modified in mid-2011,⁷ and re-opened for comment on February 25, 2014.⁸ It requires 28 loan-level disclosures regarding the assets underlying certain asset-backed securities (“ABS”),⁹ and 137 additional loan-level disclosures for the assets underlying RMBS.¹⁰ As recommended by the Committee, the loan-level disclosures for RMBS are largely based on issuer and investor recommendations, as set forth by the American Securitization Forum’s Project RESTART in 2009.¹¹

The Committee supports the Commission’s efforts to establish a more efficient and transparent securitization market and continues to agree with the disclosure of loan-level data with respect to RMBS. However, in the four years since publication of the Proposed Rule, issuers and investors have identified certain additional disclosures that would materially improve transparency. The Committee recommends that the Commission revise the Proposed Rule to include these additional disclosures, which will be set forth in greater detail in this letter.

The Committee is also grateful for the opportunity to comment on the Commission staff memorandum¹² (the “**Memorandum**”), which accompanied the re-opening of the comment period for the Proposed Rule. The Memorandum provides that potentially sensitive asset-level information should be provided solely to investors and potential investors through an issuer-controlled website rather than on a public forum, in order to mitigate concerns that loan-level disclosures could reveal private consumer data.¹³

However, the Committee is concerned that the Proposed Rule and Memorandum lack clarity regarding what loan-level disclosures should be solely disclosed on an issuer-controlled website, and how issuers should limit access to that website. If issuers are too restrictive, this lack of clarity could subject issuers to liability for failure to disclose material information under the federal securities laws. Alternatively, if issuers do not sufficiently restrict accessibility to certain data, issuers risk being in violation of consumer privacy laws. These legal concerns threaten to discourage issuer participation in ABS offerings, as an adverse judicial ruling would have substantial pecuniary and reputational risk. The Committee thus recommends that the Commission offer further clarification regarding certain asset-level disclosure obligations under the federal securities laws and relevant privacy laws.

Additional Reg AB Disclosures

Since the Commission released the Proposed Rule, there have been numerous RMBS issuances that have included the data fields required by the Proposed Rule. Based on these issuances, issuers and investors have determined that certain additional disclosures are necessary to improve transparency. The Committee supports these additional disclosures, which have been

⁶ Asset-Backed Securities, 75 Fed. Reg. 23,328 (proposed May 3, 2010).

⁷ Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities, 76 Fed. Reg. 47,948 (proposed Aug. 5, 2011).

⁸ Re-Opening of Comment Period for Asset-Backed Securities Release, 79 Fed. Reg. 11,361 (Feb. 28, 2014).

⁹ Asset-Backed Securities, 75 Fed. Reg. 23,328, 23,453-23,454 (proposed May 3, 2010).

¹⁰ *Id.* at 23,361.

¹¹ *See Id.* at 23,412.

¹² Mem. from Sec. & Exch. Comm’n Division of Corporation Finance to Commission File No. S7-08-10 1 (Feb. 25, 2014), *available at* <http://www.sec.gov/comments/s7-08-10/s70810.shtml>.

¹³ *Id.* at 10.

developed by the issuers and investors involved in Project RESTART and now a part of the Structured Finance Industry Group (“SFIG”).¹⁴

These issuers and investors recommend revising the Proposed Rule’s disclosure requirements to offer further detail regarding the securitization process, particularly the originator of the loans, funding entity, and the securitization channel.¹⁵ Additional data would also be required regarding a mortgagor’s other outstanding borrowings, income sources, financial capacity to repay the loan, and length of current employment.¹⁶ Similar disclosures would be required for any co-obligors.¹⁷ Disclosures would also be required to provide more insight into the verification process used to determine a mortgagor’s capacity to repay the loan.¹⁸

Entirely new data fields should also be added that would assign a specific identification code to each obligor, and include disclosures regarding the number of months the obligor has resided in the home, the most recent credit score used to underwrite the loan, and disclosure as to whether the mortgage is assumable and whether the obligor has previously had a loan modified. For further specification regarding the additional data fields and how to incorporate these requirements into the Proposed Rule, the Committee recommends that the Commission refer to the recent proposal by the SFIG and its investor and issuer members.¹⁹

Restriction of Sensitive Loan-level Disclosures

The Memorandum fails to specify which of the 165 loan-level disclosures for RMBS must solely be disclosed on the issuer-controlled website, nor does it include any guidance as to how an issuer should determine whether a party seeking access to the website is an investor or a potential investor. Issuers thus find themselves in the untenable position of having the regulatory obligation to restrict access to unspecified asset-level information with the risk that such restriction could render them liable to an investor suit for failure to adequately disclose all material information related to investment decisions. Alternatively, if the issuer does not sufficiently restrict accessibility to certain loan-level disclosures, the issuer risks legal liability under consumer privacy laws. The Committee thus recommends that the Commission resolve this issue by specifying the disclosures that must be made solely on the issuer-controlled website and how access to that website must be restricted. Additionally, the Commission should work with the Consumer Financial Protection Bureau and the Federal Trade Commission to provide issuers with the necessary assurances that any misuse of disclosures made in compliance with the Proposed Rule would not render the issuer liable for violating consumer privacy laws.

The Committee has also noted certain inconsistencies between the loan-level disclosures required by the Proposed Rule and the Memorandum. For example, the Proposed Rule requires that issuers disclose *ranges* regarding mortgagor credit scores, income and debt,²⁰ whereas the

¹⁴ See Letter from Structured Finance Industry Group to Sec. & Exch. Comm’n 1 (Feb. 18, 2014).

¹⁵ *Id.* at 2-3.

¹⁶ *Id.* at 3-5.

¹⁷ *Id.* at 3-5.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 1-6.

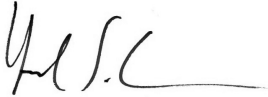
²⁰ Asset-Backed Securities, 75 Fed. Reg. 23,328, 23,357 (proposed May 3, 2010).

Memorandum indicates that actual credit scores, income and debt disclosures must be made.²¹ The Committee recommends that the Commission address any inconsistencies between the Proposed Rule and Memorandum.

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Thank you very much for your consideration of the Committee's position. Should you have any questions or concerns, please do not hesitate to contact the Committee's Director, Prof. Hal S. Scott ([REDACTED]) or John Gulliver, Research Fellow ([REDACTED]), at your convenience.

Respectfully submitted,



Hal S. Scott
Director

²¹ Mem. from Sec. & Exch. Comm'n Division of Corporation Finance to Commission File No. S7-08-10 1, 14 (Feb. 25, 2014), *available at* <http://www.sec.gov/comments/s7-08-10/s70810.shtml>.