AMI ASSOCIATION OF MORTGAGE INVESTORS

July 31, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File Number S7-08-10 Notice of Proposed Rulemaking ("NPR") Revisions to Regulation AB

Dear Ms. Murphy:

The Association of Mortgage Investors ("AMI") appreciates the opportunity to comment upon the proposed revisions to Regulation AB. The AMI was organized as the primary trade association representing investors in mortgage-backed securities, including university endowments and pension funds. The AMI was founded to play a primary role in the analysis, development, and implementation of mortgage and housing policy to help keep homeowners in their homes and provide a sound framework that promotes continued home purchasing. Since its formation, the AMI has been developing a set of policy priorities that we believe can contribute to achieving this goal. We are an investor-only group comprised of a significant number of substantial institutional investors in commercial and residential mortgage-backed and other asset-backed securities. As of June 30, 2010, our members managed a collective investment in ABS in excess of $300 billion.

The members of AMI believe that much of the dysfunction in the ABS market can be traced to (1) a lack of transparency (2) subjective representations and warranties which, compounded by weak remedy enforcement, unfairly limits sponsors' and loan sellers' liability and (3) the financial decoupling and misalignment of interests of sponsors, originators and depositors from the interests of investors through reducing and in many cases eliminating their financial interests in the performance of ABS pools. We believe that the SEC has correctly responded by proposing sweeping reform involving three broad areas:

- **Securities Act shelf registration reform** - significant improvements involving risk retention, new certifications and expanded investor review timelines;

- **Expanded disclosure requirements** – enhanced data requirements both at issuance and on a go-forward basis at the asset and pool level as well as the historical experience of sponsors and originators involving repurchase claims; in addition, requiring from issuers a common platform cash flow model; and,

- **144A and new disclosure provisions** – requiring issuers to make available similar disclosure information to that offered in public market ABS.

Since Section IX of the NPR invites general commentary on "any other approaches or issues that we should consider", AMI offers additional recommendations. Principally, AMI believes that the ABS market would benefit from the creation of an additional participant to the ABS trust: a Credit Risk Manager (CRM). The primary function of the CRM would be to investigate and, if warranted, pursue representation and warranty claims on behalf of the

investors. In furtherance of this mission, the Credit Risk Manager would have equal access to all the loan information available to the trustee and its servicer.

Our comment letter is organized into four sections mirroring the three bullet points above along with a fourth section describing additional recommendations for the Commission's consideration.

We recognize that the proposed revisions reflect a significant amount of time and effort expended by the Commission and its staff in reviewing the recent financial setbacks in this marketplace. In general, the proposed rulemaking addresses many of the deficiencies in the present system of offerings for securitized products and post-offering reporting requirements and standards. We believe the proposed revisions overall will appreciably improve operating standards for securitizations, both at issuance and in terms of ongoing surveillance. We applaud the NPR's stated commitment to full and accurate reporting for ABS transactions.

Section 1: SECURITIES ACT SHELF REGISTRATION REFORM

Shelf Eligibility

We agree with the Commission that the use of investment grade ratings by NRSROs lacks the comforting imprimatur to investors (and the SEC) that such ratings bestowed in previous years. We also agree with the SEC's objective to "promote independent analysis of ABS by investors rather than reliance on credit ratings." The interpretation of AMI is that, by

substituting these new shelf-eligibility standards for investment grade ratings, the SEC intends (a) to align more effectively investor interests with those of the loan seller or other responsible party and (b) to provide more effective remedies when loan sellers or other responsible parties do not live up to their contractual obligations to repurchase defective assets. AMI supports these objectives and priorities. While issuers may still seek to have the securitization rated and investors or potential investors may still demand it for various internal purposes, we agree with the position outlined in the NPR that credit ratings should not be a precondition to shelf registration.

While we support the concept of substituting requirements for shelf eligibility, we do not view certifications or third party opinions as critical to correcting the past ills of securitization. The requirements for third party opinions and CEO certification may lead to an unintended outcome of providing market participants (and regulators) with a false comfort that the transaction's assets will perform as stated and that responsible parties comply with their obligations when faced with breach claims. In lieu of these two preconditions, AMI recommends the creation and installation of a new transaction participant - the Credit Risk Manager – to enforce representation and warranty claims - described in greater detail in Section IV.

The objective of a third party opinion would be to confirm that the party responsible for the repurchase did not breach a claim and correctly rejected.[1] As a practical matter, AMI does

[1] NPR, §II, B. 3. b.

not believe that this provision will have the desired effect of encouraging a loan seller or other responsible party to "do the right thing". As the NPR describes, this does not require a legal opinion, nor, given the complexities of some repurchase claims would such a legal opinion be cost-effective. Any third party opinion would likely be either so limited and heavily qualified as to be without weight or offered from a third party lacking real economic substance. Any opinion more fulsome in support of the responsible party would likely be cost prohibitive to furnish on an on-going basis.

Similarly, we are concerned that the CEO certification will be qualified by the knowledge of the CEO of the originator at the time that the assets are placed in the pool. The risk is that the certificate will simply reference known financial data without regard to the reliability of that financial data and, therefore, will not be of significant value. A certification from the CEO that warrants both the reliability of the information in the offering materials and describes the process by which the issuer tested the validity of such information would be of greater value.

On the other hand, the five percent (5%) vertical risk retention requirement is meaningful. We believe it should be used as an ABS default although AMI understands that the 5% level may reasonably vary based upon asset type and other asset specific structures. Also, while we believe a vertical slice generally acts to align the investor's and the sponsor's interests, we do recognize that there may be situations where this is either less effective or redundant. As an example, we recognize that CMBS traditionally had a first loss investor which may have been affiliated with the trust's special servicer. That party had both a contractual obligation and investment interest in monitoring the proper administration of the pool and pursuing claims

against the pool's sponsor or loan contributor. Many investors believe this form of risk retention is appropriate for CMBS. Regardless, risk retention requirements should be imposed equally for shelf registration eligibility as well as 144A deals. It is important that sponsors truly have an interest in and share risk with investors in the outcome in order to keep them focused on the long-term performance of the asset pool. With the exception of truly privately negotiated transactions, the Commission should mandate this critical feature as a requirement for every securitization pool and not limit its eligibility to apply only to Form SF-3 offerings.

With respect to the continuous reporting, we observe that that provision is analogous to the present requirements for the use of S-3 and offer no additional comment.

Prospectus Requirements

We also support the Commission's proposal to insist upon an enhanced prospectus summary in order to achieve the level of disclosure in the summary that will allow a potential investor to understand the most essential and significant features of the proposed investment. We believe that an adequate and fully-developed prospectus summary is an important enhancement to the quality of the disclosure for securitization products. In this area of presentation as in all others, we encourage the Commission where prudent, to mandate standardization in format and organization to enhance investors' due diligence activities and to promote comparability across similar ABS offerings. This standardization should require disclosure in the summary of representations and warranties as well as the enforcement

mechanisms to pursue claims against responsible parties. Variances from these standards should be captured in a separate Exception Report.

Time Periods

We support the extension to give (5) days of the minimum period of time between when the "preliminary" prospectus is made available and sale for mortgage related securitized product. The extension of this minimum review period will ensure that investors have sufficient time to complete their analysis before facing the decision as to whether to purchase a given security. Five (5) days is sufficient time.

AMI also supports an extension of two days for the minimum period discussed above in cases where a material change has been made to the preliminary prospectus, affecting the cashflow, terms or disclosure.

The forty-eight (48) hour rule for delivery of a prospectus should also apply to these products. We see no reasonable distinction to be made between this product and other securities. The often cited defense limiting the marketing window applies to all fixed income sectors.

The Combined Prospectus

We are also in favor of the combined prospectus concept – that is, that the base prospectus would be combined with a "takedown prospectus" to create a preliminary prospectus. The underlying asset information and waterfall computer program would be available by way of

8-K filing, and the pool information would be available by PDF in addition to other live, manipulatable programs including Excel.

Beyond the prospectus, we believe it is also crucial that transaction documents be available in conjunction with, if not a part of, the prospectus. Investors need to be able to review the underlying documents that are often incorporated by reference in the offering materials. It is also imperative that they be filed as an integral part of the effective registration statement. A specific period of time, perhaps 90 days, from the final closing should be set for all underlying operating documents to be filed and easily accessible.[2] In the period between the closing date and the receipt of these transaction materials, the portal should list all exhibits yet to be filed. AMI supports the proposed disclosure with respect to financial information about the party with the obligation to repurchase pool assets.

AMI also supports, subject to comments as noted, the proposals as presented in the release for:

- identification of originators in the prospectus;
- the use of a measurement date and a cut-off date in every prospectus regardless of the form of registration statement used;

[2] Given the NPR's intention to expand the utility of EDGAR for ABS investors, these additional documents should be available on both EDGAR and trustee websites. In light of some investor difficulties navigating through EDGAR, we would also suggest, if practicable, a file path to the relevant transaction on the EDGAR site.

- a change in the limit of variance in pool assets between the measurement date and the cut-off date before a new "preliminary prospectus" must be prepared, although we believe a 3% variance (rather than 1%) is sufficient**;** simply highlighting these variances from those initially provided at measurement date will streamline the investor's review process;

- the use of post-effective amendments to reflect changes.

Section 2: EXPANDED DISCLOSURE REQUIREMENTS

As a general matter, we do not believe that the securitization market, historically or presently, reflects any evidence to sustain the sometimes suggested "proprietary" nature of any one issuer's or sponsor's product. Investors at deal inception and in the resale market need asset level detailed disclosure in order to evaluate securitized product.. The argument that detailed disclosure should not be available because it may somehow impact the competitive nature of an issuer's product seems to us, frankly, specious. If indeed there are highly sensitive pieces of information which would put the issuer at a competitive disadvantage, the Commission has long had the confidential treatment process available for just such circumstances. And any such information could be made available to prospective investors under a non-disclosure arrangement which would protect the competitive information, should it exist.

Quality and Granularity of Information

Regulation AB as modified would provide asset level and pool level information both at the time of the offering and after the sale. This obligation would be on an on-going basis so long as non-affiliates of insider parties own bonds. AMI supports both the asset level disclosure and the changes to pool level disclosure. The granularity required by Schedule L is necessary. Although there may be slight disagreements among ABS investors as to the inclusion or exclusion of specific data points listed in the Appendix tables, using industry-accepted data dictionaries and investor reporting package elements provide a good, supportable starting point. Additional borrower quality "checks" are described below.

As we have witnessed in many ABS markets, these required data fields need to evolve over time. The SEC would be well-served to create a mechanism that facilitated a process of periodic amendment of these reporting requirements – both at deal inception and on an on-going basis – to reflect the changing needs of investors over time as markets and technologies evolve. AMI stands ready to provide input should it be needed in the future.

Asset Level Disclosure

The asset level disclosure described in both Schedules L and L-D is essential for investors to evaluate properly the risk profile of securities offered for purchase. There may be still other data points if disclosed that would be useful to investors. For example, the addition of a Vantage score or any similar credit-tracking service would be important additional information

regarding the underlying borrower.[3] Likewise, the ability of investors to review historical property resale values over a recent period would be extremely beneficial in identifying risks of improper property valuation.[4] Depending on the gap between loan origination and securitization, this information should be included in either Schedule L or L-D.

Though granular, this information is critical. Unlike investing in a corporate security, absent external credit enhancement, investors in structured finance can only look to the assets in the pool for their return. Consequently, asset level information – at the borrower level and, if applicable, the collateral level – on an ongoing basis is essential, as are the rights of investors to intervene quickly if actual performance begins to vary from expected performance.

Pool Level Disclosure

With respect to pool level disclosure, issuers should be required to disclose whether or not a representation has been made, that no fraud has taken place in connection with the origination of the assets and, further, to describe the steps undertaken by the originators to verify the information used in the underwriting process. Disclosure about the content of the pools should be as robust as possible and should include any and all underlying variables that may affect the projected cash flows from the assets to the securities. Changes of 3% in any material pool characteristic should be reported on Form 8-K; we suggest, however, that the Commission

[3] In addition to the inherent contribution of such on-going borrower information as to creditworthiness, this post-closing update may also contribute to early fraud detection resulting in accelerated detection of borrower default or more productive repurchase claims brought against responsible parties.

[4] There are products currently available on the market that capture this historical resale information.

specify parameters for the term materiality to avoid lax reporting. Given fast moving markets, the liquidating nature of many of these asset types and the reporting burden of 8-K reporting, AMI believes that a 1% is overly restrictive. The SEC's proposed 1% change that triggers a new filing and an additional waiting period could be problematic for some ABS classes with shorter duration characteristics. We recommend a 3% threshold for changes from the original offering document to draw investor attention.

Waterfall Computer Program

The waterfall computer program that allows investors to perform their own sensitivity analysis through changing assumptions for numerous variables is an important addition to the disclosure requirements for securitizations. In addition to its other benefits, it complements the additional investor due diligence period since investors need not re-engineer the bond's waterfall characteristics. Incorporating a waterfall program which includes valuation analytics and utilizes a cash flow engine populated by the live asset data files into the registration statement extends the usefulness of the current narrative requirement of cash flow distributions under Item 1113 of Regulation AB. All of these elements should be available during the sales period at the issuer's expense.

These features will prove to be cost-effective for the issuer as such additional mechanisms will result in better pricing execution and enhanced deal liquidity. It will allow investors such as the members of AMI to model efficiently the projected performance of their investments as well as to establish parameters for expected future performance. In the short run,

AMI expects that either in-house, bolt-on programs or third party programs will allow investors to extract additional information from provided data without undue hardship. Investors will be able to develop monitoring tools. While Python is an acceptable language, the SEC should not specify a particular program, but instead leave to investor groups and trade associations the identification of a preferred language. Members of AMI do not believe that open source code should be a requirement nor do members believe that such program need be proprietary to the issuer, but we are open to discuss specifics. The conditions that the Commission proposes to place on the waterfall computer program, including an ability to recreate hypothetical cash flows contained in the offering memorandum as well as those pertaining to detailing modeling assumptions, are essential for the investor community.

On the general point of additional disclosure through SEC's EDGAR portal, we agree with the intent that such information be made publicly available in a central repository. As extensive users of EDGAR, we remain concerned that EDGAR lacks the robustness and usability conducive to such heightened, taxing demands. We trust that the SEC will allocate resources needed to ensure that the volume of outlined disclosures does not unduly strain existing systems.

Static Pool Disclosure

As to static pool information, we are in agreement that the narrative summary should be expanded and that issuers should be required to describe the methodology used in calculating the pool's characteristics. The SEC should also direct that these methodologies should converge and standardize over time. This is the only reliable method to ensure that ABS investors are able to

compare effectively "apples-to-apples" securities. Such critical defined terms as "delinquency" and "default" must be standardized across all transactions involving a given asset type. In the short term, the objective of the ABS industry should be to develop and accept data dictionaries common to given financial asset types. Various trade associations have made significant progress towards standard lexicons. We also agree that the information should present delinquency, loss and prepayment information in a graphical format, although we also believe that narrative and standardized tabular format are useful and complementary. At a minimum, this information should be filed on EDGAR; additional filings on trustee websites should also be encouraged. PDF is an adequate format in which to file static pool information, but the strong preference of AMI would be that data be machine-readable or downloadable through live spreadsheets.

At the front-end of the transaction, particulars of the relevant loan servicing agreement should also be abstracted to permit investors to understand approaches to loss mitigation. On an ongoing basis, the details of all loan workouts requiring lender concessions should be fully disclosed along with all assumption inputs used by the servicer in reaching its NPV calculations.

Post-Offering Information

Critical to AMI is the receipt of ongoing loan level and pool level information once an offering has been completed. All too often, ongoing disclosure has been limited in detail, hindering investors' monitoring of their securitized exposures. The proposed revisions and, in particular, the requirement of the use of Schedules L-D in connection with each Form 10-D filing

will improve significantly investors' ability to evaluate ongoing performance. We particularly support the disclosure of information regarding claims made and satisfied under the representation and warranties provisions of the transaction documents and request that the information be broken down by securitization and then aggregated. We further request that any significant changes to the reported underwriting guidelines or loss mitigation practices be disclosed. After 90 days of loan payment delinquency, broker price opinions or updated appraisals in addition to lien searches should be ordered and, upon completion, shared with the investor community. Additionally, at this point of serious delinquency, servicer comments on loan status should be posted and available for investor review.

Section 3: PRIVATE PLACEMENT ABS AND NEW DISCLOSURE PROVISIONS

The members of AMI support wholeheartedly the intent of provisions in the proposed Regulation AB dealing with 144A placements. There is no reasonable distinction to be made between the information requirements of an investor in a 144A placement from those in a public offering when it concerns these products. These are highly sophisticated products, whose value is determined at the outset and driven thereafter by the assets placed in the pool and the performance of those assets. To suggest that an investor in a 144A placement in these assets is no more in need of this information than other investors is irrational. Although by definition the investors in a 144A transaction would be both sophisticated and substantial financial investors, nevertheless, the complexities of the product require the granular level of information that has

been described in the proposed modification to Regulation AB – the asset level disclosure, the enhanced pool disclosure, as well as the waterfall computer program with respect to flow of funds, and certainly also the opportunity to review all of the transaction documents.

We are aware of proposals to create a structured finance QIB or SQIB or QIB/SF. We represent investors that would be included in this category and we strongly oppose its creation. The fact that an investor is a SQIB does not lessen the need for full disclosure.

We suggest that the delivery of the proposed level of disclosure be a prerequisite to any 144A placement. We believe this requirement better suits the circumstances than a backdoor suggestion in the release in the form of a requirement in the transaction documents, that issuers have such information available to investors upon request, reinforced by a new Rule 192. Whether relying upon the definition of a structured finance product or some other definition, the 144A placement vehicle should be available for securitizations. With the exception of certain highly structured products, such as resecuritizations, deal efficiency would not be diminished by public style disclosure. Because of the reluctance of many issuers to assemble such information and to make it available, however, we are concerned that the installation of this requirement, whether by way of a contractual provision or a direct requirement, might encourage issuers to attempt to use the Section 4(2) (or the so-called 4(1½)) exemptions for these offerings. We suggest that in connection with its adoption of these changes to Regulation AB, the Commission also adopt whatever changes may be required to preclude a wholesale run to these exemptions by issuers who are not qualified to use them for products which are not properly the subject matter of their use. We note that whatever ephemeral savings may exist for the issuer to exclude asset-

level information will not be realized since the issuer must be prepared to respond to affirmative investor request for such data. In other words, mechanisms must exist to capture such information and it would be folly on the part of institutional investors not to avail themselves of such data through a simple request.[5]

The notice filing requirement proposed for both Rule 144A as well as Regulation D is appropriate. The content of that notice filing should be sufficiently detailed that anyone reading the notice will understand in a basic way the nature of the offering.

Section 4: ADDITIONAL RECOMMENDATIONS

Post-Offering Rights and Enforcement

Although sponsors, issuers, originators, trustees and servicers are assigned different roles in the ABS, frequently single organizations or their affiliates play multiple roles in the same transaction. This reduces the effectiveness of structural checks and balances and can cloud the prospect that the interests of investors will be aggressively represented as required under the transaction documents. Furthermore, the transaction documents themselves have in the past been so vague as drafted that they allow tepid responses to breaches of representations and warranties and scant attention to the diminishing value of the underlying assets. Servicers of residential

[5] As mentioned *supra* in §1, AMI acknowledges that purely privately negotiated deals should be exempt from these requirements.

mortgage-backed securities have, at times, been unresponsive to their investors and reluctant to address the problems that exist within their pools.

Credit Risk Manager

The need to appoint a Credit Risk Manager arises from the possible conflicts described above. A qualified Credit Risk Manager, selected by the issuer subject to, *inter alia*, a representation of its independence from other parties to the ABS trust, will represent the interests of all certificateholders in investigating and, if warranted, pursuing representation and warranty claims against responsible parties. Although the CRM would have the unilateral discretion to pursue such claims as a fiduciary to the certificateholders, individual or collective investor interests could require the CRM to launch investigations on well-founded investor suspicions. Expanding on existing concepts of Voting Rights commonly found in existing pooling and servicing agreements, Voting Rights aggregating greater than 25% of such interests outstanding could impel the CRM investigation at the expense of the trust. Investors representing below 25% of aggregate Voting Rights could require such investigation, but only at the expense of the inquiring investor(s). In discharging its obligations as a compensated party to the pooling and servicing agreement, the CRM must have complete access to loan and servicing files in order to conduct a proper examination and effectively pursue resulting claims.

Additional Provisions in Transaction Documents

We recommend that Regulation AB mandate certain requirements for transaction documents. We suggest the following additional required provisions in transaction documents:

- A provision that the servicer be required to prepare and have available on either a masked or aggregated basis full credit reports on borrowers within three (3) to six (6) months after the loan origination has occurred and, thereafter, at annual intervals. This review would capture early on many of the violations of underwriting standards that were supposedly in place at the time the assets were originated and make it possible for the servicers to pursue remedies against the borrower or for the CRM to pursue claims against the loan seller more expeditiously.

- Increasing representations and warranties that impose strict liability on sellers or other responsible parties. Examples of such representations and warranties may include repurchase obligations for early payment defaults post-securitization, the absence of fraud the breach of which leads to a material, adverse impact on the loan assets or the pool's securities**,** material compliance with seller's contemporaneous, published underwriting guidelines and compliance with other industry standards and, in the case of mortgage-related ABS, performance of appraisals in accordance with FIRREA. A uniform section of all ABS prospectuses should include a full disclosure of all representations and warranties. As described above, such representations and warranties should be standardized by asset type with exceptions or variances from these standards noted in an exception report.

- A provision that investors representing interests above a reasonable threshold would have specific rights with respect to accessing other investor identities in order to facilitate communications. We propose that investors should have the same rights as shareholders in a corporation to request a list of all other investors. The common practice for fixed income investors to hold bonds in street name stymies investor group formation. A practical response to this is an obligation imposed on trustees to notify affected certificateholders when other investors wish to assemble. The formation of such groups may serve myriad purposes concerning the proper governance of the pool. Voting Rights above a certain threshold would be required to initiate certain actions -such as making demands (subject to contractual protections) upon the trustee and servicer.

- Pooling and servicing agreements typically limit remedies available to MBS investors to curing, substituting or repurchasing defective mortgage loans. In cases where mortgage loan servicers have foreclosed on the mortgage and then liquidated the real property, these actions may have the effect of limiting recourse against mortgage loan sellers or other responsible parties. PSAs should either provide additional, generalized remedies or, for the purpose of preserving repurchase claims, expand the definition of Mortgage Loan to include both real estate owned arising from foreclosure actions and the liquidation proceeds resulting from the sale of REO.

AMI is comprised of large fixed income institutional investors who support the reemergence of a healthy and balanced ABS market. We are very keenly aware through our ABS' investment performance of the past two years of the excesses and oversights embedded in the current market. We believe that our comments, if properly implemented, will expedite the return of these critical markets through additional disclosure, the reliability of such information with consequences for responsible parties and a general alignment of interests among sponsors, originators and the investment community.

On behalf of our membership, let me express again our thanks for giving us this opportunity to comment on the proposed modifications to Regulation AB. Should you or any member of your Staff have any questions with regard to our views, please contact me at 202-327-8100.

Very truly yours,

/Chris J. Katopis/

Chris J. Katopis
Executive Director

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