

August 2, 2010

U. S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attention: Elizabeth M. Murphy, Secretary

File No.: S7-08-10

Re: Realpoint LLC¹ ("Realpoint") Comments to the Proposed Rules²

Summary:

Realpoint supports the Proposed Rules to which comments are herein provided. Realpoint believes that ABS investors will benefit from the requirement of a preliminary prospectus³ that includes standardized data disclosures⁴ and enhanced narrative information.⁵

In general, Realpoint supports the SEC's efforts to afford investors more information and more time to review such information.⁶ Realpoint has previously supported, in comments to prior SEC rule proposals and in SEC or Congressional subcommittee hearings, increased disclosure requirements, a short waiting period for new issues of structured finance products and other measures that benefit investors.

Rule 424(h) Filing⁷

Among the Proposed Rules for ABS shelf registrations is the requirement that the issuer file a preliminary prospectus at least five business days in advance of the first sale of securities in the offering.⁸ Realpoint previously suggested a minimum waiting period of three business days; however, if the asset-level information,⁹ waterfall computer program¹⁰ and other disclosure

¹ Realpoint, a Nationally Recognized Statistical Ratings Organization ("NRSRO"), presently specializes in commercial mortgage-backed securities ("CMBS") securities ratings, research, surveillance services, and data. Realpoint's comments herein are given in and limited to the context of CMBS issuances.

² Proposed Rule, Asset-Backed Securities, Securities and Exchange Commission Release Nos. 33-9117; 34-61858; File No. S7-08-10 (April 7, 2010), 75 Fed. Reg. 23328 (May 3, 2010) [herein, the "Proposed Rules"].

³ Proposed Rules at page 23335.

⁴ E.g., Proposed Rules at page 23355-23364.

⁵ E.g., Proposed Rules at page 23381, 23385.

⁶ The SEC's "proposals are intended to provide investors with timely and sufficient information, . . . reduce the likelihood of undue reliance on credit ratings, and help restore investor confidence in the representations and warranties regarding the assets." Proposed Rules at page 23330.

⁷ Proposed Rules at page 23335.

⁸ Id.

⁹ E.g., Proposed Rules at pages 23355-23356.

¹⁰ E.g., Proposed Rules at page 23378.

requirements¹¹ included within the Proposed Rules are also adopted, then Realpoint believes that a waiting period of five business days¹² provides an appropriate balance between the interests of the issuer and the interests of the investor.¹³

Regarding the SEC's proposal to "eliminate the ability of ABS issuers to establish shelf eligibility in part by means of an [NRSRO] investment grade credit rating,"¹⁴ Realpoint requests clarification regarding the timing and extent of information, if any, to be provided to NRSROs under Rule 17g-5 for new issuances of ABS for which the issuer does not engage NRSROs to issue initial credit ratings. Presently, an ABS issuer makes available to all NRSROs the same information that the issuer provides to the issuer-paid NRSROs for the purpose of determining the initial credit rating.¹⁵ Under the Proposed Rules, if no issuer-paid NRSROs are engaged to rate new issuances of ABS, then investors and NRSROs may only have available to them data and information disclosed in the prospectus and an insufficient period time prior to the filing of the final prospectus during which to review and analyze it.

Undertaking to File Ongoing Reports¹⁶

Regarding the SEC's proposal to require ABS issuers to file ongoing reports,¹⁷ given that trustees and servicers¹⁸ typically report property-level and loan-level information on a monthly

¹¹ Proposed Rules at pages 23354-23389.

¹² The SEC requests comment on its proposed minimum time periods. Proposed Rules at page 23336.

¹³ The SEC "believe[s] that a more orderly process for asset-backed securities offerings with improved investor protections, where investors and underwriters have additional time to assist their review of offerings, may be needed, even if issuers may not always be able to time their offering in a way that takes advantage of short term price peaks. Proposed Rules at page 23334.

¹⁴ Proposed Rules at page 23338; see also fn.17 below.

¹⁵ To rate a new issuance of ABS, the issuer-paid NRSRO must obtain a representation that the issuer, sponsor, or underwriter will: (a) maintain the required information at an identified password-protected website; (b) provide access to such website to any NRSRO that provides it with a copy of the required certification; and (c) post on such website all information the issuer, sponsor, or underwriter provides to the NRSRO, or contracts with a third party to provide to the NRSRO for the purpose of: (i) determining the initial credit rating for the security; or (d) undertaking credit rating surveillance on the security. 17 C.F.R. § 240.17g-5(a)(3).

¹⁶ Proposed Rules at pages 23346-23347.

¹⁷ Under the Proposed Rules, the SEC is proposing to eliminate ABS shelf eligibility based on investment-grade credit ratings and instead require not only ongoing reports but also "risk retention," third-party review of repurchase obligations and a certification "by the [CEO] of the depositor that the assets in the pool have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows to service any payments due and payable on the securities as described in the prospectus." Proposed Rules at page 23331.

¹⁸ "Under Regulation AB, 'servicer' means any person responsible for the management or collection of the pool assets or making allocations or distributions to holders of the asset-backed securities. The term 'servicer' does not include a trustee for the issuing entity or the asset-backed securities that makes allocations or distributions to holders of the asset-backed securities if the trustee receives such allocations or distributions from a servicer and the trustee does not otherwise perform the functions of a servicer." Proposed Rules at page 23338.

basis,¹⁹ Realpoint suggests that the ABS shelf-eligibility reporting requirements include monthly ongoing reports.

Commercial Mortgage-Backed Securities²⁰

Realpoint supports the SEC's proposal to require data standardization.²¹ Realpoint offers the following suggestions for CMBS data points.

For CMBS property-level data points, the tenant data requirements should be expanded beyond that of the "three largest tenants (based on square feet), including square feet leased by the tenant and lease expiration dates of the tenant,"²² to include tenant data for either the entire rent roll or, if that is viewed as too burdensome, at least (i) the largest tenants (based on square feet) that comprise 65% to 75% of the property's square footage, and (ii) all other tenants with lease expiration dates that occur within five years of the cut off date.²³ To permit determination or testing of gross rents, net operating income,²⁴ net cash flow,²⁵ debt service coverage ratio²⁶ and other financial metrics, the tenant data points should include detailed amounts or information regarding base rent, pass-through expense reimbursements (taxes, insurance, repairs, maintenance, utilities and other operating expenses) and capital improvement reimbursements.

For CMBS loan-level data points, the debt structure data requirements should be expanded to include each property's entire debt structure and not just its "loan within securitization."²⁷ Consider adding (i) a code for indebtedness outside of the securitization and (ii) a propose response code for subordinated indebtedness.²⁸ Provision of the entire debt structure would

¹⁹ "According to the CRE Finance Council, transaction disclosure should be updated and provided monthly." Proposed Rules at page 23338, n. 267.

²⁰ Proposed Rules at page 23363, 23370. The SEC is "proposing 61 data points for [a CMBS prospectus]. The data points . . . are primarily based on the definitions included in the CRE Finance Council Investor Reporting Package, current Regulation AB requirements and staff review of current disclosure. . . . [The SEC is] not proposing, however, to include every data point included in the CRE Finance Council reporting package." Proposed Rules at page 23363. The SEC is "proposing to require 47 additional data points for periodic reports that relate to [CMBS]." Proposed Rules at page 23370. Of those 47 data points for periodic reports, 29 are data points included within the 61 data points for a CMBS prospectus. See Proposed Rules at page 23510-23512.

²¹ Id.; Proposed Rules at page 23355.

²² Proposed Rules at page 23364.

²³ The "cut-off date" is the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders. Proposed Rules at pages 23356, 23422; See § 229.1100(c).

²⁴ The SEC is proposing to require a code to indicate how net operating income, net cash flow and the debt service coverage ratio was calculated. Proposed Rules at page 23364, 23370.

²⁵ Id.

²⁶ Id.

²⁷ Schedule L, Item 3(a)(2), states that "[t]he code relates to loan within securitization." Proposed Rules at page 23425.

²⁸ The SEC's proposed responses include codes for pari passu debt, A/B/C participation structures and mezzanine financing, Proposed Rules at page 23470, but not for subordinated debt.

allow investors or other users of this information to understand a property's entire capitalization stack and its true DSCR not just its DSCR based on its indebtedness within the securitization.

Realpoint wishes to take this opportunity to point out a typographical error on Proposed Rules page 23509. The definition of Schedule L-D, Item 3(a)(1), on Proposed Rules page 23509 needs to be revised to match its definition on Proposed Rules page 23433 (which is "[p]rovide the number of months until the earlier of the scheduled loan maturity or the current hyperamortizing date"). Each of Schedule L, item 3(a)(3), and Schedule L-D, Item 3(a)(1), will then have the same proposed title and definition.

When Asset-Level Data Would be Required in the Prospectus²⁹

Realpoint believes that the SEC should provide further guidance³⁰ regarding what is an acceptable "measurement date" for asset-level data that is part of a prospectus filed under Rule 424(h).³¹ As noted above, trustees and servicers typically report property-level and loan-level information on a monthly basis; therefore, with respect to tenant and debt information, Realpoint believes that the "measurement date" should be within forty five (45) days of the filing date.

Pool-Level Information³²

Realpoint agrees with the SEC's approach of requiring disclosure regarding "assets that deviate from the [originator's] disclosed origination standards" and steps "undertaken by the originator or originators to verify the information used in the solicitation, credit-granting or underwriting of the pool assets."³³

²⁹ Proposed Rules at page 23356.

³⁰ The SEC has requested comment as to whether, for any asset-level data, its proposed "measurement date" or "cut-off date" are "inappropriate or too burdensome" and whether it should "provide further guidance about what would be a recent practicable date for purposes of determining the measurement date." Proposed Rules at pages 23356-23357.

³¹ The SEC has proposed that the issuer provide asset-level data as of: (1) a "measurement date," which is a date designated by the registrant that is as recent as practicable, for information that is part of a prospectus filed under Rule 424(h); or (2) the "cut-off date," as specified in the instruments governing the transaction (i.e., the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders), for information that is part of a final prospectus or a report filed on Form 8-K. Proposed Rules at pages 23356, 23422. That "cut-off date" is consistent with existing Rule 1101(c). See § 229.1100(c).

³² Proposed Rules at page 23376-23377.

³³ The SEC proposes to require disclosure regarding: (i) "the underwriting of assets that deviate from the disclosed origination standards . . . accompanied by specific data about the amount and characteristics of those assets that did not meet the disclosed standards[;]" and (ii) "steps [that] were undertaken by the originator or originators to verify the information used in the solicitation, credit-granting or underwriting of the pool assets." The SEC also proposes to require disclosure regarding: (a) "certain remedies available to investors in the transaction agreements," . . . such as repurchase obligations[;]" (b) "how modification [of assets] may affect cash flows from the assets or to the securities[;]" and (c) "whether or not a fraud representation is included among the representations and warranties." Proposed Rules at pages 23376-23377.

Realpoint suggests that the SEC require not only the proposed “disclosure[s] on assets that deviate from the disclosed origination underwriting standards, but also “the amount of assets that do not meet those factors” and “identif[ication of] each exception loan.”³⁴

Waterfall Computer Program³⁵

Realpoint supports the “waterfall computer program”³⁶ requirement but suggests that the SEC not limit the means to satisfy this requirement to one programming language.³⁷ With respect to the means by which issuers may satisfy filing requirements of this nature, the SEC should avoid creating a monopoly in favor of any particular software, data, information, security-identification or other vendors. The SEC and issuers may benefit from promoting, or at least permitting, competition and product development.

Realpoint believes that the waterfall computer program³⁸ and its narrative description³⁹ should be filed with or within a certain time after the initial Rule 424(h) filing to allow investors to review, and perform analyses using, this information prior to receipt of a final prospectus.⁴⁰ Otherwise, the proposed five-day waiting period⁴¹ may not be sufficient.

Identification of the Originator⁴²

Realpoint believes that each originator of assets within a CMBS pool should be identified.⁴³ As part of their cash flow analyses or credit rating processes, or evaluation of repurchase obligations,⁴⁴ investors and rating agencies need to know each lender’s financial condition and lending policies.

³⁴ Proposed Rules at page 23377.

³⁵ Proposed Rules at page 23378-23381.

³⁶ Id.

³⁷ The SEC has asked for comment as to whether: (i) “the waterfall computer program [should be] in a single programming language, such as Python, to give investors the benefit of a standardized process, (ii) more than one programming language be allowed, and (iii) to require “only open source programming languages or [to] allow fully commercial or partly-commercial languages.”

³⁸ The SEC has asked for comment as to whether the Rule 424(h) filing should include the waterfall computer program. Proposed Rules at page 23380.

³⁹ Proposed Rules at page 23381.

⁴⁰ The SEC has asked for comment as to whether: (i) “the waterfall computer program decrease[s] the amount of time needed to analyze the information in a prospectus,” or (ii) “analysis of the waterfall computer program require[s] [an] increase [to] the time period for the Rule 424(h) filing.” Proposed Rules at page 23380.

⁴¹ Proposed Rules at page 23335.

⁴² Proposed Rules at page 23378-23381.

⁴³ The SEC has asked for comment regarding originator identification and the thresholds for originator identification. Proposed Rules at page 23381.

⁴⁴ Proposed Rules at pages 23376-23377.

Servicer⁴⁵

Realpoint believes that the definition of “servicer” should expressly include any “special servicer”⁴⁶ and that the special servicer’s risk retention and affiliations with other arrangers be disclosed. To implement this suggestion, consider: (a) renumbering Item 1108(b)(2)(iv)⁴⁷ to 1108(b)(2)(v), and (b) amending Item 1108(b)(2)(iv) to “Each special servicer.”

Prospectus Summary⁴⁸

Realpoint supports the SEC’s proposal to require the prospectus summary to include “statistical information regarding the types of underwriting or origination programs, exceptions to underwriting or origination criteria and, if applicable, modifications made to the pool assets after origination.”^{49, 50} Realpoint believes that to also provide line item disclosure requirements⁵¹ would be consistent with and further the benefits of the asset-level data standardization.

Static Pool Information⁵²

Realpoint supports the SEC’s proposals to require static pool information “for all types of issuers”⁵³ and to require “[c]onsistency of presentation for delinquencies across issuers within the same asset class.”⁵⁴

⁴⁵ Proposed Rules at page 23383.

⁴⁶ The SEC has asked for comment regarding whether to make any changes to Item 1108(b)(2) to clarify what disclosure should be included. Proposed Rules at page 23383.

⁴⁷ Although Item 1108(a) refers to “special servicers,” 17 CFR § 229.1108(a), Item 1108(b)(2) does not, 17 CFR § 229.1108(b)(2). Item 1108(b)(2)(iv) refers to “Any other material servicer responsible for . . . performing work-outs or foreclosures, or other aspect of the servicing of the pool assets or the asset-backed securities upon which the performance of the pool assets or the asset-backed securities is materially dependent.” *Id.*

⁴⁸ Proposed Rules at page 23383.

⁴⁹ *Id.*

⁵⁰ Proposed “Instruction to Item 1103(a)(2). What is required is summary disclosure tailored to the particular asset pool backing the asset-backed securities. While the material characteristics will vary depending on the nature of the pool assets, summary disclosure may include, among other things, statistical information of: The types of underwriting or origination programs, exceptions to underwriting or origination criteria and, if applicable, modifications made to the pool assets after origination.” Proposed Rules at page 23420.

⁵¹ The SEC has asked for comment as to whether it should specify line item disclosure requirements. Proposed Rules at page 23384.

⁵² Proposed Rules at page 23384 to 23386.

⁵³ The SEC has requested comment as to whether to: (i) require all issuers to provide static pool data, whether or not material; and (ii) “adopt the changes to Item 1105 for all types of issuers (instead of only amortizing asset pools, as proposed) to require narrative disclosure of the static pool information presented, require the methodology used in determining or calculating the characteristics, and terms, and a description of how the assets in the static pool differ from the pool assets underlying the securities being offered.

Thank you for the opportunity to comment on the Proposed Rules. Please do not hesitate to contact us if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert Dobilas", is positioned above the typed name.

Robert Dobilas,
CEO and President,
Realpoint LLC

⁵⁴ Item 1105(a)(1) requires “static pool information, to the extent material, regarding delinquencies, cumulative losses and prepayments for prior securitized pools of the sponsor for that asset type.” 17 CFR. § 229.1105(a)(1).