

November 15, 2010

VIA ELECTRONIC MAIL ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))

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

Re: **DISCLOSURE FOR ASSET-BACKED SECURITIES REQUIRED BY  
SECTION 943 OF THE DODD-FRANK WALL STREET REFORM AND  
CONSUMER PROTECTION ACT**  
**Release Nos. 33-9148; 34-63029; File No. S7-24-10**

The Corporate Trust Services division of Wells Fargo Bank, National Association (“Wells Fargo CTS”) welcomes the opportunity to respond to the request for comment by the Securities and Exchange Commission (the “SEC”) on certain aspects of the SEC’s Release Nos. 33-9148 and 34-63029, Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Proposed Rule”) relating to the implementation of Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”). Wells Fargo CTS is an industry leader in the provision of corporate trust and related services to the structured finance industry, including acting as trustee, master trustee, master servicer, back-up servicer, collateral agent, document custodian, securities administrator, and in many other capacities, for a wide-ranging universe of securitization transactions. By our count, we have provided such services in connection with asset-backed securitizations involving as many as 25 different asset classes, including residential and commercial mortgages, auto loans and leases, equipment finance transactions, and timeshare and credit card receivables, among others. We believe we are in a unique position to provide useful input for the SEC to consider in their rulemaking mandate with respect to the Proposed Rule.

## I. INTRODUCTION

The SEC proposes to add new Rule 15Ga-1, which would require any “securitizer” of an “asset-backed security” (as such terms are defined in Dodd-Frank) to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by that securitizer, so that investors may identify asset originators with clear underwriting deficiencies. We realize that repurchase request information can be an important and useful tool for investors in

assessing originator practices and deficiencies across the securitization market. Although we generally support the SEC's efforts in this regard, we have several concerns with the Proposed Rule.

We understand that the Securities Industry and Financial Markets Association, the American Securitization Forum, the American Bankers Association, and the Commercial Real Estate Finance Council will each submit a comment letter addressing these (and other) issues raised by the Proposed Rules (although there are some variations). We generally support those positions, but felt it important to offer specific comments reflecting the unique role of the trustee, the master servicer and other "ministerial" service providers involved in asset-backed securities transactions.

## **II. APPLICATION OF THE PROPOSED RULE TO TRANSACTIONS IN EXISTENCE PRIOR TO THE EFFECTIVE DATE OF THE PROPOSED RULE**

The SEC's discussion of the Proposed Rule states that trustees may be asked by securitizers to provide information regarding repurchase requests made upon a trustee by an investor, irrespective of the trustee's determination to make a follow-up repurchase request on the relevant securitizer based on such investor request.<sup>1</sup> The SEC acknowledges that a securitizer may not be able to obtain and disclose complete information regarding these types of repurchase requests because (i) the securitizer may never have become aware of them, and (ii) the trustee may not have tracked them. As set forth more fully below, we believe, at least with respect to clause (ii) above, that is indeed the case. Additionally, we feel it important to emphasize to the SEC that the application of the Proposed Rule's look-back provisions to transactions in existence prior to the effective date of the Proposed Rule will be highly problematic, at least to the extent the SEC or other industry participants expect or believe that historical repurchase data is obtainable from trustees.

Trustees operate pursuant to the terms of specific and limited contractual requirements contained in the underlying transaction documents and are not in a position to provide information which historically has not been maintained. We do not believe trustees currently have mechanisms in place to assist securitizers with this gathering of historical information. What little of this information that may be available would be piece-meal at best and may vary greatly across transactions and asset classes. Information that might be available would require extraordinary effort to produce and would equate in some instances to looking for a "needle in a haystack".

The tracking of repurchase request information has not historically been required under the applicable governing documents. We can confirm that Wells Fargo CTS has not

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<sup>1</sup> Section II(3) of the release accompanying the Proposed Rule: "We also note that investors have demanded that trustees enforce repurchase covenants because transaction agreements do not typically contain a provision for an investor to directly make a repurchase demand. As we stated earlier, Section 943(2) does not limit the required disclosure to those demands successfully made by the trustee; therefore our proposals would require investor demands upon a trustee be included in the table, irrespective of the trustee's determination to make a repurchase demand on a securitizer based on the investor request."

tracked such information in ways that would be statistically meaningful or readily recoverable. We do not believe our practice is out of the ordinary in this respect. While there may be some information available on certain of the transactions for which we serve as trustee (as discussed further in the next paragraph), the tracking of this information was not designed to provide the information necessary to fulfill the requirements of the Proposed Rule and is extremely limited in scope and inconsistent in nature.

Prior to the financial crisis, repurchase requests were made much less frequently. In response to the increased level of repurchase requests, we have recently centralized and streamlined the processing of these requests in certain areas. However, these procedures are nascent and therefore limited in scope. They were not designed or implemented to comply with the reporting or tracking requirements of the Proposed Rule.

Additionally, we would also note that it is not always the trustee who is responsible for making repurchase requests upon an originator. In some transactions it might be the master servicer, special servicer or other party to the transaction who would make such a request, not the trustee.

Because historical repurchase data has generally not been consistently tracked by industry participants, including trustees, we are concerned that application of the Proposed Rule's look-back provisions to repurchase requests made with respect to transactions in existence prior to the effective date of the Proposed Rule will, if implemented, result in investors being provided with limited, incorrect, inconsistent, and possibly even materially misleading information, which would seem to be at odds with the apparent goals of the Proposed Rule.

We do not believe that Section 943 requires such a retrospective application and we have seen nothing in the statute which contradicts this view. Accordingly, we believe the requirement to report and disclose repurchase request information should be implemented on a prospective basis and only apply to issuances of asset-backed securities occurring after the effective date of the Proposed Rule.

### **III. DEFINITION OF "REPURCHASE REQUESTS" GOING FORWARD**

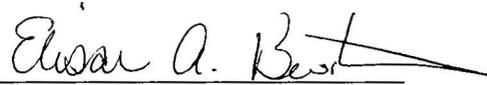
We also believe that the Proposed Rule is unclear on what constitutes a repurchase request. The more subjective the definition, the more likely it will be that tracking and reporting across securitizers and transactions will differ. What constitutes a repurchase request will vary from originator to originator and the data will likely be skewed and less useful to investors. Going forward, we suggest that the definition of "repurchase request" for purposes of the Proposed Rule be limited to repurchase requests formally submitted pursuant to the terms of the underlying transaction documents and require an allegation of a specific representation and warranty breach.

#### IV. CONCLUSION

For the reasons stated above, we urge the SEC to not apply the Proposed Rule to transactions in existence prior to the effective date of the Proposed Rule. We also suggest that the definition of “repurchase request” for purposes of the Proposed Rule be limited to repurchase requests formally submitted pursuant to the terms of the underlying transaction documents and require an allegation of a specific representation and warranty breach.

We appreciate the opportunity to provide the foregoing comments and look forward to working with the SEC in their rulemaking process.

Sincerely,

A handwritten signature in cursive script that reads "Elisabeth A. Brewster". The signature is written in black ink and is positioned above a horizontal line.

Elisabeth A. Brewster  
Vice President  
Wells Fargo Bank, National Association,  
Corporate Trust Services