



November 15, 2010

**VIA ELECTRONIC MAIL** (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**

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to respond to the request for comment by the Securities and Exchange Commission (the “Commission”) on the Commission’s Release Nos. 33-9148; 34-63029, Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; Proposed Rule (the “Proposing Release”).<sup>2</sup>

SIFMA’s comments on the Proposing Release were developed by its diverse membership, which includes financial institutions that act as securitization sponsors, broker-dealers that act as underwriters and placement agents, and asset managers that include some of the largest, most experienced investors in asset-backed securities (“ABS”) and other structured finance products. The comments reflect SIFMA’s goal of restoring

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<sup>1</sup> The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>2</sup> SEC Release Nos. 33-9148; 34-6302; File No. S7-24-10 (Oct. 13, 2010).

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capital flow to the securitization markets and increasing the availability of credit to American consumers and small businesses.

SIFMA wishes to extend our thanks to the Commission for the obvious care and extraordinary effort involved in producing a proposed rulemaking as comprehensive as the Proposing Release. We appreciate and support many of the proposed rules, and while we believe that modification of some of the proposals is necessary, we are convinced that these modifications will help to restore investor confidence in, and stimulate the recovery of, the securitized products market.

### **Summary of Comments**

A summary of SIFMA's views on the proposals is as follows:

- SIFMA supports the scope of Rule 15Ga-1 being limited, as proposed, to transactions for which the related transaction documents contain covenants to repurchase or replace an asset.
- Rule 15Ga-1 should exclude Asset-Backed Commercial Paper.
- The obligation to disclose repurchase demands should apply to securitized assets of a single asset class.
- Reporting repurchase requests should be required only to the extent a securitizer has a reportable repurchase history.
- The definition of securitizer should be applied solely to Fannie Mae or Freddie and not the financial institution transferring loans to Fannie Mae or Freddie Mac.
- To the extent the final rule is applied retrospectively, what constitutes a "repurchase request" should be defined in connection with such retrospective disclosure.
- Filing of Form ABS-15G should be required no more frequently than quarterly.
- Regulation AB disclosures should be presented in the same format as required under proposed Rule 15Ga-1.
- Foreign-offered ABS should be excluded from the scope of Rule 15Ga-1.
- NRSROs should disclose the required information for "similar securities" based on the narrowest definition of asset class and sub-type.

- The phase-in period for the prospective application of disclosure requirements under proposed Rule 15Ga-1 should be at least 18 months from the date of publication of the final rule.

## **Comments**

SIFMA supports improvements in disclosure related to fulfilled and unfulfilled repurchase requests. We also generally support the proposals to require the nationally recognized statistical rating organizations (“NRSROs”) to include information in their credit rating reports regarding representations and warranties and enforcement mechanisms available to investors upon breach. We comment on certain aspects of these proposals below.

### **I. Types of Securities Subject to Rule 15Ga-1**

We recognize that proposed Rule 15Ga-1 which implements Section 943(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) requires a securitizer of ABS to disclose repurchase requests by filing new proposed Form ABS-15G.<sup>3</sup> The new disclosure requirements under Rule 15Ga-1 would apply to ABS as defined in the Dodd-Frank Act (“Exchange Act-ABS”) which is substantially broader than the definition of an ABS set forth in Regulation AB.

SIFMA supports the scope of Rule 15Ga-1 being limited, as proposed, to transactions for which the related transaction documents contain covenants to repurchase or replace an asset.<sup>4</sup> In addition, we believe that Asset-Backed Commercial Paper (“ABCP”) should be expressly excluded from the types of securities subject to the proposed rule because ABCP programs have representations and warranties but not necessarily ones that relate to the characteristics and the quality of the collateral and do not necessarily provide for covenants relating to the repurchase of the collateral upon a breach of representations and warranties. ABCP investors are focusing on different criteria when investing in ABCP than other ABS investors. In particular, investors in ABCP value information related to the liquidity and credit facilities supporting the ABCP. Such investors also look to the history and strength of a particular ABCP conduit. Repurchases for breaches of representations and warranties are not as relevant to the ABCP investor in light of the very short maturity of the ABCP, the revolving nature of the assets supporting the ABCP and the protection afforded by the liquidity and credit facilities supporting the ABCP. In addition, the companies that utilize ABCP for their financing needs rely on the confidential nature of the information related to assets that the ABCP conduit purchases.

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<sup>3</sup> 75 Fed. Reg. at 62720.

<sup>4</sup> *Id.*

SIFMA's members active in municipal debt markets will submit a separate response to this proposal, highlighting their concerns with the rules.

## **II. Scope of the Term "Securitizer"**

### **A. Limiting Disclosure to a Single Asset Class**

SIFMA members believe that the obligation to disclose repurchase demands should apply to securitized assets of a single asset class. We do not interpret the language of Section 943(2) of the Dodd-Frank Act to require aggregation of multiple asset classes in a *single filing*, nor do we see anything in the legislative history that implies that a single filing should be made by a securitizer to cover all asset classes. We note that Congress used the term "securitizer" elsewhere in the Dodd-Frank Act in a manner indicating that such term is intended to be an asset class-specific concept. For example, in paragraphs (i)(1) and (2) of new Section 15G, the drafters distinguish between the effective date for "securitizers and originators of asset-backed securities backed by residential mortgages" versus "securitizers and originators of all other classes of asset-backed securities." We believe this interpretation is consistent with Congressional intent and also makes such disclosure more useful to investors. Our members agree that because origination channels within a particular originator operate independently for different asset classes, and because the reasons for repurchase vary greatly among the various asset classes, multiple asset class-based disclosure does not aid an investor in making an investment decision with regard to any given transaction. Rule 15Ga-1 would accommodate our investor members if the material information provided in each filing disclosed the demand and repurchase requests across all trusts consisting of the same asset class securitized by a securitizer. We acknowledge that as a result of this suggested change some securitizers may be required to file more than one report, but our members feel that our suggested change will produce more consistent reports that are more useful to investors in evaluating transactions as we recognize that investors make such evaluations on the basis of a single asset class. The Commission could also provide securitizers of multiple asset classes with instructions on how to denote on the proposed form which asset class was covered thereby.

### **B. Application of the Term "Securitizer" to the Government-Sponsored Entities ("GSEs")**

Given that investors in Fannie Mae and Freddie Mac mortgage-backed securities ("MBS") do not make repurchase demands, or cause repurchase demands to be made, on the trust that issues the securities, the disclosure related to these MBS is of a different nature. Repurchase demands with respect to these securities tend to flow from the GSE to a seller of loans that have been guaranteed by, or back securities guaranteed by, the GSE. This is in contrast to the situation with which investors in private label MBS are more concerned-- where repurchase demands flow from an investor, trustee or servicers to the securitizer. We also note that repurchases of loans in the GSE context only happen

after such loans are removed from the trust by the GSE. Nevertheless, our investor members support application of the rule to the GSEs. With respect to GSE MBS, we request that the definition of securitizer would be applied solely to the GSE and not the financial institution structuring the GSE MBS issuance. This would allow investors to review a single filing by a GSE in order to be presented with all of the required information related to all originators which sell assets to such GSE. The GSEs and are also in the best position to disclose this information as they are responsible for managing the securitization program as a whole whereas sellers to the GSEs or financial institutions structuring and distributing their MBS are privy only to discreet transactions and would not have the relevant information on an aggregate basis across the GSE's MBS platform.<sup>5</sup>

### **III. Application of the Rule**

Our issuer and sponsor members have raised numerous concerns with the retrospective application of proposed Rule 15Ga-1 in the context of both the filing of five years of repurchase data preceding the effective date on new proposed Form ABS-15G and the disclosure of three years of repurchase data preceding the effective date pursuant to Item 1104 of Regulation AB.<sup>6</sup> On the other hand, our investor members see value in historical data. We summarize member views here and discuss them further below.

- SIFMA members agree that historic data will have significant “noise,” given that there were no standards for reporting, and processes were not in place to collect this data. Therefore, data would be incomplete, at best and not standardized. Additionally, if the Commission takes a broad view of what is a “repurchase demand,” then there will necessarily be more noise added, and less comparability among securitizers.
- SIFMA members agree that the standard of liability should be lower for historical data, as strict liability is not appropriate in connection with information that market participants did not expect to have to disclose and are only required to disclose after-the-fact and for which there are genuine concerns over completeness and reliability.
- Given the above, SIFMA members also agree that retrospective repurchase requests should be segmented according to whether or not demands were made in accordance with the transaction documents.

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<sup>5</sup> SIFMA acknowledges that the future state and organization of the GSEs is an issue that may soon be addressed in Congress. SIFMA members believe that to the extent that there is a party performing a centralized aggregation and securitization function across a large number of loan sellers, similar to the current role of the GSEs, that this party will remain best positioned to report on the entirety of its securitization program(s).

<sup>6</sup> 75 Fed. Reg. at 62721-22.

- SIFMA members believe that reporting repurchase requests should be required only to the extent a securitizer has a repurchase history.
- SIFMA's issuer and sponsor members strongly believe that demands not made in accordance with the relevant transaction documents should not be reported, given that they are not bona fide repurchase demands.
- Investors on the other hand believe that structural impediments found in existing documentation result in an overly restrictive threshold for recognizing bona fide repurchase demands. Investors believe, therefore (while acknowledging issues with noise and incomplete data), that these demands that were not made in accordance with the relevant transaction documents would provide directional information as to the responsiveness of securitizers and originators of assets as well as identify originators with a history of underwriting deficiencies, and consequently should be reported.
- Going forward, all members agree that transaction documents will be more specific as to repurchase request protocol. Therefore, prospectively upon effectiveness of the final rule, only repurchase demands made in accordance with the transaction documents should be reported.

Our issuer and sponsor members believe that the retrospective application of the rule will actually yield a result that is contrary to the intent of the Dodd-Frank Act which does not expressly require such retrospective disclosure. These members believe that the proposed requirements will not increase transparency in the securitization markets as the information provided could be misleading to investors in several ways as described below. Moreover, issuer and sponsor members note that they are not aware of anything in the legislative history of the Dodd-Frank Act that would suggest that retrospective application of this requirement was intended or necessary to carry out the intent of the Dodd-Frank Act. As such, our issuer and sponsor members ask that the Commission recognize their concern regarding the potentially misleading nature of retrospective data (discussed further below) and therefore require only prospective application of the proposed rule such that repurchase data would only be provided on ABS issued after the effective date of the proposed rule.

Our issuer and sponsor members have noted several limitations with retrospective data. First, and most importantly, the information provided to investors will be incomplete. The information required to satisfy the reporting and disclosure requirements described in the Proposing Release was not and currently is not maintained by either securitizers or trustees in a manner that will allow the data to be comprehensively reported pursuant to the proposed rule or in a manner where data could be standardized to permit meaningful comparison. In many instances, the securitizer may not have maintained any information necessary to satisfy the disclosure requirements under the

proposed rule and would necessarily rely entirely on the information supplied by the applicable trustee, although the securitizer will have liability for the information under the Exchange Act. Trustees did not record the information in a manner that is easily obtainable and in many instances will need to complete the burdensome task of reviewing thousands of paper files related to repurchases in order to assemble the necessary data. Trustees might be unwilling to devote considerable resources to this effort on a voluntary basis. Seemingly in recognition of this shortcoming, the Proposing Release would allow securitizers to explain in a footnote that information regarding investor repurchase requests made prior to the effective date of the proposed rules is not available.<sup>7</sup> Issuer and sponsor members believe that the footnote will by no means be sufficient to render the available retrospective information meaningful to investors.

Our issuer and sponsor members also note that even if the securitizer and trustee amass the data available to them to comply with the disclosure requirements under the Proposing Release, the historical information reported and disclosed to investors will likely be misleading. Because every securitizer and trustee was unprepared for this requirement, the availability, characterization and categorization of information will vary greatly among securitizers disclosing the information and may result in certain securitizers and originators being portrayed as having a record in material variance with their actual performance. Further, several financial institutions, in the midst of responding to the credit crisis, acquired other entities with significant securitization programs. In the course of integrating these acquisitions, many employees of the now defunct securitizers are no longer employed by the surviving financial institutions, making historical data on repurchase requests, to the extent it exists, that much more difficult to obtain. The inconsistent nature of the data will limit its usefulness as a tool to comparatively evaluate originators and securitizers. By applying the requirement retrospectively, much of the data will describe originators or securitizers that may now be only originating or securitizing asset class(es) other than the asset class(es) to which any available historical repurchase information relates. In light of the questionable value of this information as described above, SIFMA's issuer and sponsor members do not believe that it is appropriate to cause the industry to bear the burden of compliance with the rule on a retrospective basis.

However, SIFMA's investor members see value in historic repurchase demand data. Investors have struggled to obtain data regarding the disposition of repurchase demands. SIFMA's investor members would prefer to have as much information as possible available pursuant to the proposed rule despite the points described in the preceding paragraphs but they readily acknowledge that liability for such information should be limited in light of concerns raised by issuers, originators and trustees. Such investors would prefer to have the data available and then make their own determinations as to how to utilize the data and how much weight to assign to it. At the least, most investor members believe that the repurchase demand data will allow for an analysis of

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<sup>7</sup> 75 Fed. Reg. at 62722.

the relative responsiveness of securitizers and asset originators. Additionally, other investor members note that the purpose of the regulation is to highlight for investors the identity of those asset originators that have habitual issues with underwriting deficiencies. Therefore, SIFMA investor members request that the Commission maintain the proposed rule despite the concerns raised earlier in this letter.

As such, to the extent that the Commission requires retrospective application of the proposed rule, SIFMA's entire membership, including issuers and investors, is in favor of the Commission revising the proposed rule to provide that retrospective data may be furnished to investors but that such data does not need to become part of the statutory prospectus. Therefore, we request that, akin to the challenges the industry initially faced in complying with static pool data in 2006, Section 11 liability should be limited with respect to the retrospective data disclosure and only attach in connection with prospective disclosure for transactions executed after the effective date of the final rule. Further, to the extent that the Commission requires application of the proposed rule retrospectively, then with respect to the disclosure of any data relating to transactions executed prior to the effective date of the rule, we suggest that the securitizer should be allowed to publish such data on a website in lieu of filing and provide a link to such information in the prospectus, as applicable, and that the website data provided for transactions executed prior to the effective date would not be deemed to be part of the prospectus or registration statement. To the extent that the Commission requires retrospective application of the proposed rule, we believe that this proposal best satisfies the concerns of issuers and investors.

In addition, because our issuer and sponsor members feel so strongly that any retrospective information required to be disclosed will be incomplete, to the extent that the Commission requires retrospective application of the proposed rule, we ask that for transactions that closed prior to the effective date of the final rule, the Commission clarify that the Rule 10b-5 obligation would be deemed satisfied where a diligent effort was made to gather the information required to be disclosed under the rule. In the alternative, we ask that the Commission permit issuers to include a disclaimer with respect to such information which calls to investors' attention the potential shortcomings of the historical data provided and a description by the issuer of the diligent efforts undertaken to obtain such information.

#### **IV. Defining What Constitutes a Repurchase Request**

In order to ensure the integrity of the data across the industry, we request that the Commission clarify that the only demands to be reported prospectively under the proposed rule beginning on the effective date are those that satisfy the procedural and substantive legal thresholds described in the relevant securitization transaction documents. Our comment letter to your proposed revisions to Regulation AB set forth one suggested manner in which the transaction documents could be revised to clarify the repurchase

process.<sup>8</sup> We anticipate that such a process or other more detailed mechanisms for repurchases will be further developed and agreed upon by industry participants in the near future. These more detailed mechanisms will benefit issuers and investors alike. By limiting the disclosure requirement to those demands for repurchase that satisfy the transaction document requirements, the Commission will thereby encourage the industry to develop these important standards. The repurchase data disclosed to investors would also become more meaningful as investors will then have a clear understanding of the meaning of a “repurchase demand.” Investors will have the benefit of knowing that the demands reported on a particular originator or sponsor satisfied a specific review process and were deemed of sufficient credibility by the transaction parties to merit a formal repurchase request being made upon the responsible party. By developing these mechanisms and linking the disclosure requirement to such written mechanisms, this will also prevent a particular investor from unduly affecting the data on particular originators by making spurious repurchase claims on an entire pool of assets or by making any other types of claims in bad faith. Likewise, originators and sponsors will be operating under a more stringent repurchase regime.

To the extent that the Commission requires retrospective application of the proposed rule, SIFMA asks that the Commission (i) clarify that securitizers are permitted to group demands for repurchase according to those that followed the procedures of the underlying transaction agreements and those that were made outside of the scope of the underlying transaction agreements and (ii) narrowly define the scope of repurchase demands that followed the procedures of the underlying transaction agreements as further explained below. We believe that this will result in the presentation of the data in a more objective manner across originators and issuing entities while preserving the investors’ interest in receiving as much data as possible.

If the Commission applies the final rule retrospectively, SIFMA members suggest that, further to clause (ii) in the preceding paragraph, the Commission include a definition of what constitutes a repurchase request that followed the procedures of the underlying transaction agreements for the purposes of such retrospective application. We suggest that such reportable repurchase requests be limited to those that (i) are made by a party with the right under the transaction documents to bring a claim to enforce a repurchase request, (ii) cite the representation and warranty that was breached, (iii) provide evidence that the harm suffered as a result of the breach met any materiality standard for repurchase that may be included in the transaction documents, and (iv) cite evidence to support existence of the claimed breach. Financial institutions may not have preserved records relating to repurchase requests that do not meet these criteria as they are not relevant to the determination of representation and warranty repurchase reserves for corporate financial reporting purposes. We intend for this narrow definition of repurchase request to only apply insofar as retrospective reporting is required. For all ABS issued after the effective date this is not necessary, as all SIFMA members expect

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<sup>8</sup> See SIFMA’s letter to Elizabeth M. Murphy, Commission, dated August 2, 2010, at 16-20 (available at <http://www.sec.gov/comments/s7-08-10/s70810-79.pdf>).

that what constitutes a repurchase request and protocol for making demands will be more clearly and thoroughly defined in the related transaction documents. As reflected in our comments on the proposed revisions to Regulation AB referenced above, the industry broadly agrees that past mechanisms regarding repurchase demands could be improved upon.

We believe that the final rule should also provide clarification that an asset that is subject to multiple repurchase requests should be counted only once in the repurchase history.

## **V. Content of Form ABS-15G and Filing Requirements**

SIFMA members generally support the format and content of the table described in the Proposing Release subject to the suggestions described herein.

As described earlier in this letter, SIFMA's issuer and securitizer members are concerned about the materiality and value of the information conveyed to investors pursuant to the proposed rule. They recommend that three years of prior history be the requirement for both disclosure on Form ABS-15G and pursuant to Item 1104 of Regulation AB.<sup>9</sup> Three years of history should be a sufficient amount of data to allow investors to make any judgments as to whether an originator has a pattern of poor underwriting, or how responsive the party is to repurchase demands. On the other hand, our investor members would prefer disclosures in both cases of five years of repurchase history.

We support the Commission's proposal that limits the disclosure requirements to ABS that remain outstanding and are held by non-affiliates. We note, however, that our investor members would prefer that the requirement apply regardless of whether the ABS is outstanding. In addition, to the extent that an originator is no longer in existence, the securitizer should have the option of not providing the information related to such originator. Moreover, securitizers should have the option of excluding information pertaining to an originator where such originator's assets were less than the applicable percentage (pursuant to Item 1104 and Item 1121 of Regulation AB) of the original securitization trust balance measured at the time of origination.

To help investors easily identify trends in originator performance, the required information pertaining to each originator should be broken out by calendar year within the table. With respect to transactions in which the sponsor and the originator are both liable for the same representation and warranty because the sponsor "backstopped" the

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<sup>9</sup> We note that this discussion is relevant whether or not the rule applies retrospectively. If the rule does not apply retrospectively, the look-back period will only apply for transactions after the effective date of the final rule, and will initially (until three or five years have passed) look back only to the date of the first such transaction by the securitizer. If the rule applies retrospectively, the look-back period will be three or five years for any transaction after the effective date of the final rule.

representations and warranties of the originator, the proposed rule should specify that the securitizer should report separately on repurchase demands made first against the originator, if any, and second, repurchase demands made against the sponsor.

We believe the appropriate interval for the filing of Form ABS-15G is quarterly with the filing related to a particular quarter being required within sixty calendar days of the end of such quarter. Monthly reporting is appropriate at the issuing entity level where most ABS are making distributions to investors on a monthly basis and monthly reporting is tied directly to that schedule. Repurchase demands occur independent of that monthly cycle. Furthermore, the demand process does not move fast enough to make monthly reporting worthwhile to investors. For all of these reasons, we believe additional monthly reporting requirements are unduly burdensome to the securitizer and lack a concomitant benefit of improved information. A sixty-day period to prepare and then file the report is appropriate in light of the broad scope of the report and the detailed amount of information to be presented in proposed Form ABS-15G.

In addition, we request that the Commission clarify that reporting is required only if there is a repurchase history for a securitizer to report initially or, following such initial filing of proposed Form ABS-15G, only if there is reportable activity in the applicable ongoing reporting period. This will reduce the filing burden on securitizers and not diminish the position of the investor community who will view this Form ABS-15G in the same manner as a Form 8-K.

We are attaching as Exhibit A hereto a modification of the tabular format of proposed Form ABS-15G that we ask the Commission to provide as an option for issuers. The table on Exhibit A includes two types of "Assets that were not repurchased or replaced." One category refers to those assets where the transaction parties could not resolve the disputed asset. The other category applies to those assets not repurchased or replaced because the demanding party withdrew the request. SIFMA members believe that these column headings may provide securitizers and investors with clearer guidance to the extent issuers have such information.

We also note that our investor members suggest that a time limit be placed on how long an asset may be reported on Form ABS-15G as pending repurchase or replacement before it is automatically moved to the category for "Assets that were not repurchased or replaced." In order to discourage gaming of the system and to discourage frivolous repurchase claims, we recommend that the Commission also add a final column to the chart in which the identity of the party initiating the demand may be disclosed at the option of the securitizer.

We do not believe that proposed Form ABS-15G should be modified to indicate the type of representation and warranty which was the subject of the demand. This information would not be easily comparable across originators because of the variations in the types of representations and warranties as well as the variations in the language in

any given type of representation and warranty. We would also therefore not support any other additional data points being added to the table described in the Proposing Release.

Proposed Form ABS-15G should be filed under the CIK# of the securitizer only, and EDGAR should be modified to the extent necessary to permit an investor to easily locate such filing by searching for the name of the relevant issuing entity.

Multiple entities could be deemed “securitizers” for a single transaction.<sup>10</sup> Our members agree that either the Exchange Act reporting party or the party that contractually assumes a reporting duty would have the obligation to disclose repurchase request information and file proposed Form ABS-15G, but not both.

We also concur with the observation made by the Commission in the Proposing Release that including information beyond the scope of what was required by the proposed rule may jeopardize reliance on the private placement exemption from registration. As such, we ask that the Commission expressly provide that all disclosures properly made in accordance with the proposed rule will not jeopardize a filer’s private placement exemption from registration.

## **VI. Related Regulation AB Disclosure**

With respect to the information to be disclosed pursuant to Items 1104 and 1121 of Regulation AB, SIFMA requests that the information be presented in the same tabular format as required by proposed Rule 15Ga-1 taking into consideration the comments described above with respect to Form ABS-15G. By keeping the content and presentation of the information consistent, the disclosure and filing requirements will be less burdensome for securitizers, and permit investors to more readily review and compare the data.

In addition to these comments, we support applying the materiality standard to the reporting requirements under Items 1104 and 1121 of Regulation AB. Applying a materiality standard is consistent with the general disclosure principles of the securities laws. It also furthers the Commission’s goal of providing the investor with the most relevant and useful set of data points related to the pool the investor is evaluating. SIFMA also supports providing the investor with more detailed information concerning timelines and status of claims as described in the Proposing Release with respect to Items 1104 and 1121 of Regulation AB.<sup>11</sup> Of course, in light of the volume of information to be provided across all issuing entities, we do not support requiring this level of detail for proposed Form ABS-15G.

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<sup>10</sup> For example, in a “rent-a-shelf” transaction, both the renter and the registrant could be deemed securitizers.

<sup>11</sup> 75 Fed. Reg. at 62724 (Question 14).

With respect to proposed Item 1110(c) of the 2010 ABS Proposing Release which the Commission is still considering, if adopted by the Commission, we recommend that the disclosure requirements be adopted in a manner consistent with Item 1104 and with the comments expressed herein.<sup>12</sup> Item 1110(c) would complement the information being provided pursuant to Item 1104 of Regulation AB. For the reasons discussed above, we would again support a materiality threshold being applied to this prospectus disclosure.

We also note by way of background that repurchase obligations are not a form of credit enhancement and as a result are not necessarily material to an investor's decision to invest as described above.

## **VII. Foreign-Offered ABS**

We recommend excluding from the scope of the proposed rule any "foreign-offered ABS" that were initially offered and sold in accordance with Regulation S and that have foreign assets that comprise a majority of the value of the asset pool.<sup>13</sup> In addition, we would recommend excluding from the definition of "securitizer" any foreign private issuers who are selling Exchange Act-ABS in the United States pursuant to an exemption in an unregistered offering. We believe these exclusions are consistent with the Dodd-Frank Act's goals of increasing transparency in securitization transactions and promoting prudent underwriting practices for financial assets in the United States. These exclusions would also ensure that a securitizer's Form ABS-15G filings contain only the information that will be most relevant to domestic investors. If foreign private issuers are not exempted, we are concerned that these securitizers may avoid the filing requirement by excluding U.S. investors from purchasing ABS primarily offered outside of the U.S. depriving such investors of diversification and investment opportunities.

We understand that the Association for Financial Markets in Europe intends to submit a response to this rule proposal and SIFMA generally supports the concerns raised in that letter as they relate to European securitizers.

## **VIII. Requirements for NRSROs**

With respect to the reporting requirements for NRSROs, we request that the Commission require the NRSROs to disclose the required information for "similar securities" based on the narrowest definition of asset class and sub-type. This will ensure

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<sup>12</sup> 75 Fed. Reg. at 62726 (footnote 55-59); see also Asset Backed Securities, SEC Release No. 33-9117 (April 7, 2010) (the "2010 ABS Proposing Release").

<sup>13</sup> 75 Fed. Reg. at 62725-26.

that the information presented is most relevant to an investor who is considering alternative investments in a particular type of ABS, e.g., ABS backed by subprime automobile loans versus prime automobile loans. If there is enough data available, we would also support having this comparison indicate variances from the representations, warranties and enforcement mechanisms of a particular originator.

SIFMA also encourages the Commission to provide NRSROs with more guidance on what constitutes “similar securities” (taking into account our specific requests and recommendations on the subject) and the extensiveness and format of description about the representations and warranties and related enforcement mechanisms for their breach.

SIFMA does not support requiring the NRSROs to report differences from any standard reference set of representations and warranties. The most relevant information is the description in the prospectus of the representations and warranties in that particular transaction and how such representations and warranties differ from “similar securities.”

We ask that the Commission clarify that prospectus delivery requirements under the securities laws will not be violated by providing an NRSRO with the information they require to meet their requirements under the rule prior to the filing of a prospectus.

## **IX. Phase-in Period**

The phase-in period for the prospective application of disclosure requirements under proposed Rule 15Ga-1 should be at least 18 months from the date of publication of the final rule. This will allow market participants and industry groups to develop standard definitions and provisions for repurchase procedures within transaction agreements and for securitizers and trustees to develop systems to track the relevant repurchase information as described above. This will ensure more accurate reporting and reduce “noise” as described above that in turn will better allow investors to compare apples to apples. We also request this phase-in period in light of the myriad of other requirements simultaneously affecting the securitization industry, including the proposed revisions to Regulation AB, the release of the FDIC Securitization Safe Harbor and changes to the accounting standards.

## **Conclusion**

SIFMA appreciates the opportunity to comment on the Commission’s proposed rules and commends the Commission for its detailed and thorough proposing release. Although we generally support the proposed rules, we encourage the Commission to carefully consider the observations and recommendations set forth in this letter to ensure the most effective application of the provisions of the Dodd-Frank Act, and avoid adopting rules that could impede the recovery of the securitization markets.

We greatly appreciate your consideration of the views set forth in this letter, and we would be pleased to have the opportunity to discuss these matters further with the Commission and its staff. If you have any comments or questions, please feel free to contact Richard Dorfman at (212-313-1359 or [rdorfman@sifma.org](mailto:rdorfman@sifma.org)) or Chris Killian (212-313-1126 or [ckillian@sifma.org](mailto:ckillian@sifma.org)).

Sincerely,

A handwritten signature in blue ink that reads "Richard A. Dorfman". The signature is fluid and cursive, with the first name being particularly prominent.

Richard A. Dorfman  
Managing Director  
Head of Securitization

A handwritten signature in blue ink that reads "Chris Killian". The signature is cursive and somewhat stylized, with the last name being the most legible part.

Christopher B. Killian  
Vice President

## EXHIBIT A: FORM ABS-15G – ALTERNATIVE OPTION

Name of issuing entity	Check if registered	Name of originator	Assets that were subject of demand			Assets pending repurchase or replacement			Assets that were repurchased or replaced			Assets that were not repurchased or replaced (Request Withdrawn)			Assets that were not repurchased or replaced (Request Rejected)		
			(#)	(\$)	(% of pool)	(#)	(\$)	(% of pool)	(#)	(\$)	(% of pool)	(#)	(\$)	(% of pool)	(#)	(\$)	(% of pool)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)
CIK #	X	Originator 1															
Asset Class X		Originator 2															
Issuing Entity A...		Originator 3															
Issuing Entity B...																	
Total.....	.....	.....	#	\$		#	\$		#	\$		#	\$		#	\$	