



June 29, 2012

Elizabeth M. Murray
Secretary
Securities and Exchange Commission
101 F Street, NE
Washington, DC 20549-1090

Re: *DTC Rulemaking: Proposed Changes to Timing of Post-Payable Adjustments*,
SEC Release No. 34-66894; File No. SR-DTC-2012-03

Dear Ms. Murphy:

The Commercial Real Estate (CRE) Finance Council® appreciates the opportunity to submit this response to the above-referenced proposed rule change issued in May by the Securities and Exchange Commission.¹ The proposed rule would change the established practice of the Depository Trust Company (DTC) by significantly decreasing the time period—from one year to sixty days—for DTC to process post-payable adjustments of principal and income payments. Under the proposed rule, if post-payment adjustments are necessary outside the 60-day period, issuers and agents must make “adjustments and payment arrangements directly with the affected DTC participants” and obtain a “P&I Allocation Register.”² Our members are concerned that the proposed rule will undermine the strength and liquidity of the commercial real-estate capital finance market by making it more difficult to process post-payment adjustments. Our investor members are further concerned that the proposed rule will deter efforts to process post-payable adjustments in commercial mortgage-backed securities (“CMBS”) deals because such adjustments routinely occur outside the proposed 60-day time period. As discussed in more detail below, CRE Finance Council opposes the proposal and urges that it be disapproved.

The CRE Finance Council is the collective voice of the entire \$3.5 trillion commercial real estate finance market, including portfolio, multifamily, and CMBS lenders; issuers of CMBS; loan and bond investors, such as insurance companies, pension funds, and money managers; master and special servicers; rating agencies; accounting firms; law firms; and other service providers to the commercial real estate capital finance industry. Because its members represent a broad spectrum of interests within the CRE finance market, the CRE Finance Council has an interest in the development of a

¹ Proposed Rule Change, *Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Implement a Change in the Practices of the Depository Trust Company as They Relate to Post-Payable Adjustments*, 77 Fed. Reg. 26796 (May 7, 2012) (hereafter “Proposed Rule”).

² *Id.* at 26797.

regulatory framework that promotes a favorable investing environment for commercial real estate.

We urge the Commission to consider the impact of the proposed rule on commercial real estate finance, including the impact on investors. DTC is the primary clearinghouse for virtually all CMBS issuances. There currently is approximately \$600 billion in outstanding CMBS and, prior to the recession, CMBS funded almost 50 percent of all commercial mortgage lending. CREFC and its members – led by the investment-grade investment community – are concerned that the proposed rule will impose a further impediment to the revitalization of this essential component of the commercial real estate capital markets.

It is critical to appreciate that CMBS and the loans that are securitized through CMBS can be complex, and to resolve adjustment issues multiple parties often-times must be consulted to determine and validate information: Trustees; Master Servicers; Primary Servicers; Special Servicers; and sometimes even legal counsel. In many cases, for example, investors themselves are the first to identify potential adjustment issues but, because they may not be looking closely at CMBS information until they prepare their quarterly internal financial reporting, an investor may not even become aware of a potential issue until three months or more have passed since it first arose. Additionally, it is often the case that payments made during workouts are held in a suspension fund and applied only upon final resolution in accordance with the modified documents. For these reasons – at least in the CMBS space – many post-payment adjustments are not resolved in the proposed 60-day period. For these adjustments, the proposed rule will make processing more difficult, time-consuming, and costly.

Our investor members also are concerned that the proposed rule will deter efforts to resolve post-payable adjustments in commercial real estate deals even within the sixty-day period because the short time-frame itself will be viewed as a resolution impediment. The sixty-day period clearly will impede warranted adjustments beyond the sixty-day period. There is thus a significant concern that the net impact of the proposed rule – if implemented – will be that investors will be paid less than they are due because of the increased costs that would be involved in resolving adjustment issues outside of the DTC clearinghouse process and that doing the resolving outside of that process also will further delay the reallocation of payments to which investors are entitled. This would be a disservice, especially since post-payable adjustments are made for the benefit of investors, and the DTC was established to reduce costs and increase efficiency in clearing and settlement for securities to serve investors.

We endorse the comments submitted by the American Bankers Association (ABA). The ABA also explains why certain post-payment adjustments could not occur within the proposed 60-day time period. Whatever the cause, we agree with the ABA that post-payable adjustments will be delayed if performed outside of DTC without its efficient operational capabilities, and in turn ultimately disserve investors.

We appreciate your consideration of our comments regarding the proposed rule change. We stand ready to provide any assistance that may be helpful.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen M. Renna", with a long horizontal flourish extending to the right.

Stephen M. Renna
Chief Executive Officer
CRE Finance Council

cc: Jerry W. Carpenter
Securities and Exchange Commission

Janet L. Wynn
The Depository Trust Clearing Corporation