



July 30, 2004

By E-Mail: rule-comments@sec.gov

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609
Attn: Jonathan G. Katz, Secretary

**Re: Release Nos. 33-8419; 34-49644 (File No. S7-21-04)
Supplemental Comment Letter**

Ladies and Gentlemen:

On July 12, 2004, the American Securitization Forum (the "ASF") submitted a letter of even date (the "Original Letter") in response to the request for comments made by the Securities and Exchange Commission (the "Commission") in Release Nos. 33-8419, 34-49644 dated May 3, 2004 (the "Proposing Release") relating to the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). As indicated in our Original Letter, the ASF now submits this supplemental letter addressing the Commission's proposals concerning disclosure of static pool data.

The membership task force (the "Task Force") organized by the ASF to respond to the Proposing Release recognized from the outset that formulating a consensus response to the Commission's proposals concerning static pool data represented both a challenge and an opportunity for the ASF. In response, the Task Force established a sub-group (the "Static Pool Sub-Group") the sole focus of which was the Commission's proposals concerning static pool data. Over 60 individuals from nearly 40 ASF member firms participated in the Static Pool Sub-Group. While participation in this sub-group was open to all ASF members, a concerted effort was made to enlist participation by market participants, including issuers and investors, with substantial experience in a variety of asset sectors.

Members of the Static Pool Sub-Group participated in more than 20 meetings, including some meetings comprised solely of investor members.¹ At several junctures in the deliberations of this sub-group, special efforts were made to solicit dissenting points of view before proceeding

¹ Unless otherwise specified, the views of any constituent group (e.g., investors, issuers, sponsors) presented in this supplemental letter are necessarily expressed on the basis of the views of persons within such group that participated in the Task Force.

further on a given course. Where dissenting or conflicting points of view arose, the sub-group went to great lengths and devoted many additional hours to develop practical and meaningful solutions. As a result, the recommendations presented in this letter represent the product of an intense effort by a representative cross-section of the securitization market to offer the Commission a set of consensus responses to the proposals concerning static pool disclosure. We were successful in developing a consensus on all points addressed in this supplemental letter, except with respect to certain issues in the credit card sector where, within the limited amount of time available, issuers and investors were unable to reach a consensus. For those few areas where a consensus was not reached, we present competing viewpoints. With additional time, the ASF will facilitate further dialogue among issuers and investors in that sector in an attempt to develop mutually-agreeable and workable solutions that bridge the remaining differences. We would, therefore, be very interested in convening one or more meetings with the Commission staff to discuss our recommendations generally, even as we work toward consensus in these few remaining areas.

As a final introductory point, while efforts were made to present views with respect to each primary asset sector currently securitized, the ASF's current issuer membership does not enable us to express comprehensive views from the automobile loan and lease sector. We do note, however, that several automobile and truck finance companies (some of which are not currently ASF members) have submitted comment letters to the Commission that include commentary regarding disclosure of static pool information.²

STATIC POOL DATA PROPOSALS

I. ITEMS 1104(e) AND 1110(c) OF PROPOSED REGULATION AB

Item 1104(e) of proposed Regulation AB would require, to the extent material, the disclosure of static pool data in periodic increments (*e.g.*, monthly or quarterly) regarding delinquency and loss experience of static pools of periodic originations or purchases by the sponsor of assets of the type to be securitized. The item contemplates that such information would be provided for the past three fiscal years, or such shorter period of time as the sponsor has been making such originations or purchases, and the most recent interim period. In addition to the sponsor's overall portfolio,³ the item contemplates that such information, if material, would be provided on a pool level basis with respect to prior securitized pools involving the same asset type established by the sponsor during this three-year period. In addition, the item would require, to the extent material, disclosure of static pool data separately based on the factors listed in Items 1110(b) and (c) of proposed Regulation AB. Item 1110(c) of proposed Regulation AB would require, to the

² See, *e.g.*, Letter to the Commission from American Honda Finance Corporation, DaimlerChrysler Services North America LLC, Ford Motor Credit Company, General Motors Acceptance Corporation and Navistar Financial Corporation, "Proposed Rules for Asset-Backed Securities" (Jul. 12, 2004); Letter to the Commission from Toyota Motor Credit Corporation, "File Number S7-04-21" (Jul. 12, 2004).

³ The text of the Proposing Release refers to "static pool data for the sponsor's overall portfolio," while Item 1104(e) refers to "static pools of periodic originations or purchases." We understand the two phrases to be synonymous and request that the Commission confirm the same. As a result, references in this letter to the "sponsor's overall portfolio" and the "sponsor's portfolio" are intended to refer to the sponsor's periodic originations or purchases.

extent material, static pool data for an asset pool itself in the case of securitizations involving seasoned assets.

Where static pool data is material, the Commission also encourages registrants to provide accompanying explanatory information about the data to place it in context for the current pool, including, for example, how the composition of the current pool may differ from the static pool provided.

II. MATERIALITY

The Commission's proposals concerning disclosure of static pool data are among the most significant contained in the Proposing Release. The Commission indicates that it has received requests to require disclosure of such data because investors view static pool data as important information in evaluating an investment in ABS. Historically, however, static pool data has not been included in prospectuses, which reflects the view held by most issuers and underwriters that, in the ordinary course, such data would not be material in connection with a current ABS transaction. The Commission's proposals attempt to address this dichotomy by requiring disclosure of static pool data "to the extent material."

We agree with the Commission and believe that any disclosure standard regarding static pool data should be based on materiality. We also recognize, however, that there has been a complete absence of such disclosure in prospectuses historically, an absence of any market standard defining the scope of the term "static pool data" and an absence of any existing market practice by which to gauge the materiality of static pool data. We believe, therefore, that more specific guidance on application of this materiality standard in the context of static pool data is warranted and would welcome the opportunity to work with the Commission in formulating such guidance.

In the absence of additional guidance, we are concerned that Items 1104(e) and 1110(c) could create a market expectation that static pool data is material and required in all cases, which could lead to unnecessary and excessive disclosure that would increase issuer expense without corresponding benefits to investors.⁴ Equally important, we believe that such a result would obscure and undercut the significance of static pool data in cases where it may, in fact, be material.

In seeking additional guidance, we believe that the touchstone for materiality in the context of static pool data should be whether such data reveals a trend or pattern concerning one or more material elements of pool performance and risk that are not evident from data relating to asset performance as otherwise presented in the prospectus.⁵ We encourage the Commission to include an instruction to Item 1104(e) (and to add a similar instruction to Item 1110(c)) expressly acknowledging this criterion as a benchmark in assessing the materiality of static pool data in any particular circumstance.

⁴ We note that investors believe it would rarely be the case that static pool data as outlined in this letter would not be material.

⁵ The Commission makes this observation in Section III.B.3.a. of the Proposing Release in identifying the potential value of static pool data.

III. DISCLOSURE FRAMEWORK

The Commission’s proposals would require disclosure, to the extent material, of static pool data for several different data groups – the sponsor’s overall portfolio, on a pool level basis for prior securitized pools and, where the current pool is seasoned, based on originations in the pool itself. We believe that the proposed regulations create unnecessary uncertainty regarding the appropriate focus of disclosure concerning static pool data in the context of any given ABS transaction and may promote excessive or redundant disclosure by suggesting that static pool data for multiple data groups may be required. In our view, static pool data (or a variation thereon) for a single data group is sufficient, with the appropriate data group for any given ABS transaction being dependent on two principal variables – first, whether the transaction involves an amortizing asset pool or a master trust revolving asset pool, and second, in the case of amortizing asset pools, whether the transaction involves a seasoned sponsor or a first-time or less seasoned sponsor.⁶

A. Amortizing Asset Pools

In the context of amortizing asset pools, we believe that static pool data for prior securitized pools, rather than for a sponsor’s overall portfolio, is acceptable to investors, particularly in the case of seasoned sponsors. First, new loans are continually added to the sponsor’s portfolio making it considerably less “static” than prior securitized pools. Second, at any point in time the sponsor’s “portfolio” may be comprised of a portion retained, a portion sold or held for sale through whole loan purchases, and a portion consisting of prior securitized pools. The performance of each of these portions of the sponsor’s portfolio may be followed using considerably different tracking conventions. Moreover, such performance may be tracked by an unaffiliated party with no continuing nexus to the sponsor and, therefore, any related static pool data may reside on third party servicing systems.⁷ As a result, static pool data for the sponsor’s overall portfolio will often be unavailable. Third, prior securitized pools include only loans selected for those pools and, therefore, would typically be more representative of loans included in a securitization transaction. As noted above, the sponsor’s overall portfolio could, and often does, include loans not eligible or otherwise not intended for securitization. Lastly, for a sponsor that purchases loans from a variety of originators, information regarding the sponsor’s overall portfolio would typically be less meaningful to investors than information regarding its prior securitized pools, particularly where disclosure of the relevant parameters for each such pool is provided.

As a result, we respectfully submit that the following framework should apply to disclosure of static pool data in the context of amortizing asset pools.

⁶ We provided detailed comments on the defined term “sponsor” in Sections I.B.4.b. and II.D. of our Original Letter, and also proposed a revised definition (including a related instruction) in Exhibit B to our Original Letter. We believe that those comments, and the revised definition and instruction, are particularly important in order that proposals concerning the disclosure of static pool data focus on the appropriate person or group of affiliated persons that organize and initiate an asset-backed securities transaction.

⁷ To note just one example, the sponsor may have sold some of its “portfolio” in a whole loan transaction on a servicing released basis to a third party investor.

Seasoned sponsors: For seasoned sponsors, to the extent material, information would be disclosed in connection with a new ABS transaction regarding delinquency and cumulative loss data, and cumulative prepayments, if applicable,⁸ for reasonably comparable prior securitized pools. This data would be extracted from the previously-prepared ABS remittance reports for each such prior securitized pool. To facilitate review of such performance information, issuers would also include selected information concerning the original asset pool characteristics for each such prior securitized pool, as disclosed in the original prospectus for such pool.⁹

First-time and less seasoned sponsors: For first-time and less seasoned sponsors, to the extent material, information would be disclosed in connection with a new ABS transaction regarding delinquency and cumulative loss data by vintage origination years in periodic increments (e.g., monthly or quarterly) for portfolio originations and purchases, to the extent such information is available. Issuers would also include selected information, to the extent available, concerning the characteristics of the assets about which the vintage performance information is provided. If any performance or asset characteristic information is unavailable, the sponsor would disclose why the information is unavailable.

Definition of “Seasoned Sponsor”: The disclosure framework we outline above distinguishes seasoned sponsors from less seasoned sponsors. We believe that an appropriate definition for the term “seasoned sponsor” for purposes of these static pool disclosure requirements would be “any sponsor with (a) at least three full fiscal years of experience in securitizing assets of the type included in the current transaction or (b) at least one full fiscal year of experience in securitizing assets of the type included in the current transaction where such sponsor has completed at least three registered securitization transactions supported by the same or reasonably comparable pools.”

⁸ Although disclosure of cumulative prepayments was not included in the Commission’s rule proposals, investors believe that such data would be useful. Cumulative prepayments will include voluntary prepayments and liquidations after defaults or charge-offs. In some asset sectors, such as home equity loans, cumulative prepayments could also refer to the liquidation rate of a portfolio, where such rate is a combination of scheduled payments, prepayments and charge-offs.

⁹ We have included as Exhibit A to this supplemental letter a table that, in addition to referencing periodic static pool performance information for prior securitized pools, identifies an array of original asset pool characteristics, sorted by ABS market segment. Investors have indicated that such characteristics for the original asset pool, as disclosed in the original prospectus for such pool, would facilitate their review of the static pool performance information for amortizing asset pools described above. The original asset pool characteristics presented in any instance could include more or fewer data elements, subject to materiality considerations and the availability of such information.

As noted above (*see* footnote 2 above and corresponding narrative text), the ASF’s current issuer membership does not enable us to express comprehensive views from the automobile loan and lease sector. Investors in that sector have, however, indicated that certain periodic static pool performance information for prior securitized pools, as supplemented by information concerning the original asset pool characteristics, would be highly useful. Subject to materiality considerations and the availability of such information, performance information might include such items as delinquency and cumulative loss data, and cumulative prepayments, and investors would like such performance information to be accompanied by selected information regarding original pool characteristics, such as weighted average initial loan balance, note rate, original term, remaining term and the initial weighted average, and original minimum and maximum FICO scores for the obligors on the underlying pool assets. We must emphasize, however, that neither this letter nor the data elements described above reflect the views of issuers in the automobile loan and lease sector.

B. Master Trust Revolving Asset Pools

In the context of master trust revolving asset pools, issuers and sponsors believe that static pool data in the form contemplated by the Commission's proposals would rarely be relevant to investors or available to sponsors, and that an alternative format for the presentation of static pool data regarding delinquency and loss experience could serve as a highly effective tool in analyzing pool performance and risk. Issuers and sponsors propose this alternative for the following reasons. First, the utility of static pool data for the sponsor's overall portfolio suffers from many of the same limitations described above in the context of amortizing asset pools. It is often the case that a sponsor's "portfolio" may be segmented into a portion retained, a portion sold or held for sale through whole loan purchases, and a portion comprising the securitized master asset pool. Second, in view of the frequent purchases of credit card portfolios, static pool or vintage data for credit card accounts purchased from unaffiliated originators for periods prior to the acquisition may reside on third party processing systems and, therefore, such information is often unavailable to the acquiring sponsor. Third, most large, well-seasoned master trusts maintain a relatively constant level of unseasoned pool assets as a percentage of the overall master asset pool and, as a result, any long-term trends with respect to pool performance will already be apparent in the data relating to the aggregate asset pool. Fourth, the growth rate for large, well-seasoned master trusts is far slower than that of a newly-formed master trust, resulting in a corresponding reduction in the risk that discrete pool additions might adversely impact or otherwise obscure trends in delinquency and loss data.

We believe it is also important to clarify a seeming misperception concerning the preparation and use of static pool data in the ratings process for asset-backed securities issued by seasoned master trusts. In exploring market practices with respect to static pool data, our sub-group found many instances where static pool data is neither prepared by sponsors nor used in the ratings process. We do note that this came as a surprise to many investors and does not necessarily indicate that investors do not see usefulness in static pool data.

As a result of the foregoing, we respectfully submit that, to the extent material, additional disclosure concerning delinquency and loss experience for the master asset pool itself, based on the age of the accounts or other assets comprising such pool, could serve as a highly effective tool in analyzing pool performance and risk. For example, in the context of a credit card master trust, delinquency and loss experience currently presented for the asset pool as a whole could be restated to present such data in increments based upon account age.¹⁰ This additional disclosure, where material, would allow an investor to distinguish the delinquency and loss performance of newer accounts comprising the master asset pool from those of more seasoned accounts.

Our investor members agree that this additional disclosure concerning delinquency and loss data would be meaningful, incremental disclosure in the context of master trust revolving asset pools. Some investors do, however, see this only as a beginning and would like to see more information

¹⁰ Account age would be based on the date of origination rather than the date of addition to the master trust pool. Our investor members believe that an appropriate format for the presentation of such delinquency and loss data would be in 12-month increments through the first three years of the account's life (e.g., 0-12 months, 13-24 months, 25-36 months and 37 months or more). This data could be presented with more or less granularity (e.g., in smaller or larger account age increments) depending on materiality considerations.

relevant to asset performance. Investors have suggested, for example, that the proposed format for the presentation of additional delinquency and loss data (*i.e.*, in increments based upon account age) should be duplicated for payment rate and yield data. Due to the time constraints in responding to the Commission's proposals, however, issuers and investors have not yet reached agreement on these proposals.

Issuer and investor members of the ASF are also currently exploring whether FICO® or other measures for assessing credit risk should be presented in a prospectus.¹¹ Master trust issuers have expressed significant concerns with the use of FICO as a common measure of credit risk but would like to continue to explore whether a workable alternative that provides a more meaningful measure can be achieved. These issuers point to a number of practical considerations that they believe highlight the limitations surrounding FICO scores as a meaningful measure of credit risk across a master trust portfolio. First, not all assets are scored with FICO at origination and, where used, may be obtained from different credit bureaus for different originations.¹² Second, where FICO scores are used, they are often obtained only at origination and are not updated consistently by sponsors thereafter. Sponsors themselves view FICO as a somewhat rudimentary credit indicator the usefulness of which is quickly replaced by actual account performance data (*e.g.*, delinquency and loss data). This point is particularly evident when one considers a master trust pool comprised of a significant percentage of seasoned accounts originated six, eight or even ten years earlier. In such instances, credit card issuers find it particularly difficult to see how a FICO score obtained years earlier in connection with the origination of the account relationship would be useful or relevant currently, particularly where the account has years of supporting performance data and such data, in fact, serves as the basis for the sponsor's ongoing extensions of credit. Third, in the context of acquired portfolios, FICO scores for the purchased accounts are often unavailable to the acquiring sponsor. Lastly, where used, FICO scores are often only one component of a proprietary credit-decisioning process.

Investor members discount these concerns and believe that there is a meaningful, continuing correlation between FICO scores and loss experience. They believe that FICO scores are recognized across asset sectors as a predictive tool in assessing consumer credit quality and loan performance, and find validation for this view in published research and the fact that FICO scores serve as a component of many credit-decisioning processes. Investors also view FICO scores as perhaps the only common measure used across asset sectors to evaluate the credit risk associated with the underlying assets.

As indicated above, time constraints in responding to the Commission's proposals have been among the factors hindering consensus in the credit card sector. With additional time, the ASF will facilitate further dialogue among issuers and investors in an attempt to develop a set of meaningful and practical recommendations for that sector. As we work toward that result, we would be very interested in meeting with the Commission staff to outline our further recommendations.

¹¹ FICO® is a registered trademark of Fair Isaacs and Company.

¹² The reliability of credit scores has been subject to debate. Recent studies and reports allege that a substantial percentage of credit reports contain significant inaccuracies. Because of these credit reporting problems, sponsors believe that credit scores are often inaccurate and are not the most reliable predictors of performance.

IV. DISCLOSURE BASED ON ADDITIONAL POOL CHARACTERISTICS

As noted above, Items 1104(e) and 1110(c) would require, to the extent material, disclosure of static pool data separately based on various pool characteristics, such as asset term, yield, payment rates, geography, credit scores or other applicable measures of obligor credit quality. This proposal would seem to contemplate that static pools, such as prior securitized pools, should be further stratified on the basis of any number of additional pool characteristics. Our consensus view is that this proposal goes well beyond the scope of reasonable disclosure standards by imposing an obligation on an issuer to gather, organize and analyze potentially enormous amounts of data in connection with an ABS transaction. For example, for a seasoned sponsor that has completed eight reasonably comparable prior securitizations in each of the last three years, the further stratification of such pools by each of the five pool characteristics identified above, with four stratifications for each such characteristic, and presented for each month over the last three-year period, would result in a truly staggering compilation of data, involving tens of thousands of discrete numerical entries.

In addition, we question the relevance of this information in the context of a current ABS transaction. Stratification of prior securitized pools by additional pool characteristics would allow an investor to see how discrete segments of a prior pool have performed but this data would not translate into meaningful information about the current ABS transaction and pool unless by sheer coincidence the stratifications across a prior pool and the current pool were comparable. We do not believe that sound disclosure policy should be based on the mere possibility that information might be useful in some limited instances, particularly where the burden on issuers of compiling such data is so onerous.

We believe the disclosure framework outlined above identifies the information that may be meaningful to investors, which, in the case of amortizing asset pools, would include selected information concerning the original asset pool characteristics for each prior securitized pool, as disclosed in the original prospectus for such pool, or selected information, to the extent available, concerning the characteristics of the assets about which the vintage performance information is provided.

V. NUMBER OF PRIOR YEARS DISCLOSED

Item 1104(e) contemplates that static pool data would be provided for the past three fiscal years (or such shorter period of time as the sponsor has been making originations or purchases), as well as the most recent interim period. As the Commission is aware, losses on a pool of assets originated at the same point in time will not be constant over the assets' lives. Such pools will generally exhibit low losses early in their life cycle, with loss rates increasing until they become seasoned and, thereafter, loss rates will typically remain steady or decline. The period of time over which assets move through this loss cycle varies somewhat depending on the asset type. For example, while loss rates on credit card receivables will typically plateau within 12 to 24 months after origination, loss rates on residential mortgage loans secured by real property will typically take longer, leveling off within 36 to 60 months after origination. Loss rates for other asset types will generally plateau between these two ranges. As a result, while three years of static pool data is an appropriate time period for certain asset classes, we believe that five years

would be appropriate for prime residential mortgage loans and sub-prime mortgage and home equity loans.

VI. AVAILABILITY OF STATIC POOL DATA

We respectfully request that the Commission revise Items 1104(e) and 1110(c) to indicate that a sponsor is not required to provide any static pool data that cannot be obtained without unreasonable effort or expense, or where it is under the control of an unaffiliated person. This result would be consistent with Rule 409 of Regulation C under the Securities Act.¹³

There are a variety of situations under which a sponsor may not have access to static pool data. For example, one or more prior securitized pools of a sponsor may be backed by loans that the sponsor sold on a servicing-released basis through an unaffiliated depositor (*e.g.*, in a rent-a-shelf transaction), where the sponsor would not typically have access to the static pool data for the subject pool. As a second example, and as discussed above, at any point in time the sponsor's "portfolio" may be comprised of the portion retained, the portion sold or held for sale through whole loan sales, and the portion consisting of prior securitized pools. The performance of each of these portions of the sponsor's portfolio may be followed using considerably different tracking conventions. Moreover, such performance may be tracked by an unaffiliated party with no nexus to the sponsor's securitization platform and, as a result, any related static pool data may reside on third party servicing systems. As a result, static pool data for the sponsor's overall portfolio will often be unavailable. As a third example, a sponsor may acquire a portfolio of assets, or even an entire securitization platform, from an unaffiliated third party who has no obligation to provide such static pool data to the sponsor and who, in any event, may not have maintained such data.

VII. SAFE HARBOR FOR SELECTION OF STATIC POOL DATA

As discussed earlier in this letter, historically, static pool data has not been disclosed in prospectuses and there is a complete absence of market standards or practices by which to define the scope of the term "static pool data" or by which to establish standards of materiality. To add to the uncertainty, under both the Commission's proposals and the disclosure framework we outline above, the selection of prior securitized pools would involve a significantly subjective assessment of whether such prior pools are, in fact, reasonably comparable to the current pool. Further still, investors may request and use static pool data for a wide variety of purposes only some of which may be related to their investment decision for a particular ABS transaction. As a result, issuers and their selling groups are justifiably concerned about potential litigation asserting the omission of material static pool data.

We respectfully request, therefore, that any final rules adopted by the Commission that require the disclosure of material static pool data in a prospectus or registration statement include a safe harbor protecting issuers and their selling groups from liability pursuant to Sections 11 and

¹³ 17 CFR 230.409. Rule 409 provides "[i]nformation required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof could involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted"

12(a)(2) of the Securities Act for the accuracy of any such static pool data disclosed (including any related explanatory, or interpretive statements or narrative) and protecting such persons from liability for omissions of static pool data, unless such omission was knowingly misleading.¹⁴ We believe that determinations regarding static pool disclosure implicate as much subjectivity as do forward-looking statements and, therefore, are deserving of a safe harbor affording comparable protections.

VIII. COMMERCIAL MORTGAGE-BACKED SECURITIES AND REPACKAGING TRANSACTIONS

It is our view that static pool data becomes increasingly irrelevant and immaterial as the assets comprising a pool or portfolio become less homogenous and more concentrated. Commercial mortgage-backed securities, or CMBS, transactions are perhaps the best illustration of this point in the registered market for ABS. CMBS transactions typically contain considerably fewer and larger-balance assets than in most other ABS transactions and, as a result, investors are much more interested in assessing the individual credit quality of each underlying loan and, conversely, are much less interested in evaluating the sponsor's platform. Moreover, because of the heterogeneous nature of the assets supporting any given CMBS transaction, it would be extremely difficult to identify prior securitized pools, or even a sponsor's overall portfolio, that could properly be characterized as involving the same (or even a reasonably comparable) asset type. CMBS transactions typically afford investors the opportunity to evaluate the most important features of each individual underlying loan, with even greater detail provided regarding loans constituting more than 10% of the asset pool. Access to such loan-specific information, coupled with the heterogeneous characteristics of each loan and loan pool, makes static pool data essentially irrelevant to investors. Within our Static Pool Sub-Group, in fact, investors have referred to current disclosure practice in the CMBS market as "best in class" and do not indicate any need for static pool data in this asset sector.

We believe a similar result is appropriate in the context of repackaging transactions where, again, the heterogeneous characteristics of each loan or loan pool (often a single loan or group of a very small number of loans) makes it virtually impossible to imagine a prior securitized pool or a sponsor's portfolio that could properly be characterized as involving the same or comparable asset type.

As a result, we respectfully request that the Commission expressly exempt CMBS¹⁵ and repackaging transactions from the provisions of Regulation AB that contemplate disclosure of static pool data.

IX. METHOD OF DELIVERY

Some ABS issuers currently use Internet-based systems, such as an issuer's or depositor's website or a third party service such as Bloomberg, to provide performance data concerning prior

¹⁴ The accuracy of static pool data would continue to be subject to general antifraud liability pursuant to Section 10(b) of the Exchange Act and the rules and regulations promulgated thereunder.

¹⁵ We note that the Commercial Mortgage Securities Association (the "CMSA") has submitted a comment letter to the Commission that also includes commentary regarding disclosure of static pool data in the context of CMBS. *See* Letter to the Commission from the CMSA, "Registration, Disclosure and Reporting Requirements for Asset-Backed Securities" (Jul. 12, 2004).

securitized pools and ABS investors are accustomed to and prefer accessing information through such sources. These websites offer investors the ability to access large amounts of data and often include interactive tools by which investors may sort or otherwise manipulate the information.¹⁶ In addition, this information is often posted in a format that allows investors to download it for use in their own analytical tools and applications. In short, these Internet-based sources provide an overall functionality and utility that far exceeds that available on EDGAR.

At the same time, disclosure of static pool data, even under the framework we outline above, may involve substantial amounts of information, particularly in the case of seasoned sponsors who issue ABS backed by amortizing asset pools on a frequent basis. Notably, static pool data for such seasoned sponsors over time is also likely to be very repetitive from one ABS transaction to the next, making its preparation for delivery to investors, whether as a part of a prospectus or separately as ABS informational and computational material, and its filing with the Commission after such use, unnecessarily redundant and burdensome. For example, over the course of a three to five-year period, a seasoned sponsor could have as many as 100 or more prior securitized pools that, ostensibly, are “reasonably comparable.” Such static pool data, as supplemented in each case with selected information concerning the original asset pool characteristics, would be extraordinarily voluminous and impractical to deliver physically to prospective investors. In addition, as noted above, investors would prefer to access this data through an electronic resource that offers a high degree of functionality and utility.

We believe that the confluence of these factors argues forcefully for creating an Internet-based option for meeting any disclosure requirements with respect to static pool data. We respectfully request, therefore, that each of the following options for the delivery of required static pool data be recognized under any final rules adopted by the Commission:

- By posting such data on a website, so long as (i) the prospectus discloses the availability of the static pool data on the website and provides the website address; (ii) the website is unrestricted and available to all investors;¹⁷ and (iii) a daily record of the website content is maintained, which record should be preserved until the later of (x) five years from such record date and (y) the date on which the related ABS are paid in full;
- By providing such data in an electronic format together with the prospectus (*e.g.*, as a CD-ROM attached to the prospectus);
- By providing such data as ABS informational and computational material and filing the same as contemplated by proposed Securities Act Rule 426; or
- By providing such data in an integrated fashion as a part of the prospectus.

¹⁶ For example, some issuers offer interactive tools that allow investors to graph loss and prepayment performance for selected pools or groups of pools against each other.

¹⁷ In some instances a person may be required to “register” in order to use a website, where such registration involves providing basic identifying information (*e.g.*, name, affiliated organization, contact information). We believe that a requirement that a user register in order to use a website, where all persons requesting access are given prompt access upon such registration, is consistent with concepts of unrestricted access. We respectfully request that the Commission confirm this view in any final rules adopted by the Commission.

X. PHASE-IN PERIOD

Disclosure of static pool data, under both the Commission's proposals and the framework we outline above, represents a fundamental shift in disclosure practice. In addition to the complete absence of such disclosure in prospectuses historically, in many cases sponsors will not have maintained such data and, in any event, issuers may have no contractual entitlement to such data. Implementing policies, processes and procedures to adapt to these new disclosure conventions will take time. Our consensus view is that a workable and practical means to transition to these new disclosure requirements would be to phase them in on a prospective basis.¹⁸ For example, in the case of student loan-backed securities, where we have requested and recommended that such data, where material, be presented for a three-year period, we believe that a prospective three-year phase-in period for application of this disclosure requirement is appropriate. In the case of mortgage-backed securities, where we have recommended that such data, where material, be presented for a five-year period, we believe a prospective five-year phase-in period is necessary. In each case, a sponsor would be required to disclose, to the extent material, static pool data for a minimum period equal to the least of (i) the recommended number of prior years (as set forth in Section V of this supplemental letter), (ii) the period of time that the sponsor has been making originations or purchases of assets of the type to be securitized, or (iii) during the phase-in period, the number of completed years of such phase-in period, determined by reference to each completed fiscal year of the sponsor, beginning with the sponsor's first fiscal year commencing after the date of publication of the final rules. The phase-in period outlined above would apply where required information is not currently available. For any required information that is available, the disclosure requirements would apply 12 months after the date of publication of the final rules.

XI. CONCLUSION

We again applaud the Commission and its staff for its thoughtfulness and thoroughness in developing the Proposing Release. The Task Force believed from the start that the staff's exemplary effort required the ASF to reach for the same level of commitment and professionalism in drafting its response. As we noted in our Original Letter, the Commission staff and the ABS industry have worked together since the 1970s to develop a meaningful and flexible regulatory framework recognizing the unique attributes of ABS and the ABS offering process. It is our sincere hope that the future ABS regulatory regime will be forged from that same collaborative effort, and it is in that spirit that we have offered our recommendations in the Original Letter and this supplemental letter.

¹⁸ These phase-in provisions for the disclosure of static pool data would operate in tandem with, but independent of, the transition provisions recommended in our Original Letter with respect to the proposed disclosure rules generally (*i.e.*, an effective date 12 months after the date of publication of the final rules).

The ASF greatly appreciates the opportunity to share with the Commission its views and recommendations concerning static pool disclosure. Should you have any questions or desire any clarification concerning our views and recommendations as set forth in this letter, please do not hesitate to contact George Miller of the ASF at 646.637.9216.

Sincerely,

A handwritten signature in black ink, appearing to read 'Vernon H.C. Wright', with a long, sweeping horizontal stroke extending to the right.

Vernon H.C. Wright
Chairman
American Securitization Forum

**Data Elements By ABS Market Segment
For Amortizing Asset Pools**

Characteristic	Prime Residential	Sub-Prime/ Home Equity	Student Loans
<u>Original Pool Information</u>			
# Mortgage Loans/Assets	X	X	X
Original Pool Balance	X	X	X
WA Initial Loan Balance	X	X	
WA Note Rate	X	X	X
WA Original Term	X	X	X
WA Remaining Term	X	X	X
WA FICO	X	X	X ¹
Min FICO	X	X	X ¹
Max FICO	X	X	X ¹
WA LTV	X	X	
% ARMs/% FRMs	X	X	
ARM Type (% 3/27, 5/1, etc.)	X	X	
WA Margin for ARMS	X	X	
Largest State Concentrations ²	X	X	
% Reduced Doc	X	X	
% Non-Primary Occupancy	X	X	
Loan Purpose (% cash-out refi)	X	X	
% 1st Lien		X	
% Balloon	X	X	
<u>Periodic Information (by Pool)</u>			
Current Pool Balance	X	X	X
Current Period Delinquency Information ³	X	X	X ⁴
Cumulative Net Losses (\$)	X	X	X
Cumulative Prepayments (\$) ⁵	X	X	X
Forbearance %			X
Deferment %			X
% in School			X
Claims Reject Info ⁶			X
Number of Prior Years Disclosed	5	5	3

¹ Applicable only to Private Credit Student Loans (not FFELP Loans) for which FICO was used as part of loan underwriting process

² Largest State Concentrations (>15% of orig. UPB)

³ Information provided on > 30/60/90 day delinquency and other conventions used in applicable ABS sector such as REO, foreclosure and new/inventoried repos (Current \$ or % of current balance)

⁴ Applicable only to Private Credit Student Loans (not FFELP Loans)

⁵ Cumulative prepayments will include voluntary prepayments and liquidations after defaults or charge offs. In some ABS sectors, such as home equity loans, cumulative prepayments could also refer to the liquidation rate of a portfolio, where such rate is a combination of scheduled payments, prepayments and charge offs.

⁶ Applicable to FFELP Loans (not Private Credit Loans), with such information provided on either a servicer or pool level basis.