



December 21, 2006

**VIA E-MAIL**

Mr. Jeffrey S. Cohan, Esq., Special Counsel  
Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Item 1122 of Regulation AB and Exchange Act Rules 13a-18 and 15d-18

Dear Mr. Cohan:

The American Securitization Forum (the “ASF”) and the Mortgage Bankers Association (the “MBA”) submit this letter with respect to Item 1122 of Regulation AB and Rules 13a-18 and 15d-18 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), part of a series of rule and form changes adopted by the Securities and Exchange Commission (the “SEC”) that address the registration, disclosure and reporting requirements for asset-backed securities (“ABS”) (SEC Rel. Nos. 33-8518; 34-50905 (Dec. 22, 2004) [70 FR 1506 et seq.] (the “Adopting Release”)).

Item 1122 of Regulation AB and Exchange Act Rules 13a-18 and 15d-18 build upon the longstanding framework that was developed under the SEC’s modified reporting system, which generally had required that an issuing entity include in its annual report on Form 10-K an assertion by the servicer and an attestation by an independent registered public accountant regarding compliance with servicing criteria.<sup>1</sup> Historically, however, the types of assessments and attestations, and the criteria that servicing compliance was assessed against, varied significantly. The final regulations retain the assessment and attestation approach, but enhance and add consistency to that approach by introducing a single uniform set of servicing criteria – set forth in Item 1122(d) – that cover all aspects of the servicing function and that can be used across all asset sectors.

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<sup>1</sup> As you know, the modified reporting system had its origins in the 1970s and was developed first through SEC exemptive orders under the Exchange Act and later through scores of SEC staff no-action letters pursuant to which issuers of ABS sought and received permission to modify the reports they file to fulfill their reporting obligations under the Exchange Act.

The SEC's original proposal contemplated that a single responsible party would make an assertion regarding compliance with the servicing criteria and that the responsible party's assertion would cover the entire servicing function. Commenters on this proposal, including the ASF and the MBA, encouraged the SEC to adopt a more flexible approach that did not require an assertion by a single responsible party, but instead permitted separate assessments of compliance by each entity responsible for the particular criteria and separate accompanying accountant attestations. The individual assessment and attestation reports would then be filed as exhibits to the Form 10-K report and a single party would either confirm that reports covering each party with material servicing or administration responsibilities had been received or disclose that an entity with such responsibilities had failed to deliver its required assessment and attestation.

Noting that these alternatives "still achieve [the SEC's] objectives of covering the entire servicing function," the final regulations do not require an assertion by a single responsible party, but instead require that the person that signs the Section 302 certification certify in paragraph 5 of the certification that assertions prepared by all parties participating in the servicing function as specified and associated attestation reports have been included as exhibits to the Form 10-K report, except as otherwise disclosed in the report. Under the final regulations, a "party participating in the servicing function" is defined as an entity that is performing activities that address the servicing criteria, unless such entity's activities relate only to 5% or less of the pool assets.

With the adoption of Regulation AB, sponsors and other market participants began the process to implement appropriate disclosure processes, including Exchange Act reporting processes, to prepare for and satisfy the new requirements under Regulation AB for offerings of ABS on and after January 1, 2006. As a part of those efforts, in applying Item 1122 and the related Exchange Act rules, sponsors and other market participants have identified the entity or entities – including master servicers, primary servicers, subservicers, custodians and trustees – that qualify as parties participating in the servicing function and developed new procedures and systems, including changes to transaction documentation, that enable them to comply with the Exchange Act reporting processes under Regulation AB.<sup>2</sup>

At the same time, servicers will often engage vendors to perform very specific and limited activities in respect of the pool assets, such as tax monitoring and advancing services, property insurance monitoring and lender placed insurance services or foreclosure/REO (real estate owned) property management services, or to perform scripted or other activities involving limited independent judgment, such as call centers that receive and respond to questions from borrowers concerning

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<sup>2</sup> A central element of these new procedures and systems involves new contractual provisions that obligate each transaction party identified as a party participating in the servicing function to deliver an assessment of compliance with the applicable servicing criteria and associated attestation report for inclusion in the issuer's Form 10-K in accordance with Item 1122 and the related Exchange Act rules. To provide greater certainty that the reports covering each party with material servicing responsibilities would address all applicable servicing criteria, these new contractual provisions also typically include a chart listing each of the servicing criteria set forth in Item 1122(d) and identifying each party participating in the servicing function and the servicing criteria applicable to such party. An example of such a chart is included with this letter as Appendix A.

their accounts based on the servicer's established policies and procedures.<sup>3</sup> In each case, the vendor is engaged by a servicer that has policies and procedures in place to monitor whether the vendor's activities comply in all material respects with the servicing criteria applicable to such vendor. As a result, market participants have not viewed these vendors as parties participating in the servicing function separate and apart from the servicer engaging and monitoring the vendors. Market participants have also developed a standard under which these vendors would not need to submit separate assessment and attestation reports as long as the servicer engaging and monitoring the vendors takes responsibility for assessing compliance with the servicing criteria applicable to such vendors in the servicer's assertion under Item 1122.

Most market participants have proceeded for almost all of 2006 on the basis described above, confident in their understanding of how Item 1122 is applied. Recently, however, some industry participants have indicated that they believe this industry standard should be specifically sanctioned by the SEC staff through interpretive guidance, by means of a telephone interpretation or through another comparable format. Accordingly, for the reasons set forth below, we respectfully request that the SEC staff issue interpretive guidance – in substantially the form included with this letter as Appendix B – confirming that the use of this standard represents an appropriate application of Item 1122 and Exchange Act Rules 13a-18 and 15d-18.

First and foremost among the reasons supporting this result, market participants have understood the SEC's final regulations not as a rejection of the responsible party approach but instead as an alternative approach that continues to achieve the SEC's objective of covering the entire servicing function while eliminating many of the concerns and potential complexities raised by a single responsible party approach. Accordingly, while responsibility for assessing compliance with the servicing criteria should generally be expected to be placed with the party whose servicing activities are being evaluated, the final regulations have not been viewed as precluding the placement of that responsibility on a servicer that engages and monitors another party.<sup>4</sup>

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<sup>3</sup> The use of vendors to support a servicer's servicing platform is commonplace across asset sectors and the examples identified above are merely illustrative. In the residential and commercial mortgage markets, other common examples include companies that provide cash management services for electronic loan payments, property inspections, pre-collection notifications, and foreclosure-related legal services. In several markets, including the credit card and motor vehicle markets, other common examples include companies that provide account/data management support services and collection agencies. In the motor vehicle market, other common examples include vehicle title trackers and auction companies.

<sup>4</sup> This view is reinforced by one of the staff's interpretations – Interpretation 17.01 – included in the Regulation AB Supplement to the staff's *Manual of Publicly Available Telephone Interpretations* (December 2005). Interpretation 17.01 provides that where a trustee or bond administrator does not calculate the waterfall but only receives allocations or distributions from a servicer and makes allocations and distributions to holders of the ABS out of the calculated amounts, the issuer's Form 10-K would not need to include assessment or attestation reports from the trustee or bond administrator. Inasmuch as reports covering the entire servicing function are nevertheless required, Interpretation 17.01 necessarily endorses the responsible party approach since, in the absence of a report from the trustee or bond administrator, the servicer would need to take responsibility for assessing compliance with the servicing criteria relating to the activities performed by the trustee or bond administrator.

In addition, the industry standard represents a common sense application of Item 1122 that mirrors actual servicing practices and results in the filing of separate reports from each party with material servicing or administration responsibilities. Under the standard, separate assessment and attestation reports will be obtained from each “servicer” as defined in Item 1101(j) of Regulation AB (e.g., master servicers, primary servicers, subservicers) and any other party participating in the servicing function that is not engaged and monitored by a servicer. With its focus on responsibility for vendor performance, however, the standard establishes a logical stopping point in what might otherwise be an extensive chain of entities each of which would be required to produce separate reports.

On a more practical note, the costs associated with obtaining separate reports from vendors could be staggering and would place a substantial burden on the market. As noted above, vendors will often perform very specific and limited activities in respect of the pool assets, but may perform those activities in respect of all or a substantial portion of the pool. A depositor may issue ABS that involve many different vendors, or may issue ABS that involve relatively few vendors but may issue those ABS in many separate series, each involving different groups of vendors. And even in cases where a vendor is expected to perform activities in respect of a relatively small portion of the pool assets, the 5% *de minimis* threshold established under Item 1122 must take into account the servicing function for the entire period covered by the Form 10-K report. As a result, an asset-backed issuer would have to obligate even vendors touching relatively small portions of the pool assets to provide assessment and attestation reports, to account for the possibility that at the end of the annual reporting period the vendor might exceed the 5% *de minimis* threshold. Depending on the servicer and the size and scope of its operations, a servicer may have business relationships with tens or hundreds of these vendors.

Beyond cost considerations, there would undoubtedly be vendors, some of which represent relatively small businesses, that do not engage Big Four or other independent registered public accounting firms that are versed in the subject matter of structured finance and the requirements of Regulation AB, and for which a requirement to produce assessment and attestation reports would be a practical impossibility. And finally, having proceeded in good faith through almost all of 2006 based on the industry standard described above, asset-backed issuers do not have the time or the leverage to impose new reporting obligations on vendors in respect of outstanding ABS, particularly of the scope contemplated by Item 1122.

We appreciate the sensitivity that the SEC and its staff have exhibited toward escalating regulatory compliance costs. We believe that the industry standard described in this letter represents an appropriate application of Item 1122 and Exchange Act Rules 13a-18 and 15d-18 that achieves the objectives of those regulations – reports that cover all aspects of the servicing function – without introducing the practical impediments and imposing the substantially higher costs that would result from obtaining separate reports from each vendor. For all of these reasons, we respectfully request that the SEC staff issue interpretive guidance confirming this view, in substantially the form included with this letter as Appendix B.

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The ASF and the MBA greatly appreciate the opportunity to share with the SEC staff this update on market practice and our recommendations concerning the appropriate application of Item 1122 and related Exchange Act rules. Should you have any questions or desire any clarification concerning our views and recommendations, please do not hesitate to contact Tom Deutsch, ASF Associate Director, via telephone at 646.637.9235 or via email at [tdeutsch@americansecuritization.com](mailto:tdeutsch@americansecuritization.com).

Sincerely,



Cam Cowan  
Chair  
Legal, Regulatory, Accounting and  
Tax Committee  
American Securitization Forum



Jonathan L. Kempner  
President and Chief Executive Officer  
Mortgage Bankers Association

cc: Paula Dubberly, Esq., Associate Director (Legal)  
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**SERVICING CRITERIA TO BE ADDRESSED IN ASSESSMENT OF COMPLIANCE**

The assessment of compliance to be delivered by [the Company] [Name of Subservicer] shall address, at a minimum, the criteria identified as below as “Applicable Servicing Criteria”:

<b>SERVICING CRITERIA</b>		<b>APPLICABLE SERVICING CRITERIA</b>
<b>Reference</b>	<b>Criteria</b>	
	<b>General Servicing Considerations</b>	
1122(d)(1)(i)	Policies and procedures are instituted to monitor any performance or other triggers and events of default in accordance with the transaction agreements.	
1122(d)(1)(ii)	If any material servicing activities are outsourced to third parties, policies and procedures are instituted to monitor the third party's performance and compliance with such servicing activities.	
1122(d)(1)(iii)	Any requirements in the transaction agreements to maintain a back-up servicer for the mortgage loans are maintained.	
1122(d)(1)(iv)	A fidelity bond and errors and omissions policy is in effect on the party participating in the servicing function throughout the reporting period in the amount of coverage required by and otherwise in accordance with the terms of the transaction agreements.	
	<b>Cash Collection and Administration</b>	
1122(d)(2)(i)	Payments on mortgage loans are deposited into the appropriate custodial bank accounts and related bank clearing accounts no more than two business days following receipt, or such other number of days specified in the transaction agreements.	
1122(d)(2)(ii)	Disbursements made via wire transfer on behalf of an obligor or to an investor are made only by authorized personnel.	
1122(d)(2)(iii)	Advances of funds or guarantees regarding collections, cash flows or distributions, and any interest or other fees charged for such advances, are made, reviewed and approved as specified in the transaction agreements.	
1122(d)(2)(iv)	The related accounts for the transaction, such as cash reserve accounts or accounts established as a form of overcollateralization, are separately maintained (e.g., with respect to commingling of cash) as set forth in the transaction agreements.	
1122(d)(2)(v)	Each custodial account is maintained at a federally insured depository institution as set forth in the transaction agreements. For purposes of this criterion, “federally insured depository institution” with respect to a foreign financial institution means a foreign financial institution that meets the requirements of Rule 13k-1(b)(1) of the Securities Exchange Act.	
1122(d)(2)(vi)	Unissued checks are safeguarded so as to prevent unauthorized access.	
1122(d)(2)(vii)	Reconciliations are prepared on a monthly basis for all asset-backed securities related bank accounts, including custodial accounts and related bank clearing accounts. These reconciliations are (A) mathematically accurate; (B) prepared within 30 calendar days after the bank statement cutoff date, or such other number of days specified in the transaction agreements; (C) reviewed and approved by someone other than the person who prepared the reconciliation; and (D) contain explanations for reconciling items. These reconciling items are resolved within 90 calendar days of their original identification, or such other number of days specified in the transaction agreements.	

<b>SERVICING CRITERIA</b>		<b>APPLICABLE SERVICING CRITERIA</b>
<b>Reference</b>	<b>Criteria</b>	
	<b>Investor Remittances and Reporting</b>	
1122(d)(3)(i)	Reports to investors, including those to be filed with the Commission, are maintained in accordance with the transaction agreements and applicable Commission requirements. Specifically, such reports (A) are prepared in accordance with timeframes and other terms set forth in the transaction agreements; (B) provide information calculated in accordance with the terms specified in the transaction agreements; (C) are filed with the Commission as required by its rules and regulations; and (D) agree with investors' or the trustee's records as to the total unpaid principal balance and number of mortgage loans serviced by the Servicer.	
1122(d)(3)(ii)	Amounts due to investors are allocated and remitted in accordance with timeframes, distribution priority and other terms set forth in the transaction agreements.	
1122(d)(3)(iii)	Disbursements made to an investor are posted within two business days to the Servicer's investor records, or such other number of days specified in the transaction agreements.	
1122(d)(3)(iv)	Amounts remitted to investors per the investor reports agree with cancelled checks, or other form of payment, or custodial bank statements.	
	<b>Pool Asset Administration</b>	
1122(d)(4)(i)	Collateral or security on mortgage loans is maintained as required by the transaction agreements or related mortgage loan documents.	
1122(d)(4)(ii)	Mortgage loan and related documents are safeguarded as required by the transaction agreements	
1122(d)(4)(iii)	Any additions, removals or substitutions to the asset pool are made, reviewed and approved in accordance with any conditions or requirements in the transaction agreements.	
1122(d)(4)(iv)	Payments on mortgage loans, including any payoffs, made in accordance with the related mortgage loan documents are posted to the Servicer's obligor records maintained no more than two business days after receipt, or such other number of days specified in the transaction agreements, and allocated to principal, interest or other items (e.g., escrow) in accordance with the related mortgage loan documents.	
1122(d)(4)(v)	The Servicer's records regarding the mortgage loans agree with the Servicer's records with respect to an obligor's unpaid principal balance.	
1122(d)(4)(vi)	Changes with respect to the terms or status of an obligor's mortgage loans (e.g., loan modifications or re-agings) are made, reviewed and approved by authorized personnel in accordance with the transaction agreements and related pool asset documents.	
1122(d)(4)(vii)	Loss mitigation or recovery actions (e.g., forbearance plans, modifications and deeds in lieu of foreclosure, foreclosures and repossessions, as applicable) are initiated, conducted and concluded in accordance with the timeframes or other requirements established by the transaction agreements.	
1122(d)(4)(viii)	Records documenting collection efforts are maintained during the period a mortgage loan is delinquent in accordance with the transaction agreements. Such records are maintained on at least a monthly basis, or such other period specified in the transaction agreements, and describe the entity's activities in monitoring delinquent mortgage loans including, for example, phone calls, letters and payment rescheduling plans in cases where delinquency is deemed temporary (e.g., illness or unemployment).	
1122(d)(4)(ix)	Adjustments to interest rates or rates of return for mortgage loans with variable rates are computed based on the related mortgage loan documents.	

SERVICING CRITERIA		APPLICABLE SERVICING CRITERIA
Reference	Criteria	
1122(d)(4)(x)	Regarding any funds held in trust for an obligor (such as escrow accounts): (A) such funds are analyzed, in accordance with the obligor's mortgage loan documents, on at least an annual basis, or such other period specified in the transaction agreements; (B) interest on such funds is paid, or credited, to obligors in accordance with applicable mortgage loan documents and state laws; and (C) such funds are returned to the obligor within 30 calendar days of full repayment of the related mortgage loans, or such other number of days specified in the transaction agreements.	
1122(d)(4)(xi)	Payments made on behalf of an obligor (such as tax or insurance payments) are made on or before the related penalty or expiration dates, as indicated on the appropriate bills or notices for such payments, provided that such support has been received by the servicer at least 30 calendar days prior to these dates, or such other number of days specified in the transaction agreements.	
1122(d)(4)(xii)	Any late payment penalties in connection with any payment to be made on behalf of an obligor are paid from the servicer's funds and not charged to the obligor, unless the late payment was due to the obligor's error or omission.	
1122(d)(4)(xiii)	Disbursements made on behalf of an obligor are posted within two business days to the obligor's records maintained by the servicer, or such other number of days specified in the transaction agreements.	
1122(d)(4)(xiv)	Delinquencies, charge-offs and uncollectible accounts are recognized and recorded in accordance with the transaction agreements.	
1122(d)(4)(xv)	Any external enhancement or other support, identified in Item 1114(a)(1) through (3) or Item 1115 of Regulation AB, is maintained as set forth in the transaction agreements.	

[NAME OF COMPANY] [NAME OF SUBSERVICER]

Date: \_\_\_\_\_

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Requested Telephone Interpretation**

**Item 1122 and Rules 13a-18 and 15d-18**

Servicers will often engage vendors to perform specific and limited activities in respect of the pool assets, or to perform scripted or other activities involving limited independent judgment. Where a vendor is engaged by a servicer that has policies and procedures in place to monitor whether such vendor's activities comply in all material respects with the servicing criteria applicable to such vendor, and where such vendor is not a "servicer" as defined in Item 1101(j) of Regulation AB, such vendor would not be viewed as a party participating in the servicing function separate and apart from the servicer engaging and monitoring such vendor, and would not need to submit separate assessment and attestation reports for inclusion in the related asset-backed issuer's Form 10-K report if the servicer engaging and monitoring such vendor elects to take responsibility for assessing compliance with the servicing criteria applicable to such vendor in the servicer's assertion under Item 1122. In those circumstances, the requirement to assess compliance with the servicing criteria applicable to a vendor's activities is satisfied if the servicer has instituted policies and procedures to monitor whether such vendor's activities comply in all material respects with such criteria, and compliance with the applicable servicing criteria is achieved if those policies and procedures are designed to provide reasonable assurance that such vendor's activities comply with such criteria. The servicer's assessment of compliance with the applicable servicing criteria should include disclosure of any material instance of noncompliance by such vendor identified by such servicer or, if a material deficiency in the servicer's policies and procedures has been identified, should include disclosure of such material deficiency.