



**MBA's NATIONAL SECONDARY MARKET  
CONFERENCE & EXPO 2010**  
MAY 23-26, 2010, NYC

**Whole Loan Sales - Priming the Pump for Private Label Securitization**

**May 24, 2010  
3:30 PM - 4:45 PM**

**Hilton New York  
Sutton North  
Second Floor**



<b>Moderator:</b>	
<b>Ralph Armenta</b> Manager – Secondary/Capital Markets PMI Mortgage Insurance	
<b>Panelists:</b>	
<b>Dan Antokal</b> Vice President Chase	<b>Steve Molitor</b> Partner Dechert LLP
<b>Amy Summers Creason, CMB</b> First Vice President – Capital Markets SunTrust Mortgage, Inc.	<b>Lawrence Rubenstein</b> Managing Counsel Wells Fargo Bank
<b>Kathryn Kelbaugh</b> Vice President – Senior Analyst Moody's Investor Services	<b>Susan Thurman</b> First Vice President and Senior Counsel SunTrust Bank, Inc.



- The development of a model mortgage loan purchase and servicing agreement (“MLPSA”) was unanimously approved during the 2009 Secondary and Capital Markets Committee Meeting
- A special committee on Transparency and Liquidity was subsequently formed
- The Model MLPSA document (“Model Document”) was presented and approved by the MBA’s Residential Board of Governors (RESBOG) at the National Conference in October 2009
- Final work on the document was completed in April 2010



- **Standardization**

- » The Model Document Working Group is a cross-section of 20 members
- » The objective is to develop and maintain a consistent and transparent whole loan sales agreement that is synchronized with securitization conventions
- » The Model Document endeavors to become industry “best practice”

- **Legal Counsel**

- » Development of the Model Document included significant guidance from MBA’s General Counsel, Dechert LLP
- » As the principal drafter of the Model Document, and with extensive experience with similar agreements, Dechert, LLP provided unbiased, objective counsel
- » Counsel ensured public input and appropriate drafting and procedural matters



- **Developed with Full Transparency**
  - » The development of the Model Document included a 30-day comment period for response by industry participants
  - » A draft of the Model Agreement was posted on MBA's web site, while notice of MBA's request for comment was circulated via MBA and independent publications
  - » Public comments were included in the final version of the Model Document
  
- **Minimizes Transaction Costs**
  - » Drafting transaction documents requires significant time, legal analysis and costs
  - » The Model Document minimizes these costs by serving as a "baseline" agreement
  - » The Model Document may be customized for specific transactions or counterparty requirements



- **Adaptable and Evolving**
  - » Market uncertainty regarding the GSEs and temporary government/industry borrower assistance programs are accommodated within the Model Document
  - » The MBA Secondary and Capital Markets Committee will update the Model Document to incorporate industry requirements and market preferences
  - » As with the changing environment, the Model Document will adapt and evolve to support secondary market transactions



- **Use the Model Document as a starting point for negotiations with a counterparty**
  - » Recognize that counterparties will have differing perspectives on risk-taking
- **The Model Document is flexible by design and may be modified significantly by a counterparty**
  - » Investor preferences and requirements may result in considerable changes to ASF Project RESTART representations and warranties
  - » Other provisions may be omitted or altered
- **Expectations of transaction types and the loan products to be sold under the Model Document should guide negotiations**
  - » Bulk (single transaction) versus Flow (periodic deliveries)
  - » Language should allow for dynamic underwriting guidelines for various products



- **Recognize the risk levels and provisions that each party will assume**
- **Evaluate risk**
  - » Identify “deal-killers”
  - » Quantify the cost of various provisions
  - » Vet with executive management the continuing obligations and potential liabilities of loan sale transaction agreements
- **Verify that your firm can comply with all representations and warranties**
  - » Distinguish “origination reps” from “bring-down” reps
  - » Understand Purchaser and Seller corporate reps
- **Ensure clarity within remedies**
  - » Repurchase and indemnification as remedies for breach of rep
  - » Carefully consider indemnification extended beyond breach of rep
- **Define the repurchase process and price**



- **Additional key transaction documents are integrated within the Model Document**

✓Trade Confirmations

✓Purchase Confirmations

✓Mortgage Loan Schedule

✓Custodial Agreement

✓Underwriting Guidelines

✓Assignment and Assumption Agreement

✓Bailee Letter

✓Bring-Down Letter

- **Consider “carving-out” certain representations, warranties and/or covenants within transaction documents**

- » Underwriting guidelines
- » Early Pay-Off or Early Payment Default provisions
- » Other transaction-specific exemptions



- **The whole loan MLPSA is often made part of the final PSA provided by the RMBS issuer**
  - » Investors require representations and warranties for confidence in the underlying assets of securities
  - » Investors look to the provider of the representations and warranties for assurance and remedy
  - » A securitization may require the “pass-through” of the whole loan MLPSA representations and warranties by the originator to the trust
- **Stronger representations and warranties should result in better pricing**
  - » Investors seek originator “skin-in-the-game”
  - » Originators are closest to the parties involved in the origination of a mortgage loan
- **Detailed origination information is required on Mortgage Loan Schedule**
  - » Product characteristics, credit components, origination channel, etc.



- **Moody's will not rate RMBS securities without certain representations and warranties**
  - » Unqualified fraud representations and warranties
  - » Unqualified underwriting representations and warranties
  - » Unqualified appraisal representations and warranties
  
- **Moody's will lower rating, will not rate or will increase credit enhancement requirement for missing data**
  - » Detailed mortgage loan schedule will assist in proper credit analysis
  - » Details and transparency demanded by investors



- **The current Model Document does not include mechanisms for identifying and enforcing breaches of representations and warrants**
  - » Potential changes and additions to the Model Document will be considered as industry consensus emerges
  - » Examples include:
    - Provisions to allow for inspections (including third-party) of delinquent mortgage loans
    - Provisions to allow for the Seller to rebut allegations of breaches
    - Provisions for an arbitration process to resolve disputes regarding purported breaches
- **Other changes or additions may include:**
  - » Servicing procedures governing loss mitigation activities, including mortgage loan modifications
  - » Various existing and to-be-enacted governmental initiatives



# Questions and Answers

<http://www.mortgagebankers.org/IndustryResources/ResourceCenters/ModelLoanSeller/ServiceAgreement.htm>

Also, the public may get to it through MBA's Web site and then clicking on Industry Resources, Resource Centers and Secondary Marketing.