



ISSUE PAPER

Subject: SEC Regulation on Asset-Backed Securities

Issue: The SEC codifies requirements for the registration, disclosure and reporting for asset-backed securities (ABS), in Regulation AB, including most mortgage-backed securities (MBS) that are not issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae. Regulation AB has important implications for companies involved in issuing private-label (often called “non-agency”) MBS, and originators or servicers of mortgages that become, or could become, part of private-label MBS.

Background: Regulation AB integrates and codifies 20 years of fragmented guidance and establishes transaction participants' responsibilities for disclosing and reporting information regarding security collateral and past performance to investors. The final regulation was published in the Federal Register on January 7, 2005, with the requirement that all ABS offerings commencing on or after January 1, 2006, be in compliance with the new regulation.

The portion of the mortgage securities market covered by Regulation AB is very large. The non-agency residential mortgage-backed securities (RMBS) sector reached a 2006 issuance level of almost \$1.2 trillion and [\\$523.74 billion year-to-date as of June 30, 2007](#).¹ Commercial mortgage-backed securities' (CMBS) U.S. total volume in 2006 was \$206 billion and \$137 billion year-to-date as of June 30, 2007.²

As the major association involved in the interpretation of Regulation AB for the mortgage industry, MBA has committed substantial staff resources from our commercial real estate finance and residential finance areas to work with members and the SEC to address questions and concerns with the new Regulation, as indicated below.

- In the summer of 2005, MBA formed an industry “Regulation AB Working Group” to address issues relating to Regulation AB, which now has a membership of over 200 individuals. The working group assisted MBA staff in drafting several letters relating to Item 1122, *Compliance with applicable servicing criteria*, of the Regulation, including a “Dear Member” letter sent in December 2005, and two letters to the SEC sent in March and May 2006. MBA staff also met with the SEC on several occasions to clarify industry practice, with beneficial results for the industry.

¹ *Inside MBS & ABS*, July 6, 2007.

² *Commercial Mortgage Alert*, July 6, 2007.

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- MBA sponsored a Regulation AB forum, and many MBA commercial and residential conferences in 2005, 2006 and this year have featured Regulation AB compliance panels.
- MBA's MISMO (Mortgage Industry Standards Maintenance Organization) team is involved in the residential effort and has been working on a project to develop efficient methods and standards for tracking non-agency mortgages. MBA anticipates that expanded efforts through staff, outside lawyers and other outside consultants will be undertaken in order to support the RMBS sector.
- A separate Regulation AB Working Group was formed under the auspices of the Commercial Real Estate/Multifamily Finance Board of Governors (COMBOG) Asset Administration Committee. The commercial working group focused on servicers and has completed several key projects including 1) the SEC definition of servicer; 2) the requirements for servicer disclosure in the prospectus; and 3) servicer compliance with the new Attestation.

Information on MBA's activities in this area, as well as other information that has been compiled and prepared by MBA relating to commercial and residential Regulation AB issues can be found on MBA's resource Web sites, respectively, at:

<http://www.mortgagebankers.org/IndustryResources/ResourceCenters/RegABCCommercial>

<http://www.mortgagebankers.org/IndustryResources/ResourceCenters/RegAB>

MBA Position: MBA supports the SEC in its effort to clarify the requirements for issuers of private-label MBS that register their transactions on a shelf registration basis. The SEC has contributed to the development of the private sector for MBS through its review of registered deals in the past and will continue to do so through the Regulation, which will serve investors by clarifying the rules for private label transactions.

MBA recognizes that the Regulation raises different concerns for different transaction parties. Those concerns include which transaction parties are covered by the Regulation; under what circumstances are they responsible for interpreting the Regulation for other transaction parties; and each party's exposure for technical or substantial failure to comply with a major or minor aspect of the Regulation.

Status: Through recent letters and conference calls, MBA offered industry feedback to the SEC and recommended that the SEC issue additional interpretive written guidance to assist mortgage servicers in planning and performing Item 1122 engagements. Item 1122 of Regulation AB requires reports to be filed annually with investors regarding servicers' compliance with specified activities or "criteria" as outlined in the Regulation. On August 7, 2006 the SEC released additional guidance requested by the MBA in the form of staff "telephone interpretations" released by the SEC's Division of Corporation

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Finance in December 2005. The guidance reflects several specific clarifications, recommended in MBA's May 17 letter, as follows:

- Testing platforms can be defined by management in different ways within certain reasonable parameters;
- The phrase "maintenance of collateral or security on pool assets" under criterion (d)(4)(i) refers to the mortgage (or other) instruments, rather than to the related real estate or other collateral security; and,
- The focus of testwork at the platform level under Item 1122 is different from the focus of testwork at the transaction level under Item 1123, *Servicer compliance statement*; therefore, testwork of servicer activities may lead to different outcomes on compliance under these two reports.

On February 2, 2007, the SEC staff added new interpretive staff guidance to the Division of Corporation Finance's Staff Telephone Interpretations for Regulation AB that formally embraced the industry's recommended solution to allow servicers to assess compliance with activities performed by vendors in the servicer's own Item 1122 management assertion report. This industry recommendation was developed by MBA and the American Securitization Forum (ASF) in response to industry concerns by servicers, vendors and their accountants.

The staff telephone interpretations for Regulation AB can be found on the SEC's Web site at the following link: http://www.sec.gov/interps/telephone/cftelinterps_regab.pdf.

MBA staff plans to continue discussions with MBA members on outstanding interpretation issues with Regulation AB. MBA members interested in participating in MBA's commercial or residential Regulation AB Working Groups or in obtaining further information should call one of the staff members listed below.

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