



**MBA CONFERENCE CALL ON  
PLATFORM LEVEL CONCEPT IN ITEM 1122 OF  
SEC REGULATION AB, *Asset-Backed Securities*  
Thursday, December 8, 2005**

**MINUTES**

**I. Welcome & Introductions**

At 3:00 p.m. ET, MBA staff began the call by thanking members for their participation.

After introductions, the staff stated that the objectives of the call were to: (1) review a final draft of a MBA letter advising members to consult with their counsel, auditors and user regarding the benefits of performing only an Item 1122 engagement beginning in 2006; (2) continue an earlier discussion of the platform level concept which took place during a MBA sponsored call on November 16, 2005; and, (3) to reconsider submitting a request to the SEC relating to changing the period to be covered by 2006 Item 1122 engagements.

**II. Major Issues Discussed**

A. Comments on final draft MBA letter to members

Discussion turned to a draft final letter to members that MBA staff had produced in consultation with Marty Rosenblatt, Deloitte & Touche; Paul Liu, Countrywide; Bill Felts, CitiMortgage; Bob Bailey, GEMSA; Paul Kurzeja, Bank of America; Kathy Marquardt, GMAC Commercial; and Tom Knox, PricewaterhouseCoopers. The letter advises members to consider the advantages of performing only the Item 1122 engagement in the future (as opposed to performing both the Item 1122 and USAP engagements). MBA staff noted that while some members had hoped the letter would more directly state that an Item 1122 engagement would satisfy the objectives of a USAP engagement, it was determined that such a statement should not be made because (1) the objectives and requirements of the engagements are not *exactly* the same and (2) any perception that MBA was endorsing the Item 1122 engagement could be problematic for companies that might prefer to provide investors in pre-06 and/or post-06 non-registered transactions with a USAP Reports after 2006. After some discussion on this last point, the letter was approved for mailing to members.

B. Continuation of Discussion of Platform Level Concept

1. Approaches under Consideration

MBA staff then reiterated some of the discussion on the platform level during a call on November 16. They noted that members had indicated that, for the purpose of assessing compliance with the servicing criteria in Item 1122, they are considering defining “platform level” differently depending on whether they intend to provide users with:

1. an Item 1122 Report for all transactions; or
2. a USAP Report for pre-06 transactions and an Item 1122 Report for post-06 transactions; or

3. a USAP Report for pre-06 transactions and post-06 transactions that are delisted and an Item 1122 Report for post-06 publicly registered transactions.

Subsequent to the call on November 16, some people had suggested that servicers could probably just define their USAP and Item 1122 platforms based on listed and de-listed transactions, since most pre-06 transactions have probably been delisted or will be soon. [The staff noted that this would address concerns about whether the platform level could be bifurcated by year (as described in 2 immediately below).] Some participants countered that while most pre-06 CMBS transactions may already be delisted, that is not necessarily true for RMBS.

Once transactions are subdivided per 1-3 above, a servicer could further subdivide their servicing rights for the purpose of defining their platforms by: mortgage type (agency and non-agency, residential and commercial, ARM and fixed, prime and nonprime, etc.) and then by (1) servicing platform; (2) servicing location; (3) legal entity; (4) other. Under this approach, a company could have multiple groups of servicing rights, each of which would be subject to testing pursuant to the Item 1122 criteria and/or the USAP criteria.

One participant noted that they intend to define servicing platform as their entire servicing portfolio, and to test different servicing rights within the portfolio for compliance with the USAP “minimum standards” or the Item 1122 “servicing criteria” depending upon whether the selected servicing right is related to a registered or non-registered transaction. They explained that because compliance tests under both engagements are so similar, that tests of sampled items from the same population should be acceptable.

A participant from one of the Big 4 firms said that to the extent the servicing entity determines it is appropriate to issue separate USAP and Item 1122 reports (for example, USAP - for the nonpublic platform, i.e., the serviced portfolio subject to non-registered transactions, and Section 1122 - for the public platform, i.e., the serviced portfolio subject to registered transactions), the attestation standards would appear to require each of the reports to “stand on its own”, and accordingly, to be supported by separate testing of individual items or internal controls from separate populations identified based on the specified servicing platforms. This separate testing would be necessary to ensure that the tested items are statistically representative of the population of the serviced assets on each of the defined platforms on which the reports are issued. In the scenario described immediately above, the population of items to be tested is commingled between the platforms (i.e. the non-registered and registered platforms), and therefore, the reliability of the test results to support the individual USAP or Item 1122 reports could be questioned. Stated differently, in the scenario above, the individual reports may not be adequately supported if the underlying testing strategies and the individual tested items include serviced items from both platforms.

Consequently, from an attestation perspective, separate servicing platforms, as identified by the servicing entity for reporting purposes, would have to be used for determination of the test populations, statistical sampling, and individual testing under separate USAP and Item 1122 engagements. Further, if a company defines multiple platforms underneath USAP and Item 1122, separate reports would have to be issued for each identified platform. In that instance, if a company defines its platforms as pre-06 USAP transactions, further divided by commercial and residential servicing platforms, and post-06 Item 1122 transactions, further divided by commercial and residential servicing platforms, the company will have identified four platforms which will necessitate four separate reports: two USAP Reports and two Item 1122 Reports, each of which would have to be supported by its own full-scope testing.

MBA noted that representatives of the Big 4 accounting firms had pointed out another complexity associated with the platform level concept. Specifically, they noted that the Regulation states that “...an assessment and attestation for the entire period covered by the report on Form 10-K is the appropriate

approach...” [Fed Reg, Vol. 70, No 5, Jan 7, 2005, page 1573]. Consistent with this reference, an entity servicing assets in deals with multiple reporting dates could be faced with the prospect of performing rollforward tests throughout the year in order to produce multiple Item 1122 Reports within the same year to conform to periods covered by Form 10-K reports. This is in contrast to the USAP engagement which is intended to cover the “entity’s” fiscal year.

Many participants acknowledged that they had not focused on this reference, and that they would have to consider its implications. Others, however, said that it should not present a problem because almost all CMBS and most RMBS transactions are on a calendar year basis.

## 2. Question about pre- and post-06 bifurcations

MBA staff noted that while some members believe Item 1122 engagements are not applicable to pre-06 transactions and post-06 delisted transactions, others said they are not so sure. They mentioned that some people have questioned whether the word “all” in the description of the platform level concept in the Regulation<sup>1</sup> suggests that testing under Item 1122 should cover servicing of *all* ABS with servicing of the same type as those ABS covered by the 10-K report, regardless of other considerations.

Others disagreed saying that there could be no justification for subjecting non-registered ABS which are not subject to SEC reporting requirements, and pre-06 transactions which are not subject to Reg AB, to reporting under Item 1122. Nevertheless, others said it is unclear whether servicers can elect to exclude their pre-06 and post-06 delisted transactions from compliance testing under Item 1122. MBA staff noted they would follow-up with the Big 4 firms on this issue and report back to the group.

## 3. Considerations involving Issuing Separate 1122 and USAP Reports

MBA staff then reviewed the advantages and disadvantages of issuing separate reports that were discussed on November 16.

The main advantage of delivering 1122 Reports for only currently registered, post-06 deals, is that an Item 1122 engagement is a more expansive engagement than the USAP engagement and therefore will be more expensive to perform.

Some advantages of delivering Item 1122 Reports for all transactions include: 1) the cost of producing USAP and 1122 Reports may outweigh some of the cost of just 1122 Reports. For example, separate platforms for registered/non-registered deals could complicate testing, especially as deals are continually listed and de-listed, and 2) investors could be confused by the receipt of 1122 Reports followed by USAP Reports, or vice versa during the same period, or between periods. For example, investors may object to receiving Item 1122 Reports and then USAP Reports when the deals are de-listed. Further, investors in deals issued prior to '06 may request Section 1122 reports for all deals going forward, regardless of when issued.

Participants made the following additional observations:

- Many systems may not be able to accommodate a bifurcation or separation of testing for pre- and post-06 transactions.

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<sup>1</sup>“This means an assessment of compliance with respect to all asset-backed securities transactions involving the asserting party that are backed by assets of the type backing the asset-backed securities covered by the Form 10-K report.” [Federal Register, Vol. 70, No. 5, January 7, 2005, page 1573]

- Existing contracts will have to be amended in order to provide users with an Item 1122 Report rather than a USAP Report. MBA's letter to members, particularly page 2, gives people a good starting point for negotiating with users to accept Item 1122 Reports.
- As time goes by the Reg AB population will decrease relative to the non Reg AB population as more and more deals are outstanding but delisted.
- Contractual requirements control what must be done once a deal is delisted.

#### 4. Additional Considerations

Someone noted that the mismatch in review criteria resulting if a vendor/subservicer provides a servicer with a USAP engagement but the servicer reports under Item 1122 could be problematic.

MBA staff questioned whether MBA should draft a letter to vendors and subservicers for use by members in requesting reports under USAP or Item 1122. Someone responded that they would love to get some feedback from parties that see their vendors falling into Item 1122. They said they are monitoring their vendors so they do not believe they need to obtain Item 1122 reports from them. Other participants said they are doing the same. One participant, however, said their company had sent letters to vendors, prepared by their legal group, putting them on notice that they might need to comply with Item 1122. One vendor disclaimed responsibility for reporting.

### **III. Next Steps**

Finally, MBA staff asked whether members would like MBA to submit a request to the SEC for a change in the "period covered by" 2006 Item 1122 engagements. The staff advised that all indications are that the SEC staff would not be amendable to the change. Nevertheless, members generally agreed that it is worth a try, and that they would recommend that MBA send the letter. The staff indicated that a draft of the letter would be circulated for discussion in advance of the next call.

### **IV. Adjournment**

MBA staff said further discussion of the platform level concept and other issues would be taken up during a call to be scheduled after the first of the year. The call was adjourned at 5:00 p.m. ET.