



November 30, 2005

Mr. Thomas Deutsch, Esq.
Associate Director
American Securitization Forum
The Bond Market Association
360 Madison Avenue
New York, NY 10017-7111

By Electronic Mail

Dear Tom:

Attached to this letter for consideration by the American Securitization Forum (ASF) is a copy of the ASF draft document, "Model Provisions: Regulation AB Compliance, Residential Mortgage Loan Purchase and Selling Agreements," marked up to reflect the aggregate comments we have received from members of the Mortgage Bankers Association (MBA).

We congratulate the ASF staff for your pioneering work on compliance with Regulation AB. ASF has dedicated substantial resources to assisting our industry in interpreting the new Regulation and at MBA we respect your efforts and thank for your allowing us to participate on some of your calls on this important subject. However, we believe that the draft Model Provisions require some changes in order to serve as a starting point for an industry standard.

At present, the Model Provisions reflect the interests of the large issuers that purchase mortgages and engage in the securitization business. Virtually all of those entities are MBA members and Regulation AB compliance is critical to them and, therefore, to MBA. Despite the importance of the purchasers' interests, contracts based on the draft Model Provisions can be successful only if they balance the interests and responsibilities of buyers with those of sellers and servicers in complying with the Regulation. We have members with concerns in that regard.

MBA represents mortgage originators, sellers, servicers, and issuers of all sizes and types. That diversity of market positions has resulted in some observations you might not yet have received, and we hope the comments will be useful. For example, a small- or medium-sized mortgage originator

that sells servicing released, but services only for an interim period prior to servicing transfer will tend to have different record keeping capabilities than a very large servicer. Some interim servicers believe that the Model Provisions draft language does not accommodate their business arrangements as indicated in the attached mark-up. One such concern, for example, is that mortgage originators will be unable to comply with the static pool information demands of purchasers.

There are several substantive points on which our members converged. To facilitate transfer of our comments here, we use the term "purchaser" although that term could apply to the issuer, sponsor or depositor for a securitization transaction covered by Regulation AB:

- The Model Provisions do not reflect the materiality balance mentioned repeatedly in Regulation AB itself and, therefore, are more demanding than the Regulation. Where the Model Provisions require that various standards should be as determined by the purchaser, the wording should be changed to reflect that performance standards should be as required by Regulation AB.
- In some sections, the Model Provisions extend Regulation AB standards to private transactions not subject to the Regulation. Our members do not believe that Regulation AB standards should be applied to mortgages that are not used in transactions subject to the Regulation, such as whole loan transfers or private placement transactions.
- The responsibilities of a seller or servicer should be clarified where threshold percentages of Regulation AB securitization transaction participation will not be met; in fact, some members would like to see a specific provision, available where applicable, that would assure them that the subject mortgages will not equal or exceed such thresholds in any securitization subject to the Regulation.
- Further to the point above, the purchaser, or its successor, is in a position to provide prior notice to servicers with regard to the actual use of the mortgages sold under a purchase agreement. The sponsor/purchaser should be required to do so at the time the agreement is executed or thereafter in order to clarify the scope of the servicers' responsibilities and limit reports and certifications to those actually required by Regulation AB.

- The five day turnaround times specified in several sections for the turnaround of materials in response to purchaser requests are aggressive and there is concern that compliance could be impossible. We have tried to make a change to a ten day period in our mark-up.
- While our members think that the Model Provisions should stay within the parameters of Regulation AB, there are instances where specific guidance from the purchaser is necessary. In particular, the Model Provisions require sellers or servicers to provide static pool information according to Regulation AB. These parties are not in a position to determine what data elements are specifically required by Reg AB as interpreted by the purchaser. Instead, we suggest the language indicate that the purchaser will provide a specific list of data elements being requested of the seller or servicer, which will be allowed indemnity for the fact that some information may not be available. Another area requiring clarification pertains to which subcontractors should be covered in any reports to be provided by a servicer.
- The Model Provisions do not envision certain circumstances that are common in the residential mortgage industry. Interim servicing, mentioned above, is such a circumstance, and the originators who provide such servicing are not in a position to submit the data needed to satisfy requirements for static pool information because they do not have it. The information gathering and aggregation capabilities of the issuer are clearly more suited to that role.
- The servicer has liability for the provision of information by third-party subservicers and other contractors with whom the servicer may have no contractual relationship. We question the efficacy of the Model Provisions' placing liability on the servicer for the compliance of entities over which the servicer might have no leverage at all. As noted above, the servicer should receive clarification from the purchaser as to which subcontractors should be covered in the servicer's reports.
- The indemnification and potential liability sections in the Model Provisions need to be revisited. Servicers' liability extends

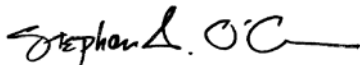
potentially to numerous parties and should be confined to those items required by the Regulation to be delivered and to the parties to which such items must be delivered. The potential liability could be very large, even catastrophic, for many servicers depending on unknown variables, such as an action by the SEC in response to a technical default by the purchaser. Some servicers see the liability exposure as disproportionate to the benefits of the contract to an unreasonable degree. See our comments attached regarding section .07

All of our responding members, originators and servicers, indicated their understanding of the importance of Regulation AB. It is their intention to do whatever is necessary to assure that they provide products, services, information and certifications to allow purchasers of their mortgages to comply with the Regulation.

For the purpose of advancing the revision of the current draft, we have attached a redlined version showing our suggested changes based on your draft of November 28. It is our hope that further discussions among the parties to purchase and selling agreements and between our associations will continue.

Please feel free to call Vicki Vidal at 202/557-2861 or Kathy Gibbons at 202/557-2870 with questions.

Sincerely,

A handwritten signature in black ink that reads "Stephen O'Connor". The signature is written in a cursive style with a long horizontal line extending to the right.

Stephen O'Connor
Vice President
Government Affairs