



March 13, 2006

Ms. Paula Dubberly
Associate Director, Legal
Division of Corporation Finance
United States Securities & Exchange Commission
100 F Street, NE
Room 3612
Washington, DC 20549

Dear Ms. Dubberly:

The Mortgage Bankers Association¹ respectfully requests that the Commission consider changing the period covered by first year attestation reports under Item 1122, *Compliance with applicable servicing criteria*, under Regulation AB, **Asset-Backed Securities**, to a “for the quarter-ended” date from a “for the period covered by” date. Under a “quarter-ended date,” testing would be performed throughout the reporting period but instances of material noncompliance would be reportable only if identified during the last quarter of the year. MBA believes this change will give entities that are subject to reporting under Item 1122 (hereby “servicers”) needed time to address outstanding issues relating to assessing and reporting on compliance with the servicing criteria.

MBA members have been preparing to implement Regulation AB for more than a year. A member of your staff graciously addressed MBA questions about Regulation AB during a phone conference in Washington, DC last March and during an on-site conference in Chicago last April, and MBA sought additional guidance from the Commission this past summer regarding the proper application of the reporting threshold under Item 1122. For more than six months, MBA also has been sponsoring an ongoing series of conference calls among the members of our new Regulation AB Working Group (which has a current membership of more than two hundred individuals) to facilitate an exchange of information about the Regulation. In addition, separate commercial and residential Regulation AB pages are now available for viewing by all interested parties on MBA’s web site.²

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 500,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation’s residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 3,000 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA’s Web site: www.mortgagebankers.org.

² See <http://www.mortgagebankers.org/IndustryResources/ResourceCenters/RegAB> and <http://www.mortgagebankers.org/IndustryResources/ResourceCenters/RegABCommercial>

Despite these efforts, MBA has learned that many servicers believe they are unprepared to report on compliance at this time, including many servicers that have filed "USAP Reports" in the past under the Commission's "modified Exchange Act reporting" approach.³ While the USAP and Item 1122 engagements are substantively the same types of engagements,⁴ the scope of the Item 1122 engagement is much broader as more parties are subject to reporting. Also, the Item 1122 engagement involves assessments of compliance with more servicing activities than is true under the USAP engagement.

The expanded scope of Item 1122 has given rise to issues which servicers are still working to resolve. For example:

- some servicers (including vendors and trustees) that are subject to reporting under Item 1122 have only recently learned that the Regulation is relevant to them. In some cases, business partners disagree on their respective reporting responsibilities under Item 1122;
- many servicers, including servicers that have reported under the USAP, are still trying to determine how they should perform the Item 1122 engagement, including how it is affected by the guidance in §AT 601, *Compliance Attestation*, and how some of the servicing criteria should be interpreted.

MBA believes a change in the date of first year Item 1122 engagements to a "for the quarter-ended" date would give servicers needed time to resolve these issues to ensure a more orderly and timely transition to reporting to the benefit of servicers and investors, as explained below.

Challenges Relating to Reporting by More Parties

Item 1122 reporting requirements⁵ have instigated a flurry of contract negotiations among, and contract amendments by, parties engaged in servicing publicly registered mortgage-backed security transactions, including master servicers, primary servicers, third party service providers, and interim servicers.⁶ While master servicers are working to ensure they will obtain Item 1122

³ Under that approach: "A modified annual report on Form 10-K is required with two items being most important: a servicer's statement of compliance with its servicing obligations; and a report by an independent public accountant regarding compliance with particular servicing criteria." [See Federal Register, Vol. 70, No. 5, January 7, 2005, page 1510]. Many servicers have chosen to fulfill this requirement by filing copies of USAP Reports prepared pursuant to MBA's *Uniform Single Attestation Program for Mortgage Bankers* (the USAP).

⁴ The USAP engagement and the Item 1122 engagement are examination level attestation engagements pursuant to the American Institute of CPAs (AICPA) and the Public Company Accounting Oversight Board's (PCAOB) Attestation Standards for Compliance Attestation (AT §601). According to the preamble to the final Regulation, those standards "...should be used in performing this examination engagement." [See Federal Register, Vol. 70, No. 5, January 7, 2005, page 1576].

⁵ Pursuant to the Regulation, Item 1122 Reports are required "...by any "party participating in the servicing function," which is defined as any entity that is performing activities that address the servicing criteria." [See Federal Register, Vol. 70, No. 5, January 7, 2005, page 1574]

⁶ "Interim servicer" is a term often used to describe loan originators that service loans for an interim period between origination of a loan and some period of time after the sale of the loan to an aggregator/issuer.

reports⁷ from primary servicers,⁸ many primary servicers are working to ensure they will obtain Item 1122 Reports from third party service providers, including parties that perform many of the servicing functions⁹ as well as parties that perform one or two discrete servicing functions (generally referred to as “vendors”). Many of these parties, including many primary servicers and most vendors and trustees, have not reported under the USAP in the past.

Moreover, many servicers have been surprised to learn that they will be required to produce 1122 Reports by some business partners as a condition of doing business in the future because they have been under the impression they fall below the 5% threshold for reporting.¹⁰ Likewise, many third party service providers until recently were unaware of the Regulation altogether, or assumed that it was inapplicable to them as they consider themselves to be “vendors” rather than “servicers.” Complicating matters further is that many of these vendors and other “servicers” have not engaged registered accountants¹¹ to perform Item 1122 engagements because they have only recently learned that it is relevant to them.

In all cases, these contract negotiations have been time-consuming as servicers (including vendors and trustees) are reluctant to undertake significant new reporting costs and responsibilities without a clear understanding of their legal obligations and exposures under the new contracts, as well as confirmation that their accountants will be able to furnish them with attestation reports within the required timeframes. These negotiations can be prolonged if the parties disagree on their respective responsibilities for reporting under Item 1122, including the extent to which a party will meet the 5% threshold for reporting. In at least one case, a master servicer has terminated relationships with some business partners who have refused to furnish them with Item 1122 Reports.

Challenges Relating to Expanded Compliance Testing

Engagement planning has been delayed also by general unfamiliarity with the nature of the Item 1122 engagement among many servicers, as well as their accountants. This unfamiliarity extends to the professional authoritative literature that should be followed in planning and performing the Item 1122 engagement (namely, AT §601) and how that literature contrasts with the authoritative literature for audit engagements. It also extends to the proper procedures for testing compliance with some of the Item 1122 criteria, and the circumstances in which business practices or transaction documents should be changed to conform to activities addressed in the criteria.

⁷ As used herein, an Item 1122 Report includes: (1) Management's assessment of compliance with the servicing criteria; (2) A registered public accounting firm's attestation report on management's assessment; and (3) any additional disclosures required for the Form 10-K, as specified in §229.1122 of the Regulation.

⁸ Primary servicers also are referred to as “subservicers” within the commercial mortgage-backed securities market.

⁹ Parties that perform many of the servicing functions on behalf of, and under the direction of, primary servicers (that own the servicing rights) are often referred to as “subservicers” within the residential mortgage-backed securities market.

¹⁰ For example, some “interim” servicers (see footnote 6) are being asked to furnish Item 1122 Reports to purchasers of their loans as a precautionary measure to ensure that reports are received from them in the event they meet the 5% threshold for reporting at the end of the year.

¹¹ A company may need to engage new accountants if their current accountants are not registered with the PCAOB, and either cannot register or do not have an interest in registering with the PCAOB.

MBA notes that as of March 7, 2006, there were 1627 accounting firms registered with the PCAOB. While many firms may have conducted attestation engagements in the past, many are unfamiliar with the USAP engagement and are just learning about the Item 1122 engagement in circumstances where clients have notified them recently that they are subject to reporting under the Regulation. Consequently, many firms are still developing plans and procedures for performing the engagements, including developing guidance for rendering judgments about material compliance with the criteria.

Further, many servicers and accountants, including those that have reported under the USAP in the past, are by necessity undertaking to understand fully the authoritative literature on "attestation engagements."¹² The increased focus on the engagement is understandable given the perceived additional legal exposures associated with inaccurate reporting under an engagement that was developed by a regulatory authority, rather than by an industry group (as in the case of the USAP). Further, it is only reasonable to assume that reporting parties are far more focused on the details of these matters now, given the significantly increased exposures for inaccurate reporting in the current post Sarbanes-Oxley environment.

Also, while MBA has endeavored, and is continuing to endeavor, to build consensus regarding the proper interpretation of the servicing criteria among our members, some uncertainty remains with respect to how some of the Item 1122 servicing criteria should be interpreted. This uncertainty presents a risk that servicers may inadvertently assess compliance with the wrong servicing activities if their accountants reach different conclusions with respect to the activities described by the criteria. To avoid this possibility, many servicers have sought guidance from their accountants only to be told that they, too, are seeking to interpret the criteria.¹³

Moreover, the Item 1122 engagement, unlike the USAP engagement,¹⁴ requires testing back to transaction documents. This feature of the engagement is beneficial as it allows servicers to demonstrate compliance where their servicing practices conform to transaction requirements but not to the criteria (e.g., deposits of payments on pool assets must be made within two business days of receipt and other situations where the timelines cannot be met due to a variety of circumstances). However, it also is likely to encourage contracts to be more descriptive where business practices may differ from the specific timelines in the criteria (in order to avoid any assessment of material noncompliance and the business consequences that may flow from such findings), as may be the case in "exception processing" where such timelines cannot be met for legitimate reasons. Many servicers feel compelled to address all exception practices because of the increased risk exposure for inaccurate reporting today.

Conclusion

MBA believes planning and performance of Item 1122 engagements under Regulation AB has been delayed for legitimate reasons that call for leniency in this initial reporting year. If servicers

¹² Pursuant to Regulation AB, "...the attestation examination must be made in accordance with standards for attestation engagements issued or adopted by the Public Company Accounting Oversight Board (PCAOB)." [See Federal Register, Vol. 70, No. 5, January 7, 2005, page 1576].

¹³ For example, some servicers and accountants have questioned the meaning of the word "maintained" in criterion (d)(3)(i) in §229.1122: "Reports to investors, including those to be filed with the Commission, are maintained in accordance with the transaction agreements and applicable Commission requirements."

¹⁴ The "minimum standards" in the USAP are, for the most part, "stand alone" criteria as they do not involve testing to transaction documents.

are not given additional time to resolve outstanding issues, they may be unable to report on compliance or could report instances of material noncompliance with the criteria. Reported noncompliance could unnecessarily alarm investors about the propriety of some servicers' legitimate and longstanding servicing practices if the servicers are not given time to amend their transaction documents in time to reflect them.

MBA notes that a change in the reporting date would not be without precedent as the Commission on March 1, 2004, granted an extension to certain publicly registered companies for reporting on internal control pursuant to the requirement in items 308(a) and (b) of Regulations S-K and S-B.¹⁵ MBA believes that many servicers are facing many of the same challenges associated with reporting on compliance with the Item 1122 servicing criteria that smaller companies faced with reporting on internal control two years ago. Consequently, MBA believes the Commission should give servicers similar relief by allowing compliance to be judged "for the quarter-ended" rather than "for the period ended" for this first reporting year.

To reiterate, under a "quarter-ended" reporting date, MBA believes testing should be performed throughout the reporting period but instances of material noncompliance would be reportable only if identified during the last quarter of the year. Some accountants have advised MBA that this is the only feasible approach to testing compliance, as testing could not – and should not – be compressed into the final quarter alone. However, to the extent any detected material noncompliance is detected through tests performed in the first three quarters of the year, that noncompliance would only be reportable if not addressed and corrected beginning the first day of the last quarter of the year, through the last day of the year.

In closing, MBA supports Regulation AB because a cohesive and formalized framework for applying the Federal securities laws to asset-backed securities (ABS) ultimately will be to the benefit of all parties to the ABS market. This is most likely to be true if the requirements in the Regulation are interpreted consistently among different parties to the benefit of investors whose evaluations of different transactions depend, in part, on comparable provider information. MBA believes a change in the reporting period to a "quarter-ended" date will serve servicers and investors by helping ensure that engagements are performed more consistently among different servicers, and reported compliance reflects activities over a period of time, including the end of the year.

MBA greatly appreciates the opportunity to share our comments and recommendations regarding Regulation AB with the Commission. For further information about our comments, please contact Alison Utermohlen, Senior Director of Government Affairs and Staff Representative of MBA's Financial Management Committee, at 202/557-2864 or autermohlen@mortgagebankers.org.

Most sincerely,



Jonathan L. Kempner
President & Chief Executive Officer

¹⁵ See Federal Register, Vol. 69, No. 40, March 1, 2004, "Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports," page 9722.