



VIA Electronic Mail

May 17, 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:

In a letter sent to you earlier this year, the Mortgage Bankers Association¹ (MBA) recommended that the Commission change the date of first year Item 1122 engagements to a “for the quarter ended” date from an “as of and for the year ended” date to give servicers and their accountants additional time to address outstanding issues associated with the engagements. Some of those issues were discussed during a subsequent meeting with Commission staff on April 5 during which representatives of the Big Four accounting firms said that an “as of the year ended” date, rather than a “quarter ended” date, would be more practicable to perform from a resource management standpoint. MBA endorsed a change to an “as of the year ended” date during that meeting and continues to support that view given the number of issues our members are still working to address.

Over the past month, MBA members have continued to debate questions about the performance of Item 1122 engagements despite helpful guidance that you, and other members of the Commission staff, provided last month. For example, MBA members are still considering how the term “asset type” should be defined for the purpose of determining the scope of transactions that are subject to testing under Item 1122. MBA members are also continuing to resolve ongoing contract renegotiations to ensure their business partners will be prepared to report under Item 1122 in the first year.

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.

In addition, MBA members are still trying to determine whether:

- Testing platforms can be defined (e.g., by legal entity, geographic region, etc.) as broadly or as narrowly as an entity may prefer, provided that the platform definitions are commercially reasonable, based on “asset types,” and remain consistent between years, given that the more numerous an entity’s platforms the closer testing is to a “transaction” based approach which could be viewed favorably by investors;
- The guidance in AT 601 permits accountants to rely on the work of management and other parties in performing examination level attestation engagements. This question is critical within the context of testing waterfall calculations under Item 1122 (d)(3)(ii)² as accountants that do not have the in-house expertise to perform tests of those calculations will have to rely on outside help to attest to their accuracy. If accountants cannot rely on outside parties for this purpose, they presumably could not accept the engagements, thereby placing their clients at risk of not being able to comply with the Regulation;
- Transaction documents should be amended to ensure compliance with the criteria going forward where an entity’s servicing practices differ from standards in the criteria for legitimate business reasons. In those cases, management may prefer to change their transaction documents rather than change their servicing practices or, alternatively, risk reported noncompliance with the criteria;
- The materiality standard in Item 1122 (d)(1)(ii)³ has implications for determining which third parties may be subject to reporting under Item 1122. For example, mortgage servicers are somewhat uncertain which third parties may be required to provide attestation reports, including parties who handle the substantive aspects of foreclosure actions as described in Item 1122 (d)(4)(vii);⁴ and,
- The authoritative literature for attestation engagements, namely AT 601, *Compliance Attestation*, requires separate reports for separate testing platforms, or whether a single report would be acceptable provided the results of testing under separate platforms are fully and clearly disclosed in the report.

The performance of Item 1122 engagements has been delayed because the answers to some of these questions affect determinations of the transactions that will be subject to testing and the nature of the tests. An entity’s compliance testing will be affected, for example, by whether it assesses compliance with certain servicing activities directly or by reliance on reports from business partners that perform those activities. Some accountants also may be delaying accepting engagements until they know whether they can rely on third parties’ tests of waterfall calculations.

² That criterion reads as follows: “Amounts due to investors are allocated and remitted in accordance with timeframes, distribution priority and other terms set forth in transaction agreements.”

³ That criterion reads as follows: “If any material servicing activities are outsourced to third parties, policies and procedures are instituted to monitor the third party’s performance and compliance with such servicing activities.”

⁴ That criterion reads as follows: “Loss mitigation or recovery actions (e.g., forbearance plans, modifications and deeds in lieu of foreclosure, foreclosures and repossessions, as applicable) are initiated, conducted and concluded in accordance with the timeframes or other requirements established by the transaction agreements.”

Some MBA members also are waiting for confirmation of the guidance provided by the Commission staff on April 5 before beginning engagements. Consequently, MBA recommends that the Commission release interpretative guidance soon confirming that:

- Pre-Regulation transactions are not required to be included in the scope of testing under Item 1122;
- All post-Regulation transactions are required to be included in the scope of testing under Item 1122 (i.e., ABS transactions that were required to comply with Regulation AB, which would not include offerings that were not required to be registered or that did not fall within the Regulation's definition of 'asset backed security');
- It is acceptable for a servicer (that is also an issuer) to include pre-Regulation transactions in the scope of testing for the purpose of issuing only Item 1122 Reports to investors in the future;
- Testing platforms can be defined in different ways provided: (1) the defined platforms remain unchanged between periods absent some compelling reason for a change (e.g., sale of a segment of a portfolio); and (2) the transactions within a particular platform are of the same "asset type;"
- The phrase "are maintained" as used in Item 1122 (d)(3)(i)⁵ should be interpreted to mean that tests must be performed only to determine that reports to investors were timely filed. [MBA requests clarification of which party must report on the timeliness of the filing of investor reports; that is, whether it should be the party that provides the reports directly to investors or the party that is ultimately responsible for the content of the report per the transaction agreement];
- Material noncompliance is to be judged separately under Items 1122 and 1123, *Servicer compliance statements*, such that any noncompliance related to an investor's transaction agreements detected in the course of performing the Item 1122 engagement is not required to be disclosed unless it is material to the platform. Likewise, any noncompliance reported in a servicer's compliance statement is not required to be disclosed in the servicer's Item 1122 report unless it was detected in the course of that engagement and deemed material to the platform;
- The phrase "maintenance of collateral or security on pool assets" is a reference to the mortgage (or other) instruments, rather than to the related real estate or other collateral security, in Item 1122 (d)(4)(i);
- Further, and although this point was not specifically discussed, MBA recommends that the Commission clarify that servicers, rather than issuers, are responsible for defining "asset-type" for testing purposes because servicers may be subject to providing the same Item 1122 reports to multiple issuers.

⁵ The criterion reads, in part, as follows: "Reports to investors, including those to be filed with the Commission, are maintained in accordance with the transaction agreements and applicable Commission requirements. Specifically, such reports..."

MBA also recommends that the Commission confirm that compliance with the Item 1122 criteria is to be judged by the standards in the criteria, and that reference to transaction documents is only warranted if a particular servicing practice is inconsistent with a standard in one of the criteria. Some MBA members are concerned that transaction documents will be reviewed for compliance as a matter of practice, which would substantially drive up the cost of engagements. Also, this could contribute to the belief that noncompliance with transaction documents trumps compliance with the standards in the criteria, as illustrated below:

Attesting to Compliance with Item 1122 Servicing Criteria				
Standard in Servicing Agreement	One day	Two days	Three days	Three days
Standard in Reg AB Criterion	Two days	Two days	Two days	Two days
Results of Compliance Testing	Two days	Two days	Two days	Three days
Evaluation of Compliance*	Noncompliance	Compliance	Compliance	Compliance
*Reflects reliance on agreement language rather than standard in Regulation AB criterion.				

MBA believes that transaction documents should only be referred to if a servicer's servicing practices are inconsistent with the standards in the criteria, and not as a matter of course. Further, MBA believes any noncompliance noted in the first column would be subject to reporting under Item 1123, but not under Item 1122. MBA recommends that additional Commission guidance clarify these points.

MBA also recommends that the Commission seek the concurrence of the Public Company Accounting Oversight Board (PCAOB) that, pursuant to AT 601:

- The results of testing different platforms may be conveyed in a single report to investors provided the reported information describes the nature of the platforms and the results of testing in a manner that is clearly understandable to readers; and
- Accountants can rely on the work of management and third parties in attesting to the accuracy of management's assertion regarding compliance with the servicing criteria. MBA recommends, in particular, that the Commission provide guidance that accountants can rely on other parties to assert compliance with waterfall calculations if the accountants lack the required expertise or resources.

Given the continued state of uncertainty relating to the performance of engagements, MBA believes it is appropriate for our members to be given additional time to resolve outstanding issues. MBA would like to acknowledge that if management is permitted to assess compliance with the Item 1122 criteria "as of the year ended date" in this first reporting year, noncompliance would only be reported if it is not corrected as of the end of the year. Moreover, while MBA agrees with the Commission staff that any disclosed material noncompliance is simply a disclosure matter (for which no SEC penalties apply), our members believe there are real costs to them associated with these disclosure items in the form of potential diminished ratings by rating agencies, diminished confidence by investors, and other negative implications.

For all these reasons, MBA recommends that the Commission issue interpretive guidance soon confirming the information above and on the preceding page and granting a change in the first year engagements to an "as of the year ended" date.

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In closing, MBA greatly appreciates the opportunity to share our members' thoughts and suggestions regarding Item 1122 issues with the Commission. Any questions regarding any of the comments or recommendations in this letter should be referred to Alison Utermohlen, MBA Senior Director for Government Affairs, at 202/557-2864 or autermohlen@mortgagebankers.org

Most sincerely,

A handwritten signature in black ink that reads "Jonathan L. Kempner". The signature is written in a cursive style with a large initial 'J' and a long, sweeping underline.

Jonathan L. Kempner
President and Chief Executive Officer