



ISSUE PAPER

Subject: SEC Regulation on Asset-Backed Securities

Issue: On January 7, 2005, the Securities and Exchange Commission (SEC) issued a final regulation, Regulation AB, to codify requirements for the registration, disclosure and reporting for asset-backed securities (ABS), 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 twenty 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 all ABS offerings commencing on or after January 1, 2006, requiring 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 2005 issuance level of almost \$1.2 trillion and exceeded the combined Fannie Mae, Freddie Mac and Ginnie Mae mortgage-backed securities issuance volume of \$966 billion. Through May 2006, RMBS volume exceeded \$452 billion, an amount significantly above the agency MBS volume of \$364 billion. Commercial mortgage-backed securities (CMBS) U.S. volume for 2006 is already over \$90 billion and 2005 hit a record \$169 billion, a substantial increase in issuance.

As the major industry 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 two hundred individuals. Numerous MBA sponsored conference calls have been held throughout the past year among the members of the working group and

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MBA staff. Select members of 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 participated in a meeting with SEC staff this past April and two follow-up conference calls with SEC staff in June regarding industry practice.

- MBA also sponsored a highly successful residential Regulation AB forum on April 10-11, featuring two senior members of the SEC staff and twenty expert accountants, lawyers and industry practitioners as speakers. Also, many MBA commercial and residential conferences in 2005 and 2006 have featured, or will feature, 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 the extensive static pool disclosure required by Regulation AB. 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 also 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 websites, respectively, at: <http://www.mortgagebankers.org/IndustryResources/ResourceCenters/RegABCommercial>

<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 they are responsible for interpreting the

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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: Earlier this year, the SEC provided tentative responses to several questions raised by the industry and their accountants regarding compliance with

Item 1122 of the Regulation. Some of the SEC's tentative guidance is listed below:

- Pre-Regulation transactions are not required to be included in the scope of testing under Item 1122, the servicer can perform the USAP;
- All post-Regulation transactions are required to be included within the scope of testing under Item 1122;
- 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)¹ should be interpreted to mean that tests must be performed to determine that reports to investors were prepared and timely filed; the parties required to complete loan level information for the reports will be tested under the criteria in Item 1122 (d)(4);
- Material noncompliance is to be judged separately under Items 1122 Attestation review and 1123, *Servicer compliance statements*, such that the two statements exist independently as a test of the platform (1122) and a test to the specific transaction (1123); therefore, one report may indicate noncompliance and the other report indicate full compliance; and
- 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).

On May 17, 2006, the MBA submitted a letter requesting that the SEC put the above responses in writing for the benefit of all parties. MBA requested guidance on some additional Item 1122 matters also. The SEC staff has informed the MBA that written guidance in the form of SEC staff telephone interpretations will be issued soon and will be available to the public on the SEC's Internet website. 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.

¹ 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..."

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