

November 16, 2010

VIA ELECTRONIC MAIL

Ms. Elizabeth Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Disclosure for Asset-Backed Securities Required by Section 943
of the Dodd-Frank Wall Street Reform and Consumer Protection Act
Release Nos. 33-9148; 34-63029, File No. S7-24-10
75 Federal Register 62718, October 13, 2010

Dear Ms. Murphy:

The American Bankers Association (ABA)¹ and the ABA Securities Association (ABASA)² appreciate the opportunity to respond to the request for comment by the Securities and Exchange Commission (Commission) on the above-referenced release (Proposing Release). Our members serve as originators, issuers, sponsors, underwriters and trustees across the broad spectrum of securitization transactions.

The Proposing Release would implement Section 943(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act³ (Dodd-Frank Act), that requires securitizers of asset-backed securities (ABS) issuances to disclose demands for repurchase of assets across all trusts aggregated by the securitizer and whether such assets were, in fact, repurchased, so that investors may identify asset originators with clear underwriting deficiencies. Section 943(2) was enacted in response to a perceived lack of effectiveness of the buy-back covenants in ABS transaction documents where breaches of underlying asset-level representations and warranties were alleged. At the outset, ABA generally supports the need for appropriate disclosure with respect to repurchase requests, and we suggest modifications which we believe will provide investors with more useful information about such requests.

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its 2 million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities. Learn more at www.aba.com.

² ABASA is a separately chartered affiliate of the ABA that represents those holding company members of the ABA that are actively engaged in capital markets, investment banking, and broker-dealer activities.

³ Pub. L. No. 111-203 (July 21, 2010). The Proposing Release would also implement the requirement of Section 943(1) to require rating agencies to provide descriptions of representations, warranties and enforcement mechanisms in ABS transactions and how these compare to other transactions. This comment letter does not address this requirement of Section 943.

Discussion

The Proposing Release would implement this requirement by proposing new Rule 15Ga-1 that would require disclosure on new Form ABS-15G of repurchase requests on all ABS transactions, whether or not publicly and privately issued, in which transaction documents provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty. Initially, a securitizer would be required to provide the repurchase history for the last five years by filing Form ABS-15G at the time the securitizer or its affiliate first offers or organizes an offering of ABS after the rule's effective date. Thereafter, the form would be required to be updated and filed monthly, until the last payment has been made on the last ABS outstanding and held by a non-affiliate of the securitizer.

The data required by Form ABS-15G would not be limited to successful demands for repurchase, but also would include disclosure of both pending and unfulfilled repurchase requests by the trustee, as well as repurchase requests made by any securityholder even if the trustee did not make a demand. Form ABS-15G would require disclosure in a single table of repurchase requests by asset class, listing the names of all of the relevant issuing entities and detailing for each issuing entity the repurchase statistics for each originator of underlying assets. For each originator and for each issuing entity, Form ABS-15G would require disclosure of the number, outstanding principal balance and percentage by principal balance of:

- Assets that were the subject of a repurchase demand for breach of representations and warranties;
- Assets that were actually repurchased or replaced;
- Assets that were not repurchased or replaced; and
- Assets that are pending repurchase or replacement (including a footnote that provides narrative disclosure as to why the repurchase or replacement is pending).

1. Disclosures Should Be Required Prospectively

The Proposing Release would require a five-year look-back period for repurchase demands, based on the Commission's belief that Section 943(2) requires retroactive application. ABA and ABASA strongly disagree with that interpretation. To the contrary, we believe that nothing in the statutory language requires retroactive application. Neither are we aware of anything in the legislative history that would require retroactive effect. Rather, as discussed below, we believe that retroactive application could serve to mislead rather than provide transparency for investors.

To date there has been no requirement either under transaction documents or by regulation for parties involved in securitization transactions to track information on repurchase demands. As a result, any information to be disclosed in a five-year look back period will almost certainly be incomplete and may well not provide a reasonably accurate picture of repurchase demands. Our trustee members have indicated that they could not even determine what percentage of the information they could provide. Moreover, we believe it would be extremely burdensome for trustees and other parties authorized in securitization transactions, to compile the data from thousands of paper document files. This would be a very time-consuming and costly exercise

that trustees could not undertake without adequate compensation. Finally, because so many of the originators of residential mortgage securitizations (which represent the focus of most investor discontent with repurchases) have gone out of business in the last five years, we believe the look-back provision will not effectuate Congressional intent to illuminate those originators that have poor underwriting practices.

Although the Commission would permit securitizers to indicate in a footnote that complete information is not available, we strongly believe that the footnote cannot serve to undo misperceptions resulting from incomplete data. Such footnote disclosures are likely to create issues that are unrelated to the performance of the assets and that will take time and resources to address, without leading to the disclosure of useful information.

In addition, because there has been no requirement to report the data, securitizers and trustees may have widely differing practices for retaining such data. As a result, the fragmented information that is available may well not be amenable to the standardization and comparability that would permit investors to discern those originators with “clear underwriting deficiencies” as intended by Congress. However, applying the rule prospectively would enable securitization parties to develop the systems and procedures to track data on repurchase demands so that the information on Form ABS-15G will be relevant and useful to investors and act as an incentive to good performance on the part of originators.

Finally, the disclosure requirement in the Proposing Release is not limited to demands made by the trustee or other parties authorized by transaction documents to make repurchase demands. Rather, the disclosure requirement would encompass requests by *any party* that made a repurchase demand of a securitizer, regardless of the legal standing of the party or the validity of the request. We note that during the past several years of disruption in the mortgage markets in particular, some investors have demanded the repurchase of whole pools of mortgages based on poor performance rather than as a function of the breach of specific representations and warranties with supporting information. Because the Proposing Release does not define a repurchase “demand,” we believe the disclosures would likely reflect repurchase requests that would not be valid demands under the transaction documents. As such, we believe the inclusion of this type of information could well skew the data to be reported and again provide misleading information to investors.

For the above reasons, ABA and ABASA strongly urge the Commission to revise the proposal to make the reporting requirement prospective and to narrow appropriately the definition of the demands to be reported under the proposal (as discussed below).

2. Definition of Repurchase Demand

As noted above, the Proposing Release does not currently define a repurchase “demand.” We believe that the only demands that should be required to be disclosed are those that comport with the procedures specified in the transaction documents.

We do not dispute that the recent economic turmoil revealed that the existing process relating to repurchase demands was flawed. We believe, however, that the industry has made significant progress toward remedying those flaws. As a result, new ABS transaction documents will

contain effective procedures for appropriate parties to make allegations of breaches of specific representations and warranties. Accordingly, ABA and ABASA strongly believe that only demands for repurchases made in accordance with the specified procedures should be reportable.

3. Timing, Content of Form ABS-15G

Under the Proposing Release, Form ABS-15G would be required to be filed monthly with updated information. Although ABS issuers often make monthly distributions to investors, repurchase demands are wholly unrelated to that schedule, and the process may move slowly. As a result, there would be many months with nothing to report. Thus, a monthly reporting schedule would provide little beneficial information to investors but could impose significant burdens on securitizers. Accordingly, ABA and ABASA urge the Commission to revise its proposal to require reporting no more frequently than on a quarterly basis.

Finally, ABA and ABASA urge the Commission to permit securitizers to file separate forms per asset class. Although investors in residential mortgage-backed securities have expressed significant and repeated concerns with the repurchase process, investors in some other asset classes have not had such experiences. To avoid overwhelming investors with information that may not be relevant, we believe filing Form ABS-15G by asset class is appropriate and would let investors readily find the information in which they are specifically interested.

Conclusion

For the reasons stated above, ABA and ABASA strongly urge the Commission to implement Rule 15Ga-1 prospectively and define the repurchase “demands” to be reported as only those that conform to the procedures specified in the transaction documents. We further believe the Commission should require reporting on Form ABS-15G no more frequently than on a quarterly basis and that filing by asset class should be permitted.

If you have any questions about the foregoing, please do not hesitate to contact the undersigned.

Sincerely,



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