

**NEW YORK
CITY BAR**

COMMITTEE ON STRUCTURED FINANCE

CRAIG A. WOLSON
CHAIR
29 PUNCH BOWL DRIVE
WESTPORT, CT 06880
Phone: (203) 858-4804
cwolson01@aol.com

MONICA PURI
SECRETARY
HUNTON & WILLIAMS LLP
200 PARK AVENUE
NEW YORK, NY 10166
Phone: (212) 309-1074
Fax: (212) 309-1835
mpuri@hunton.com

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VIA ELECTRONIC MAIL
Tom Deutsche, Esq.
Deputy Executive Director
American Securitization Forum
360 Madison Avenue, 18th Floor
New York, NY 10017-7111

**Re: American Securitization Forum Request for
Comment on Project RESTART RMBS Disclosure
Package**

Ladies and Gentlemen:

The Committee on Structured Finance (the "Committee") of The Association of the Bar of the City of New York (the "Association") is pleased to submit the following comments on the RMBS Disclosure Package (including the related Transaction Supplement Fields, the "Disclosure Package"), which was issued by the American Securitization Forum ("ASF") on July 16, 2008 in connection with the ASF's Project on Residential Securitization Transparency and Reporting (the "Project").

The Association is an organization of over 23,000 lawyers. Most of its members practice in the New York City area; however, Association membership spans nearly every state and over 50 countries.

The Committee exists to address the unique set of legal, accounting, and regulatory issues critical to structured finance. The Committee appreciates the opportunity to comment on

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
42 West 44th Street, New York, NY 10036-6689 www.nycbar.org

the Disclosure Package and stands ready to assist the ASF and its staff if further clarification is required on any of the points raised in this letter.

The Committee appreciates ASF's considerable efforts to establish best practices to be followed by industry participants, in order to restore the confidence of investors in mortgage- and asset-backed securities. The Committee agrees with and endorses the goals of the Project generally and, specifically, the use of the proposed Disclosure Package. The Committee submits this letter to convey its views regarding certain of the details in the proposal.

Timing of Delivery of Disclosure Package

The preparation and delivery of the Disclosure Package to investors needs to be examined in connection with the requirements and restrictions set forth under the Securities Act of 1933, as amended (the "Securities Act")¹. It is proposed that the Disclosure Package be provided to rating agencies early in the securitization process and be updated to reflect changes to the pool of loans prior to the issuance of the ratings and the issuance of the RMBS and that the version containing data on the final pool will be made available to investors. This raises questions regarding timing which should be considered and possibly addressed in the Disclosure Package materials. The first is whether there should be a specified timeframe for delivery of the Disclosure Package to investors prior to the pricing of the transaction in order to afford investors with a reasonable opportunity to review the disclosure and make an informed investment decision. We think that, consistent with the Securities Offering Reform rules², which require that investors have all material information prior to the time of the sale of the securities³, potential investors should be provided the Disclosure Package with a reasonable amount of time to review it prior to the sale. In determining this time period, it is worth considering that it may take more time to process the Disclosure Package than it would to review a prospectus or other "plain English" disclosure.

The timing of the delivery of the Disclosure Package also will affect the timing of the filing requirements pursuant to the Securities Act. The Disclosure Package will probably be considered to be a free writing prospectus that contains only ABS informational and computational materials as defined in Item 1101(a) of Regulation AB⁴. Therefore, pursuant to Rule 433 of the Securities Act, the Disclosure Package must be filed within the timeframe permitted by Rule 426(b). Under Rule 426(b)(2), the materials must be filed by the later of the due date for filing the final prospectus relating to such offering and two business days after first use. By requiring delivery of the Disclosure Package to investors prior to the time of sale of the securities, it will also help to ensure that the disclosure is filed and accessible for all potential investors at or near the same time as

¹ 15 U.S.C. § 77a et seq.

² 17 CFR § 200 et seq.

³ Rule 159 of the Securities Act provides that any information conveyed to a purchaser after the time of sale will not be taken into account in determining the rights a purchaser may have with respect to whether a prospectus or oral statement contained an untrue statement of a material fact or omitted to state a material fact.

⁴ 17 CFR § 229.1100 et seq.

delivery of the Regulation AB-required offering documents, which will provide a complete picture of the RMBS transaction for investors.

Cut-off Date for Data

In the list of initial data fields to be contained in the Transaction Supplement, which is attached as Appendix A (the "Transaction Supplement Fields"), the first field is "Data as of Date". Currently, the Disclosure Package does not have a requirement that the data must be as of a certain date in relation to the issuance of the RMBS. There should be a requirement that the "as of date" in the Disclosure Package be the same as the "cut-off" date as to which information is provided in the offering documents pursuant to Regulation AB⁵. This will ensure that all information is current and enable investors to get an accurate understanding of the pool composition. If the dates are not the same, the information regarding pool assets and selection criteria disclosed pursuant to Item 1111 in the offering document may differ from the information provided in the Disclosure Package; this could lead to potential confusion for investors.

FICO Score

Another loan field that might prove useful is the number of open tradelines for each borrower, as this information is helpful in evaluating the FICO score. For example, if the FICO is generated from too few tradelines, it might be considered less indicative of the borrower's actual creditworthiness and lower the usefulness of the information that might otherwise be derived from the FICO score.

Borrower Income Information

Given widespread concern about the overstatement of borrower income⁶, the Committee supports the provisions in the Disclosure Package that require additional borrower income data. Most notable are fields requiring a statement of the monthly base income for both the primary borrower and any co-borrower⁷, a statement of the total income (from all sources) for all borrowers under the loan⁸, a field that states the means employed to verify the income information, and a field calling for the monthly payment amount required on all debt owed by the borrowers.⁹ While basic borrower income figures are by no means a fail-safe method of assessing a borrower's likelihood of performing under the borrower's loan obligations, the additional income information mandated by the guidelines is an important and necessary improvement.

⁵ 17 CFR § 229.1100 et seq.

⁶ See, e.g., Bob Tedeschi, "When the Truth Goes Begging", *N.Y. Times*, Aug. 27, 2006.

⁷ See field numbers 89 and 90.

⁸ See field number 94.

⁹ See field number 102.

Property Valuation

The property valuation figures assigned to the mortgaged property have been cited as a significant factor in the mortgage crisis¹⁰. In the new Disclosure Package, the number of required fields addressing property valuation is substantially increased and promises to provide more information to investors. The Disclosure Package requires a statement of the sale price of the property negotiated between the buyer and seller.¹¹ To further increase the usefulness of the sale price field, the Disclosure Package should also include the date of the referenced sale, which would allow investors to evaluate the sales figure's continued usefulness.

While the Disclosure Package provides a number of improved fields relating to appraisals, it would be helpful to require disclosure of the number of appraisals obtained, the date of each such appraisal, and the valuation figures each of these appraisals garnered¹². As drafted, the new Disclosure Package requires information related only to a single valuation of the property. By incorporating fields for additional valuations of the property, investors will get the benefit of all the available valuation information regarding a property.

Standardization and Future Developments

While the standardization of the information provided and the use of common terminology is a useful goal, the 135 categories of information outlined in the Disclosure Package should not be considered exhaustive; instead, the Disclosure Package should allow for relevant information related to new and/or revised mortgage products that may not yet exist. The Disclosure Package should instruct issuers to include in the Disclosure Package any additional fields that are material concerning the mortgage loans in the pool.

Related to this point, we suggest that the form of Transaction Supplement Fields be revised to reflect that the characteristics listed in items 12 through 18 are illustrative of, but not a finite list of, the types of information that should be disclosed if the concentration percentage of loans with that characteristic are not *de minimis*¹³. That is, any unusual or novel characteristics should be disclosed here if they are material.

The Committee also supports the Proposed Market Standards and Practices and approves the idea of standardizing such disclosure as delinquency reporting, so that the information is comparable among deals without having to consider further whether a differing methodology might be used. Although the "OTS method" has commonly been used in subprime deal reporting, the avoidance of confusion by setting one standard methodology

¹⁰ See, e.g., Vikas Bajaj, "New York Says Appraiser Inflated Value of Homes", *N.Y. Times*, Nov. 2, 2007; Press Release, New York Attorney General, New York Attorney General Cuomo Announces Agreement With Fannie Mae, Freddie Mac, and OFHEO (March 3, 2008)

¹¹ See field number 115.

¹² See Standard & Poor's, Request for Comment: Additional Loan-Level Fields Requested For New U.S. RMBS Ratings (Feb. 1, 2008), which included these fields.


¹³ We note that the letter accompanying the Reporting Package describes the Transaction Supplement Fields in this manner.

is a sensible improvement, and the “MBS method” provides a more intuitive method for the calculation of delinquency. Further, we look forward to a proposed standard definition for such factors as documentation type. The lack of a common recognized standard in such subjective areas has served as a source of confusion and even fraud.

The Committee looks forward to participating in the upcoming phases of the Project. We believe that increased standardization and transparency of disclosure related to securitization transactions will increase confidence and efficiency in the marketplace and can help speed the return of investors to the market.

The Committee appreciates the opportunity to comment and stands ready to assist the ASF with further information or other assistance regarding this important matter.

Very truly yours,


Craig A. Wolson

The Association of the Bar of the City of New York
Committee on Structured Finance
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Bianca A. Russo
Jeffrey Stern
Linda Grant Williams
Boris Ziser

* Primary draftsman of this letter of comments