



July 21, 2022

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549

Dear Chair Gensler,

SIFMA appreciates the Webex meeting we had with your staff on June 28, 2022 and the smaller, follow-up Webex meeting on June 30, 2022 with your staff to discuss our concerns with the December 16, 2021 Trading and Markets staff No-Action Letter that implements a phased approach to compliance with Rule 15c2-11 of the Securities Exchange Act of 1934 (“Exchange Act”) in fixed income markets, including debt securities resold pursuant to Rule 144A of the Securities Act of 1933.

SIFMA discussed with your staff the serious concerns raised by the application of Rule 15c2-11 to Rule 144A securities issued by private companies and various types of asset-backed issuers, in particular the requirement that issuer financial information be made “publicly available” starting next year under phases two and three of the No-Action Letter in order for broker-dealers to be able to publish or submit quotations for those securities in a quotation medium. As we noted, the value and liquidity of 144A securities (including securities that are already outstanding) are likely to be adversely affected, potentially significantly, without further action by the Commission.

SIFMA’s concerns are shared by a wide spectrum of issuers¹ and other bond market participants, and we highlight a letter from The Credit Roundtable to the SEC Chair and staff dated June 21, 2022.² The Credit Roundtable is a group of large institutional fixed income managers with more than \$4 trillion of investment assets – i.e., it represents a very large percentage of *buyers* of Rule 144A securities as only qualified institutional buyers can purchase these securities. The Credit Roundtable stated in that letter that its “members do not have any issues obtaining access to financial reporting to make informed investment decisions regarding issuers accessing fixed income financing pursuant to Rule 144A and are unaware of significant examples of investors having been harmed by a lack of information access.”

The investors’ satisfaction with current financial reporting reflects the robust information that investors receive in Rule 144A offerings of debt securities and continue to receive while such

¹ See Letter from the National Association of Manufacturers dated July 18, 2022, representing 144A issuers (https://documents.nam.org/tax/nam_144a_letter.pdf) .

² See (https://cdn.ymaws.com/thecreditroundtable.org/resource/resmgr/recent_news/220621_crt_letter_re_15c2-11.pdf).

debt securities are outstanding. The financial reporting covenants that are found in Rule 144A securities have developed through negotiation between issuers and investors over the 30+ years since the adoption of Rule 144A, are typically calibrated to the asset class, and reflect what the investor community considers to be important to their ongoing credit analysis. While it may be obvious, it is important to remember that if investors were not receiving the information they viewed as material, they would not purchase the securities either in their initial offering or in the secondary market.

During our June 30 Webex meeting, your staff raised questions regarding the disclosures that are currently provided to investors in Rule 144A securities. In response to those questions, we note the following:

- **Initial Offering Document:** Consistent with the obligations imposed under the antifraud provisions of the federal securities laws such as Exchange Act Rule 10b-5, it is market practice that Rule 144A offering documents contain similar disclosure as registered offering prospectuses. Initial purchasers and their counsel conduct substantially the same level of due diligence, and initial purchasers receive customary supporting opinions and documents, such as “negative assurance” (10b-5) disclosure letters from both issuer’s and initial purchasers’ counsel and auditor comfort letters, just as is the case in registered offerings. Thus, from both a process and substantive information point of view, Rule 144A offerings are substantially similar to registered offerings.
- **Rule 144A(d)(4) Information Covenant:** Although the exact wording may vary from security to security, market standard indentures (or issuing and paying agency agreements) under which Rule 144A securities are issued contain a covenant to the following effect:

“The Issuer agrees that, *for so long as any Notes are outstanding*, to the extent not satisfied by [the reporting covenant, discussed below], it shall furnish to the Holders and beneficial owners of the Notes and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.”

The covenant tracks the language of Rule 144A(d)(4) in entitling the holders and prospective investors to receive information from the issuer, *upon request*.

Rule 144A(d)(4) requires the provision of limited information: “a very brief statement of the nature of the business of the issuer and the products and services it offers; and the issuer’s most recent balance sheet and profit and loss and retained earnings statements, and similar financial statements for such part of the two preceding fiscal years as the issuer has been in operation (the financial statements should be audited to the extent reasonably available).” That information is required to be “reasonably current” as defined in Rule 144A(d)(4)(ii).³

³ Information will be presumed to be reasonably current if “[t]he balance sheet is of a date less 16 months before the date of resale, the statements of profit and loss and retained earnings are for the 12 months preceding the date of

- **Ongoing Reporting Covenant:** Market standard indentures (or issuing and paying agency agreements) under which Rule 144A securities are issued also contain a covenant requiring the issuer to provide ongoing financial and other information to bondholders. The information required by the reporting covenant is typically extensive and goes much beyond (in scope and frequency) what Rule 144A(d)(4) requires to be made available to holders and prospective investors upon request.

Thus, in the high yield market these covenants typically provide for the provision of a management discussion and analysis like that disclosed in registered offerings and the disclosure of certain events that would trigger the filing of a Form 8-K by a public reporting company. It is also not uncommon for these covenants to require the issuer to hold a quarterly conference call with investors. To help facilitate an understanding of the extent of these covenants, we have attached as Appendix A an excerpt from Simpson Thacher & Bartlett LLP's "Standard Form of High Yield Debt Covenants with Commentary, Seventh Edition" which discusses the reporting covenants typically found in high yield note offerings.

In the case of asset-backed securities, these reporting covenants typically require much of the information (such as pool performance information) that would be provided as part of a Form 10-D distribution report for public asset-backed issuers and, in a number of cases (especially CLOs), more performance and asset-level information than would be required by Form 10-D.

The information required to be provided under both the Rule 144A(d)(4) Information Covenant and the Ongoing Reporting Covenant is very frequently made available by posting the required information on a password-protected website. Existing bondholders, prospective investors that qualify to purchase the relevant securities (e.g., qualified institutional buyers), securities analysts and market making institutions may access the website after entering into a "click-through" or other standard form of confidentiality agreement. In the asset-backed securities space (including CLOs), investors often access information about the securities through subscription services (such as Intex) that are available only to professional investors.

To supplement this overview, we have also included examples of actual reporting covenants across all types of products in Appendix B hereto. These were excerpted from the applicable transaction documents for Rule 144A securities that are currently outstanding and redacted to eliminate certain identifying information.

As you would expect, and as demonstrated by these examples, qualified institutional buyers have negotiated for, and receive, extensive reporting from issuers. Information provided by issuers, including non-reporting companies and the various types of asset-backed issuers, is available on a real-time basis to investors in the secondary market. As indicated by The Credit Roundtable,

such balance sheet, and if such balance sheet is not as of a date less than six months before the date of resale, it shall be accompanied by additional statements of profit and loss and retained earnings for the period from the date of such balance sheet to a date less than six months before the date of resale". Thus, under Rule 144A(d)(4) information does not even need to be as current as provided by Exchange Act reporting companies.

the fact that financial information is not posted on a public website or on EDGAR does not negatively impact the ability of investors to access information necessary to make an informed investment decision.

The requirement that Rule 144A(d)(4) information be “publicly available” in order for broker-dealers to be able to publish or submit quotations in a quotation medium will not enhance the quality or scope of information available to investors, nor the frequency of its distribution, but is likely to undermine the liquidity of securities issued by non-reporting companies and asset-backed issuers. Such illiquidity would harm all market participants, including investors and issuers. As The Credit Roundtable notes, there is a “very high likelihood that the valuation of,” and its members ability to trade, certain Rule 144A securities “will be negatively impacted as we near the expiration of the No-Action letter.”

We hope this information is useful in helping you and your staff to understand the level of information that investors in the Rule 144A market are currently receiving.

We will follow up with your staff shortly to answer any questions you or your staff may have and to continue our discussions on this important topic. In the interim, please contact us if you have any questions regarding these materials or require additional information, including additional examples of reporting covenants.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken Bentsen", with a long horizontal flourish extending to the right.

Kenneth E. Bentsen, Jr.
President and CEO

cc: The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárrag, Commissioner
Mr. Haoxiang Zhu, Director, Division of Trading and Markets
Ms. Renee Jones, Director, Division of Corporation Finance

APPENDIX A

Excerpt from Simpson Thacher & Bartlett LLP's "Standard Form of High Yield Debt Covenants with
Commentary, Seventh Edition"

[see attached]

APPENDIX B

Excerpts of Reporting Covenant Provisions

Example 1 (Note: The reporting covenant below relates to a high-yield debt issuance):

SECTION 4.03. Reports and Other Information.

(a) So long as any Notes are outstanding, the Company shall furnish to the Holders (with a copy to the Trustee):

(1) (A) all annual and quarterly financial statements substantially in forms that would be required to be contained in a filing with the SEC on Forms 10-K and 10-Q of the Company, if the Company were required to file such forms, plus a "Management's Discussion and Analysis of Financial Condition and Results of Operations," (B) with respect to the annual and quarterly information, a presentation of EBITDA and Adjusted EBITDA of the Company substantially consistent with the presentation thereof in the Offering Memorandum and derived from such financial information, and (C) with respect to the annual financial statements only, a report on the annual financial statements by the Company's independent registered public accounting firm; and

(2) promptly after the occurrence of an event required to be therein reported, such other information containing substantially the same information that would be required to be contained in filings with the SEC on Form 8-K under Items 1.01, 1.02, 1.03, 2.01, 2.05, 2.06, 4.01, 4.02, 5.01 and 5.02(b) and (c) (other than with respect to information otherwise required or contemplated by Item 402 of Regulation S-K promulgated by the SEC) as in effect on the Issue Date if the Company were required to file such reports; *provided, however*, that no such current report will be required to include as an exhibit, or to include a summary of the terms of, any employment or compensatory arrangement agreement, plan or understanding between the Company (or any of its Subsidiaries) and any director, manager or executive officer of the Company (or any of its Subsidiaries);

provided, however, that (i) in no event shall such reports be required to comply with Rule 13-01 or 13-02 of Regulation S-X promulgated by the SEC or contain separate financial statements for the Company, the Guarantors or other Subsidiaries the shares of which are pledged to secure the Notes or any Guarantee that would be required under Rule 3-09, 13-01 or 13-02 of Regulation S-X, respectively, promulgated by the SEC, (ii) in no event shall such reports be required to comply with Regulation G under the Exchange Act or Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non-GAAP financial measures contained therein, (iii) no such reports referenced under clause (2) above shall be required to be furnished if the Company determines in its good faith judgment that such event is not material to the Holders or the business, assets, operations or financial position of the Company and the Restricted Subsidiaries, taken as a whole, (iv) in no event shall such reports be required to include any information that is not otherwise similar to information included in the Offering Memorandum, other than with respect to reports provided under clause (2) above and (v) in no event shall reports referenced in clause (2) above be required to include as an exhibit copies of any agreements, financial statements or other items that would be required to be filed as exhibits to a current report on Form 8-K except for (x) agreements evidencing material Indebtedness and (y) historical and *pro forma* financial statements to

the extent reasonably available and, in any case with respect to *pro forma* financial statements, to include only *pro forma* revenues, Consolidated EBITDA and Capital Expenditures in lieu thereof.

All such annual reports shall be furnished within 120 days after the end of the fiscal year to which they relate, and all such quarterly reports shall be furnished within 60 days after the end of the fiscal quarter to which they relate.

At any time that any of the Company's Subsidiaries are Unrestricted Subsidiaries and if any such Unrestricted Subsidiary or group of Unrestricted Subsidiaries, if taken together as one Subsidiary, would constitute a Significant Subsidiary of the Company, then the quarterly and annual financial information required by the preceding paragraph will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" or other comparable section, of the financial condition and results of operations of the Company and Restricted Subsidiaries separate from the financial condition and results of operations of such Unrestricted Subsidiaries of the Company.

(b) So long as any Notes are outstanding, the Company shall also make available such information and such reports (as well as the details regarding the conference call described below) to any Holder and, upon request, to any beneficial owner of the Notes, securities analysts providing analysis of investment in the Notes and market makers, in each case by posting such information on its website, on Intralinks or any comparable password-protected online data system which will require a confidentiality acknowledgment, and will make such information readily available to any Holder, beneficial owner of Notes, any prospective investor in the Notes, any securities analyst (to the extent providing analysis of investment in the Notes) or any market maker in the Notes who agrees to treat such information as confidential or accesses such information on Intralinks or any comparable password-protected online data system which will require a confidentiality acknowledgment; *provided* that the Company shall post such information thereon and make readily available any password or other login information to any such Holder, beneficial owner of Notes, prospective investor, securities analyst or market maker; *provided, further, however*, the Company may deny access to any competitively-sensitive information otherwise to be provided pursuant to this paragraph to any such Holder, prospective investor, security analyst or market maker that is a competitor of the Company and its Subsidiaries to the extent that the Company determines in good faith that the provision of such information to such Person would be competitively harmful to the Company and its Subsidiaries; and *provided, still further*, that such Holders, prospective investors, security analysts or market makers shall agree to (i) treat all such reports (and the information contained therein) and information as confidential, (ii) not use such reports and the information contained therein for any purpose other than their investment or potential investment in the Notes (but shall be authorized to trade the Company's securities) and (iii) not publicly disclose any such reports (and the information contained therein).

Example 2 (Note: The reporting covenant below relates to a high-yield debt issuance):

Section 4.03 Reports(a) So long as any Notes are outstanding, the Company will deliver to the Trustee a copy of all of the information and reports referred to below:(1) on or before the date that is 120 days after the end of each fiscal year of the Company and (during the IP Co Reporting Period) IP Co, (i) audited consolidated balance sheet and audited consolidated statements of operations and income, members' equity and cash flows of the Company and its Subsidiaries (without giving effect to the proviso in the definition of "Subsidiary") as of the end of and for such year, and related notes thereto,

setting forth in each case in comparative form the figures for the previous fiscal year and (ii) during the IP Co Reporting Period, audited consolidated balance sheet and audited consolidated statements of operations and income, members' equity and cash flows of IP Co and its Subsidiaries as of the end of and for such year (commencing with financial statements as of the end of and for the fiscal year during which the IP Distribution occurs and ending with the financial statements as of the end of and for the fiscal year during which the IP Consolidation occurs), and related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year (if available); at the time of delivery of such statements, the Company shall provide an accompanying customary management discussion and analysis (which, for the avoidance of doubt, shall not be required to include strategy level detail with respect to operational performance, trading algorithms, "ticker-level" information or information that the Company otherwise reasonably considers to be proprietary or highly sensitive) plus a report on such financial statements by the Company's independent auditors;

(2) commencing with the financial statements for the fiscal quarter ending September 30, 2021, in respect of the Company and the fiscal quarter during which the IP Distribution occurs (unless such fiscal quarter is the last quarter of IP Co's fiscal year, in which case such financial statements under this clause (2) for IP Co and its Subsidiaries shall first be prepared with respect to the succeeding fiscal quarter), in respect of IP Co (and ending, with respect to IP Co, with the financial statements for the fiscal quarter during which the IP Consolidation occurs (unless such fiscal quarter is the last quarter of IP Co's fiscal year, in which case such financial statements during this clause (2) for IP Co and its Subsidiaries shall cease to be prepared with respect to the preceding fiscal quarter)), on or before the date that is 60 days (75 days for the quarter ended September 30, 2021) after the end of each of the first three fiscal quarters of each fiscal year of the Company and (during the IP Co Reporting Period) IP Co, an unaudited consolidated balance sheet and unaudited consolidated statements of operations and income, members' equity and cash flow as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year (if available), in each case on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes; at the time of delivery of such statements of the Company, the Company shall provide an accompanying customary management discussion and analysis in respect of the Company (which, for the avoidance of doubt, shall not be required to include strategy level detail with respect to operational performance, trading algorithms, "ticker-level" information or information that the Company otherwise reasonably considers to be proprietary or highly sensitive); and

(3) within 15 days after the time period specified in the SEC's rules and regulations for filing current reports on Form 8-K, substantially the same information that would be required to be contained in filings with the SEC on Form 8-K under Items 1.01, 1.02, 1.03, 2.01 (only with respect to acquisitions that are "significant" at the 20% or greater level pursuant to clauses (1)(i) and (ii) of the definition of "Significant Subsidiary" under Rule 1-02 of Regulation S-X only), 2.05, 2.06 4.01, 4.02(a) and (b), 5.01 and 5.02(b) and (c) (with respect to the principal executive officer, president, principal financial officer and principal operating officer only and other than with respect to information otherwise required or contemplated by subclause (3) of such Item or by Item 402 of Regulation S-K); *provided, however*, that no such current reports will be required to be delivered if the Company determines in its good faith judgment that such event is

not material to Holders or the business, assets, operations, financial position or prospects of the Company and its Restricted Subsidiaries, taken as a whole.

The foregoing (a) shall not be required to comply with Section 302, Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, as amended, or related Items 307, 308 and 308T of Regulation S-K promulgated by the SEC, or Item 10 and Item 402 of Regulation S-K and information regarding executive compensation and related party disclosure related to SEC Release Nos. 33-8732A and 34-54302A, (b) shall not be required to comply with public company GAAP, (c) shall not be required to comply with Regulation G under the Exchange Act or Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non GAAP financial measures contained therein, (d) shall not be required to comply with, or contain separate financial statements that would be required under, Rule 3-09, Rule 3-10, Rule 3-14, Rule 3-16, Rule 3-05, Rule 13-01 or Rule 13-02 of Regulation S-X, (e) shall not be required to provide any segment or business unit financial information except to the extent consistent with the disclosures in the Offering Memorandum dated November 2, 2021, (f) shall not be required to comply with or provide exhibits pursuant to Item 601 of Regulation S-K and (g) shall not be required to include financial statements in interactive data format using the eXtensible Business Reporting Language and such reports shall be subject to exceptions, exclusions and other differences consistent with the presentation of financial and other information in the Offering Memorandum dated [month] [day], 2021 and shall not be required to present compensation or beneficial ownership information.

Notwithstanding the foregoing, none of the Company nor any Restricted Subsidiary will be required to disclose any document, information or other matter (i) that constitutes trade secrets or proprietary information, strategy level detail with respect to operational performance, trading algorithms or strategies, or ticker level information, (ii) in respect of which disclosure to the Trustee or any Holder (or their respective representatives) is prohibited by law or any binding agreement or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product; *provided* that if information is withheld under clause (ii) pursuant to a binding agreement, the Company or such Restricted Subsidiary shall use commercially reasonable efforts to obtain waivers and otherwise provide such information that does not violate such confidentiality obligations.

In the event Unrestricted Subsidiaries constitute more than 5.0% of the total assets or income of the Company and its Subsidiaries on a combined (during the IP Co Reporting Period) and consolidated basis, simultaneously with the delivery of each set of consolidated financial statements referred to in clauses (1) and (2) above, a schedule setting forth adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements.

In addition, the Company will, for so long as any Notes remain outstanding, use its commercially reasonable efforts to hold and participate in quarterly conference calls with Holders, beneficial owners of the Notes, bona fide prospective investors and securities analysts to discuss such financial information no later than 15 Business Days after distribution of such financial information required by clauses (1) and (2) of the Section 4.02(a). If the Company or a direct or indirect parent of the Company holds a publicly accessible quarterly conference call with its investors or lenders, it shall be deemed to satisfy the obligation of the foregoing sentence.

Example 3 (Note: The reporting covenant below relates to a high-yield debt issuance):

SECTION 4.03 Reports.

(a) So long as any Secured Notes are outstanding, the Issuer will provide the Trustee and, upon request, to Holders of Secured Notes a copy of all of the information and reports referred to below:

(1) within 90 days after the end of each fiscal year (or 150 days after the end of the first fiscal year after the Acquisition Closing Date) (or such longer period as may be permitted by the Commission pursuant to the reporting requirements for a non-accelerated filer), annual audited consolidated financial statements of Parent that would have been required to be contained in an Annual Report on Form 10-K under the Exchange Act if Parent had been a reporting company under the Exchange Act for such fiscal year (but only to the extent similar information is presented in the Offering Memorandum), including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" with respect to the periods presented and a report on the annual financial statements by Parent's independent accountants (all of the foregoing financial information to be prepared on a basis substantially consistent with the corresponding financial information included in the Offering Memorandum);

(2) from and after the first fiscal quarter ending after the Acquisition Closing Date, within 45 days after the end of each of the first three fiscal quarters of each fiscal year (or 75 days after the end of each of the first three fiscal quarters ending after the Acquisition Closing Date for which delivery is required hereunder) (or such longer period as may be permitted by the Commission pursuant to the reporting requirements for a non-accelerated filer), unaudited quarterly consolidated financial statements of Parent (including a balance sheet and related statements of profit and loss and statement of cash flows) that would have been required to be contained in a Quarterly Report on Form 10-Q under the Exchange Act if Parent had been a reporting company under the Exchange Act for the interim period as of, and for the period ending on, the end of such fiscal quarter (but only to the extent similar information is presented in the Offering Memorandum), including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" (all of the foregoing financial information to be prepared on a basis substantially consistent with the corresponding financial information included in the Offering Memorandum), subject to normal year-end adjustments and the absence of footnotes; and

(3) within 15 days after the time period specified for filing current reports on Form 8-K by the Commission, current reports containing substantially all of the information that would be required to be filed in a current report on Form 8-K under the Exchange Act on the Acquisition Closing Date pursuant to Items 1.01, 1.03, 2.01, 2.03, 2.04, 4.01, 4.02, 5.01, 5.02(a) through (c) (other than compensation information), and 5.03(b) (in each case, excluding the financial statements, pro forma financial information and exhibits, if any, that would be required by Item 9.01) of Form 8-K if Parent had been a reporting company under the Exchange Act; *provided, however*, that no such current report will be required to be furnished if Parent determines in its good faith judgment that such event is not material to Holders or the business, assets, operations, financial position or prospects of Parent and its Restricted Subsidiaries, taken as a whole, or if the Issuer determines in its good faith judgment that such disclosure would otherwise cause material competitive harm to the business, assets, operations, financial position or prospects of Parent and its Restricted Subsidiaries, taken as a whole or contains any trade secrets, privileged or confidential information obtained from another Person or competitively sensitive information;

provided, however, that in addition to providing such information to the Trustee, the Issuer will be required to make available to the Holders, *bona fide* prospective investors in the Secured Notes, *bona fide* market makers in the Secured Notes affiliated with any Initial Purchaser and *bona fide* securities analysts (to the extent providing analysis of investment in the Secured Notes) such information by (i) posting to its website (or the website of any direct or indirect parent of the Issuer or of a Subsidiary of Parent) or on IntraLinks or any comparable password-protected online data system, in each case, subject to the extensions provided for in clauses (1) and (2) of this Section 4.03(a), within 15 days after the time the Issuer would be required to provide such information pursuant to clause (1), (2) or (3) above, as applicable, or (ii) otherwise providing substantially comparable availability of such reports (as determined by the Issuer in good faith) (it being understood that, without limitation, making such reports available on Bloomberg or another comparable private electronic information service shall constitute substantially comparable availability).

Example 4 (Note: The reporting covenant below relates to an investment-grade debt issuance):

The Company will furnish to the Trustee for the benefit of and distribution to other Holders of each section of Securities:

- (1) As soon as practicable and in any event within 120 days after the end of each fiscal year, (A) a management's discussion and analysis of financial condition and results of operations for such fiscal year, (B) consolidated earnings and retained earnings statement and consolidated statement of cash flow of the Company and its consolidated Subsidiaries for such fiscal year, and (C) consolidated balance sheet of the Company and its consolidated Subsidiaries as at the end of such fiscal year, setting forth in each case in comparative form corresponding consolidated figures from the proceeding fiscal year, together with the report of the Company's independent certified accountants of recognized national standing (the "Accountants") with respect to such fiscal years;
- (2) As soon as practicable and in any event within 45 days after the end of each quarterly period in each fiscal year, which is not the end of a fiscal year referred to in the clause (1) above, (A) a bring-down management's discussion and analysis of financial condition and results of operations for the period from the last fiscal year-end to the end of such quarterly period, (B) consolidated earnings and retained earnings statement and consolidated statement of cash flow of the Company and its consolidated Subsidiaries for the period from the last fiscal year-end to the end of such quarterly period, and (C) consolidated balance sheet of the Company and its consolidated Subsidiaries as at the end of such quarterly period, setting forth, in each case in comparative form, corresponding consolidated unaudited figures from the corresponding period in the immediately preceding fiscal year, in each case in summarized presentation and unaudited; subject to the changes resulting from year-end adjustments;

Example 5 (Note: The reporting covenant below relates to an RMBS issuance):

Reports to Certificateholders.

On each Distribution Date⁴, the Securities Administrator shall have prepared and shall make available to the Mortgage Loan Seller, the Depositor, the Issuing Entity, the Loan Data Agent, the Delaware Trustee, the Reviewer and each Certificateholder a written report that includes, at a minimum, the following information (based, to the extent related to the Mortgage Loans, on Mortgage Loan information received from the Servicers or the Master Servicer):

(1) the amount of the distributions, separately identified, with respect to each Class of Certificates;

(2) the amount of the distributions set forth in clause (a) allocable to principal, separately identifying the aggregate amount of any Principal Prepayments or other unscheduled recoveries of principal included in that amount;

(3) the amount of the distributions set forth in clause (a) allocable to interest and how such amount was calculated;

(4) the Class Principal Amount or Class Notional Amount, as applicable, of each Class of Certificates after giving effect to distributions of principal on such Distribution Date;

(5) the Stated Principal Balance of the Mortgage Loans at the end of the related Due Period and the Net WAC for such Distribution Date;

(6) the aggregate amount of Trust Expenses paid since the previous Distribution Date and the aggregate amount of each component of Trust Expenses paid since the previous Distribution Date;

(7) the amount of (i) the Servicing Fee or the Successor Servicing Fee, as applicable, paid to or retained by each Servicer or the successor servicer, as applicable, including the amount of Base Servicing Fees, Delinquent Servicing Fees, if any, and Additional Servicing Fees, if any, (ii) the amount of any Servicing Fee Shortfalls, if any, paid to any Servicer, (iii) the Delaware Trustee Fee paid to the Delaware Trustee, (iv) the installment of the Reviewer Annual Fee, and any Reviewer Review Fees and any Reviewer Termination Fee paid to the Reviewer, (v) the Master Servicing Fee paid to the Master Servicer, (vi) the Securities Administrator Fee paid to the Securities Administrator, (vii) the Custodian Fee paid to the Custodian and (viii) the Loan Data Agent Fee paid to the Loan Data Agent;

(8) the amount of Advances made and reimbursed during the related Due Period;

(9) the number and Stated Principal Balance of the Mortgage Loans that, using the Mortgage Bankers Association's method, were (A) Delinquent Mortgage Loans (exclusive of Mortgage Loans in foreclosure) (1) 30 to 59 days, (2) 60 to 89 days and (3) 90 or more days, (B) in foreclosure and Delinquent (1) 30 to 59 days, (2) 60 to 89 days and (3) 90 or more days and (C) in bankruptcy as of the close of business on the last day of the calendar month preceding such Distribution Date;

⁴ Note: In this transaction, the Distribution Date occurs monthly.

(10) for any Mortgage Loan as to which the related Mortgaged Property was an REO Property during the related Due Period, the principal balance of that Mortgage Loan as of the close of business on the last day of the related Due Period;

(11) the amount of Realized Losses incurred during the related Due Period;

(12) the cumulative amount of Realized Losses incurred since the Closing Date through the end of the related Due Period;

(13) the aggregate amount of the Realized Losses, Subsequent Recoveries, Certificate Writedown Amounts and Certificate Writeup Amounts, if any, allocated to each Class of Certificates on such Distribution Date;

(14) the Pass-Through Rate on each Class of Certificates for such Distribution Date;

(15) the number and aggregate Stated Principal Balance of the Mortgage Loans as of the first and last day of the related Due Period;

(16) each related Record Date;

(17) each related Accrual Period;

(18) the related Distribution Date;

(19) a list of Mortgage Loans subject to forbearance with the Servicer and the expiration date of each such forbearance;

(20) the total dollar amount of principal deferred in connection with any Mortgage Loans subject to forbearance for the related Due Period;

(21) the cumulative dollar amount of principal deferred in connection with any Mortgage Loans subject to forbearance since the Closing Date;

(22) the total dollar amount deferred in connection with any Mortgage Loans subject to forbearance for the related Due Period;

(23) the cumulative dollar amount deferred in connection with any Mortgage Loans subject to forbearance since the Closing Date;

(24) an indication if a notice of resignation has been received from the Reviewer, any Servicer, the Master Servicer, the Securities Administrator, the Delaware Trustee or the Resident Trustee during the preceding calendar month and the name of any successor Reviewer, successor servicer, successor Master Servicer, successor Securities Administrator, successor Delaware Trustee or successor Resident Trustee appointed during the preceding calendar month; and

(25) the percentage of principal outstanding for each Class of Certificates, calculated by a fraction, the numerator of which is the current Class Principal Amount of such Class and the denominator of which is the initial Class Principal Amount of such Class.

The Securities Administrator shall make such reports and an updated Loan Tape, which shall include information for any Replacement Mortgage Loans, available each month via the Investor Reporting Website. Assistance in using the Investor Reporting Website may be obtained by calling the Securities Administrator's customer service desk at (xxx) xxx-xxxx. Certificateholders and other parties that are unable to use the Investor Reporting Website are entitled to have a paper copy mailed to them via first class mail by contacting the Securities Administrator and indicating such. In preparing or furnishing the foregoing information, the Securities Administrator shall be entitled to rely conclusively on the accuracy of the information or data regarding the Mortgage Loans and the related REO Properties that has been provided to the Securities Administrator by the Master Servicer and the Servicers or any other party providing such information under the terms hereof to the Securities Administrator, and the Securities Administrator shall not be obligated to verify, recompute, reconcile or recalculate any such information or data.

Example 6 (Note: The reporting covenant below relates to an Auto ABS issuance):

Statements to Noteholders.

(a) On or prior to each Distribution Date⁵, the Indenture Trustee shall make available to each Noteholder of record (with a copy to (i) the Depositor who will deliver such statement to the Rating Agencies and (ii) the Certificate Paying Agent who will deliver such statement to the Certificateholders in accordance with Section 11.5 of the Trust Agreement) a statement setting forth at least the following information as to the Notes and Certificates to the extent applicable:

- (i) the amount of such distribution allocable to interest for each Class of Notes;
- (ii) the amount of such distribution allocable to principal of each Class of Notes, the First Priority Principal Distributable Amount, the Second Priority Principal Distributable Amount, the Third Priority Principal Distributable Amount, the Fourth Priority Principal Distributable Amount, the Fifth Priority Principal Distributable Amount and the Regular Principal Distributable Amount;
- (iii) the amount paid or distributed to the Certificateholders;
- (iv) the Note Balance and the Note Factor for each Class of Notes after giving effect to all payments to be made on such Distribution Date;
- (v) the Noteholders' Interest Carryover Amount for each Class of Notes and the change in that amount from the preceding Distribution Date;
- (vi) the amount of the Servicing Fee paid to the Servicer with respect to the related Collection Period and/or due but unpaid with respect to such Collection Period or prior Collection Periods, as the case may be;

⁵ Note: In this transaction, the Distribution Date occurs monthly.

(vii) the Pool Balance as of the close of business on the last day of the preceding Collection Period;

(viii) the amount on deposit in the Reserve Account as of the close of business on the related Distribution Date;

(ix) the aggregate amount of overcollateralization as of the close of business on such Distribution Date, after giving effect to all payments to be made on the related Distribution Date;

(x) the amount of the aggregate Realized Losses, if any, for the preceding Collection Period as a dollar amount and as a percentage of the Original Pool Balance;

(xi) the aggregate Purchase Amounts for Purchased Receivables;

(xii) the amount of the distribution payable out of amounts withdrawn from the Reserve Account;

(xiii) the number and percentage of Receivables that have been delinquent between 31 and 60 days, between 61 and 90 days, and 91 days or more; and

(xiv) the number of all repossessed Financed Vehicles held in inventory.

Each amount set forth pursuant to paragraphs (i), (ii) and (iv) above shall be expressed as a dollar amount per \$1,000 of the initial Note Balance of the Notes (or Class thereof).

Example 7 (Note: The reporting covenant below relates to a CLO issuance):

Accountings.

(a) **Monthly.** Not later than the 20th calendar day (or, if such day is not a Business Day, on the next succeeding Business Day) of each calendar month (other than, after the Effective Date, January, April, July and October in each year) and commencing in April 2021 the Issuer shall compile and make available (or cause to be compiled and made available) to each Rating Agency, the Trustee, the Portfolio Manager, the Initial Purchaser, the CLO Information Service and, upon written request therefore, to any Holder of Notes and upon written notice to the Trustee in the form of Exhibit C, any beneficial owner of a Note, a monthly report on a trade date basis (each such report a “**Monthly Report**”). As used herein, the “**Monthly Report Determination Date**” with respect to any calendar month will be the eighth Business Day prior to the 15th day of such calendar month. The Monthly Report for a calendar month shall contain the Market Value of each Collateral Obligation to be reported in such Monthly Report and the following information with respect to the Collateral Obligations and Eligible Investments included in such Assets, and shall be determined as of the Monthly Report Determination Date for such calendar month; **provided that** the Monthly Report delivered in the calendar months prior to the Effective Date shall contain only the information described in clauses (iii), (iv)(A), (iv)(C), (iv)(D) and (x) below:

(i) Aggregate Principal Balance of Collateral Obligations and Eligible Investments representing Principal Proceeds.

(ii) Adjusted Collateral Principal Amount of Collateral Obligations.

(iii) Collateral Principal Amount of Collateral Obligations.

(iv) A list of Collateral Obligations, including, with respect to each such Collateral Obligation, the following information:

- (A) The obligor thereon (including the issuer ticker, if any);
- (B) The CUSIP, Bloomberg Global Identifier, LoanX identification of security identifier thereof;
- (C) The Principal Balance thereof (other than any accrued interest that was purchased with Principal Proceeds (but excluding any capitalized interest));
- (D) The percentage of the aggregate Collateral Principal Amount represented by such Collateral Obligation;
- (E) The related interest rate or spread;
- (F) The LIBOR floor, if any,
- (G) The stated maturity thereof,
- (H) The related Moody's Industry Classification;
- (I) The related S&P Industry Classification;
- (J) The Moody's Rating, unless such ratings is based on a credit estimate unpublished by Moody's (and, in the event of a downgrade or withdrawal of the applicable Moody's Rating, the prior rating and the date such Moody's Rating was changed), and whether such Moody's Rating is derived from an S&P Rating as provided in the definition of the term "Moody's Derived Rating";
- (K) The Moody's Default Probability Rating, and whether such Moody's Default Probability Rating is derived from an S&P rating as provided in the definition of the term "Moody's Derived Rating";
- (L) The S&P Rating, unless such rating is based on a credit estimate or is a private or confidential rating from S&P;
- (M) The country of domicile;
- (N) An indication as to whether each such Collateral Obligation is (1) a Senior Secured Loan, (2) a Second Lien Loan, (3) an Unsecured Loan, (4) a Defaulted Obligation, (5) a Delayed Drawdown Collateral Obligation, (6) a Revolving Collateral Obligation, (7) a Participation Interest (indicating the related Selling Institution and its ratings by each Rating Agency), (8) a Deferrable Obligation,

(9) a Partial Deferrable Obligation, (10) a Currently Pay Obligation, (11) a DIP Collateral Obligation, (12) a Discount Obligation, (13) a Cov-Lite Loan, (14) a Bridge Loan or (15) a Fixed Rate Obligation;

(O) The Aggregate Principal Balance of all Cov-Lite Loans;

(P) The Moody's Recovery Rate;

(Q) The S&P Recovery Rate and the S&P Rating Factor;

(R) The Market Value of such Collateral Obligation and, if such Market Value was calculated based on a bid price determined by a loan pricing service, the name of such loan pricing service (including such disclaimer language as a loan pricing service may from time to time require, as provided by the Portfolio Manager to the Trustee and the Collateral Administrator);

(S) (I) Whether the settlement date with respect to such Collateral Obligation has occurred and (II) such settlement date, if it has occurred;

(T) The identity and Principal Balance (other than any accrued interest that is expected to be purchased with Principal Proceeds (but excluding any capitalized interest)) of each Collateral Obligation that the Issuer has committed to purchase (and the date of such commitment to purchase) for which the settlement date has not yet occurred;

(U) The name and rating of the bank account provider, if applicable;

(V) The Eligible Loan Index for each Collateral Obligation; and

(W) The Asset Replacement Percentage.

(v) If the Monthly Report Determination Date occurs on or after the Effective Date, for each of the limitations and tests specified in the definitions of Concentration Limitations and Collateral Quality Test, (1) the result, (2) the related minimum or maximum test level (including any Moody's Weighted Average Recovery Adjustment, if applicable, indicating to which test such Moody's Weighted Average Recovery Adjustment was allocated), (3) with respect to the S&P CDO Monitor Test, the Class Default Differentials, the Class Break-even Default Rates and the Class Scenario Default Rates for the Highest Ranking S&P Class, the Weighted Average Floating Spread that is calculated for purposes of the S&P CDO Monitor Test, the characteristics of the Current Portfolio and the benchmark rating levels used in connection with the related S&P CDO Monitor and (4) a determination as to whether such result satisfies the related test.

(vi) If the Monthly Report Determination Date occurs after the Reinvestment Period, the stated maturity of each Reinvestable Obligation and the stated maturity of each Substitute Obligation purchased during the calendar month with the reinvested Principal Proceeds for such Reinvestable Obligations, and setting forth in respect of each Substitute Obligation, compliance with the test set forth under Section 12.2(e)(ii) (which shall be set forth on a separate dedicated page of the Monthly Report).

(vii) The calculation of each of the following:

- (A) Each Interest Coverage Ratio (and setting forth the percentage required to satisfy each Interest Coverage Text);
- (B) Each Overcollateralization Ratio (and setting forth the percentage required to satisfy each Overcollateralization Ratio Test); and
- (C) The Interest Diversion Test (and setting forth the percentage required to satisfy the Interest Diversion Test).

(viii) The calculation specified in Section 5.1(g)

(ix) For each Account, (A) a schedule showing the beginning balance, each credit or debit specifying the nature, source and amount, and the ending balance, and (B) the identity of each intermediary maintaining such Account and its rating by S&P.

(x) A Schedule showing for each of the following the beginning balance, the amount of Interest Proceeds received from the date of determination of the immediately preceding Monthly Report, and the ending balance for the current Measurement Date:

- (A) Interest Proceeds from Collateral Obligations; and
- (B) Interest Proceeds from Eligible Investments.

(xi) Purchases, prepayments, and sales:

- (A) The identity, Principal Balance (other than any accrued interest that was purchased with Principal Proceeds (but excluding any capitalized interest)), Principal Proceeds and Interest Proceeds received, and date for (X) each Collateral Obligation that was released for sale or disposition pursuant to Section 12.1 since the last Monthly Report Determination Date and (Y) for each prepayment or redemption of a Collateral Obligation, and in the case of (X), whether such Collateral Obligation was a Credit Risk Obligation or a Credit Improved Obligation, whether the sale of such Collateral Obligation was a discretionary sale, and
- (B) The identity, Principal Balance (other than any accrued interest that was purchased with Principal Proceeds (but excluding any capitalized interest)), and Principal Proceeds and Interest Proceeds expended to acquire each Collateral Obligation acquired pursuant to Section 12.2 since the last Monthly Report Determination Date.

(xii) the identity of each Defaulted Obligation, the Moody's Collateral Value, S&P Collateral Value and Market Value of each such Defaulted Obligation and date of default thereof.

(xiii) The identity of each Collateral Obligation with an S&P Rating of "CCC+" or below and/or a Moody's Rating of "Caa1" or below and the Market Value of each such Collateral Obligation.

(xiv) The identity of each Deferring Obligation, the Moody's Collateral Value, S&P Collateral Value and Market Value of each Deferring Obligation and Partial Deferrable Obligation, and the date of which interest was last paid in full in Cash thereon.

(xv) The identity of each Current Pay Obligation, the Market Value of each such Current Pay Obligation and the percentage of the Collateral Principal Amount comprised of Current pay Obligations.

(xvi) The Aggregate Principal Balance, measured cumulatively from the Closing Date onward, of all Collateral Obligations that would have been acquired through a Distressed Exchange but for the operation of the proviso in the definition of "Distressed Exchange".

(xvii) The Weighted Average Moody's Rating Factor and the Adjusted Weighted Average Moody's Rating Factor.

(xviii) (a) The Weighted Average Floating Spread, and each component thereof and (B) the Weighted Average Floating Spread, calculated in the manner required for the S&P CDO Monitor.

(xix) With respect to each purchase of Notes by the Portfolio Manager, on Behalf of the Issuer,, Pursuant to Section 2.1.5 since the last Monthly Report Determination Date, the Class and Aggregate principal amount of Notes purchased and the price (expressed as a percentage of par) at which such purchase was affected.

(xx) The identity, stated maturity and credit ratings of each Eligible Investment.

(xxi) The identity of each Collateral Obligation that is a First Lien Last Out Loan.

(xxii) With respect to a Deferrable Obligation or Partial Deferrable Obligation, that portion of deferred or capitalized interest that remains unpaid and is included in the calculation of the Principal Balance of such Deferrable Obligation or Partial Deferrable Obligation.

(xxiii) The identity of each Collateral Obligation subject to a Trading Plan, together with the (x) identity of each sale and proposed investment related thereto and (y) the Aggregate principal Balance of all such Collateral Obligations, which shall be reported on a dedicated page of the Monthly Report.

(xxiv) With respect to any Trading Plan, whether such Trading Plan complies with the criteria specified in the proviso to Section 1.2(j) (which shall be set forth on a separate dedicated page of the Monthly Report).

(xxv) With respect to any Issuer Subsidiary: (A) the identity of each Collateral Obligation or portion thereof held by such Issuer Subsidiary; and (B) the identity of each Collateral Obligation or portion thereof transferred to or from such Issuer subsidiary pursuant to Section 12.1(j) since the last Monthly Report Determination Date.

(xxvi) The amount of any Contributions accepted by the Issuer since the Determination Date of the last Monthly Report.

(xxvii) If the Monthly Report Determination Date occurs after the Effective Date and before the first payment Date thereafter, (i) the amount (if any) transferred from the Ramp-Up Account into the Principal Collection Subaccount as Principal Proceeds and (ii) the amount (if any) transferred from the Ramp-Up Account into the Interest Collection Subaccount as Interest proceeds, in each case pursuant to the third sentence of Section 10.3(c).

(xxviii) With respect to each Collateral Obligation that is a Swapped Non-Discount Obligation,

- (A) the identity of the Collateral Obligation (including whether such Collateral Obligation was classified as a Discount Obligation at the time of its original purchase) the proceeds of whose sale are used to purchase the purchased Collateral Obligations;
- (B) the purchase price (as a percentage of par) of the purchased Collateral Obligation and the sale price (as a percentage of par) of the Collateral Obligation the proceeds of whose sale are used to purchase the purchased Collateral Obligation;
- (C) the Moody's Default Probability Rating assigned to the purchased Collateral Obligation and the Moody's Default Probability Rating assigned to the Collateral Obligation the proceeds of whose sale or used to purchase the purchased Collateral Obligation; and
- (D) the Aggregate Principal Balance of all Swapped Non-Discount Obligations acquired by the Issuer after the Closing Date and all relevant calculations contained in the provisions to the definition of "Swapped Non-Discount Obligation."

(xxix) Such other information as any Rating Agency or the Portfolio Manager may reasonably request.

...

(b) **Payment Date Accounting.** The Issuer shall render, or cause to be rendered, an accounting (each a "**Distribution Report**") determined as of the close of business on each Determination Date preceding a Payment Date and shall make available such Distribution Report to the Trustee, the Portfolio Manager, the CLO Information Service, the Initial Purchase, each Rating Agency, and, upon written request therefor, any Holder shown on the Note Register and, upon written notice to the Trustee in the form of Exhibit C, any beneficial owner of a Note not later than a Business Day preceding the related Payment Date. The Distribution Report shall contain the following information:

(i) the information required to be in the Monthly Report pursuant to Section 10.6(a);

(ii) (a) the Aggregate Outstanding Amount of the Notes of each Class at the beginning of the Interest Accrual Period and such amount as a percentage of the original Aggregate Outstanding Amount of the Notes of such Class and (b) the amount of principal payments to be made on the Notes of each Class on the next Payment Date, the amount of any Note Deferred Interest on the Deferrable Notes

and the Aggregate Outstanding Amount of the Notes of each Class after giving effect to the principal payments; if any, on the next Payment Date and such amount as a percentage of the original Aggregate Outstanding Amount of the Notes of such Class,

(iii) the Interest Rate and accrued interest for each applicable Class of Secured Notes for such Payment Date;

(iv) the amounts payable pursuant to each clause of Section 11.1(a)(i), each clause of Section 11.1(a)(ii) and each clause of Section 11.1(a)(iii), as applicable, on the related Payment Date;

(v) for the Collection Account:

(A) The Balance on deposit in the Collection Account at the end of the related Collection Period (or, with respect to the Interest Collection Subaccount, the next Business Day);

(B) The amounts payable from the Collection Account to the Payment Account, in order to make payments pursuant to Section 11.1(a)(i) and Section 11.1(a)(ii) on the next Payment Date (net of amounts which the Portfolio manager intends to re-invest in additional Collateral Obligations pursuant to Article 12); and

(C) The Balance remaining in the Collection Account immediately after all payments and deposits to be made on such Payment Date; and

(vi) such other information as the Portfolio Manager may reasonably request.

Each Distribution Report shall constitute instruction to the Trustee to withdraw funds from the Payment Account and pay or transfer such amounts set forth in such Distribution Report in the manner specified and in accordance with the priorities established in Section 11.1 and Article 13.