



Via Electronic Mail (rule-comments@sec.gov)

December 1, 2025

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attention: Vanessa A. Countryman, Secretary

Re: File Number S7-2025-04: Concept Release on Residential Mortgage-Backed Securities Disclosures and Enhancements to Asset-Backed Securities Registration

SIFMA and SIFMA AMG¹ (together, “SIFMA”) appreciate the opportunity to submit this letter to the Securities and Exchange Commission (the “SEC” or the “Commission”) in response to the Commission’s Release Nos. 33-11391, 34-104102, Concept Release on Residential Mortgage-Backed Securities Disclosures and Enhancements to Asset-Backed Securities Registration (the “Concept Release”). SIFMA strongly supports the SEC’s review of the requirements of Regulation AB and shares the Commission’s goal of enabling a more active registered RMBS market, because this would benefit consumers and investors and would help create a more complete, balanced, and transparent housing finance system.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. We advocate for effective and resilient capital markets. For more information, visit www.sifma.org.

SIFMA’s Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG’s members represent U.S. and global asset management firms that manage more than 50% of global AUM. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit <http://www.sifma.org/amg>.

I. Executive Summary

As detailed in this letter, SIFMA's principal recommendations with respect to asset-level disclosure for RMBS and, more generally, the rules governing registered transactions with respect to asset-backed securities, may be distilled into five key categories:

1. Substantially Reduce and Redesign Schedule AL Asset-Level Disclosure Requirements for RMBS to Better Align with the 144A Market

The current asset-level disclosure regime is a significant barrier to registered RMBS and is impractical or impossible to comply with. Required data fields should be aligned with those that are uniformly provided in the 144A market and are readily obtainable across product types. Our recommendations include:

- Issuers should be permitted to define each field since the meanings are often ambiguous or may vary between issuers (e.g., "cash-out refinance").
- References to "any transaction party or its affiliates" should be removed from any data fields since it is impractical, if not impossible, to gather information from unrelated business lines.
- Flexible response codes should be included for each data field so that issuers can provide substantive responses as opposed to being forced to choose "Other" or "Not available".

2. Allow Sensitive Data to be Filed in Restricted-Access Systems

Investors require certain loan-level data points that raise privacy concerns, such as five-digit zip codes. The public release of this information raises borrower re-identification risk. Our recommendations include:

- Only limited, non-sensitive Schedule AL fields should be publicly accessible.
- Sensitive data (e.g., five-digit zip code, credit score, income/asset data) should be provided only through a Commission-operated restricted website, analogous to 144A practices (redacted vs. unredacted tapes via confidentiality agreements).
- The SEC should specify in Regulation AB that receipt of sensitive asset-level data filed on the Commission's restricted website does not create "material non-public information" or Regulation FD issues for issuers or investors.

3. Reduce the Burden of Ongoing Exchange Act Reporting

The lifetime reporting obligations required by the Exchange Act make the issuance of registered RMBS economically irrational. Since they are long-dated assets, the reporting requirements create decades of unpredictable compliance costs as "grandfathering" generally

does not exist for any new reporting obligations created under the Exchange Act. To reinvigorate the registered markets, the Commission will need to take action to reduce the burden of Exchange Act reporting on issuers of asset-backed securities.

4. *Modernize Form SF-3 Eligibility Requirements to Align with Actual 144A RMBS Practice*

The asset review provisions and the dispute resolution mechanics required by Form SF-3 do not permit the detailed and effective mechanisms that have been developed in the 144A RMBS market. The Form SF-3 requirements should be revised to permit registered transactions that incorporate those mechanisms that both issuers and investors have already determined are acceptable in the 144A market.

5. *Conduct a Comprehensive Review and Reform of Regulation AB and Related Rules in Addition to the Issues Raised in the Concept Release*

Regulation AB includes outdated disclosure requirements (e.g., mandatory identification of rating agencies even though this has not occurred since Rule 436(g) was repealed). In addition, overly prescriptive rules (e.g., Item 1100(b)) and rules that are not currently generating meaningful disclosures (e.g., Item 1104(f)) should be revised or eliminated.

In Parts II, III, IV and V of this letter, we address the specific questions and requests posed by the Commission in the corresponding sections of the Concept Release. We identify each question and request and provide our response below.

II. Asset-Level Disclosures for Residential Mortgage-Backed Securities

1. To what extent, if at all, are the Commission's asset-level disclosure requirements adopted in 2014 contributing to the lack of registered RMBS issuances? What are the costs and other related burdens associated with providing asset-level disclosures for registered RMBS offerings?

The Commission's asset-level disclosure requirements are a primary reason for the lack of registered RMBS issuances, but they are not the sole reason. In our responses to question 2 and other questions, we discuss some of the other reasons for the lack of registered RMBS issuance. With respect to asset-level disclosure specifically, there are several reasons why the requirements have contributed to the lack of registered RMBS issuances.

- **First, it is impractical, if not impossible, for some asset-level data to be provided.** For example, Item (1)(e)(4) of Schedule AL requires the most recently obtained standardized credit score of the obligor to be provided if an additional credit score was obtained by any transaction party or its affiliates. If a large financial institution is the sponsor, a large financial institution serves as the trustee and another large financial institution serves as a custodian, each of those institutions would need to scour their internal financial databases across all business lines on a monthly basis to determine if an updated credit score had been obtained with respect to that obligor in an unrelated business. We are not aware of any issuer whose computer systems can readily obtain all of the required data elements across multiple business lines. Several other asset-level data fields require information to be provided if it has been obtained by "any transaction party or its affiliates", and each of those data fields raise similar issues.
- **Second, some asset-level data may not be obtainable without significant expense, yet there is no clear standard as to when those fields would not be required.** For example, Item (1)(c)(12) of Schedule AL requires information regarding junior liens on mortgaged properties to be disclosed "if obtained or available". It is always possible to run a title report on a mortgaged property on a regular basis, and it would not be a significant expense for a single mortgaged property. However, running title reports every month on every mortgaged property related to every mortgage loan in a securitized pool would make a registered issuance of mortgage-backed securities uneconomical.

Registrants could potentially look to Rule 409 for some relief, but Rule 409's

standards are not well-defined since it was formulated with a “principles-based” disclosure regime in mind, not a disclosure regime consisting of many specific data points. In addition, Rule 409 would require disclosure that explains the burden and expense for each data point which is not provided. That could result in several pages of disclosure with no assurance that, with 20/20 hindsight, the registrant could not be held to have unreasonably relied on Rule 409 and failed to provide required information in the prospectus.

- **Third, many of the asset-level data fields are defined in ways that are unclear and could raise the possibility of liability if the registrant misinterpreted what the item required.** For example, Item (1)(c)(2) of Schedule AL requires the name of the entity that originated the loan. It is unclear if this requires information regarding the party named as the payee in the original mortgage note, a correspondent lender or the funder of the mortgage loan to be named. It would be imprudent for an issuer to move forward with a registered issuance if it does not clearly know what data needs to be provided in response to required disclosure items.
- **Fourth, since the Schedule AL information forms part of the registration statement, the Securities Act imposes “strict liability” on each of the individual data points in Schedule AL.** One missing Schedule AL data point would be an omission of required information and possibly expose an issuer (and the underwriters) to liability under Section 11 of the Securities Act. Since the number of required data points is extremely large, there is a significant risk of an omission or an error with respect to one or more data points on any single transaction. By requiring each data point with respect to each mortgage loan, it can be argued that the Commission made the determination that each one of those data points for each mortgage loan is material to an investor’s investment decision.

In addition, certain data points are subjective or subject to variance that makes it difficult to provide that data in a “strict liability” regime. For example, valuation information regarding a mortgaged property is based on the opinion of the person who prepared that valuation – it is not an objective fact. Similarly, debt-to-income ratios are subject to variance depending on which income or indebtedness is included in the calculation – some calculations may include certain seasonal or bonus income and may exclude certain indebtedness that is not reported by the related obligor.

One potential solution is to have a minimal number of required data points that can be reported by all issuers with a very high degree of accuracy and that form part of

the prospectus and registration statement while additional data points that are more subjective (such as property valuation or debt-to-income ratios) could be treated as not forming part of the prospectus and registration statement.

- ***Finally, the burden and expense required for initial compliance with the asset-level data requirements and the ongoing Exchange Act reporting process makes a registered issuance uneconomical.*** No issuer is currently providing all of the information required by Schedule AL, and fewer asset-level data points are currently provided in the 144A market than those contained in Schedule AL. Schedule AL appears to be an aspirational list of data disclosures, but the systems used in originating and servicing mortgage loans have not evolved to provide this level of data capture. To revamp those systems to meet the Commission's requirements seems unlikely to happen given that it has not happened over the previous twelve years. In addition, the ongoing compliance burden of providing the asset-level data on a monthly basis (as well as all other information required by Form 10-D, Form 8-K and Form 10-K) is also not justifiable from a cost perspective since this information may need to be provided for up to 30 years while being subject to potentially new Exchange Act disclosure requirements enacted over that period.

To give a sense of the cost, utilizing a third-party provider to format an Excel file into the SEC's data format and file that on EDGAR costs approximately \$1,000 - \$2,000. Consequently, the format conversion and filing costs alone could run into the hundreds of thousands of dollars over the life of a transaction, and that doesn't include the costs of hiring additional staff to oversee Exchange Act compliance and the cost associated with any Form 8-K or Form 10-K filings.

For issuers in the 144A market, none of these costs are incurred, and the uncertainties and risks discussed above do not exist. While there are benefits to an issuer for executing in the registered market, the risk/reward benefit is currently so unbalanced that no issuers have chosen to do so in a decade.

2. To what extent have other factors contributed to the absence of registered RMBS offerings? Which are the most salient factors? To what extent, if at all, has the Rule 144A market also contributed to the lack of registered RMBS issuances and if so, why?

There are several other factors that have contributed to the absence of registered RMBS offerings which include:

- ***General Issues with Regulation AB Requirements:*** Since there has been no comprehensive review of the asset-backed securities disclosure regime since the implementation of Regulation AB, the industry has been left with outdated disclosure requirements. For example, Items 1103(a)(9) and Item 1120 of Regulation AB still require identification of the rating agencies that have been hired to rate the securities even though a rating agency has not been named in a registered transaction since Rule 436(g) was repealed over a decade ago.
- ***Costs:*** The expenses to prepare for a registered RMBS offering, including legal and accounting expenses, and the ongoing compliance costs represent significant barriers to registered issuance. Issuers would need to prepare static pool information that conforms to the requirements of Item 1105 of Regulation AB. Since static pool information is rarely provided in the 144A RMBS market, most issuers would need to gather and validate this information for the first time. This would be a significant burden and likely involve significant expense. We expect, based on discussions with members, that the legal expense to convert existing 144A disclosure and transaction documents and prepare a registration statement will be approximately \$250,000 to \$500,000 (and possibly more). That doesn't include increased accounting costs associated with the additional statistical information that the accountants would need to comfort (e.g., the static pool information). In addition, given the complexity of the ongoing reporting requirements under the Exchange Act, many RMBS issuers would need to hire additional staff to monitor compliance with those requirements and to coordinate all Exchange Act filings, for potentially multiple transactions per year. In many cases, an RMBS issuer might request outside counsel's assistance in preparing and filing Form 10-Ks. Given that the hourly rate of outside counsel generally exceeds \$1,000 per hour, those costs would also be substantial. Also, since Rule 15d-22 essentially requires lifetime Exchange Act reporting and it is expected that issuances would be outstanding for at least several years, the cost of Exchange Act reporting for a single takedown from a registration statement would be expected to be in the tens of thousands of dollars per year multiplied by a number of years.

Even if all asset-level data issues are solved, the ongoing compliance costs for a single takedown are likely to continue to block most, if not all, registered RMBS issuance.

- **Other Form SF-3 Requirements:** As discussed in further detail in other parts of this letter, the requirements of SF-3 themselves inhibit registered issuance. The chief executive officer certification continues to be a source of concern for RMBS issuers. The asset review provisions are overly prescriptive and would require most RMBS issuers to revise their current asset review frameworks, and in some cases, those revisions would be harmful to the efficiency of the asset review process (e.g., by prohibiting the assets representations reviewer from making a determination that a representation and warranty had been breached). The dispute resolution requirements of Form SF-3 do not conform with current market practice and wouldn't permit the arbitration framework that is used in many RMBS transactions.
- **Shelf Eligibility Concerns:** Given the prescriptive nature of the SF-3 requirements related to the asset review and dispute resolution provisions, a registered RMBS issuance's failure to comply with those provisions would affect the shelf eligibility of all affiliated depositors. A diversified financial institution that already has active shelf registration statements for other asset classes may not want to imperil the shelf-eligibility of their affiliated depositors. In addition, even if the only shelf registration statement is for the residential mortgage asset class, the requirements of Instruction I.A.2. to Form SF-3 in the context of a lifetime reporting requirement of Rule 15d-22 raises the possibility that an incomplete Form 10-D filing (possibly because certain asset-level information was "unavailable") could put future shelf-eligibility at risk.
- **Liability Concerns:** Section 11 of the Securities Act applies to registered issuances but doesn't apply to the 144A market. Given the volume of line-item disclosures that are required by Regulation AB, the possible scope of liability under Section 11 is uncertain. For example, is the failure to provide a single data point on a single asset an omission of required material information? One could argue that it is since the Commission generally doesn't require "immaterial" disclosures. The United States federal securities laws were generally constructed as a principles-based disclosure framework, so it is difficult to know how liability will be determined in a highly prescriptive framework without additional Commission rulemaking that provides guidance. For the Commission to overcome this concern, it would need to make clear in Regulation AB that Section 11 and 12(a)(2) liability for Schedule AL information is based on an analysis of all of that information taken as a whole and not based on any individual data point with respect to an individual asset. Similarly, the determination of whether or not all "required" information under Schedule AL has

been provided would need to be qualified by materiality so that failure to accurately provide a single data point for an asset would not be an omission of required information.

- **144A Market:** The presence of the 144A market did not cause the decline in registered issuance. The 144A market has always co-existed with the registered market, but with respect to RMBS, the 144A market was generally a smaller percentage of overall issuance. After the implementation of Regulation AB II, the 144A market provided a lifeline for RMBS issuance since it was simply not possible to comply with all of the newly required disclosures, including the asset-level disclosures.

The 144A market allowed issuance to take place because issuers and investors were able to negotiate the asset-level data that was material based on investor requirements (e.g., five-digit zip codes) and based on the asset-level data that an issuer was able to provide given data constraints and liability concerns. The 144A market has allowed RMBS issuance to take place efficiently under a framework with acceptable liability for all offering participants while meeting the disclosure needs of investors. The market has coalesced around asset level disclosure, due diligence procedures, and representations/warranties and review mechanics that collectively have imparted confidence in the sector. Transactions can be completed in as little as two weeks with no required SEC filings other than those required under Rule 15Ga-2. Given the current registration requirements and ongoing compliance requirements associated with a registered issuance, it is an easy decision for issuers to continue undertaking 144A transactions.

If the Commission wishes to stimulate additional registered asset-backed security issuance (in all asset classes), it will need to closely examine all of the asset-backed securities rulemaking that has been done since the original version of Regulation AB was promulgated. As shown in Table 1 in the Concept Release, taking the auto, credit card and private-label RMBS asset classes together, there is nearly twice as much 144A issuance as registered issuance. In addition, as shown in that Table 1, for asset-backed issuance backed by both automobile receivables and credit card receivables, the amount of 144A issuance (as a percentage of total issuance in each of those asset classes) has generally increased since 2014.² We are aware of issuers in the auto asset class that have chosen to forego registration given some of the issues that are referred to above. The problem is clearly larger than RMBS – RMBS is just the most

² Data from Commercial Mortgage Alert also shows that from 2017 through 2024, 144A CMBS issuance has generally increased while registered CMBS issuance has general declined.

obvious example of how the regulations related to asset-backed securities have had the combined effect of reducing registered issuance.

3. Are there differences in transaction costs for registered RMBS relative to Rule 144A RMBS offerings? For example, are there differences in costs associated with reporting frequency, making filings on EDGAR, or costs related to the administration of the deals, such as those related to transaction parties? Is there quantitative data available underlying such cost comparisons? Are there any parallels to other quantitative data sets?

Yes - as noted in the responses to questions 1 and 2 above, there are significant additional transaction costs for registered RMBS. Leaving aside the initial “setup” costs involved in preparing a form of prospectus that complies with the requirements of Form SF-3 (including producing an initial set of static pool information), below are some of the ongoing costs associated with a registered transaction that are inapplicable to a 144A offering:

- **Registration Fees:** Registration fees are currently \$138.10 per \$1,000,000, which equates to \$69,050 for a \$500 million offering.
- **EDGAR Costs:** Filing of 15Ga-2 reports for 144A RMBS transactions currently costs approximately \$3,000 - \$5,000 depending on complexity. We would expect that the filing costs of Form 10-Ds with Schedule AL attached would be approximately \$1,000-\$2,000.
- **Accounting Costs:** Given the increased data required for a registered issuance (both static pool information and asset-level data), we would expect increased costs for accountants that are tasked with reviewing that data.
- **Headcount Costs for Ongoing Exchange Act Compliance:** We expect that additional employees would be needed to monitor and coordinate Exchange Act compliance, so there would certainly be additional costs associated with that.

We are not aware of any quantitative data sets that provide accurate cost comparisons, in part because there is no registered RMBS issuance for comparison. However, it is clear that the costs of doing a single RMBS issuance on a registered basis under the current rules would be significantly higher than the costs of a 144A issuance. As noted above, even if there were an agreed-upon set of asset-level data points for Schedule AL, there is a low likelihood that an

active registered market for RMBS would develop. Further regulatory reform is needed to reduce the cost burden associated with registered RMBS transactions.

4. Are there any RMBS data points in Schedule AL for which the Commission’s rationale articulated in the 2014 Regulation AB II Adopting Release is no longer relevant in today’s market?

We do not have a specific list of asset-level data points to refer to as the Commission did not provide its rationale for every data point that was adopted. However, the RMBS market has developed its own asset-level data practices over time through an iterative process, and the Commission should review the asset-level data disclosures currently used in the 144A market. Those asset-level data disclosures are a good indication of the data points that market participants currently view as material. The Commission should specifically review the data files of issuers who are current, regular issuers in the RMBS market. We would be willing to assist the Commission in gathering these materials.

5. Should the RMBS asset-level disclosure requirements in Schedule AL be conformed to the practices of private-label RMBS issuers offering securities in the Rule 144A market?

In general, yes, the RMBS asset-level disclosure requirements should be conformed to the practices in the 144A market. However, different sets of asset-level disclosure may be appropriate for different types of mortgage loan collateral, so we encourage the Commission to only require those asset-level data points that are consistently provided by issuers and that would apply across various types of mortgage loans, while making the provisions of additional asset-level data optional or by tying it to the concepts already found in Item 1111(b) of Regulation AB.³

Issuance of registered RMBS will be stimulated by (i) requiring a reduced number of agreed-upon asset-level data points and (ii) providing issuers with the flexibility to include additional asset-level data. We expect that issuers will provide the same level of data that is currently provided in 144A market transactions (subject to the privacy considerations addressed further below). This approach will give the registered RMBS market a chance to develop while the Commission monitors the asset-level disclosures that are being made in those transactions. Further standardization of asset-level data can be addressed by the Commission at a future date

³ E.g., different data fields may be needed for prime “jumbo” loans, investor loans, home equity loans, fixed rate vs adjustable, etc....

once it has better information regarding the asset-level disclosure practices of a broader swath of RMBS issuers.

6. Should any RMBS data points in Schedule AL be revised? Should any data points be removed? If so, which specific data points should be revised or removed and why? Should any RMBS data points not in Schedule AL be added? If so, which specific data points should be added and why?

As addressed in our response to question 1, there are several problematic data points. Asset-level data points that refer to information obtained by “any transaction party or its affiliates” should be revised to identify a specific transaction party. Third parties that have a limited role in the transaction (such as a custodian or a third-party servicer that doesn’t service a particular mortgage loan) should not be required to scour their internal business records for information regarding obligors or mortgaged properties.

Asset-level data points that reference “if obtained or available” are likely asset data points that would not fall into the framework discussed in our response to question 5. Those are data points that may not be consistent across transactions and mortgage asset types.

Any asset-level data points that are not uniformly provided in the 144A market should not be included in Schedule AL. Given the volume of transactions occurring, there is sufficient data to determine the asset-level data points that are being provided uniformly and limit the Schedule AL required data fields to only those data points.

No data points should be added as required data points at this time. It is the case that there are data points that are consistently being disclosed in the 144A market that aren’t in Schedule AL (e.g., the Qualified Mortgage status of residential mortgage loans and whether or not the related mortgage loans are considered “Safe Harbor” or “Rebuttable Presumption” Qualified Mortgages for purposes of TILA). However, the first step in establishing a registered market is to (i) reduce the number of “required” data points to those that are material and readily available to issuers and that apply uniformly across all RMBS offerings related to various product types and (ii) permit issuers to disclose any additional data points in their asset-level disclosures. Once a registered RMBS market has been restarted, then the Commission will have access to the data that is being provided in those transactions and can make an informed decision as to any additional data points that may need to be added as required data elements under Schedule AL.

The Commission should also consider whether it could promulgate a rule related to Schedule AL that is similar to Rule 409 but that has lower thresholds for determining when

information can be considered “unknown” or not obtainable “without unreasonable effort or expense”.

7. Are there any RMBS data points in Schedule AL that are not necessary or are overly burdensome to obtain? If so, could any such data points be revised or should they be removed from Schedule AL? Are such data points overly burdensome to obtain for newly issued mortgages, or only for legacy mortgages, and if the latter, of what vintage? Which data points are possible to obtain, even if not typically or easily obtained, versus which data points are impossible to obtain and why? Please specify the data points and provide a detailed explanation of the reasons why they should be revised or removed.

As noted above, there are data points that are very difficult to obtain (e.g., any data points that refer to “any transaction party or its affiliates”). Within different types of mortgage loans, there are also difficulties. For example, if agency-eligible mortgage loans are being securitized, income verification level, employment verification level and asset level verification level may not be captured during the origination process since the originator is generally just relying on the level of verification required by Fannie Mae’s or Freddie Mac’s automated underwriting systems. Also, mortgage loans originated pre-2010 often lack data related to their origination or their original terms since they may have been originated 20 years ago and modified 15 years ago. Both the origination and modification may have taken place by prior owners so the related data may not be available, but more importantly, it likely isn’t material depending on how long it has been since the last modification. Given all of the various types of mortgage loans and all of the potential timeframes during which they were originated, it is nearly impossible to come up with a comprehensive set of data points that could be adjusted to every situation, and such an effort would likely be futile.

A principles-based asset-level data requirement that only has a minimal number of specified, required fields would be a better path and would be more consistent with the general disclosure requirements of the federal securities laws. If the Commission decides against that approach, it will need to consider when certain origination information is no longer material to the performance of the mortgage loan and will need to thoroughly understand all of the particular mortgage product types that are being securitized so that it can craft appropriate lists of asset level data points for each product type, taking into account the time since origination.

8. Are there any definitions in Schedule AL regarding specific RMBS data points that are ambiguous or confusing? Why or why not? If so, how can such definitions be revised to provide clarity? Is there interpretive guidance that the Commission could provide to help clarify any data points?

Yes, there are several definitions and terms that are ambiguous, but it is not productive to identify each one at this point, since the Commission needs to more broadly consider its approach to asset-level data. In general, issuers should be permitted to define the meaning of each data field since there several that may have different meanings depending on the particular issuer and its systems. Below are a few examples:

- **“Originator”**: This is probably one of the most difficult concepts to define as there are many parties involved in the origination of a mortgage loan. The original Regulation AB release identified the difficulty in defining the term and left it to the marketplace. Similarly, the required data point for asset-level data should leave it to the issuer to define “originator”.
- **“Cash-out refinance”**: Since there was no definition for this term in Schedule AL, issuers would need to assume that even if the obligor received \$1 in connection with a refinancing transaction, then it was a cash-out refinance. Most originators apply a threshold of \$2,500 or \$5,000 before a refinance transaction would be deemed a “cash-out refinance”. Any requirement to provide this information should permit the issuer to define what a cash-out refinance is, since it may not be practicable to attempt to go through the origination file to determine exactly how much money a borrower received in connection with a cash-out refinance transaction. Similarly, the related field “refinance cash-out amount” is subject to interpretation because any refinancing proceeds that are used to pay any third-party debt (e.g., credit card debt) may not be viewed as amounts “received” by the obligor.
- **“Balloon Indicator”**: Schedule AL requires an indication as to whether the loan documents require a “lump-sum” to fully pay off the loan. In certain instances, there may be a slightly larger payment due at the maturity of the mortgage loan. There is no indication as to whether or not that would qualify as a balloon. If this type of data is required, the issuer should be permitted to define what a “balloon” loan is.
- **“Original Loan-to-Value”**: Schedule AL requires that this value be computed using the lesser of the original appraised property value or the sales price. For mortgage loans originated through Fannie Mae’s or Freddie Mac’s automated underwriting systems, a “property inspection waiver” may apply, but a value will be

generated by such systems for the related property. For loans originated with a “property inspection waiver”, the originator would generally report the origination loan-to-value ratio using the value provided by the related automated underwriting system, but Schedule AL would not permit that due to the field’s current definition.

- **“Modification Indicator”:** Schedule AL requires an indication as to whether a loan has been modified from its original terms. Presumably, this would include any modification, including a change in due date. It would also include immaterial modifications such as a “recast” where a borrower instructs the servicer to apply a principal prepayment to ratably reduce each future scheduled payment due on the loan. Again, this would be a data point where the issuer should be able to describe what modifications are and are not included in this data.

As noted above, from a conceptual standpoint, we think it would make sense for issuers to be able to define what the various data points mean – the Commission need only provide the title of the data point. As an example, Item 1111(c) of Regulation AB does not define each of the data points that were mentioned therein.

9. Should we consider alternative reporting frequencies for ongoing disclosures and/or allowing summary reporting for certain credit events required to be disclosed by Schedule AL? Why or why not?

A monthly reporting frequency is common in the 144A market and has been common for the past two decades, so we do not suggest a change to the frequency of reporting.

Summary reporting for certain credit events should be permitted in line with current 144A market practice. Again, if the Commission believes there is a need to include asset-level data requirements, it should conform those to what is currently provided in the 144A market.

10. Should the Schedule AL data points be rearranged or modified in such a way that would more clearly delineate when and under what circumstances each data point is required to be provided (i.e., at offering and/or at the time of filing each Form 10-D)? If so, what clarifying changes to the structure of Schedule AL or the definitions of specific data points would be helpful in this regard?

Yes, the data points should be rearranged. First, the initial field on Schedule AL should be the asset number. Second, the fields related to the loan terms should be grouped together.

This includes all of the terms that would be found in the note related to the mortgage loan. Third, the fields should indicate in their name whether they are “Current”, “Original” or “Cut-off Date” information. Similarly, it would be helpful to have the fields arranged by time period. For example, a set of fields related to data points gathered in connection with the origination of the mortgage loans, a set of fields related to information about the mortgage loans as of the securitization transaction’s cut-off date and a set of “dynamic” fields that would represent performance metrics of the mortgage loans that would be updated as part of the Form 10-D filing.

However, for all fields, the requirement to provide that data needs to be informed by current market practice. For example, the information required with respect to the ongoing performance of the mortgage loan largely depends on the information that can be reported by both the servicer that is actually servicing the mortgage loan and any master servicer that consolidates the information received from each servicer on the transaction and prepares the monthly report. Both the servicer’s and the master servicer’s system limitations and current data practices need to be taken into consideration.

In addition, once a mortgage loan is no longer part of the asset pool for any reason (e.g., such mortgage loan being paid-in-full or the related mortgaged property is liquidated and sale proceeds have been received), further reporting on that mortgage loan should not be required. The computer systems of many issuers purge the data regarding paid-in-full and liquidated mortgage loans after a certain period of time, so the information may become unavailable. Even if information was available, information about a mortgage loan that is no longer part of the asset pool seems immaterial.

11. Should the response codes for specific RMBS data points in Schedule AL be revised? If so, which ones and why? Should we consider providing greater use of response codes such as “not applicable,” “not available,” “not obtainable,” or “unknown”? Should we require additional explanatory information regarding such responses and, if so, where?

Yes, any response codes will need to permit variance (e.g., “Other”) with the ability to explain what “Other” means in Schedule AL. Most of the response codes currently include “Other”, but a few do not (e.g., the Advancing Methodology options do not include an “Other” which would presumably pick up transactions where the servicer only has an advancing obligation until a loan is 120 days delinquent). However, even though “Other” is an available option, there is no ability to specify what “Other” means and it is important to have that ability.

Again, this is an area where the Commission should review market practice. For example, in the original loan purpose code restrictions, there are no codes that would differentiate between loans extended for consumer purposes versus loans extended for business purposes. Any data value constraints that are included in Schedule AL will need to be reformulated to conform to the current mortgage market and will need to be updated on a regular basis to take account of changes in mortgage products and the granularity of disclosure regarding specific data points.⁴

12. Should we consider a “provide-or-explain” regime? Under a provide-or-explain regime, an issuer may omit any asset-level data point, provided the issuer identifies the omitted field and explains why the data was not disclosed.

Yes - a “provide-or-explain” regime would be helpful to stimulate registered issuance and allow the market to develop. Unless an entirely new set of data points is produced based on current 144A market conventions and includes only those data points that are uniformly provided, it is likely that there will still be data points required for which at least some issuers would not be able to provide the related data. A “provide-or-explain” regime would allow those transactions to occur and would assist the Commission in identifying those asset-level data points which are difficult for certain issuers to provide or which are inapplicable in certain instances (e.g., “current” loan-to-value information generally wouldn’t be provided for mortgage loans that were originated less than 12 months prior to the cut-off date for the securitization transaction). However, as noted above, the number of required asset-level data points should be reduced to a minimal number of required fields that are readily obtainable by issuers while giving issuers the ability to provide additional asset-level data.

If so, what limits should we place on a provide-or-explain regime? What impact could a provide-or-explain regime have on investor protection, market transparency, and investors’ ability to analyze data using models or other technologies?

While the Commission monitors the registered RMBS market, no limits should be placed on the provide-or-explain regime.

⁴ We recognize the Commission has updated the EDGAR ABS XML Technical Specifications from time to time to account for changes in the market (e.g., the introduction of SOFR), but we are concerned that the Commission will not have the resources to monitor all changes in the residential mortgage market to update Schedule AL and the Technical Specifications promptly to accommodate those changes.

13. What impacts would there be on standardization of RMBS asset-level data if we were to allow a provide-or-explain regime? How could a provide-or-explain disclosure regime be structured so as to be consistent with Securities Act section 7(c)? Please explain.

As noted above, the required data points specified in Schedule AL should be limited initially. Those data points would be standardized consistent with Section 7(c). Section 7(c) only requires standardization “to the extent feasible”, and a limited initial list of data points would satisfy that requirement.

14. What asset-level data is necessary for investors to independently perform due diligence on RMBS offerings, consistent with the mandate in Securities Act section 7(c)? Are there data points in current Schedule AL upon which investors do not rely? Would the elimination of any of the RMBS data points in Schedule AL be reasonably expected to adversely affect investors’ ability to analyze the quality and performance of the underlying assets? If so, which specific data points should not be eliminated and why?

As noted above, it is evident that the asset-level data necessary for investors to independently perform due diligence on RMBS offerings is already present. Any asset-level data points included in Schedule AL that are not currently being provided in the 144A market would be data points on which investors do not rely or which cannot be uniformly provided by issuers.

15. Are there any RMBS data points in Schedule AL that are duplicative? If so, identify the data points and explain why. Would it be beneficial to issuers and investors to remove duplicative data points?

Yes, there are data points that are duplicative of other disclosures required to be made. For example, Item 1111(a)(8) of Regulation AB already requires disclosures regarding assets in the pool that deviate from the disclosed underwriting criteria. However, Item 1(c)(10) of Schedule AL requires an indication as to whether the loan or asset met the criteria for the first level of solicitation, credit -granting or underwriting criteria used to originate the pool asset. Once Schedule AL has been revised, we will examine it to determine if there are more

duplicative disclosure items. The Commission should remove duplicative data points and disclosures so as to streamline the information provided to investors.

16. Some RMBS data points request the results of calculations, such as debt-to-income ratios. Can these ratios otherwise be calculated from data provided in other asset-level data points? Are these calculations overly burdensome to perform? Should we permit these data points to be excluded from the asset-level data file?

Calculations should be retained to the extent they are consistent with disclosures already made in the 144A market, as that provides evidence that such ratios are not too burdensome to perform and are actually useful for investors. However, the Commission will have to closely examine some of the calculations. For example, Item (1)(d)(11) of Schedule AL requires the “Original Loan-to-Value” ratio to be disclosed which is the ratio obtained by dividing the amount of the mortgage loan at origination by the lesser of the original appraised property value or sales price. For some RMBS issuances, issuers prefer to show a current LTV ratio together with the original LTV ratio, as the original LTV ratio by itself may be misleading. For example, as part of its review of the pool assets, the issuer may receive an updated property valuation that shows a significantly reduced property value, and the issuer may decide to provide LTV information based on that reduced property value and the current balance of the mortgage loan. Although the original LTV may have been 80% or less, the current LTV could be greater than 80%. Interestingly, Schedule AL does not contemplate a “Current Loan-to-Value” ratio data point.

III. Disclosure of Certain Sensitive RMBS Asset-Level Data

17. Are issuers forgoing registered RMBS offerings because they cannot provide investors with sensitive asset-level information, such as five-digit zip code, due to privacy and re-identification concerns? If so, please identify the asset-level requirements that contain such sensitive information and that are causing or contributing factors in issuers’ decisions to forgo registered RMBS offerings.

As indicated in our response to question 1, the primary reason that issuers are forgoing registered RMBS offerings is that it is impractical, if not impossible, for some of the asset-level data required by Schedule AL to be provided. In addition, there are other impediments to

registered issuance as discussed in our responses to question 2 and other questions above. However, assuming those impediments are removed, then we must consider the privacy and re-identification concerns raised by the asset-level data that is typically provided to RMBS investors in the 144A market since we assume that same data will be provided in registered transactions. For example, in the 144A market, it is typical to provide five-digit zip codes, city, origination date, original loan amount, sale price (if applicable) and other information that can, together with other publicly available information, be used to identify the borrower. Credit score information and certain income, asset and debt information regarding the borrower is also typically provided – this asset-level data is very sensitive since the other asset-level data that is provided could be used to identify the borrower.

Investors generally expect this information to be provided, and the re-emergence of the 144A RMBS market after the 2007-2009 financial crisis occurred, in part, because investors were provided extensive asset-level data. The robust level of asset-level information currently provided to investors is appropriate, and the Commission should not implement a revised disclosure regime that makes less information available.

Due to technological advancements and the availability of other third-party data sources, it is likely that additional data fields will raise concerns as to borrower re-identification than was the case when Regulation AB was last revised in the 2010s. Given advances in data analysis and machine learning, it is unclear to SIFMA exactly which data fields could be combined to re-identify borrowers, and the Commission should consult with privacy experts. What is clear is that, for any asset-level data filing that is accessible by the general public, the SEC should only require the disclosure of a limited number of fields that privacy experts agree do not raise a borrower re-identification risk.

In analyzing this issue, the Commission also needs to consider the other information regarding the mortgage loans that could be combined with Schedule AL data and result in the ability to re-identify borrowers. For example, the due diligence reports filed pursuant to Rule 15Ga-2 contain extensive data regarding the mortgage loans, and when combined with certain Schedule AL data could pose borrower re-identification risk. In connection with analyzing the privacy concerns, the Commission should consider permitting only the due diligence summary reports provided by the third-party review firms to be filed in satisfaction of the requirements of Rule 15Ga-2 so as to minimize the possibility of borrower re-identification.

18. What methods of disclosing zip codes, obligor credit scores, and other sensitive asset-level data would best balance providing investors with sufficiently granular geographical and obligor financial information while also addressing privacy concerns?

For purposes of any asset-level data filing that is accessible by the general public, the Commission should only require a limited number of fields that privacy experts agree do not raise a re-identification risk. The complete asset-level data set should be provided in a separate filing that would be contained on a Commission website (or a centralized repository acting on behalf of the Commission) where access is restricted.

This approach would be similar to market practice in 144A offerings where “redacted” and “unredacted” loan tapes are available to investors. These loan tapes are generally in Excel format and contain asset-level data regarding the mortgage loans. The redacted loan tape omits certain fields of information that raise borrower re-identification risk (e.g., five-digit zip codes) while those fields are available on the unredacted loan tape. The unredacted loan tape is only available to investors that enter into a click-through confidentiality agreement. If an investor chooses not to enter into a click-through confidentiality agreement, that investor only has access to the redacted loan tape. Although redacted and unredacted loan tapes are generally prepared for each offering of RMBS in the 144A market, it is common for only the unredacted loan tape to be used in connection with an offering as the vast majority of investors enter into the current forms of the click-through confidentiality agreement.

19. Should we consider adding data points used in Rule 144A private-label RMBS transactions that may include sensitive information to Schedule AL? If so, which data points should be added and what steps should be taken to address privacy or confidentiality concerns?

As noted above in our responses to prior questions, the robust asset-level information currently provided to investors in the 144A market is generally appropriate. However, as noted above, an extensive list of data points in Schedule AL is not appropriate at this time since the Commission seeks to encourage registered issuance and the extensive list currently required by Schedule AL has restricted issuance. Consequently, we are not recommending any additional fields to be added to Schedule AL at this time. A transparent market of publicly registered RMBS must develop before Schedule AL requires an extensive list of data points. A transparent market will allow the Commission to evaluate the different asset-level data points being

disclosed by various issuers and will provide the data necessary to be able to establish a more extensive Schedule AL disclosure regime that is based upon actual market practice.

Even a reduced set of Schedule AL data points would include zip code information regarding the related mortgaged properties, but any publicly accessible zip code information will be limited due to privacy concerns (e.g., limited to two-digit zip code information). However, we also expect that the Commission will provide issuers with the ability to disclose to investors (i) five-digit zip code information on an asset-level basis and (ii) other asset-level information that raises privacy concerns but is commonly provided in the 144A market on “unredacted” loan tapes. The determination of the specific asset-level information that should be publicly accessible will need to be made by the Commission based on input from privacy and data experts that have a more thorough understanding of the borrower re-identification risk presented by a specific set of asset-level data fields.

As noted in our response to question 18, asset-level data fields that include sensitive information or raise privacy concerns should only be filed on a Commission website (or a centralized repository acting on behalf of the Commission) where access is restricted. The Commission would need to restrict access to investors that the Commission determines are appropriate types of investors to receive that information and that agree to hold the information in that filing confidential. For example, the Commission could limit access only to investors that are subject to Regulation S-P and other institutional investors that the Commission believes are appropriate.

• If any of the sensitive information is not currently considered by market participants to be necessary for investors to independently perform due diligence, please elaborate as to why such information is provided to investors in connection with a Rule 144A private-label RMBS issuance.

We believe that the current level of information being provided in the 144A market is appropriate.

20. Are the legal and reputational concerns under privacy laws that were identified in connection with the adoption of Regulation AB II still relevant? How have Rule 144A private-label RMBS issuers mitigated those concerns? Have there been breaches in data and privacy protections resulting in harm to obligors? To what extent and how frequently do issuers update their data and privacy protections in response to emerging cybersecurity threats and breaches?

Yes - the concerns identified in connection with the adoption of Regulation AB II are still relevant. Indeed, those concerns are currently more substantial because of increased state regulation of personally-identifiable information and technological advances that allow significant amounts of data to be extracted from a variety of sources and expeditiously processed. Data from commercially available databases with property-level information and other consumer data can be used together with asset-level data to identify individual borrowers and their credit characteristics. Consequently, the Commission will need to develop a creative solution that both provides investors in registered issuances of RMBS with similar information to what they generally receive now in the 144A market but minimizes the risk of borrower identification.

As discussed in our response to question 18, issuers in the 144A market have mitigated these concerns by only providing “unredacted” loan tapes to investors that enter into click-through confidentiality agreements. Since the investors in the 144A market are qualified institutional buyers, they are already sensitive to privacy issues as they generally collect personal information which they are required to safeguard pursuant to applicable law (e.g., the personal information of their employees and their own investors and/or clients). As noted above, certain information such as five-digit zip codes is removed from the “redacted” loan tapes that are provided to investors who are unwilling to enter into a click-through confidentiality agreement. However, only a small number of investors in the 144A market are unwilling to enter into click-through confidentiality agreements (we estimate that it is less than 5% of investors).

We are not aware of any breaches that have resulted in harm to obligors. However, since the “unredacted” loan tapes are not posted on websites that are accessible by the general public, the risk of a breach that results in harm to obligors is much lower.

With respect to SIFMA members, data and privacy protections in response to emerging cybersecurity threats and breaches are frequently updated since most SIFMA members collect and process a substantial amount of consumer information. We believe that most participants in the current RMBS market also frequently update their data and privacy protections given that the origination and servicing of residential mortgage loans results in the collection of significant amounts of consumer information. However, our members are concerned about the risk posed by both federal and state privacy laws with respect to the protection of consumer information.

One of the reasons we have suggested that the SEC control access to any asset-level data that is sensitive or raises privacy concerns is to reduce the risk that a state regulatory authority or borrower will have a cause of action against an RMBS issuer (or other participants in a securitization transaction) for unauthorized disclosure of that data to third parties. Requiring issuers to store and provide investor access to asset-level data that raises privacy concerns (and requiring the disclosure in a publicly available prospectus of the location where that information can be accessed by investors) is likely to invite potential attacks on those websites.

21. Are there other legal or reputational concerns, such as with respect to Regulation FD or other Federal or State securities laws, that RMBS issuers would have if we permit disclosures of certain information via an issuer-sponsored website (or other alternative method) rather than being publicly disseminated via filings on EDGAR? Would Commission rules or guidance establishing what information may or must be disclosed in this manner mitigate any of those concerns?

As noted above in our response to question 20, we have concerns with respect to a requirement that issuers establish the websites where asset-level data is available, especially if there is a requirement to publish in a prospectus (or other filing with the Commission) the address of the website where that information is located.

In addition, both issuers and investors have concerns under Regulation FD and under Rule 10b-5 with respect to information that is not “publicly available”. The Commission would need to adopt rules to give comfort to both issuers and investors that “sensitive” asset-level data that raises privacy concerns (and is therefore, not publicly accessible on www.sec.gov) is not material non-public information. For example, the Commission could expressly provide, as part of any revision to Regulation AB, that if a two-digit zip code is included in the publicly available Schedule AL, then a five-digit zip code provided as part of the “unredacted” asset-level data is not “material”. The Commission must ensure that investors that access the “unredacted” information are not restricted from trading in any manner due to that information being provided to them.

The concerns above also have informed our suggestion that the asset-level data be filed on a Commission website (or a centralized repository acting on behalf of the Commission) where access is restricted, since the Commission would have ultimate responsibility for disclosure of that information to investors.

22. Please describe the websites currently used to provide RMBS asset-level data to investors and potential investors. How is access managed? Is access limited only to potential investors, investors, and the issuer? How is access managed to reflect secondary market transactions? For instance, how is it updated to reflect when investors may no longer hold an applicable investment? What are the challenges issuers have faced in maintaining these websites?

Generally, in connection with the initial offering, third-party websites are employed where prospective investors can access the redacted loan tape and, after entry into the applicable click-through confidentiality agreement, the unredacted loan tape. Those websites are password-protected, and prospective investors are provided the website location and the related password by the applicable broker-dealer. In connection with some initial offerings, asset-level data files are electronically delivered by the applicable broker-dealer directly to prospective investors.

After the initial offering is complete, data regarding the transaction (including the offering document, asset-level data, historical interest and principal payments, current and historical delinquency and default information and copies of the monthly remittance reports) are available through third parties that serve as regular providers of data to the structured finance community (e.g., Bloomberg and Intex). Data is also available through the website of the paying agent, although the data that is available on the paying agent's website is generally included in the data that is provided by the third-party data providers noted above. We are not aware of any widespread complaints regarding the amount of information that is currently available to investors in the secondary market.

23. Do the websites continue to use click-through agreements consistent with the model click-through agreement provided by SIFMA? Have there been important changes to usage rights, representations, or limitations?

Click-through confidentiality agreements consistent in all material respects with either version 2 or version 3 of the forms provided by SIFMA are used in connection with the distribution of the unredacted loan tape. We are not aware of material modifications regularly being made to those forms and believe that the forms are part of generally accepted market practice at this point.

24. Do RMBS issuers maintain websites specific to their own issuances, or are there any third-party websites, whether affiliated or unaffiliated with the RMBS issuers, currently in use that allow investors to access data across issuances? If such websites have been utilized or considered, what challenges do they pose? How have those challenges been addressed? To what extent do liability concerns impact issuers' use of issuer-maintained websites or third-party websites, respectively?

Issuers generally do not maintain websites specific to their issuances. In general, third-party websites are used to host the asset-level data during the initial offering process. As noted in our response to question 22, other third-party data service providers that regularly provide data to structured finance market participants (e.g., Bloomberg and Intex) are generally provided with information related to the initial issuance and then those parties also are provided with ongoing access to the relevant paying agent's website so that they can access information that is posted monthly regarding distributions on the related securities and certain other information regarding the transaction and the underlying mortgage loans.

• Do RMBS issuers delegate the responsibility and obligations to establish, maintain, and manage access to such websites to other transaction parties such as the sponsor, servicer, trustee, or custodian (whether affiliated or unaffiliated with the RMBS issuers)? Why or why not? To what extent do liability concerns impact issuers' decisions to delegate these obligations? Is there a standard market practice with respect to the security provided when issuers delegate their obligations to other transaction parties? If so, what are the standard liability provisions under these arrangements in the event of a data breach?

In connection with the initial issuance of RMBS, the broker-dealers generally handle the dissemination of information to prospective investors. For example, the broker-dealers may establish the "data room" into which the offering document and loan tapes are posted, together with any other information being made available to investors (e.g., a "roadshow"). The issuer will make the ultimate decision as to the information that is made available to investors in the data room, but the broker-dealers would generally handle the actual posting of the information into the data room.

Once the securitization transaction has closed, then pursuant to the applicable transaction documents, the responsibility for ongoing reporting on the transaction generally

shifts to the entity that is responsible for calculating the amounts distributable to the various classes of securities and making the distributions on the securities. That role may be undertaken by a “paying agent”, a “trustee” or a “securities administrator”, but it is not the sponsor, the depositor or their affiliates. For purposes of this letter, we will refer to this party as the “paying agent”. The servicer(s) (or in some cases, a master servicer) will provide information to the paying agent regarding the performance of the mortgage loans, the amount of collections and certain asset-level data regarding the mortgage loans. Based on that information, the paying agent will determine the amounts distributable to the various classes of securities and will prepare a report that summarizes those distributions and provides certain information regarding the performance of the mortgage loans (e.g., delinquency, prepayment and loss information). That report is posted on the paying agent’s website and is accessible by investors (including prospective investors) and by third-party data service providers such as Intex and Bloomberg. The sponsor and the depositor generally have very little input into this process, except to the extent that the servicer is an affiliate and is providing the detailed information to the paying agent.

Generally, there is no “delegation” of obligations in a 144A transaction as the issuer does not have any reporting obligation pursuant to the transaction documents. The terms of the transaction documents create the paying agent’s reporting obligation and specify the information to be reported. The servicers are required pursuant to the servicing agreements to provide the paying agent with certain information regarding the performance of the mortgage loans so that the paying agent can prepare the monthly report that it is obligated to prepare. In terms of the standard liability provisions, each party is generally responsible for protecting the data in its possession, but there are generally not indemnification provisions that would, for example, require the paying agent to indemnify the servicer for a data breach or vice versa.

25. Should we permit RMBS issuers to use issuer-sponsored websites in connection with registered RMBS offerings? If so, should we permit RMBS issuers to delegate the responsibility and obligations to establish, maintain, and manage access to such websites to other transaction parties such as the sponsor, servicer, trustee, or custodian (whether affiliated or unaffiliated with the RMBS issuers)? Why or why not?

RMBS issuers should be permitted to use issuer-sponsored websites for both asset-level data and static pool information, and RMBS issuers should be permitted to delegate that task to other transaction parties.

As to RMBS issuers, Regulation AB originally permitted issuers to host websites with the static pool information required by Item 1105 which resulted in issuer websites that generally had enhanced functionality permitting the static pool information to be downloaded and/or viewed in ways that were simply not possible through EDGAR. This was especially true for frequent issuers that had sizeable amounts of static pool information. For both asset-level data and static pool information, certain issuers may take advantage of this option and create websites that offer enhanced functionality.

As to other transaction parties, since the ongoing data in many RMBS transactions is not even in the registrant's possession (e.g., in those transactions where only unaffiliated servicers and paying agents collect and receive the ongoing information regarding mortgage loan performance), it would make sense for the relevant asset-level data to be posted by the party that is in possession of that data. Since many paying agents currently post distribution reports and certain asset-level data on their websites for 144A RMBS transactions, providing this option would simply comport with current market practice.

Providing additional flexibility in reporting could help achieve the Commission's goal of expanding the number of registered offerings, since EDGAR has limited functionality especially when dealing with large data sets. However, as noted in our response to question 18, we would still urge the Commission to ensure that asset-level data and static pool information could be posted on a website operated by the Commission as issuers and other transaction parties should not be forced to create reporting websites as a condition to a registered offering. If issuers are given the option to host such information, the Commission will need to ensure that issuers can enact access restrictions that are substantially similar to those that the Commission would impose on its website for investors wishing to access sensitive data regarding obligors.

26. Have investors in unregistered RMBS offerings expressed concerns with the amount of asset-level data typically provided on the website? Have investors expressed concerns with the approach taken in providing the data, or on the attendant access restrictions?

To our knowledge, investors have not expressed concerns regarding the amount of asset-level data being provided in 144A RMBS offerings. As noted in our response to question 20, a limited number of investors have objected to the terms of the click-through confidentiality agreements required to access the unredacted loan tapes. Investors may be concerned as to any data that the Commission may collect from an investor in connection with accessing asset-level data on a Commission-operated website, so the Commission would have to enact appropriate safeguards to protect that investor information together with the asset-level data.

27. Should we require the RMBS issuer to undertake in the offering materials and transaction documents that it will identify and make available the sensitive asset-level information provided on the website? Should we consider requiring that RMBS issuers make certain representations in their filings on EDGAR related to the disclosure of sensitive information?

As noted in our response to question 25, a website established by an RMBS issuer should be an option, but not the sole option, for the posting of sensitive asset-level information. The Commission should also operate a website (or oversee a centralized repository) to which sensitive asset level information may be posted. Also, as noted in our response to question 20, we have concerns related to an RMBS issuer's identification in publicly available materials of the location of any website that it has established since that may invite potential attacks against that website.

As to representations regarding the disclosure of sensitive information, we would need to examine the specific language of any proposed representations. The Commission should be careful in terms of the scope of any such representations. For example, if an RMBS issuer has valid concerns over a particular person's request to access sensitive asset-level data on the issuer's website (e.g., the issuer believes that the person is not an investor or prospective investor or the person may be impersonating another person), the scope of the related representation may nonetheless require the RMBS issuer to provide the sensitive asset-level data.

28. If we require undertakings, representations, and/or certifications by the RMBS issuer as to the sensitive asset-level data provided on its website, what should those obligations include? Should the Commission provide standard language for such undertakings, representations, and/or certifications? For example, should we require undertakings, representations, and/or certifications that a website will be/has been established, that a website will continue to be maintained for the life of the deal, and that access to such website has been granted to all prospective/purchasing/current investors (and will continue to be granted) subject to certain specified conditions? Why or why not? Are there other representations and/or certifications that we should consider? If so, please specify.

Subject to the concerns noted in our response to question 27, the Commission should require undertakings, representations and/or certifications that are no more burdensome than those that were required in connection with the websites that were previously permitted for the posting of static pool information provided pursuant to Item 1105 of Regulation AB.

• Should RMBS issuers be required to represent that such information will be provided to any investor or prospective investor upon request, similar to the standard used in Rule 144A? Would it be appropriate to require that the sensitive RMBS asset-level information that is disclosed outside of EDGAR be incorporated by reference into the issuer's disclosures that are publicly filed on EDGAR?

As to the first question, we refer you to our responses to question 27 and the immediately preceding portion of this question 28. As to the second question, the standards for incorporation by reference would require the identification of the website at which the information was located which raises the concern of inviting potential attacks on that website.

• When and how frequently should any such undertakings, representations, and/or certifications be required? For example, should they be required with the offering materials (either at the time that the preliminary prospectus is required to be filed pursuant to Securities Act Rule 424(h)77 or at the time that the final prospectus is required to be filed pursuant to Securities Act Rule 424(b)78), with

each distribution report filed on Form 10-D, and/or with the annual report filed on Form 10-K? Please specify why your recommendation as to timing and frequency would be appropriate.

In general, any undertakings, representations and/or certifications should only be required in connection with the preliminary prospectus or final prospectus. Requiring an issuer to make the same undertakings, representations or certifications at multiple points in time would not provide any additional substantive value.

29. Have there been recent technological or other advances in the production and analysis of property data that have lessened reliance on the RMBS asset-level data that has previously raised privacy concerns, including zip codes?

No - we are not aware of any such advances that have reduced reliance on those particular data fields. As mentioned in our response to question 20, technological advances have increased the risk that data from asset-level filings can be combined with other commercially available data (or with information from other sources, such as the detailed diligence reports included in most Form ABS-15G filings) to identify individual borrowers.

30. When investors in, or assets of, a given unregistered RMBS issuance are located outside the United States, what is the general approach for addressing any cross-border privacy considerations? For instance, when a property and/or obligor may be situated outside the United States and foreign privacy laws constrain the dissemination of asset-level information beyond what is contemplated by U.S. privacy laws, what sorts of restrictions are put in place?

We are not aware of any particular actions undertaken with respect to these matters as the presence of non-U.S. obligors or non-U.S. properties is minimal in the 144A RMBS market.

31. Are there alternative approaches to providing RMBS investors with access to sensitive asset-level information that would minimize the re-identification risks discussed above? Please describe the alternative(s) and explain why it would be preferable to the issuer-sponsored website approach discussed in this release.

As mentioned in our responses to questions 18, 19 and 21, sensitive asset-level data should be provided in a separate filing that would be contained on a Commission website (or a centralized repository acting on behalf of the Commission) where access is restricted. This would ensure that the asset-level data remains available to the Commission and to investors (e.g., in a situation where the sponsor may no longer be in existence). It would also allow access restrictions to be uniformly tailored so that there would be a single standard for access to the sensitive asset-level information. This approach also would minimize the risk of issuers being subject to liability for unauthorized disclosure of such information. Given that the Commission currently holds a significant amount of sensitive information in its systems, it is well equipped to prevent unauthorized access.

IV. Definition Of Asset-Backed Security Generally

32. Are there any challenges to market participants associated with having more than one definition of “asset-backed security” in the Federal securities laws? If so, what are the challenges? Are there any potential benefits to retaining the current Regulation AB ABS Definition as is that could be lost if we make changes? What are those benefits?

There may be certain challenges associated with multiple definitions, but any changes to any of the definitions of “asset-backed security” should be incremental and designed to stimulate registered issuance. In particular, we are concerned that any significant changes to the definition of “asset-backed security” could unintentionally include categories of securities that market participants do not want to be considered an “asset-backed security” (e.g., issuers of certain municipal securities) and could result in disruptions to various segments of the capital markets. We urge the Commission to carefully tailor any revisions to address particular issues that are raised in the comment letters to the Concept Release.⁵

In our responses to question 33 below, we suggest an incremental change to the Regulation AB definition of “asset-backed security”, but we are not aware of a pressing need to

⁵ SIFMA will be submitting a separate comment letter to the SEC with respect to the concerns related to municipal securities.

undertake a comprehensive re-write of all definitions of “asset-backed security” across the Federal securities laws.

If the Commission wishes to significantly modify any of the current definitions of “asset-backed security”, any related proposed rules should have an extended comment period of at least 120 days and be a part of a separate rulemaking to ensure that any affected market participants have adequate time to assess the impact of those changes.

33. Should we amend the Regulation AB ABS Definition to cross-reference, or otherwise incorporate, the Exchange Act ABS Definition? What are the advantages or disadvantages of consolidating the two definitions?

We are not aware of an urgent need to amend the definition of “asset-backed security” in Regulation AB to incorporate the Exchange Act definition. The two definitions have been crafted in the context of different regulations, and since the enactment of the Dodd-Frank Act and its related regulations, the capital markets have adapted to those regulations that use the more expansive Exchange Act definition. We will review any comment letters submitted with respect to the Concept Release on this point, and if our view changes based on any issues raised by market participants, we will provide an updated response to this question.

However, we request that the Commission re-evaluate the limitation on revolving periods in the Regulation AB definition of “asset-backed security”. Currently, Item 1101(c)(3)(iii) limits the length of the revolving period to three years if the receivables or other financial assets do not arise under revolving accounts. Since 2014, the market for securitizations of non-revolving assets where the transaction includes a revolving period of five or more years has grown significantly, with issuance estimated to be in excess of \$50 billion over that time period. These transactions are predominately backed by automobile loans and device payment plan receivables. Since these asset types are already securitized in registered transactions, we think that an extension (or removal) of the three-year revolving period limitation would stimulate additional registered issuance.

• If we amend the Regulation AB ABS Definition in this way, should we revise either Item 1101(c)(2) or Item 1101(c)(3) to be consistent with the additional features and structures (such as active pool management and the use of series trusts) included in the Exchange Act ABS Definition? Are there any conditions or limitations in Item 1101(c)(2) and/or Item 1101(c)(3) that we should retain as still

applicable and/or because they would still be appropriate for registered offerings? If so, please specify what should be retained, deleted, and/or revised and why.

Given our response to the question above, we suggest no additional changes at this time although we will continue to monitor market participants' responses to these questions.

34. As an alternative to the approach described in question 33, should we replace the entirety of the Regulation AB ABS Definition with the Exchange Act ABS Definition? Would replacing the entirety of the Regulation AB ABS Definition with the Exchange Act ABS Definition create a definition of “asset-backed security” that is too broad for purposes of Regulation AB? If so, what conditions and limitations would be necessary or beneficial?

Replacing the entirety of the Regulation AB definition of “asset-backed security” with the Exchange Act definition certainly would have unintended consequences. For example, removing the “investment company” exclusion in clause (c)(2) of the Regulation AB definition of “asset-backed security” could scope in a variety of other pooled investment entities (e.g., registered money-market funds or other registered funds that invest primarily in debt). Again, we will monitor market participants' responses to this question, but our initial view is that this approach would likely disrupt certain segments of the capital markets.

35. Should we consider expanding the Regulation AB ABS Definition to conform with the recently adopted definition of “asset-backed security” in Securities Act Rule 192, which references the Exchange Act ABS Definition but also includes synthetic and hybrid cash/synthetic securitizations? Why or why not?

Scoping synthetic securities into the definition of “asset-backed security” is not necessary at this time. From the inception of the first synthetic securitizations in the 1990s, the market has not viewed those as traditional “asset-backed securities” and any change to this would potentially disrupt the synthetic securitization market.

36. Are there any potential regulatory impacts to market participants that would result from revising the Regulation AB ABS Definition?

For any significant modification of the definition of “asset-backed security” in Regulation AB, it is almost certain that there would be regulatory impacts. We are especially concerned about any impact it may have on issuers of municipal securities. As noted above, we will monitor market participants’ responses to these questions.

• For example, would revising the Regulation AB ABS Definition cause any consequences for issuers who have historically offered, or would offer, securities in reliance on Regulation A, which excludes “asset-backed securities as such term is defined in Item 1101(c) of Regulation AB” from eligibility?

A revision of the definition of “asset-backed security” in Regulation AB would have consequences for issuers who rely on Regulation A which is why we are recommending that the Commission only consider incremental changes at this time to address material issues that are inhibiting registered transactions of asset-backed securities.

• What impacts, if any, would incorporating the Exchange Act ABS Definition into Regulation AB have on market participants who are subject to regulation under the Investment Company Act of 1940? Should managed pool structures such as CLOs be permitted (but not required) to register ABS offerings pursuant to Regulation AB? What impacts, if any, would such a registered ABS offering have on a pool’s ability to rely on the exclusions set forth in sections 3(c)(1) or 3(c)(7) of the Investment Company Act?

As noted above, incorporating the Exchange Act definition of asset-backed security into the Regulation AB definition would scope in a variety of investment companies. If the Commission is seeking to permit CLOs to conduct registered transactions, that should take place through a separate rulemaking as it would also likely require additional rulemaking under the Investment Company Act. However, the Commission should consider clarifying the scope of “eligible assets” under Rule 3a-7 of the Investment Company Act to expressly accommodate certain securitizations (e.g., equipment and motor-vehicle lease securitizations).

• Should we also consider revising the definition of “asset-backed securities” in Rule 902(a)(2) of Regulation S to further harmonize the definitions across the Federal securities laws? What impacts, if any, would such a change have for issuers and/or offerings of ABS offered and sold pursuant to Regulation S?

We will monitor other market participants’ responses to this question, but at this point, we do not see a pressing need to make such a revision to Regulation S.

• While any potential changes to the Regulation AB ABS Definition would not change the statutory definition of “asset-backed security” referenced in Exchange Act section 3(a)(62)(A)(iv), would revising the Regulation AB ABS Definition have any impact for a credit rating agency registered, or seeking to be registered, as a nationally recognized statistical rating agency (“NRSRO”) in the issuers of asset-backed securities category of credit ratings pursuant to Exchange Act Rule 17g-1? Could revising such definition have any impact for NRSROs not registered in the issuers of asset-backed securities category or for users of credit ratings?

We defer to comments from the NRSROs on these questions.

37. Are there other definitions under Item 1101 of Regulation AB that we should consider amending to expand issuer and investor access to the registered ABS markets and facilitate enhanced capital formation and liquidity while maintaining appropriate investor protections?

We are not aware of any other definitions in Item 1101 of Regulation AB that should be amended. If the Commission seeks to amend any particular definitions in Item 1101 of Regulation AB, it should clearly describe any costs and benefits of making any such amendment. We are particularly concerned that any industry interpretations of those definitions over the past 20 years may be unintentionally disrupted by any amendment.

• For example, do the definitions for the various ABS transaction participants—such as asset-backed issuer, depositor, issuing entity, sponsor, and

originator—still accurately describe these parties’ roles and responsibilities in contemporary securitization transactions? If not, what changes would be beneficial?

We request no changes at this time.

• Would any new definitions be necessary or beneficial?

We are not aware of any new definitions that would be necessary or beneficial.

• Is there interpretive guidance that could help clarify any definitions?

Not at this time, but we will monitor other market participants’ comments in response to this question.

38. What additional or alternative disclosures should we consider in light of any revisions to the Regulation AB ABS Definition or other definitional changes discussed above? What specialized disclosures may be necessary or appropriate regarding asset classes or structures that may be new to shelf registration or registration in general?

If any changes to the disclosure requirements in Regulation AB are made, the Commission should only require specific disclosures that are already customary in the 144A market rather than introducing new disclosure concepts. With respect to our suggestion to extend or remove the revolving period limitation from the Regulation AB definition of “asset-backed security”, we do not believe that any additional disclosures are necessary.

39. Are there any additional features of, or developments in, the ABS market that we should take into account in considering potential regulatory changes?

The Commission should note that registered issuance has generally been declining as a percentage of total issuance across various asset types. Consequently, the Commission should

be very careful to not impose additional burdens on registrants that are likely to further suppress registered issuance.

V. General Request for Comment

We request and encourage any interested person to submit comments on any aspect of this concept release, other matters that might have an impact on the topics discussed in this concept release, and any suggestions for additional changes. We are also soliciting comment on any other aspect of asset-backed securities regulations that commenters believe may be improved, including additional amendments to Regulation AB that should be considered. Please be as specific as possible in your discussion and analysis of any additional issues. We particularly welcome comments on any costs, burdens, or benefits that may result from possible regulatory responses related to the items identified in this release or otherwise proposed by commenters.

We believe that this is an opportune time for the Commission to undertake a comprehensive examination of all of the asset-backed securities regulations that it has promulgated since Regulation AB became effective almost twenty years ago. As mentioned in our responses to questions 1 and 2, there are several disclosure requirements that have contributed to the absence of registered RMBS offerings and to the overall decline in registered issuance of ABS as a percentage of total issuance of ABS. Below are a number of proposed changes that we believe should be made in order to stimulate RMBS issuance specifically and ABS issuance generally.

1. Eliminate Items 1103(a)(9) and Item 1120 of Regulation AB

Items 1103(a)(9) and Item 1120 of Regulation AB require identification of the rating agencies that have been hired to rate the offered asset-backed securities if the issuance or sale of any class of the offered asset-backed securities is conditioned on the assignment of a rating by one or more rating agencies. Nearly every asset-backed securities issuance is conditioned on the assignment of a rating by one or more rating agencies, so this disclosure is almost always required. However, since the repeal of Rule 436(g) over a decade ago, no rating agency has permitted disclosure of its name in a prospectus. Consequently, the staff of the Commission issued a no-action letter that indicated that the staff would not take action against an issuer that omitted this disclosure. While

comfort can be taken in a staff no-action letter, a no-action letter does not eliminate the disclosure requirement. Given that the market consistently discloses this information through a free writing prospectus, we urge the Commission to eliminate Items 1103(a)(9) and Item 1120 of Regulation AB.

2. Revise Rule 15d-22 to Permit the Suspension of Exchange Act Reporting in Certain Scenarios

As noted in our response to question 2, the cost of Exchange Act compliance in connection with a single registered issuance of asset-backed securities can be prohibitive, especially with longer-dated assets such as residential mortgage loans. Prior to the enactment of the Dodd-Frank Act, most issuers of asset-backed securities would deregister their issuances after the end of the issuing entity's first fiscal year in accordance with Section 15(d)(1) of the Exchange Act since there were less than 300 registered holders of the securities. After the enactment of the Dodd-Frank Act, that option was no longer available. Using the authority granted by Section 15(d)(2) of the Exchange Act, the Commission promulgated Rule 15d-22 which essentially requires Exchange Act reporting for the life of the issuing entity since there is no longer a minimum threshold of third-party investors.

The pendulum has swung too far, and Rule 15d-22 should be revised to permit the suspension of Exchange Act reporting if (i) there are less than 100 holders of record, (ii) any revolving period for the securitization transaction has ended and (iii) the initial offering was only made to "qualified investors".

As noted in our response to question 24, the paying agent for the transaction is generally responsible for monthly reporting and the third-party data services that provide information to the structured finance community have access to that monthly reporting. In our experience, most investors rely on the third-party data services for ongoing information regarding a particular asset-backed security, not the individual filings made on EDGAR. Unlike corporate issuers, the independent reporting mechanism through the paying agent ensures ongoing reporting even if the sponsor or depositor are no longer in existence. We know this to be true since information is still available regarding ABS and RMBS that was issued over 20 years ago (e.g., both in the manufactured housing and residential mortgage asset classes).

A cessation of reporting under the Exchange Act will not unduly limit the amount of information that is available to investors, but the ability to cease reporting will remove a prohibitive cost associated with registered ABS with longer expected weighted average lives. This might not be appropriate if the securities are initially marketed to investors who do not have a particular level of sophistication, so it would be acceptable to only

provide this option if the transaction is initially marketed and sold only to certain “qualified investors”, such as an institutional “accredited investor”.

We cannot understate the cost associated with ongoing Exchange Act compliance.⁶ In addition, the ongoing reporting requirements are subject to change, so the future cost of Exchange Act compliance for an issuance of registered ABS cannot be reliably estimated. There have been several instances where the requirements of Form 8-K, Form 10-D and Form 10-K have been amended without “grandfathering” of transactions that were initially issued prior to the date of those amendments. For an asset-backed securities issuance, this is significant because the issuing entity does not have additional funds to pay for increased burdens in Exchange Act reporting. That burden is shouldered by sponsors and depositors (and in some cases, third-party servicers) even though they could not have reasonably anticipated those increased burdens. Even if all of the asset-level data and related privacy concerns are resolved with respect to RMBS, we do not believe that a robust public market will develop unless the burden of ongoing Exchange Act compliance is significantly reduced.

3. Amend 1100(f) and Rescind Compliance and Disclosure Interpretation 111.01 to Provide that the Final Transaction Documents with Pricing Information Be Filed No Later than Two Business Days After the Closing Date for the Transaction

Item 1100(f) of Regulation AB requires the filing of final agreements no later than the date the final prospectus is required to be filed under Rule 424. Rule 424(b)(2) and Rule 424(b)(5) require the prospectus to be filed no later than the second business day following the date it is first used. Rather than refer to the date of “first use”, Compliance and Disclosure Interpretation 111.01 instead required the prospectus and the documents to be filed no later than the second business day after the date of the “first sale” of any tranche of asset-backed securities in an offering.

In most cases, this wouldn’t be feasible for RMBS (and our understanding is that it is difficult in connection with other asset classes as well, such as CMBS). Generally, the pricing of the various tranches of securities in an RMBS offering is iterative – certain tranches may price on a one day (e.g., fixed rate securities that pay principal and interest) and other tranches (e.g., interest-only securities) may price one or two business days after the first tranches are priced. On the day of pricing, investors are generally provided with pricing information through the transmission of a Bloomberg message that contains the pricing information for the applicable tranches of securities that priced on a particular day. After pricing of all tranches of securities occurs (which may occur

⁶ See our response to question 1.

over a number of days as noted above), the final prospectus is prepared which is then provided to investors once it is finalized. The day on which the final prospectus is delivered to investors is (and has been for over 20 years) considered the “first use” of the prospectus.

After the preparation and distribution of the final prospectus, the deal participants turn their attention to finalizing the transaction documents. In RMBS securitizations, the provisions related to the underlying tax structure (also known as the “REMIC” provisions since most mortgage securitizations are structured using “real estate mortgage investment conduits” for tax purposes) must be revised to conform with the final structure and final pricing terms. These are very complex, detailed provisions that need to be accurate to ensure proper tax treatment of the securities and the issuing entity. Forcing deal participants to “rush” the preparation of these provisions and the finalization of other terms of the transaction documents invites mistakes.

Based on the process described above, the Commission should rescind CD&I 111.01 should amend Item 1100(f) of Regulation AB to provide that the final transaction documents with pricing information be filed no later than two business days after the closing date for the transaction. Forms of the transaction documents are filed as part of the registration statement and certain material terms of the transaction documents (other than terms dependent on pricing) are disclosed in the preliminary prospectus. A requirement to file the transaction documents within two business days of the closing date would be a more appropriate timeframe, especially since the prospectus will have already been conveyed to the deal participants. This expanded timeframe would give counsel to the issuer and the underwriters sufficient time to ensure that the terms of the transaction documents conform to the final prospectus and that the tax provisions in the transaction documents are appropriately drafted.

4. Rationalize Form SF-3 Requirements

Several changes to the requirements for the use of Form SF-3 should be made to further stimulate public issuance of registered securities.

- ***Registrant requirements contained in in General Instruction I.A.1. should be modified to only apply to depositors or issuing entities of the same asset class***

First, the registrant requirements contained in in General Instruction I.A.1. should be modified to only apply to depositors or issuing entities of the same asset class. Sponsors that sponsor securitizations in multiple asset classes are concerned that a

foot-fault in one asset class could result in the loss of shelf-eligibility for other asset classes, so they are reticent to sponsor securitizations of new asset classes (e.g., residential mortgage loans). This concern grew after the release of Compliance & Disclosure Interpretation 111.01 discussed above, given the requirement in General Instruction I.A.1(b) which requires all transaction agreements to be filed on a “timely basis”. Even if relief is granted on the point as to what constitutes a “timely basis”, we remain concerned about General Instruction I.A.1. since the instruction to General Instruction I.A.1. requires a registrant to disclose in the prospectus that it has met the registrant requirements of I.A.1. which, for entities that have affiliates which sponsor securitizations in multiple asset classes, results in a certification across all business lines that securitize even though the individuals in one business line (e.g., the residential mortgage loan business) may have little to no contact with individuals in another business line (e.g., the credit card business). This requirement also completely disregards any concepts of corporate separateness among affiliates and treats them as a single registrant. We think that these requirements disincentivize certain institutions from sponsoring registered securitizations involving multiple asset classes.

- ***Certification requirements required by General Instruction I.B.1. should be revisited***

Second, the Commission should revisit the certification required by the General Instruction I.B.1. as that also has the effect of reducing the incentive of a sponsor’s employees to undertake registered transactions versus a 144A transaction. In particular, unlike paragraph (2) of the certification, paragraphs (3) and (4) go beyond the Commission’s traditional focus on disclosure.

Paragraph (3) is a certification that the prospectus and other information included in the registration statement “fairly present”, in all material respects, the characteristics of the securitized assets, the structure of the securitization and the risks of ownership of the securities, including the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms. The words “fairly present” have been interpreted by the Commission as referring not to the accuracy of the disclosure but to a different, more abstract standard, which “will require the chief executive officer to consider whether the disclosure is tailored to the risks of the particular offering and presented in a clear, non-misleading fashion”. As asset-level disclosure requirements become more numerous, and particularly if they are unclear or not able to be produced with a sufficient level of reliability, this certification presents greater and great risk to the sponsor, making sponsors less willing to make it.

Paragraph (4) is a representation that, based on the chief executive officer's knowledge, taking into account all material aspects of the securitized assets, the structure of the securitization, and the related risks (as such risks are described in the prospectus), there is a reasonable basis to conclude that the securitization is structured to produce, but is not guaranteed by the certification to produce, expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.

In the Regulation AB II Final Release, the Commission made clear that they do not believe the chief executive officer's review should be based solely on the review of the prospectus, and accordingly the chief executive officer must consider the material aspects of the securitized assets as well as the structure of the securitization not just in the context of whether they are adequately disclosed, but in the more subjective context of whether they support a presumption of expected cash flows to service scheduled payments of interest and repayment of principal on the ABS. In response to industry concerns over potential future developments that could cause asset performance to deviate from issuance-date models or historic trends, the Commission stated that the certification will be a statement of the certifying officer's current beliefs, and included the phrase "a reasonable basis to conclude" to further clarify that the certification applies to what is known at the time of the securitization. The Commission also made clear, however, that the certification in paragraph (4) is not protected by the statutory safe harbor for forward-looking statements, and that any issues the certifying officer may have with respect to providing the certification must be addressed through disclosure in the prospectus.

Sponsors will naturally weigh the risk and consequences of making an erroneous certification against the different, lower standard that applies to 144A issuances. Under the Reg ABII RMBS disclosure regime, this certification is a component of what has tipped the balance of RMBS issuance entirely to the 144A market.

- ***Asset review provisions in General Instruction I.B.1.(b) should be made consistent with 144A market practice***

Third, the asset review provisions in General Instruction I.B.1.(b) are inconsistent with current market practice in the 144A market for RMBS and should be revised to allow the approaches currently utilized in the 144A market. In particular, in requirement (C), there is a prohibition on the asset representations reviewer being the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. In most 144A RMBS transactions,

the asset representations reviewer does make a determination as to whether a representation or warranty has been breached by determining whether there has been a “material test failure” or through a similar determination. By making such a determination, it facilitates a more rapid conclusion as to whether or not a particular asset needs to be repurchased by the representing party, since the asset representation reviewer’s determination must be challenged in a relatively short time frame by either the investors or the representing party. Most transactions require any challenge of the asset representations reviewer to take place through an arbitration proceeding.

Furthermore, requirement (C)(2) sets a threshold of investors that can direct a review. In some RMBS transactions, reviews occur automatically when a loan becomes 120 days delinquent or suffers a realized loss. In other RMBS transactions, 25% of the investors can direct a review of delinquent or defaulted mortgage transactions or, in certain cases, the majority holder(s) of the most subordinate class of securities can direct a review. The requirement to have an asset representations reviewer in a transaction should still be included, but we see no need for the level of detail provided in Instructions (C)(1) or (C)(2) or in Instruction (D). We urge the Commission to analyze the asset representations review provisions that have been implemented in the RMBS market since, to our knowledge, that is the only asset class where reviews of assets by a third-party asset representations reviewer take place on a regular basis.

- ***Dispute resolution requirement in General Instruction I.B.1.(c) should be made consistent with 144A market practice***

Fourth, the dispute resolution requirement in General Instruction I.B.1(c) is also unnecessarily detailed and would exclude many of the dispute resolution provisions currently in the 144A RMBS market. For example, it permits either mediation or third-party arbitration as a dispute resolution option. Most RMBS transactions only permit arbitration as the dispute resolution method and in some cases either lets the arbitrator determine the allocation of expenses or allocates expenses to the losing party.

As evidenced by 144A market practice, a requirement for there to simply be a non-judicial dispute resolution mechanism is sufficient. Alternatively, we would suggest that the Commission examine the multiple forms of dispute resolution mechanisms that are described in the offering documents for RMBS currently issued in the 144A market and revise its dispute resolution provision requirements to permit those existing mechanisms.

In addition, the form of expense allocation from the dispute resolution should not be mandated by Form SF-3. In some transactions, the arbitrator gets to allocate expenses while in other transactions the losing party pays the expenses of the arbitration proceeding. Obviously, the market for RMBS has revived over the past 10 years in part because it established, prior to any other asset class, procedures related to the review of asset representations mechanisms to resolve any related disputes. The Commission needs to re-examine these provisions and revise them so that well-established review and dispute mechanisms found in the RMBS market can be incorporated into registered transactions. As a corollary to this, Item 1113(a)(7)(i) should be removed since it requires a description of how the triggers were determined to “be appropriate” and to compare the delinquency threshold to delinquencies for prior pools. That disclosure is not currently included in RMBS deals in the 144A market as it is left to investors to determine whether the review mechanisms are “appropriate”. A principles-based disclosure regime should merely require a description of the review mechanism, its thresholds and the various components.

- ***The Commission should re-evaluate General Instruction I.B.1(f)***

Last, the Commission should re-evaluate General Instruction I.B.1(f). Although not relevant to RMBS, we think that the additional limitation on residual value for securitizations of leases other than motor vehicle leases is unnecessary since the definition of asset-backed security already establishes a 20% limit. We think this 20% threshold may constrain some equipment lease securitizations.

5. Revisit Item 1105 of Regulation AB

With respect to the disclosure of static pool information, we request that the Commission revise Item 1105(d) to update the “January 1, 2006” date with a date that coincides with the effectiveness of any new rules designed to stimulate registered RMBS issuance. RMBS issuers have undertaken their transactions over the last ten years with little hope of ever undertaking a registered transaction given the rules that were promulgated under Regulation AB II. Consequently, the issuers have not collected static pool information on their prior transactions in anticipation of a registered transaction where Section 11 liability would be applicable. Consequently, as with the original version of Regulation AB, RMBS issuers would need a lower standard of liability with respect to the static pool information related to time periods prior to the effectiveness of the new rules.

Similarly, we request that Rule 312 of Regulation S-T be restored with no expiration date so that RMBS sponsors can re-establish websites that have the static pool information.

To our knowledge, participants in the RMBS market regularly relied on Rule 312 of Regulation S-T to establish their static pool information websites, so that would need to be restored.

Lastly, we would ask the Commission to re-examine the usefulness of static pool information. Most RMBS transactions in the 144A market provide no static pool information as it is historical information that is not likely to be predictive of future performance.

6. Revise Rule 401(g)(4) to be Less Punitive

Rule 401(g)(4) under the Securities Act indicates that, after a registration statement becomes effective, the requirements as to proper form of a registration statement and related prospectus will be violated if the requirements of General Instruction I.A. of Form SF-3 have not been met as of ninety days after the end of the depositor's fiscal year end prior to such offering (referred to as the registrant's "annual compliance check").

While the intent behind this Rule was sensible, the practical effect on underwriters is simply unfair. As an example, assume that a registrant was declared effective on February 1, 2025. During the calendar year of 2025, the registrant did one registered issuance of RMBS each month beginning in March 2025 and continued monthly offerings into 2026. Each offering had a syndicate of underwriters, with some who participated in only one or two offerings. In November 2026, the registrant decides to conduct an offering and arranges a syndicate of underwriters to participate, including an underwriter who had not previously been a member of this registrant's underwriting syndicates. Unbeknownst to this new underwriter, in May 2025, the paying agent failed to include in the distribution date report for the offering consummated in March 2025 information related to two mortgage loans in the asset pool that were delinquent 30 days as of the end of the related collection period. This information was accurately reported to the paying agent by the related servicer, but for some reason it was not included in the distribution report. The registrant attached that distribution report to the related Form 10-D filed in May 2025 in reliance on the instruction in Item 1 of Part I of Form 10-D, not realizing that the distribution report failed to contain the information required by Item 1121(a)(9) of Regulation AB.

Technically, in the event that Form 10-D was viewed as a materially deficient report (since it did not include all information required by Item 1121(a), (b) and (c)), the effect of Rule 401(g)(4) would be that the offering in November 2026 was on the wrong form (i.e., the offering was conducted in violation of Section 5 of the Securities Act) because, while the registrant believed it was current and timely in its Exchange Act reporting at

the time of its annual compliance check on March 31, 2026, it was subsequently determined that the registrant had not corrected the deficient Form 10-D filing by the date of the March 2026 annual compliance check. Every underwriter who participated in the November 2026 offering could be held liable for the Section 5 violation. We think that is an absurd result and that Rule 401(g)(4) imposes an impossible burden on underwriters in a securitization transaction as they could not possibly have discovered the deficient Form 10-D filing.

Although registrants should be responsible for ensuring all required filings are made, Rule 401(g)(4) was a draconian solution that penalizes parties who simply cannot police the Exchange Act filings of a registrant, especially a registrant that conducts frequent securitization transactions. There are sufficient protections under the Federal securities laws to ensure that registrants abide by their ongoing reporting obligations, and liability for reporting failures should lie solely with the registrant and not with underwriters who may not have even participated in the transactions where there was a reporting failure. This is also another example of how certain rules dissuade deal parties from undertaking registered transactions.

7. Revise Various Aspects of Item 1100(b)

Item 1100(b) governs the presentation of historical delinquency and loss information for items that call for that information in Regulation AB. In the past, the RMBS industry had difficulties complying with Item 1100(b) since it would require delinquencies to be reported in 30-day increments through foreclosure. Given extended foreclosure timelines, this would result in delinquency reporting in 30-day increments through as many as 300+ days. To simplify delinquency reporting, Item 1100(b)(1) should be aligned with the Instruction to Item 1105(a)(9) so that reporting in 30- or 31-day increments would only be required through no more than 120 days as opposed to “through the point that assets are written off or charged off as uncollectible”. This would also be consistent with Item 1121(a)(9) and would eliminate the need for Compliance and Disclosure Interpretation 300.01 with respect to Item 1111(c). We do not think that more granular disclosure of delinquencies past the 120-day mark provides investors with material information.

In addition, Item 1100(b)(3) should be revised to eliminate the requirement to disclose “the number and amount of assets experiencing a loss and the number and amount of assets with a recovery, the ratio of aggregate net losses to average portfolio balance and the average of net loss on all assets that have experienced a net loss”. We think the first clause of Item 1100(b)(3) (“[p]resent loss and cumulative loss information, as applicable, regarding chargeoff, charge-off rate, gross losses, recoveries and net losses (with a

description of how those terms are defined)”) is a sufficient requirement. The additional granular disclosures that are required do not appear especially useful, and eliminating these detailed requirements would ease the burden on new registrants that are preparing static pool information and other related disclosures. We would also note that these types of prescriptive disclosures run counter to a principles-based disclosure regime.

Lastly, the Commission should eliminate Item 1100(b)(4) that requires categorization of all delinquency and loss information by “pool asset type”. We are unclear as to the meaning of “pool asset type” as it only appears in two places in Regulation AB – Item 1100(b)(4) and Item 1100(b)(6). For example, we are unsure if this will require categorization of delinquencies and loss information on fixed-rate mortgage loans versus adjustable-rate mortgage loans. In Item 1100(b)(6), merely eliminating the phrase “particular to the pool asset type(s)” would resolve the issue without substantively affecting 1100(b)(6)’s overall requirement to “describe any other material information regarding delinquencies and losses, such as repossession information, foreclosure information and real estate owned (REO) or similar information.”

8. Eliminate Items 1104(f), 1108(b)(4) and 1110(c)

Items 1104(f), 1108(b)(4) and 1110(c) were promulgated as part of Regulation AB II. These items require the disclosure of financial condition information regarding the sponsor, the servicer and an originator, respectively, if there is a material risk that the party’s failure to comply with certain provisions of the transaction documents “could have a material impact on pool performance or performance of the asset-backed securities”. We are not aware of any parties that have made disclosures pursuant to these Items since they were added to Regulation AB. Given that these items haven’t elicited any disclosure to this point, we question the point of having them. In addition, if there were material risks regarding a party’s ability to perform any of its obligations under the transaction documents, the principles-based disclosure requirements contained in Item 105 of Regulation S-K would compel the inclusion of risk factors that cover these points.

9. Remove Duplicative Requirement for Originator Disclosure from Item 1110(a)

The second sentence of Item 1110(a) requires the identification of any originator that originated less than 10% of the assets if the cumulative amount originated by parties other than the sponsor or its affiliates is more than 10% of the pool assets. This would require disclosure in the prospectus of every originator, even if they only originated a single mortgage loan. Given that it is likely that “originator” will be a field in Schedule

AL, we request that this requirement be deleted as it will simply result in asset-level disclosure being contained in both the prospectus and in Schedule AL.

10. Clarify Item 1111(a)(8) Regarding Compliance with Underwriting Criteria

We request that the Commission clarify that Item 1111(a)(8) does not require disclosure of whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset, but rather requires only what Item 1111(a)(8) requires on its face – disclosure as to whether any assets in the pool deviate from the disclosed underwriting criteria or other criteria or benchmark used to evaluate the assets.

Confusion has arisen since the “criteria for the first level of solicitation...” phrase was included in the release accompanying Item 1111(a)(8) and in Schedule AL. In the context of mortgage loans, this is incredibly difficult to apply since applications for mortgage loans may be submitted to many different loan programs and each submission is not comprehensively tracked by lenders. For example, a borrower may initially want a fixed-rate mortgage loan with a substantial down payment requirement but may decide later in the origination process that they would rather have an adjustable-rate mortgage loan with a lower down payment requirement. It is unclear if issuers would need to report whether that loan met the criteria for the fixed-rate mortgage loan. The language of Item 1111(a)(8) by itself is adequate and that the Commission should expressly indicate that Item 1111(a)(8) does not require disclosure of whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

11. Incorporate Materiality into Item 1111(c)

Item 1111(c) requires historical delinquency information for the subject asset pool as was clarified by Compliance and Disclosure Interpretation 311.01. However, we think that Item 1111(c) must be qualified by materiality. For example, in many RMBS transactions there are loans that were originated more than one year prior to the cut-off date. However, in 144A transactions, it is typical to only provide delinquency information for the pool assets for the twelve months prior to the cutoff date. In certain instances, very seasoned loans (e.g., five or more years seasoned) are included in RMBS transactions. This may include loans that were purchased from a prior securitization in connection with the exercise by a transaction party of a “clean-up” call. We do not think that the intent of Item 1111(c) was to include delinquency information for a mortgage loan for the entire life of that mortgage loan, especially when that mortgage loan was originated

several years prior. We believe that adding a materiality qualifier to Item 1100(c) or adding a one-year limitation to comport with market practice would resolve the issues raised by Item 1111(c).

12. Consider Revising Scope of Eligible Assets for Rule 3a-7

As referenced in response to question 36, the Commission should consider revising the scope of “eligible assets” to expressly include equipment and motor-vehicle leases. For example, the Commission could revise Rule 3a-7 to indicate that “eligible assets” includes any assets that would be permitted under the definition of “asset-backed security” in Regulation AB. Given that the title of Rule 3a-7 is “Issuers of asset-backed securities”, we think that the Commission should re-evaluate Rule 3a-7, especially since Rule 3a-7 has not been amended since it was first issued in 1992.

VI. Conclusion

We greatly appreciate your consideration of the views set forth in this letter, and we would be pleased to have the opportunity to discuss these matters further with you or with any member of the Commission staff. Please feel free to contact Chris Killian at 212-313-1126 or ckillian@sifma.org, or our counsel on this matter, R.J. Carlson of Sidley Austin LLP, at 212-839-6730 or rcarlson@sidley.com.

Respectfully submitted,



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