June 21, 2018

Acting Director Mick Mulvaney
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20006

Re: Market Consequences of CFPB v The National Collegiate Master Student Loan Trusts

Dear Acting Director Mulvaney,

Following productive discussions with staff in the Consumer Financial Protection Bureau's ("CFPB") Office of Financial Institutions & Business Liaison, we would like to bring to your attention the proposed amicus curiae brief filed by the Structured Finance Industry Group ("SFIG")[1] in the matter of CFPB v. The National Collegiate Master Student Loan Trusts (the "Case"). SFIG respectfully asks the CFPB to carefully consider the risks to the healthy functioning of the securitization markets should it enter into the proposed consent judgment in the Case. As summarized below and detailed in our attached amicus brief, the proposed consent judgment will upset the reasonable expectations of market participants involved in securitizations, with far-reaching consequences for the securitization market and consumers. Most significantly, altering the transaction parties' settled contractual rights and obligations will destabilize market expectations, thereby injecting uncertainty into the market. This uncertainty will likely result in securitization investors requiring higher risk premiums, leading to higher borrowing costs and lower credit availability for the very consumers the CFPB is seeking to protect.

The National Collegiate Master Student Loan Trusts (the "Securitization Trusts") were established between 2002 and 2007 to acquire private student loans originated by various banks pursuant to programs managed by First Marblehead Corporation, an education finance company. These loans were financed by borrowing money from investors in the capital markets through securitization transactions.

[1] SFIG is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFIG provides an inclusive network for securitization professionals to collaborate and, as industry leaders, to drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. Members of SFIG represent all sectors of the securitization market, including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers, and trustees. Further information can be found at www.sfindustry.org.

In mid-September 2017, previous CFPB leadership filed a Consent Order against a special servicer for the Securitization Trusts, requiring the servicer to pay a $2.5 million civil money penalty and imposing injunctive provisions. At the same time, the CFPB filed a lawsuit against the Securitization Trusts also containing injunctive provisions that would abrogate the Trusts' governing documents and seek to hold them liable for the actions of the servicer. Several parties moved to intervene, and SFIG filed a motion for an order permitting it to submit a brief as *amicus curiae*.

At the heart of the issue is the sanctity of contractual agreements. The CFPB lawsuit against the Securitization Trust rewrites the contractual provision that the parties agreed to and penalizes investors, who are not accused of any wrongdoing. As stated in the proposed amicus brief, "The rights, obligations and roles of all the parties involved in both the origination and management of a securitization are governed by various written agreements between the transaction participants, including…master loan purchase agreements, trust agreements, administration agreements, servicing agreements, and/or pooling and servicing agreements."

For any capital markets contract, the establishment of trust is absolutely fundamental to the successful execution of that contract and the consequent successful functioning of the relevant market. That trust must not only exist between market participants, but must also exist in the transactional documents themselves. Simply put, if any market participant cannot trust that the transactional documents will be allowed to run their course, it brings into question the entirety of those contracts and, by consequence, the existence of the market itself. Given the very important role securitization plays in the U.S. economy, providing $2.4[2] trillion or slightly over 33% of the nation's roughly $7.5 trillion of bond issuance in 2017 and representing approximately 55%[3] of household debt as of Q3 2017, any wariness on the part of investors or other participants could result in either a significant increase in the cost of credit and/or a reduction in credit availability.

Contractual ambiguity, concern around sanctity of the contract and a general lack of trust that contractual cash-flows will not be allowed to run their course is one of the many-cited contributors to the failure of the private label RMBS market to rebound from its crisis-driven lows. We would counsel against running the risk that a similar lack of confidence might extend to all other asset classes (e.g. Credit Card, Student Loans, Auto). All market participants and especially investors need to trust that well-meaning government actors and regulators will not abrogate their contractual rights and hold them responsible for the alleged bad acts of unrelated third parties, the resulting uncertainty will undoubtedly lead to a reduction of or increase in cost of credit for individuals and businesses across the United States.

[2] SIFMA

[3] Moody's Investors Service, "Structured finance – US: Securitization remains major funding source for economy, while government still dominates housing and higher education", 15 Feb. 2018, p. 9, *Sector In-Depth Structured finance – US.*

Consistent with the CFPB's mission, our members are committed to providing consumers with transparent and fair financing options. However, it is inappropriate for enforcement actions to penalize innocent actors, including pension plans, retirement plans, and by extension the consumers that have entrusted their savings to them, for a third party's alleged misconduct.

Thank you for considering this request. Your prompt review and response is appreciated and would facilitate the continued healthy functioning of the securitization market. If you have any questions, please contact Richard Johns, Executive Director, at Richard.Johns@sfindustry.org or (202) 524-6300.

Yours very truly,

Richard Johns
Executive Director
Structured Finance Industry Group