STRUCTURED
FINANCE
ASSOCIATION

November 25, 2025

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**Re: File no. S7-2025-04 - Concept Release on Residential Mortgage-Backed Securities Disclosures and Enhancements to Asset-Backed Securities Registration, SEC Release Nos. 33-11391; 34-104102, (Sept. 24, 2025)**

Ladies and Gentlemen:

The Structured Finance Association (the "SFA") appreciates the opportunity to provide feedback on the concept release published by the Securities and Exchange Commission (the "SEC").[1]

The SFA's mission is: *"To help its members and public policy makers grow credit availability and the real economy in a responsible manner."*

The SFA is a consensus-driven trade association with over 370 institutional members representing the entire value chain of the securitization market. By facilitating the responsible issuance of and investment in loans and securities, our members help to foster a market that provides trillions of dollars of capital to consumers and businesses in communities across the country. SFA members include issuers, investors, broker-dealers, rating agencies, data analytic firms, law firms, servicers, trustees and accounting firms. As such, unlike many other trade associations, before we take any advocacy position our governance requires us to achieve consensus by agreement rather than majority vote, ensuring the perspectives of all our diverse membership are included. This diversity is our strength, as it builds healthy tension in arriving at our consensus position. Because of this, we are methodical and thoughtful as we analyze the pros and cons of regulatory proposals before we reach a mutually acceptable position.

Securitization provides families, individuals, and businesses with access to credit at a price that is lower than what would otherwise be available. The industry funds 60 percent of borrowing for housing, twenty-five percent of borrowing for commercial real estate, 15 percent of auto loans, and seven percent of credit card and student-loan debt. Asset-backed securities ("ABS") are issued in both the registered and unregistered markets. As the Concept Release notes, a robust registered

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[1] See Concept Release on Residential Mortgage-Backed Securities Disclosures and Enhancements to Asset-Backed Securities Registration, Release Nos. 33-11391; 34-104102, (Sept. 24, 2025) [90 FR 47254] (the "Concept Release").

ABS market offers benefits such as increased transparency and protection, greater liquidity, and potentially lower costs of capital.[2]

The SFA supports the SEC's efforts to assess whether there are any regulatory impediments to issuer and investor access to the registered ABS market and to expand access to the registered securitization market. We believe that these efforts keep true to the SEC's mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

## I. Background and SFA Work to Date

Following the financial crisis of 2007-2009 (the "Financial Crisis"), Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[3] The Dodd-Frank Act included mandates for the SEC to adopt rules and regulations intended to address concerns in the securitization market including, in relevant part, a lack of transparency about the assets underlying ABS,[4] and added a new statutory definition of "asset-backed security".[5] In 2014, the SEC adopted significant revisions to its registration, disclosure, and reporting regime for ABS, including amendments to Regulation AB (colloquially, "Regulation AB II"),[6] in part to implement several of these Dodd-Frank Act mandates. Among the revisions, the SEC adopted asset-level disclosure requirements, known as "Schedule AL".[7]

As the Concept Release notes, there have been no registered private-label residential mortgage-backed securities ("RMBS") offerings since June 2013 (pre-dating the adoption of Regulation AB II by more than a year).[8] In October 2019, then-SEC Chairman Jay Clayton released a statement seeking public input on issues related to RMBS asset-level requirements.[9] In response, we convened our members to engage in a dialogue on this topic and created a focused task force (the "Regulation AB II Task Force"), with the goal of providing specific and detailed feedback on particular aspects of Regulation AB II, including Schedule AL.[10] Via our Regulation AB II Task Force, we launched discussions throughout our membership and have gathered input to establish a comprehensive industry agreed upon recommendation to the SEC to address how disclosures in registered RMBS offerings may be modified to provide investors the material information they

[2] *See* Concept Release at 47255. As an example, additional liquidity could be provided because QIBs would not have to ensure compliance with Rule 144A to sell their securities. Further, certain institutional investors may be subject to limitations on the amount of Rule 144A securities that they may hold; however, if registered, more capital could be deployed to trade registered RMBS.

[3] Public Law 111-203, 124 Stat. 1376 (2010).

[4] *See*, e.g.,Public Law 111-203, 942(b), 124 Stat. 1376, 1897.

[5] Section 3(a)(79) of the Exchange Act [15 U.S.C. 78c(a)(79)].

[6] *See Asset-Backed Securities Disclosure and Registration*, Release No. 33-9638 (Sept. 4, 2014) [79 FR 57184] (Sept. 24, 2014) ("2014 Regulation AB II Adopting Release")

[7] *See* Item 1125 of Regulation AB.

[8] *See* Concept Release at 47257.

[9] *See* Chairman Jay Clayton, Asset-Level Disclosure Requirements for Residential Mortgage-Backed Securities (Oct. 30, 2019) (the "2019 Chairman's Statement").

[10] *See* letter from Structured Finance Association (Jan. 29, 2020), available at https://www.sec.gov/comments/rmbs/cll8-6721626-206212.pdf.

need to analyze investment opportunities while also supporting registered issuance of RMBS.[11] This process was governed by SFA's advocacy approach which ensures that all parties have their voices heard and accounts for the views of all industry participants. Our membership discussions have included participants from: bank and non-bank issuers for both qualified ("QM") and non-QM products, investors that purchase in both Rule 144A and registered offerings across asset classes, servicers, rating agencies and diligence firms, law firms, technology and data providers, trustees, and other market participants. From this group, SFA established a task force specifically focused on asset-level disclosure in RMBS (the "SFA RMBS Data Tape Task Force").

Beginning in 2021, members of the SFA RMBS Data Tape Task Force engaged in field-by-field discussions to achieve consistency across fields, definitions, enumerations, and format. In undertaking this work, the task force members looked to a variety of sources, including data provided to investors in Rule 144A offerings and the requirements of Regulation AB II. The initial work of the SFA RMBS Data Tape Task Force focused on at-issuance disclosures for prime RMBS and a draft was made available on SFA's website on October 31, 2024 and remains in draft form today.[12] Since the draft was posted, we have refined and analyzed disclosure for residential mortgages, including across our other types of mortgage loan types (e.g., reperforming loans, non-performing loans, debt-service coverage ratio loans, bridge loans or fix-and-flip loans, home equity investments, etc.) and ongoing monthly disclosure. This work to achieve consensus-based recommendations remains ongoing, and will continue on an ongoing basis as the RMBS market evolves. The SFA has also broadened the conversation beyond our task forces through discussion at our industry conferences and RMBS symposiums. We believe that we are uniquely positioned to address the questions posed in the Concept Release because our diverse membership has been dedicated to this effort for many years and our governance requires us to achieve consensus by agreement.

As the Concept Release notes, the SEC staff has engaged with industry participants to identify potential barriers to registration of RMBS offerings, as well as ways to reduce or remove those barriers.[13] We thank the staff for engaging with us over the years and thank you for the opportunity to comment on this important topic.

Our membership has carefully considered the questions posed by the Concept Release and our responses are discussed below.

## II. Executive Summary

The SFA supports the SEC's review of the regulatory framework to remove barriers to the registered ABS market. Our responses are focused on three key initiatives: revisions that should be made to align definitions and practices in Schedule AL to the RMBS market today; enabling delivery of material asset-level information to investors while recognizing the sensitivity of that

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[11] *See* Key Points Summary: Responding to the SEC's Request for Input on Residential Mortgage Backed Securities Disclosures Structured Finance Association (2019), available at https://structuredfinance.org/wp-content/uploads/2020/02/SFA-Responding-to-the-SECs-RFI-on-RMBS-Summary-Final.pdf

[12] *See* SFA Data Tape Specification available at https://structuredfinance.org/resources/sfa-publishes-prime-rmbs-data-tape/.

[13] *See* Concept Release at 47258.

data; and expanding the availability of registration for additional types of securitizations so they are not confined to the Rule 144A market. In combination, these adjustments would promote data quality and comparability, support information sharing, and facilitate broader participation in the registered RMBS market without sacrificing transparency or investor protections.

## III. Requests for Comment - 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?*

SFA members would welcome a thriving registered RMBS market. However, the SEC's asset-level disclosure requirements for RMBS in Schedule AL have contributed to the lack of registered RMBS issuances, primarily for the following reasons:

1) Institutional investors in RMBS require certain information in excess of Schedule AL fields which is sensitive and cannot be made available to the public. SEC rules require that any material information provided to any investor in a registered offering must be filed on EDGAR. As a result, SEC rules essentially prohibit investors in a registered RMBS offering from receiving certain information they deem necessary to perform due diligence;

2) Disincentivizing market participants from investing in developing processes and systems to transact in the registered market; and

3) Schedule AL requires disclosure of up to 270 data points for each securitized loan, and many of the definitions lack clarity on what information to provide.

Consequently, there are practical and technical challenges to interpreting, assembling and delivering the data to be compliant with the existing rules. Our responses below, as well as the Preface to Annex A, illustrate more specifically why the requirements of Schedule AL serve as a barrier to RMBS issuance.

### 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?*

As noted in the Concept Release, RMBS securitizations have been concentrated in the Agencies[14] and all private-label RMBS offerings since June 2013 have been unregistered, with nearly all occurring in the Rule 144A market despite investment criteria restrictions that limit the amount of

[14] Together the "Agencies" are Ginnie Mae, Fannie Mae and Freddie Mac.

Rule 144A ABS that many institutional investors can hold.[15] SEC data reveals that non-Agency Rule 144A RMBS transactions accounted for approximately twenty percent of all ABS issuances by volume (across all assets) between 2014 and 2024. Out of all private-label RMBS offerings in that period, approximately 90% occurred in the Rule 144A market.[16]

SFA members do not believe that the Rule 144A market has contributed to the lack of registered RMBS issuances. Rather, the transactions remain in the Rule 144A market because a registered RMBS offering is not possible under existing rules. As noted in our response to question 1, the rules essentially prohibit investors from receiving certain information that they deem necessary and there are practical and technical challenges to interpreting, assembling and delivering the information to be compliant with the existing rules. In our response to question 3, we broadly describe the potential costs associated with a registered offering, noting the additional burden of such issuances when compared to Rule 144A unregistered offerings.

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?***

Since there have been no registered RMBS since the adoption of Regulation AB II, there is no data regarding the differences in transaction costs for a registered RMBS relative to a Rule 144A RMBS offering. Below, we qualitatively compare a non-exhaustive list of costs that we believe would increase in a registered RMBS:

| Cost | Rule 144A estimated burden and cost components | Registered burden/cost consideration |
|---|---|---|
| Monthly distribution reports | Trustee report distributed to investor typically through trustee or securities administrator website.<br><br>Monthly asset-level data accessible through a trustee or securities administrator website or through data vendors. | In addition to posting the monthly trustee report on a trustee or securities administrator website, Form 10-D must be prepared and filed on EDGAR 15 days after each required distribution date. Requires additional legal review and filing costs.<br><br>Increased cost to reprogram systems to conform to Schedule AL requirements and to prepare XML |

[15] *See* Concept Release at 47256.

[16] *See* Diana Knyazeva, Asset-Backed Securities Markets: Issuance and Structure (Apr. 2025) at 5, *available at* https://www.sec.gov/files/dera-abs-mkt-2504.pdf.

| Cost | Rule 144A estimated burden and cost components | Registered burden/cost consideration |
|---|---|---|
| | | filing for EDGAR. However, standardizing the data definitions across all deals would decrease individual investor cost to ingest and scrub data to make it comparable.<br><br>Increased oversight cost by master servicers to ensure compliance with new reporting requirements. |
| Other Reporting Costs | Annual servicer certificate. | Preparation of Form 10-K - Regulation AB requires preparation of platform-level assessment of servicer compliance and auditor assessment. Additional 10-K disclosures required and additional legal review and filing costs.<br><br>Preparation of Form 8-K – need to develop policies and procedures to identify when reporting is required for events on Form 8-K. |
| Asset Representation Reviewer ("ARR") required by Form SF-3. | Market practice has developed to include a representations and warranties reviewer in RMBS deals. | Additional costs to negotiate changes from market practice to conform to ARR requirement, associated legal fees to formalize agreements and develop new policies and procedures.<br><br>Market practice for reviewer is likely more effective than ARR required by Form SF-3, making this added cost unduly burdensome when it does not serve any additional benefit. |

| Cost | Rule 144A estimated burden and cost components | Registered burden/cost consideration |
|---|---|---|
| Legal Fees | Cost of drafting offering materials and transaction documents to 10b-5 standard. | Increased cost of drafting offering materials, including asset-level data, to registered offering liability standards and issuing related opinions.<br><br>Increased cost of establishing processes for reviewing each monthly distribution report for compliance with Form 10-D requirements, including loan-level data. Increased cost of reviewing Form 8-K, as needed. |
| SEC Registration Fee | No fee for unregistered offerings. | Increased cost of filing ($138.10 per $1,000,000).[17] |

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?***

Yes. Because the market has not included negative amortization loans in securitizations, SFA members have not discussed what data disclosure requirements would be most appropriate for these types of loans. It would be premature to develop standardized data when the market has not been securitizing these loans since prior to the Financial Crisis. In order to streamline the rules, we suggest removing these data points, except for Item 1(c)(15) Negative Amortization Indicator that requires an indication of yes or no as to whether the loan allows for negative amortization. We suggest that the SEC provide guidance that, if negative amortization loans are included, additional data should be disclosed to provide investors with the information they need to perform due diligence. Regulation AB II already provides for the disclosure of additional data by filing an asset-related document.[18]

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[17] See Order Making Fiscal Year 2026 Annual Adjustments to Registration Fee Rates, Release Nos. 33-11384; 34-103768 (August 25, 2025).

[18] *See* Item 1111(h) of Regulation AB.

### 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?*

Yes, we believe the absence of registered RMBS is due to Regulation AB's disclosure requirements limiting necessary investor information, and we recommend that Schedule AL be revised to align with Rule 144A practices to reduce costs and improve market efficiency.

As discussed in our response to questions 1 and 2, the main factor for the absence of registered RMBS is that the Regulation AB asset-level disclosure requirements effectively prohibit investors from receiving certain information that investors deem necessary to perform their due diligence. Consequently, we believe that the disclosure practices that have developed in Rule 144A RMBS offerings should directly inform how Schedule AL should be revised.

In our response to question 3, we broadly and qualitatively describe the potential increase in costs associated with a registered RMBS offering and ongoing reporting. We believe that some of these increased costs are necessary. But with respect to Schedule AL, we believe the SEC should harmonize Schedule AL to Rule 144A RMBS disclosure practice to reduce costs for all market participants. Specifically, SFA's work described in Section I takes into account the views and practices of market participants, including investors, that are currently engaging in Rule 144A RMBS transactions. In contrast, Schedule AL was informed by a recommendation that was developed and published before the Dodd-Frank Act and its mandated reforms.[19] For example, Schedule AL was constructed without the benefit of the CFPB's Ability-to-Repay/Qualified Mortgage ("ATR/QM") framework.[20] At the time Schedule AL was adopted, the SEC focused on investor-oriented variables for modeling cash flows and credit risk. As a result, certain data points in Schedule AL may not fully align with the current ATR/QM requirements. This potential gap further supports our recommendation to revisit and align Schedule AL to better reflect today's market practices and regulatory expectations.

SFA's efforts to standardize and more clearly define the at-issuance data required by Schedule AL should benefit all market participants by allowing users of the data to analyze it more efficiently. If Schedule AL were aligned to reflect our recommended definitions, data preparers and data users would incur incremental costs to reprogram systems to prepare and analyze the data. Because they are not currently aligned, data preparers and users would need to reprogram to provide data using the Schedule AL definitions, which are not currently being used by the market. The same investors that purchase in Rule 144A offerings today will be largely the same investors that will purchase registered RMBS. If the Schedule AL definitions are aligned, investors and other users will be able to more efficiently and confidently compare registered and Rule 144A deals. Differences between the definitions would not need to be analyzed. We provide our recommendations for alignment in Annex A.

We also note that our recommendations generally cover the various types of residential mortgages loans that are securitized today, such as prime jumbo, non-QM (qualified mortgage) investor

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[19] The "RMBS Disclosure and Reporting Package" was published in 2009 by the American Securitization Forum.

[20] *See* Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6408 (Jan. 30, 2013).

homes, reperforming loans, residential construction loans (RTL), closed-end second mortgages, and home equity lines of credit. Some investor homes include what are called "DSCR loans" (debt service coverage ratio). As the market is still developing, we do not have recommendations for standardized data at this time; however, we believe issuers should indicate whether the loan is a DSCR loan and, similar to the approach with negative amortization loans, additional data should be disclosed to provide investors with the information they need to perform due diligence.

Lastly, as noted in the preface of Annex A, we have provided a draft of at-issuance recommendations that focuses on certain collateral types, and we continue to actively work to align Rule 144A at-issuance and ongoing disclosure practices. We expect to submit a follow-on letter with those recommendations in the near future.

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 discussed in our response to question 5, we believe Schedule AL should be aligned to the disclosure practices in Rule 144A market. To that end, as discussed in the preface of Annex A, we have prepared a chart of Schedule AL RMBS data points that should inform your consideration of which item requirements should be revised, removed or added. Annex A includes responses to many of the questions posed, including whether the information is necessary for investor due diligence and provides suggested revisions to the definitions or responses. As we mention in Annex A, the attached chart is still in draft form and should not be interpreted as a recommended replacement for Schedule AL. However, it does represent significant industry collaboration towards standardizing disclosures and serves as a strong foundation for informing the SEC's review of Schedule AL.

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 in our response to question 6, Annex A provides detailed responses to this question in the list of Schedule AL RMBS data points that should be revised, removed, or added, as applicable. For example, Schedule AL fields addressing additional liens on mortgaged properties illustrate the balance between investor utility and operational feasibility. While such data can help inform investors decisions, the cost and complexity of such information on a loan-level basis are disproportionately high. Accordingly, to the extent issuers or servicers possess reliable, loan-level lien status from origination or servicing workflows, we believe that such information should be provided; however, to the extent that the data is not reasonably obtainable without unduly burdensome costs, it would be impracticable to provide.

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?***

As noted in our response to question 6, Annex A provides detailed responses to this question in the list of Schedule AL RMBS data points that should be revised, removed, or added, as applicable.

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?***

No. We do not believe any change is necessary to the Form 10-D reporting frequency. In the Rule 144A market, RMBS investors receive trustee reports when cash distributions are made, typically on a monthly basis. In a registered offering, an investor in an RMBS would similarly receive a trustee report on a monthly basis.[21] In addition, we do not believe that allowing for summary reporting of credit events required to be disclosed by Schedule AL will reduce cost of reporting; however, see our response to question 10 for our recommendations to clarify the reporting requirements and reduce redundancy of reporting certain items on Schedule AL. We also welcome any changes to the EDGAR filing process to make it more efficient and less costly.

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. We believe that certain information only needs to be disclosed at the time of issuance and does not need to be repeated with each subsequent periodic report. We also believe that some information should only be provided when a certain event occurs.

Simplifying the disclosure requirements to clearly indicate what information is required and when it must be provided would likely decrease the cost of preparing the data filings and reduce ambiguity for the user that is analyzing the data. For example, servicers are typically responsible for providing ongoing data, and several servicers may be engaged in servicing the loans in any one RMBS. Some or all of these servicers may not have access to certain origination or at-issuance data, such as credit score. Even if they obtain the data from the issuer, servicers should not be required to report such information because they would need to verify the accuracy of the data before filing it, as well as store and protect the data. The issuer appropriately has the obligation for the accuracy of information at the time of issuance, therefore the servicers and other parties that are tasked with ongoing reporting should not incur the additional obligation to continue to report previously reported at-issuance information. We indicate in Annex A which items should only be required at-issuance.

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[21] In a registered offering, the EDGAR filing requirements are keyed to market practice such that Form 10-D is required to be filed within 15 days after each required distribution date.

As we noted in our response to question 5, we continue to actively work on aligning Rule 144A monthly disclosure practices to Schedule AL item requirements and will submit a follow-on letter with those recommendations in the near future.

In this letter, we share our overall approach for ongoing disclosure. On an ongoing basis, we note that existing Schedule AL only requires some disclosures when an answer of "Yes" is provided in response to an indicator field.[22] Other item requirements, however, do not clearly indicate if the same logic should be applied.[23] For this reason, we believe that some of the requirements should be revised and the rules should be presented in a structure and format to clearly indicate when disclosure is required. Revising the rules in this way will make it less burdensome to comply because registrants and servicers will be able to more easily identify what disclosures are and are not applicable. Providing this clarity in the rule text would reduce the time to prepare each monthly Form 10-D and facilitate each subsequent level of review. Likewise, it will be more efficient for investors to analyze the data because it will be organized in a way that removes questions of interpretation (*e.g.*, Was the data point intentionally omitted, when it would otherwise be applicable? Or did the issuer or servicer think it was truly inapplicable?).

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. Annex A indicates our recommendations for revisions to response codes. The SEC should also provide greater clarity regarding when "not applicable, "not available," "not obtainable," or "unknown" is appropriate. In the 2014 Regulation AB II Adopting Release, the SEC noted that rules do not affect the availability of Securities Act Rule 409 or Exchange Act Rule 12b-21.[24] Both rules require that if any required information is unknown and not reasonably available to the issuer, the issuer is to include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person who has the information and stating the result of a request made to such person for the information.

However, it seems unreasonable to require a reporting party to seek out information that is not ordinarily in its possession. For instance, we do not believe that it is reasonable for an RMBS issuer or servicer to seek out responses from affiliates in wholly different business lines. Such information was not used in any initial or ongoing credit analysis by the issuer or servicer and does not reflect information asymmetry between the parties and investors. For example, an RMBS issuer or servicer should not be required to seek information from an auto lending affiliate to

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[22] For example, Item 1(c)(16) of Schedule AL reads "Modification indicator. Indicate yes or no whether the loan has been modified from its original terms." Accordingly, it is clear that a registrant must provide the disclosure required by Item 1(m) Information related to loan modifications if the answer to Item 1(c)(16) is yes.

[23] For example, Item (g)(31) of Schedule AL only reads "Information related to servicer advances." Therefore, a review of each of the twelve disclosure items that follow is necessary to determine whether they are applicable for each loan.

[24] Regulation AB II Adopting Release at 57210.

respond to Items 1(e)(4)-(6) for information related to most recent credit score.[25] In this case, it should be acceptable to omit the data point altogether or respond with "unknown." However, if it is the case that a credit score was obtained in connection with the loan in the pool that is being serviced, then it would be appropriate to provide that information.

We note that in the 2014 Regulation AB II Adopting Release, the SEC states that in situations where a response is "not applicable," "unknown," or "other," that issuers are encouraged to provide additional explanatory disclosure,[26] that a response of "not applicable," "unknown" or "other" would not be appropriate responses to a significant number of data points and that registrants should be mindful of their responsibilities to provide all of the disclosures required in the prospectus and other reports.[27] We request that the SEC clarify these statements in relation to disclosure obligations and securities law liability, including that additional disclosure is not required in all cases. At-issuance, Securities Act Rule 193[28] requires an issuer to perform a review of the pool assets. The review standard in Rule 193 is "reasonable assurance that the disclosure regarding the pool assets in the form of prospectus… is accurate in all material respects."[29] The rule also permits third-party review and sampling.[30] The Exhibit 36[31] certification required at the time of each shelf offering requires that the CEO of the depositor acknowledges their obligations under the Securities Act. Specifically, paragraphs 2, 3, and 4 acknowledge the assessment of materiality with respect to disclosure about the characteristics of the "securitized assets" consistent with Securities Act Section 11.[32] We believe that Rule 193, Section 11, and the Exhibit 36 certification, should be interpreted to consider the totality of the data disclosed in Schedule AL when assessing materiality.

We do not believe that the existing securities laws referenced intend for materiality to be assessed on a data point-by-data point basis. For the avoidance of doubt, we request that the SEC confirm that an analysis of materiality consider the totality of data in Schedule AL when determining whether the disclosure omits to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading. We also request confirmation that the same totality of data in Schedule AL analysis apply to the disclosures provided at-issuance and in ongoing reports. We believe that this position is consistent with Securities Act Section 7(c) which requires the SEC to adopt rules that require issuers "to disclose

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[25] Schedule AL Item 1(e)(4) requires that if an additional credit score was obtained by any transaction party or its affiliates after the original credit score, provide the most recently obtained standardized credit score of the obligor.

[26] Regulation AB II Adopting Release at 57210.

[27] Regulation AB II Adopting Release at 57210.

[28] 17 CFR 230.193.

[29] Id.

[30] See Issuer Review of Assets in Offerings of Asset-Backed Securities, Release No. 33-9176 (Jan. 20, 2011) [76 FR 4231 at 4235].

[31] 17 CFR 299.601(b)(36).

[32] *See* Regulation AB II Adopting Release at 57267.

asset-level…data, if such data are necessary for investors to independently perform due diligence”.[33]

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.***

    - *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?*

We believe a “provide-or explain regime” is challenging to define and could lead to less comparable information. It also creates a high level of uncertainty for issuers and servicers with respect to whether they are in compliance with the rules. However, as discussed in our response to question 11, we believe that there are some occasions where “not applicable,” “not available,” “not obtainable,” or “unknown” is appropriately conditioned on disclosure, including representations by the registrant would be appropriate.

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 discussed in our response to question 11, we do not recommend exclusive reliance upon a provide-or-explain regime. However, as discussed in our response to question 12, there are occasions where prescribed inputs such as “not applicable,” “not available,” “not obtainable,” or “unknown” would be appropriate.

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 we described above in Section I, our investor members are active participants in developing our recommendations. Annex A includes a list of Schedule AL RMBS data points that should be revised, removed, or added. Within that list, we indicate what data is necessary for investors to independently perform due diligence, consistent with the mandate in Securities Act section 7(c).

[33] 15 U.S.C. 77g(c)(2)(B).

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?***

Annex A includes a list of Schedule AL RMBS data points that should be revised, removed, or added. Within that list, we indicate what data is duplicative.

As an example, certain ARM-related fields in Schedule AL are duplicative and should be streamlined. On a monthly basis, only one set of ARM parameters can be operative for a given loan; yet Schedule AL contemplates reporting both original ARM parameters and post-modification ARM parameters. With respect to this specific example, we recommend that monthly reporting include only the ARM parameters applicable for that period, if any, while requiring at-issuance ARM fields only at-issuance. More broadly, fields that are truly static from the servicer's perspective should be confined to at-issuance disclosure and not repeated in ongoing monthly files, thereby eliminating redundancy, lowering reporting burden, and enhancing the relevance of the investor disclosure.

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?***

As noted in our response to question 6, Annex A includes a list of Schedule AL RMBS data points that should be revised, removed, or added. We believe that certain RMBS ratios (DTI, LTV, CLTV) can often be derived from other asset-level fields that would be required to be reported. Servicers should not be required to calculate and update those ratios on an ongoing basis. Where an issuer already maintains the ratio, it may choose to report it; however, servicers should not be required to calculate and supply ratios where doing so would necessitate recalculations beyond the standard reporting workflow. This approach preserves transparency of the underlying components and enables investors to perform their own calculations.

### *IV. Request for Comment 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.***

Yes. As the SEC noted in the Concept Release, investors in unregistered RMBS offerings receive five-digit zip codes in the disclosures provided with these unregistered offerings.[34] Investors in unregistered offerings also receive additional data points that may be considered to be sensitive due to re-identification risk in conjunction with the five-digit zip code, such as original loan amount and date of origination (together "Additional Sensitive Data"). Because institutional

[34] See Concept Release at 47261. See also response to question 20.

investors have shaped this market practice in unregistered offerings, we consider such data points to be deemed a necessary information for their due diligence, and expect that institutional investors in a registered offering would demand the same information.

The existing Schedule AL requirement to provide two-digit zip code[35] simply would not provide institutional investors with the information that they believe is necessary to perform diligence or analysis on the asset pool. In order to bring investors back to the registered market, issuers would need to provide them with the same information that they are accustomed to receiving in unregistered offerings. Some of this information is in excess of Schedule AL requirements and could lead to reidentification of borrowers, such as five-digit zip code, and therefore should not be made publicly available. The existing Regulation AB rules are unworkable, because there is no ability to provide institutional investors with five-digit zip code or other information in excess of the Schedule AL fields without that information being required to be filed on EDGAR and made publicly available.[36]

While the need to provide institutional investors with five-digit zip code by non-public means is a gating issue, there are other reasons why issuers may favor the Rule 144A markets, including the additional disclosure and compliance requirements that apply under Regulation AB offerings.

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?***

Additional Sensitive Data for RMBS are discussed in response to question 17. Note that stand-alone borrower credit scores are not considered to be sensitive information, assuming that re-identification risk is mitigated. Our recommendation is that Schedule AL continue to require only a truncated two-digit zip code, and also that the schedule be revised to remove original loan amount and date of origination.[37] In other words, the Additional Sensitive Data should not be required on Schedule AL, in order to prevent that data from being disclosed publicly. However, issuers should be able to provide institutional investors with five-digit zip code and other Additional Sensitive Data by non-public means.

As to the methods for disclosing Additional Sensitive Data or other information that is in excess of the Schedule AL requirements, we recommend that the rules allow in registered offerings the types of methods that are used today in the Rule 144A market, as described below.

In offerings exempt from registration under Rule 144A, at issuance, issuers and/or underwriters distribute asset-level data tapes to prospective investors that contain sensitive data by the following means.

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[35] Item 1(d) of Schedule AL.

[36] Additional asset-level information is required to be filed as an asset-related document pursuant to Item 1125(h)(4)-(5) of Regulation AB.

[37] Items 1(b)(3) and 1(b)(13)(vi) of Schedule AL.

First, issuers and/or underwriters will provide a "data tape" at issuance in the form of an electronic file, which may be sent by email, directly to prospective investors. Receipt of this information is contingent on the investor acceptance of a click-through agreement as described in response to question 23. We note that in some transactions, provision is made for providing a redacted data tape to investors who decline the click-through agreement. Such redacted data tape would typically exclude zip code, original loan amount and date of origination.

Second, the issuer or underwriter will provide the at-issuance data tape to any of a number of vendors, or "third-party data services," that institutional investors can access.[38] We note that these third-party data services generally require a subscription agreement, and payment of access fees that are significant. Access to information about any specific RMBS issuance through these services is not contingent on the user being an investor in that transaction. These services are generally used by institutional investors, and not by individual investors. Accordingly, these services should not be viewed as being available to the retail market generally.

These third-party data services will generally upload at-issuance data tapes as well as updated loan data servicing tapes, in the form provided to them, which may include five-digit zip code but more typically is three-digit zip code. These services may not use a click-through agreement. However, the terms of use for these services may contain use restrictions designed to prevent borrower identification and to protect privacy.

After issuance, the transaction documents generally require that the trustee or securities administrator maintain a password-protected website accessible to investors in the transaction. Generally, the master servicer will provide an updated loan data servicing tape on a monthly basis that is posted on the trustee or securities administrator website. Access may be contingent on the investor acceptance of a click-through agreement. The monthly servicing tape may or may not include zip code. The updated loan data servicing tape is also typically made available through one of the third-party data services described above.

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?***

    ***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.***

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[38] Examples include: Intex, which provides cashflow models and data analytics for the securitization markets; dv01, which provides data management, reporting and analytics for securitizations and other products; 1010 Data, which provides data management and analytics for securitizations as well as other industries; LSEG Yield Book, which provides data and analytics for securitizations and other fixed income securities; Bloomberg Professional Services, which provides data and other information about a wide variety of securities, including securitizations; and CoreLogic (or Cotality), an information services company that provides data, analytics, and technology solutions for the property ecosystem, including real estate, mortgage, and insurance industries.

We believe that five-digit zip code should not be added to Schedule AL because such public disclosure along with the other information continues to present a risk of borrower re-identification and resulting disclosure of confidential personal financial information. As noted above, we also recommend removing the original loan amount and date of origination from Schedule AL, in line with disclosure practices in the Rule 144A market for investors who decline the click-through agreement.

This question 19 more broadly addresses information disparity, or why institutional investors should receive more information than is publicly available.

The goals of the Concept Release will only be achieved if changes to be developed in Regulation AB II actually result in registered offerings of RMBS. If the changes open the market beyond qualified institutional buyers to institutional investors generally, that would be a huge success.

In the period leading up to the Financial Crisis, many RMBS were issued in registered offerings. However, these offerings were primarily directed to institutional investors and not to retail investors. These offerings typically had high minimum denominations, generally $100,000, as is the case with today's Rule 144A offerings. Interestingly, some registered offerings contained a "retail" class that was targeted to retail investors, with lower minimum denomination (e.g., $1,000) and payment features that addressed retail investors' needs.

Success does not require the ability to sell to retail investors. Investing in RMBS requires some degree of sophistication. Asset-level data in and of itself is extremely granular. RMBS investors who use asset-level data generally use it only in connection with their own proprietary analytical tools, or through third-party data services that contain analytical tools. Investors who use asset-level data in conjunction with such analytical tools will require the five-digit zip code, and other potentially sensitive information, to perform their analysis.

We do not believe that retail investors would generally have the sophistication to use such tools to analyze the volume of asset-level data. The SEC staff even has acknowledged that asset-backed securities are complex securities with regard to Regulation BI's duty of care obligations to retail investors.[39] Given the analysis and tools that are necessary for professional investment managers to evaluate an investment in RMBS, these securities may not be suitable for direct investment by retail investors. However, the Additional Sensitive Data is necessary for institutional investors that desire registered RMBS and are entitled to receive the information that is necessary for their due diligence. For example, certain institutional investors are mutual funds and retail investors may gain indirect exposure to RMBS through investment in a mutual fund. We believe that our recommendation does not limit investment opportunity for retail investors in complex products but rather could help to expand exposure through funds that are managed by investment advisors that have the tools to analyze an RMBS, including asset-level data and are required to exercise

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[39] See question 18 of *Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations* ("Regulation BI Staff Bulletin") available at https://www.sec.gov/about/divisions-offices/division-trading-markets/broker-dealers/staff-bulletin-standards-conduct-broker-dealers-investment-advisers-care-obligations.

certain standards of care.[40] Therefore, the benefits to institutional investors of liquidity and securities law protections of a registered RMBS offering would flow to the retail investors in a mutual fund.

Therefore, there is no compelling need to include the five-digit zip code or other potentially sensitive information in the publicly available Schedule AL filings.

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?***

The fundamental concerns under privacy laws remain in place. Prior to the adoption of Regulation AB II, it was thought that exclusion from public filings of obvious data points such as name, address and SSN were sufficient to protect privacy. As you know, the Regulation AB II rulemaking process brought to light the risk of re-identification by means of connecting various data points. If anything, the risk of re-identification has increased since that time and will continue to increase due to technological advancements. The Schedule AL data fields will continue to contain data such as credit score and borrower income, therefore re-identification risk must continue to be mitigated.

The Rule 144A market for RMBS mitigates these risks by limiting disclosure of sensitive data points to institutional investors with a need to know the information, and through the click-through agreement.

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?***

We are proposing that issuers of registered RMBS have the ability (but not the obligation) to provide investors with sensitive asset-level data points, in excess of the fields required by the publicly filed Schedule AL, through restricted media including the means described in response to question 18. In order to facilitate this, the SEC will need to provide exceptions or guidance to clarify liability under Securities Act Sections 11,[41] 12,[42] 17,[43] Securities Exchange Act Section

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[40] See Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248 (June 5, 2019) [84 FR 33669 (July 12, 2019)].

[41] 15 U.S.C. 77g(c)(2)(B).

[42] 15 U.S.C. 77*l*.

[43] 15 U.S.C. 77q.

10(b),[44] and Rule 10b-5[45] related to the omission of data from EDGAR filings that is provided through restricted means. In addition, the SEC will need provide exceptions to rules that could otherwise require the filing or furnishing of such information on EDGAR, including Item 1111(h)(5) of Regulation AB, the free writing prospectus rules,[46] and the ABS computational data rules[47] and Regulation FD.[48] We also request confirmation that investors of registered RMBS would not be exposed to a violation of trading on material non-public information, including in secondary market trades. In this regard, please see our proposals in response to question 28. The SEC should also clarify how a broker or dealer would satisfy its obligation to deliver a copy of a preliminary prospectus under Exchange Act Rule 15c2-8(b).[49]

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?***

Please see response to question 18.

At the time of issuance, issuers and/or underwriters may distribute asset-level data tapes directly to prospective investors. Receipt of this information is generally contingent on the investor acceptance of a click-through agreement. In this context, the recipients would be persons identified by the underwriters as prospective investors who meet the applicable eligibility criteria, which may include qualified institutional buyer status.

After issuance, updated loan data servicing tapes along with monthly remittance reports are generally posted on a monthly basis to the trustee or securities administrator website, or "deal website," that is accessible by investors in the transaction. Practices may vary from deal website to deal website.

Deal websites list a number of RMBS and other securitizations for which the site host is trustee or securities administrator. Access practices may be determined by the issuer, who may or may not require that access to information on their deals be restricted. For unregistered RMBS, access is generally restricted. The user may be required to accept a click-through agreement in a form required by the issuer, or alternatively access may be restricted by the site host's terms of use. A current investor in a given transaction generally can get access to information on that deal (verification of ownership may be required). Prospective investors in a given transaction may need to get approval from the issuer in order to have access, and may need to provide indemnification

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[44] 15 U.S.C. 78j(b).

[45] 17 CFR 240.10b-5.

[46] *See e.g.*, 17 CFR 230.164 and 17 CFR 230.433.

[47] 17 CFR 230.426(c)(1)

[48] 17 CFR Part 243.

[49] 17 CFR 240.15c2-8(b).

in order to receive access. For any given transaction, any loan level data posted would be as provided by the issuer, and may or may not include five-digit zip code. The site host's terms of use may require an investor to cease accessing the data if they sell their position in the transaction, but there may not be any monitoring of this status.

At-issuance data tapes and monthly servicing data tapes are also generally uploaded to third-party data services as described in response to question 18.

### *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?*

A click-through agreement is generally required when providing the at issuance loan data tape to investors, and also on trustee or securities administrator websites containing updated loan data tapes.

The click-through agreement was developed by SIFMA, and the SIFMA form has not been substantively updated since 2015.

Importantly, the form contains this language: "The Receiving Party shall treat the Asset-Level Information as if it were personally identifiable information under all applicable federal, state, and local laws, rules, regulations, and orders relating to the privacy and security of such information. Without limiting the foregoing, the Receiving Party represents that: (i) it has developed and implemented, and will maintain, reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of non-public personally identifiable information, including, but not limited to, safeguards that are designed to prevent the unauthorized use, disclosure, destruction, or alteration of such information; and (ii) it will apply such safeguards to the Asset-Level Information."

We believe that the SIFMA click-through agreement language can be used by the SEC as a baseline, as the language articulates clear privacy, security, and safeguard obligations for asset-level information.

These representations and covenants will be equally appropriate for investors who are qualified institutional buyers, or institutional investors who are not. However, they do not appear suitable to be made by investors who are natural persons.

While the SIFMA form has not changed, in practice investors find that issuers may customize their click-through agreement language to address matters such as indemnification and issuer securities concentration limits. Such customization can slow down or impede access to asset level data in some cases.

***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?***

- *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?*

Generally, RMBS issuers do not maintain their own websites used for posting asset-level data.

See responses to questions 18 and 22 for trustee or securities administrator websites on which updated loan data servicing tapes are generally posted on a monthly basis.

See responses to questions 18 for third-party data services on which at issuance data tapes and monthly servicing data tapes are also generally uploaded.

The at-issuance asset-level data tapes that are provided to investors contain data that overlaps significantly with the information in the mortgage loan schedules that are part of the transaction documentation (subject to any changes in pool composition prior to issuance). Both the at-issuance data tapes and the mortgage loan schedule these would be viewed as issuer provided offering documentation, for which the issuer would have responsibility. The issuer typically makes a representation and warranty in the operative transaction documents as to the accuracy of the information in the mortgage loan schedule. In addition, providers of third-party due diligence services as described in Rule 17g-10[50] are generally engaged to perform a tape to file check of the data in the mortgage loan schedule.

As for monthly servicing data tapes, under current Rule 144A market practices, the production and distribution of these are generally delegated by the issuer to other parties, such as the master servicer and the trustee, as the issuer itself is not directly involved in these activities. Such parties would typically be held to a negligence or gross negligence standard as a general matter under the transaction documents. Such parties would generally not provide the issuer with indemnification for securities law liability resulting from any errors or omissions in the monthly servicing data tapes (but note the discussion in the following paragraph). Such parties may have liability under applicable law with respect to any data breaches. If a data breach is caused by or attributable to an

[50] 17 CFR 240.17g-10.

investor who received asset-level data under a click-through agreement, such investor could be subject to a breach of contract claim.

For future registered RMBS offerings under Regulation AB II, the rules contemplate that the monthly servicing asset-level data in Schedule AL be filed on EDGAR, on Form ABS-EE, and incorporated by reference into Form 10-D. As such, in future registered RMBS, the issuer will likely need to take additional steps to receive assurance as to the accuracy and quality of monthly servicing tapes as well as other information filed on EDGAR. The above commentary does not take into account transaction document changes that may arise from such filings in terms of contractual responsibility of various parties.

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?***

We propose that issuers of registered RMBS have the ability (but not the obligation) to provide investors with sensitive asset-level data points, in excess of the fields required by the publicly filed Schedule AL, through restricted media including any of the means described in response to question 18, as well as in issuer-sponsored websites. Issuers should be able to delegate provision of such information to other transaction parties, and to post such information on third-party data services.

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?***

As discussed above in Section I and in response to question 5, Rule 144A practice for asset-level data has developed through cross-industry engagement and transaction issuance, and as a result for the most part it appears that investors in unregistered RMBS receive the asset-level data they desire through the means discussed above. Our investor members would prefer a standardized click-through agreement, to the extent practicable, to facilitate legal review of terms of conditions.

Some investors have indicated that more uniform practices generally would improve liquidity. For example, if an investor in a given RMBS series received an at-issuance loan tape including five-digit zip code, the investor would like to know that the same information is generally available to institutional investors as potential purchasers of that series in the secondary market. However, there is no assurance that this will be the case, as the same at-issuance data will not necessarily be posted on the deal website or uploaded by third-party data services. Further, a potential secondary market purchaser will not necessarily be granted access to the deal website, or may find the required click-through agreement to be objectionable. These uncertainties may result in an investor determining that trading in such a position should be restricted.

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?***

See response to question 28 regarding undertakings.

Additional Sensitive Data should not be filed on EDGAR. We ask that the SEC consider, given the sensitivity of such information, whether it is advisable for SEC rules to mandate that the existence of this information be disclosed publicly. For example, disclosing that five-digit zip code and the exact website address where it is available could pose increased cybersecurity risk.

We also request that the SEC confirm that asset-level data can continue to be provided to investors in the formats in which they are accustomed. For example, apart from the sensitive information, the provision of loan data tapes provided as described in response to question 25 should continue in their current formats, which differ from the presentation in Schedule AL. The existing formats provided in the Rule 144A market are intended to sync with and be readily usable by third-party data services, as well as by institutional investors with their own analytical tools. However, we do not believe that the SEC should mandate how to deliver the data to investors as described in response to question 25. The issuer will still be obligated to file a copy of the asset-level data (other than the Additional Sensitive Data) as required under Schedule AL on EDGAR.

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.*

- *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?*

- *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) or at the time that the final prospectus is required to be filed pursuant to Securities Act Rule 424(b) 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.*

As discussed in our responses above, we do not believe that the SEC should mandate how to deliver the data to investors, including the Additional Sensitive Data. As discussed in response to question 11, the existing Exhibit 36 certification already requires the CEO of the depositor to acknowledge their obligations under the securities law, and any additional undertaking, representation or certification could potentially create a higher standard. We do not oppose including a statement that any information provided to investors outside of what is filed on EDGAR would be deemed incorporated by reference into the prospectus for liability purposes, in order to maintain consistency with the Exhibit 36 certification and the existing securities law framework.

We do not believe that RMBS issuers should be required to represent that such information will be provided to any investor or prospective investor upon request, similar to the requirement in Rule 144A. As discussed in this letter, registered offerings provide additional protections, including increased liability under the securities laws, therefore issuers, or their agents, should not be required to make additional representations or certifications that create higher or different standards. However, issuers should be able to restrict the general public from accessing Additional Sensitive Data.[51] If issuers disclose in the prospectus how institutional investors can access the information, we specifically request guidance on whether this disclosure would meet prospectus delivery requirements for the additional sensitive information that would not be required to be filed on EDGAR.

However, for the reasons indicated in response to question 26, to the extent that the issuer provides Additional Sensitive Data not filed on EDGAR to investors by the means discussed above, including at issuance, we recommend that the issuer be required to make such information readily available to institutional investors as prospective purchasers in secondary trading, at least for a specified period of time following initial issuance. The rules could provide examples of how to meet this standard. For example, if the issuer caused the Additional Sensitive Data to be posted on the applicable deal website, with access available to any institutional investor who is a prospective purchaser in secondary trading, and with access conditioned only on acceptance of a standard form of click-through agreement prescribed under the rules, this fact pattern could be deemed to meet such a standard. Another example might be for the issuer to undertake to provide the Additional Sensitive Data upon request to any institutional investor who is a prospective purchaser in secondary trading, provided that a financial institution involved in the prospective transaction has performed "Know Your Customer"[52] diligence on the investor, and the investor accepts the standard form of click-through agreement.

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[51] For example, access could be prohibited for any retail investor as defined under Regulation BI. *See* Regulation BI Staff Bulletin. *See also* our response to question 19.

[52] *See* FINRA Rules 2090 and 2111, FinCEN's Customer Due Diligence (CDD) Rule, and other relevant rules and regulations.

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?***

Our understanding is that institutional investors continue to require five-digit zip codes and other sensitive information in RMBS asset-level data.

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?***

Based on experience with unregistered RMBS issuances offered into the United States by issuers located in the United Kingdom, backed by residential mortgage loans on properties in the UK, the approach is similar to that in the U.S. Investors may be provided with a data tape, but in such tape borrower names are not provided, and steps are taken to make sure that individuals and particular homes are not identifiable. For example, general geographic location is provided, but not specific postcode or street address.

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 discussed in response to question 18, there exist today a number of means of providing asset-level data for RMBS that include sensitive information, including direct provision to prospective investors, trustee or securities administrator websites for monthly servicing data, and third-party data services. An issuer-sponsored website as contemplated in the Concept Release would also be appropriate.

We would propose that the rules allow issuer flexibility to use any of the above types of methods, as well as additional methods that may be developed in the future. Access to sensitive asset-level data should be conditioned on a standard form of click-through agreement.

Given the nature of the undertakings in the standard form of click-through agreement (see response to question 23), it would be reasonable to restrict access to these means of providing asset-level data including sensitive information, to institutional investors.

## *IV. Request for Comment - 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?***

We recognize that Regulation AB ABS was adopted to distinguish a set of ABS that are eligible for the Regulation AB offering and disclosure framework. Exchange Act ABS was adopted to implement many of the Dodd-Frank Act requirements. We believe, however, that there are potential benefits to broadening the definition of Regulation AB ABS to increase access to the public markets and remove barriers from registration.

The Concept Release traces the origins of the Regulation AB ABS definition back to 1992, when the SEC amended Form S-3 to permit shelf registration of offers and sales of ABS. At that time, the SEC envisioned a broad definition.[53] That definition was a simple definition;[54] however, with the adoption of Regulation AB in 2004, the definition was narrowed considerably by adding conditions to the definition, including limits to the number of delinquent assets and a limit on residual value for pools of leases, including different standards for motor vehicle leases and all other leases.[55] A technical mistake interpreting the Regulation AB ABS definition may have severe consequences. If, for example, an issuer miscalculated one of the required percentages for an individual ABS transaction, an offering of that ABS could be deemed to be offered without using an effective registration statement, which could potentially give rise to a technical violation of Section 5 of the Securities Act.[56]

Further, the Regulation AB ABS definition includes a host of exceptions to the definition for master trusts, and for ABS that include prefunding and revolving periods. In addition, the rules include instructions to the definition that specify conditions on how to calculate limitations on amounts and time limits. These very specific exceptions further demonstrate that an analysis of whether a structure is included or excluded from the Regulation AB ABS definition requires a thorough legal analysis so as not to inadvertently fall outside the definition and risk violating Section 5 of the Securities Act. For example, arguably, there is no rule text that would exclude series trusts from the Regulation AB ABS definition. The guidance on how the Regulation AB ABS definition excludes these series trusts, but permits other exceptions, is also not clear. And, as the Concept Release notes, the SEC has permitted certain series trusts to register under the Regulation AB framework. Moreover, some of these conditions were amended in the 2014

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[53] *See Simplification of Registration Procedures for Primary Securities Offerings*, Securities Act Release No. 33-6964, Exchange Act Release No. 34-31345, 57 FR 48970 at 48972 (Oct. 29, 1992) ("1992 Form S-3 Release") ("A broad standard has been adopted in order to provide sufficient flexibility and to accommodate future developments in the asset-backed marketplace."); *see also* 2025 Concept Release at 47263 "At that time, the Commission envisioned a broad definition, stating that '[a] broad standard has been adopted in order to provide sufficient flexibility and to accommodate future developments in the asset-backed marketplace.'")

[54] *See* 1992 Form S-3 Release at 48976-77 ("[A]sset-backed security' means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.").

[55] *See* Asset-Backed Securities, 70 Fed. Reg. 1506, 1597 (Jan. 7, 2005) and Item 1101(c) of Regulation AB. S*ee also* Annex C (providing a markup illustrating the considerable narrowing of the ABS definition).

[56] 15 U.S.C. 77e. (Among other things, a Section 5 violation would give a purchaser a one-year right to rescind the transaction).

Regulation AB II Adopting Release which made access to forms even more restrictive through changes to the Regulation AB ABS definition.[57] Well-settled guidance should be clarified and codified within the rule.

We believe the definition of an "asset-backed security" should be simple for the market to understand. If the SEC desires to retain some or all of the existing conditions and exceptions, it can do so by moving those eligibility conditions to the registration forms (Form SF-1 and Form SF-3); however, we ask the SEC to confirm that all of the Regulation AB ABS that currently rely on those existing exceptions would continue to have access to the forms. Because Form SF-1 was intended to mirror Form S-1 as a form of general use, we believe that securitizations that fall within the definition of Exchange Act ABS should be permitted to use that form subject to appropriate conditions.[58] However, the existing instructions to Form SF-1 restrict the use of registration to only Regulation AB ABS, therefore creating a barrier to the registered market for both issuers and investors. While issuers of Exchange Act ABS could engage in bespoke pre-filing consultations with the staff to determine which form to use, doing so seems less efficient, and more costly than permitting an Exchange Act ABS direct access to the disclosure framework that is tailored for asset-backed securities offerings. An issuer that registers Exchange Act ABS on Form SF-1 would be subject to staff review and comment, therefore it is hard to identify a risk that would arise should an Exchange Act ABS issuer have direct access to the form. We request, however, that Form SF-1 be afforded the same opportunity for nonpublic draft registration statement review that is available for Form S-1 and that was recently expanded to other forms.[59]

The Exchange Act ABS definition is broader than the preexisting Regulation AB ABS definition[60] and serves as the touchstone for implementing key Dodd-Frank mandates relating to credit risk

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[57] *See* 2014 Regulation AB II Adopting Release at 57265 (noting that "in 2004, we adopted certain exceptions to the 'discrete pool' requirement in the definition of asset-backed security to accommodate master trusts, prefunding periods, and revolving periods," and that "[t]he new rule decreases the prefunding limit from 50% to 25%").

[58] For example, the condition that neither the depositor nor the issuing entity is an investment company under the Investment Company Act could be moved to form requirements. *See* Item 1101(c)(2)(i) of Regulation AB. S*ee also* response to question 36 for our views regarding Investment Company Act exemptions.

[59] *See* U.S. Sec. & Exch. Comm'n, Div. Corp. Fin., Enhanced Accommodations for Issuers Submitting Draft Registration Statements (Mar. 3, 2025). (Expanding issuers' access to nonpublic review for initial registration of a class of securities to include Forms 10, 20-F, or 40-F under either Exchange Act Section12(b) or Exchange Act Section 12(g) and highlighting that this expansion is consistent with facilitating capital formation without diminishing investor protection.)

[60] *See* Concept Release at 36 (noting that the Exchange Act ABS definition, while similar to the Regulation AB ABS definition, specifically includes managed pools and series and master trust structures and "[t]herefore . . . is broader (i.e., encompasses more types of ABS) than the Regulation AB ABS Definition, and any ABS that satisfy the Regulation AB ABS definition also meet the Exchange Act ABS Definition.").

retention, conflicts of interest,[61] repurchase disclosure and due diligence reporting.[62] In the wake of the financial crisis, the Dodd-Frank Act added Section 3(a)(79) of the Exchange Act to anchor a uniform regulatory framework for securitization reforms, defining ABS as "a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset…."[63] The current regulatory framework effectively confines the broader scope of Exchange Act ABS to the unregistered market due to the inflexibility of the Regulation AB ABS definition. Given that Exchange Act ABS are subject to the Dodd-Frank Act reforms, such as credit risk retention and the prohibition of conflicts of interest, the SEC should consider whether there is a compelling reason for Exchange Act ABS to not have the benefits of direct access to the registered markets using the forms and rules that are tailored for securitizations. The benefit to investors would be additional liquidity and the added legal protections that apply to a registered offering.

Additionally, analyzing certain textual differences between the Regulation AB ABS and Exchange Act ABS definitions requires interpretation of terms and phrases that exist in one definition but not the other. For example, the Regulation AB ABS definition includes the phrase "discrete pool" while the Exchange Act ABS definition does not. The Exchange Act ABS definition includes the phrase "self-liquidating financial asset" while the Regulation AB ABS definition does not. Another example is that the Exchange Act ABS definition includes the phrase "collateralized by" and the Regulation AB ABS definition does not. As is the case with existing rules that refer to the Exchange Act ABS definition, each existing rule that refers to the definition has its own purpose, requirements, conditions and exceptions; but permitting Exchange Act ABS to be registered on Form SF-1 and SF-3 will make it clear that a broader set of asset-backed securities would be eligible for registration.

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?***

    - *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.*

[61] *See* 17 CFR 230.192 ("Asset-backed security has the same meaning as in section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79)), and also includes a synthetic asset-backed security and a hybrid cash and synthetic asset-backed security."); *see also infra* Question 35 Response (noting that Rule 192 was intended to be intentionally broader than the Exchange Act ABS definition in order to include synthetic and hybrid cash/synthetic securitizations).

[62] In each of those rulemakings the SEC considered commentary on the definition of Exchange Act ABS and the market relies on guidance in those adopting releases to assess what is and what is not an Exchange Act ABS.

[63] 15 U.S.C 78c(a)(79).

Regulation AB could reference the Exchange Act ABS definition and that would be consistent with how other rules reference the Exchange Act ABS definition.[64] Doing the same in the Regulation AB ABS definition similarly adds clarity, and would not require extensive rule text changes to cross references throughout Regulation AB.

Similar to our response to question 32, we ask the SEC to confirm that all of the Regulation AB ABS that currently rely on existing exceptions in the definition of Regulation AB ABS would continue to be eligible to use the Regulation AB disclosure and reporting regime. If the SEC chooses to retain any of the conditions, it should carefully consider the original purpose of the condition and what purpose retaining that condition would serve today.

As noted in our response to question 32, series trusts, some master trusts, and ABS with prefunding and revolving periods beyond the existing limitations should be reconsidered. In particular, we do not believe the time limits on addition and removal of assets should serve as a barrier to the registered markets, especially if ongoing disclosure is required. For instance, the existing definition of Regulation AB ABS currently permits revolving periods of up to three years for non-revolving asset ABS. Since 2014, the market for ABS backed by non-revolving assets with revolving periods of five or more years has grown significantly, with over $50 billion of issuance. These transactions are predominantly backed by auto loans and device payment plans. Securitizations of device payment plans did not exist when the revolving period time limits in the Regulation AB ABS definition were adopted in 2004. These securitizations with revolving periods greater than three years are confined to the Rule 144A market unless the Regulation AB ABS definition and form eligibility are revised to permit these securitizations to be registered. The SEC should consider whether it is appropriate for investors to be deprived of the liquidity and securities laws protections that a registered offering would provide. Also of note, there is no such limitation on revolving period length for master trust-issued ABS backed by revolving assets (e.g. credit card accounts, dealer floorplan accounts). Should the SEC retain any elements of the Regulation AB ABS conditions for form eligibility, it could move those to transaction requirement conditions in Form SF-1 and SF-3.

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?***

We do not believe that the Regulation AB ABS definition should be replaced in the entirety with the Exchange Act ABS definition. The Regulation AB ABS definition should reference the Exchange Act ABS definition, as noted in our response to question 33. Referencing the Exchange

[64] *See* 17 CFR 230.192 ("Asset-backed security has the same meaning as in section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79)), and also includes a synthetic asset-backed security and a hybrid cash and synthetic asset-backed security"); 17 CFR 246.2 ("Asset-backed security has the same meaning as in section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79))."; 17 CFR 240.15Ga-1(a) ("asset-backed security (as that term is defined in Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79))"); 17 CFR 240.15Ga-2(a) ("asset-backed security (as that term is defined in Section 3(a)(79) of the Act (15 U.S.C. 78c(a)(79)))").

Act ABS definition in the Regulation AB ABS definition is consistent with the manner in which references are made to the Exchange Act ABS definition throughout the securities laws. We do not believe this would create a definition that is too broad for Regulation AB because appropriate conditions and limitations to Forms SF-1 and SF-3 would give the SEC the ability to tailor eligibility for such forms.

***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?***

No. We do not believe that the Regulation AB ABS definition should be conformed to the Rule 192 definition, which is broader than Exchange Act ABS because it includes synthetic and hybrid cash/synthetic securitizations. Our view is that the Regulation AB ABS definition should be expanded to permit issuers of Exchange Act ABS to register securities using Forms SF-1 and SF-3 for the reasons discussed in our response to question 32. The Rule 192 definition was adopted to implement Congress' intent to apply the prohibition to a set of securities intentionally broader than Exchange Act ABS.[65] We do not believe that it would be appropriate to use the Rule 192 definition for purposes of determining registration eligibility under Regulation AB.

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

- *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?*

Our members do not issue securities in reliance on Regulation A, therefore, we do not have a view on the consequences for issuers who have historically offered, or would offer, securities in reliance on Regulation A. The SEC should revisit Regulation A and consider whether to amend the exclusion.

- *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?*

Incorporating the Exchange Act ABS definition into the Regulation AB ABS definition would not have a direct impact on market participants who are subject to regulation under the Investment

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[65] *Prohibition Against Conflicts of Interest in Certain Securitizations*, 88 FR 85396 at 85408 (Dec. 7, 2023) ("Rule 192, consistent with the express language of Section 27B, applies to a wider spectrum of ABS (i.e., Exchange Act ABS, synthetic ABS, and hybrid cash and synthetic ABS) than Regulation AB.").

Company Act of 1940. As is the case today, issuers of managed pool structures offer securities in the Rule 144A market and rely on exemptions from the Investment Company Act, such as sections 3(c)(1) or 3(c)(7).

If an issuer wanted to register an ABS with a managed pool structure, it would need to rely on a different exemption that does not prohibit a registered offering, such as sections 3(c)(5)(A) – (C) or Rule 3a-7, if available for the individual offering. However, the lack of guidance has served as a barrier to entry, as the consequences are severe. In fact, the SEC recognized that "[a]lthough asset-backed issuers typically meet the definition of investment company, as a practical matter, they cannot operate under certain of the Investment Company Act's requirements and restrictions."[66] In that same release, the SEC recognized that there may be provisions under the federal securities laws applicable to asset-backed issuers which, although intended for different purposes, may also help mitigate potential Investment Company Act related concerns.[67] We believe that the SEC should consider whether the rules that have been adopted since the 2011 Concept Release help mitigate potential Investment Company Act-related concerns and whether permitting Exchange Act ABS to register offerings pursuant to Regulation AB would further mitigate those potential concerns. In addition, we request that the SEC provide guidance regarding sections 3(c)(5)(A) – (C) considering the evolution of the securitization market and the incompatibility of the Investment Company Act requirements with securitization structures. For example, we believe that it is important to provide guidance on Investment Company Act exemptions to address inconsistencies that result in ABS backed by real estate loans having more access to exemptions under the Investment Company Act than any other asset class. For example, a managed ABS of real estate loans, such as a CRE CLO, may rely on the exemption provided by Investment Company Act section 3(c)(5)(C), and could engage in a registered offering. But a managed ABS of corporate loans, such as a CLO, would not be able to rely on the exemptions that it uses in Rule 144A offerings, sections 3(c)(1) or 3(c)(7), because those exemptions are not available for registered offerings. Clarifying whether the exemptions in sections 3(c)(5)(A) – (C) or Rule 3a-7 are available to CLOs would provide certainty to the market.

- *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?*

No, we do not believe that the Regulation S asset-backed securities definition should be revised unless such revisions would not narrow the scope of issuers that rely on such definition. The Regulation S definition of asset-backed securities was adopted to distinguish debt from equity for purposes of exemptions from registration. As such, this definition serves a specific purpose, and the SEC should consider whether aligning the definition with Exchange Act ABS would potentially limit the availability of Regulation S for those that currently rely on the exemption.

- *While any potential changes to the Regulation AB ABS Definition would not change the statutory definition of "asset-backed security" referenced in Exchange Act*

[66] *See Treatment of Asset-Backed Issuers Under the Investment Company Act*, Release No. IC-2977, [76 FR 55308 at 55310] (Aug. 31, 2011) ("IC Concept Release").

[67] *See* IC Concept Release at 55317.

*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?*

No, we believe that revising the Regulation AB ABS definition would not change market practice.

***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?***

- *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?*
- *Would any new definitions be necessary or beneficial?*
- *Is there interpretive guidance that could help clarify any definitions?*

Not at this time. Regulation AB was adopted as a principles-based disclosure regime. Existing Regulation AB includes Item 1100(d), which requires disclosure about additional parties not specifically identified in Regulation AB. Disclosure required includes information to the extent material regarding any such party and its role, function, and experience in relation to the asset-backed securities and the asset pool. It also requires a description of the material terms of any agreement with such party regarding the transaction, and to file such agreement as an exhibit. This disclosure requirement clearly covers parties that are not otherwise defined in Regulation AB and material information would be required about those parties and any material agreements. In addition, under existing rules, such material transaction agreements are required to be filed, therefore investors would have access to all the material underlying contracts. Interpretive guidance may be helpful as new asset classes and structures conduct registered offerings.

***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?***

Regarding disclosure, we believe that the issuers of Exchange Act ABS, which have developed and are regularly issued in the Rule 144A market, are accustomed to providing disclosure that is material to investors. As discussed in our response to question 37, we also believe that the securities laws and the existing principles-based framework of Regulation AB would provide investors with material information to make an investment decision. However, we believe that existing requirements for shelf registration will need to be adjusted or waived to accommodate

structures that have never been registered. For example, it would be unreasonable and unnecessary to require an asset-representations reviewer ("ARR") and delinquency triggers for certain types of securitizations,[68] such as for a securitization of a single obligor. Further, it does not seem as if the ARR provisions have proven to be effective to protect investors because the delinquency thresholds, as required by the rules, are not likely to be triggered.

While a registrant could seek a waiver for a shelf-eligibility requirement, it seems inappropriate for the staff or the SEC to grant shelf-eligibility waivers on a case-by-case basis. It is also inequitable for some transactions to bear the cost of retaining an ARR while others do not. The SEC should reconsider whether the ARR and the related requirements and disclosures are achieving their intended purpose. See also our response to question 3 regarding market practice related to the representations reviewer and the increased costs to comply with Form SF-3.

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

We have focused our letter on answering the questions posed by the Concept Release and have provided detailed responses, specifically with respect to the asset-level data in RMBS transactions. We appreciate the continued dialogue and willingness of the staff to engage with SFA and our members and look forward to ongoing discussions regarding developments in the ABS market.

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[68] *See* General Instruction I.B.1.(b) of Form SF-3.

**ANNEX A: SFA Data Tape**

By way of background, the SFA Prime Data Tape is a standardized data specification format for private label securities (PLS) in the residential mortgage-backed securities (RMBS) market, developed by the Structured Finance Association (SFA). It updates and standardizes elements 2009 ASF Data Tape, addressing the current lack of uniformity where different issuers use varying interpretations and proprietary fields. This standardization is intended to increase efficiency by reducing time and costs by providing a consistent format as the information moves to downstream to market participants.

The goal of the working group was to establish best practices within the 144A market across all sub-asset class types within RMBS. It was developed through collaboration among leading industry participants, including issuers, investors, rating agencies, due diligence firms, and other market participants. It also includes a standardized Third-Party Review (TPR) Valuation Summary Report, which offers best-practices guidelines for review of the valuation of the underlying mortgage loans.

While the goal of SFA's working group is to standardize all disclosures in the 144A market, the decision was made to focus first on Prime Jumbo and Agency-eligible or Agency-adjacent collateral types, such as second homes and investment properties. Moreover, the working group prioritized at-issuance disclosures, before moving to work on standardizing ongoing/servicing disclosure reporting. Finally, when it was published in December 2024, it done as a "Draft" publication. SFA requested further feedback from industry participants; it remains in "Draft" status today.

Because we continue to work on the development of the SFA Data Tape, we are not suggesting that it serve as a holistic replacement for Schedule AL at this time. Efforts to standardize additional disclosures related to other mortgage loan types (e.g., reperforming loans, non-performing loans, debt-service coverage ratio loans, bridge loans or fix-and-flip loans, home equity investments, etc.) are ongoing, and we want to ensure that any standardization reflects the views of both issuers and investors. While the SFA Data Tape is derived from issuer data tapes, would do recommend that the SEC look at issuer-specific data tapes themselves for additional market color.

Nevertheless, we believe that the work done is a strong representation of how the industry can work together to establish standardized disclosures to help facilitate a functioning RMBS market. Moreover, we believe that the SFA Data Tape is a helpful starting point that is broadly reflective of at-issuance disclosures in the 144A Prime Jumbo market today, and will inform the SEC's efforts to revisit Schedule AL. SFA respectfully requests that we continue to engage in an ongoing dialogue with the SEC as we continue to work with our membership to update and fine tune asset-level disclosures for RMBS.

**See Excel file "SFA Response to SEC Concept Draft Release Annex A"**

## ANNEX B: FIELDS CURRENTLY UNDER DISCUSSION

During the open comment period for responding to the Concept Release, SFA received feedback from certain of our issuer members that some data fields which were included as a best practice in the draft SFA Data Tape for the Prime Jumbo market may not be suitable as a required field under Schedule AL. These issuers noted questions of availability, sourceability, consistency, necessity, cost, and redundancy for certain data fields. Additional updates to the SFA Data Tape may arise from efforts to ensure thoroughness, consistency, and quality control of the data presented in the standard. As such, this list is meant to be illustrative of a larger effort by SFA and our membership to continue to iterate through the proposal.

In the weeks and months ahead, SFA will continue to work closely with investors and other market participants to ensure that any recommendations made by SFA reflect the consensus of our membership. We note that most of the fields are generally above and beyond what is required by Schedule AL today. However, it is not yet clear whether these fields, as defined in the SFA data tape, would be deemed necessary by investors in order for them to perform their due diligence on RMBS offerings.

Consequently, we note that further supplements to our response to the Concept Release may be forthcoming. Such additions may include amendments or deletions to the SFA Data Tape, as well as proposed recommendations for how fields in the SFA Data Tape should inform views on Schedule AL item requirements. We are happy to discuss any of these in detail in order to be helpful to you.

| Field Number | Field Name | Issuer Rationale |
|---|---|---|
| 6 | Servicing Advance Methodology | This should be answered at the deal level and doesn't need to be provided at the loan level |
| 19 | Junior Lien Type | Unable to provide |
| 20 | Application Date | This is typically requested to double check QM rate spread. Notably, APR and APOR are not provided in this specification (and issuers are may have difficulty sourcing). As such, suggest removing this. |
| 27 | Current Other Monthly Payment | Do not provid today |
| 36 | Initial Interest Rate Cap (Change Down) | There is no such thing as a contractual cap down. Caps are not provided in terms of a direction, it just speaks to 2/2/5, etc. |
| 39 | Subsequent Interest Rate Cap (Change Down) | There is no such thing as a contractual cap down. Caps are not provided in terms of a direction, it just speaks to 2/2/5, etc. |
| 56 | Original Qualifying Credit Score Method | This isn't captured at the loan level and is a guideline specific field. |
| 58 | Borrower 1 Original Credit Score: Equifax | The individual borrower's overall score and the loan's overall score should be provided. These scores are frequently mismapped in source files without an impact to the overall score. The overall credit score is used to underwrite the loan and any issues with these fields are typically clerical in nature. |
| 59 | Borrower 1 Original Credit Score: Experian | The individual borrower's overall score and the loan's overall score should be provided. These scores are frequently mismapped in source files without an impact to the overall score. The overall credit score is used to underwrite the loan and any issues with these fields are typically clerical in nature. |
| 60 | Borrower 1 Original Credit Score: TransUnion | The individual borrower's overall score and the loan's overall score should be provided. These scores are frequently mismapped in source files without an impact to the overall score. The overall credit score is used to underwrite the loan and any issues with these fields are typically clerical in nature. |
| 61 | Borrower 2 Original Credit Score: Equifax | The individual borrower's overall score and the loan's overall score should be provided. These scores are frequently mismapped in source files without an impact to the overall score. The overall credit score is used to underwrite the loan and any issues with these fields are typically clerical in nature. |
| 62 | Borrower 2 Original Credit Score: Experian | The individual borrower's overall score and the loan's overall score should be provided. These scores are frequently mismapped in source files without an impact to the overall score. The overall credit score is used to underwrite the loan and any issues with these fields are typically clerical in nature. |
| 63 | Borrower 2 Original Credit Score: TransUnion | The individual borrower's overall score and the loan's overall score should be provided. These scores are frequently mismapped in source files without an impact to the overall score. The overall credit score is used to underwrite the loan and any issues with these fields are typically clerical in nature. |

| | | |
|---|---|---|
| 66 | Updated Qualifying Credit Score Method | While an issuer will more typically have this data point compared to origination as they are the entity ordering this score, it's not something being captured in loan systems today. It can be answered at the pool level and it's not typical that this would differ on the loan level. |
| 68 | Borrower 1 Updated Credit Score: Equifax | The individual borrower's overall score and the loan's overall score should be provided. These scores are frequently mismapped in source files without an impact to the overall score. The overall credit score is used to underwrite the loan and any issues with these fields are typically clerical in nature. |
| 69 | Borrower 1 Updated Credit Score: Experian | The individual borrower's overall score and the loan's overall score should be provided. These scores are frequently mismapped in source files without an impact to the overall score. The overall credit score is used to underwrite the loan and any issues with these fields are typically clerical in nature. |
| 70 | Borrower 1 Updated Credit Score: TransUnion | The individual borrower's overall score and the loan's overall score should be provided. These scores are frequently mismapped in source files without an impact to the overall score. The overall credit score is used to underwrite the loan and any issues with these fields are typically clerical in nature. |
| 71 | Borrower 2 Updated Credit Score: Equifax | The individual borrower's overall score and the loan's overall score should be provided. These scores are frequently mismapped in source files without an impact to the overall score. The overall credit score is used to underwrite the loan and any issues with these fields are typically clerical in nature. |
| 72 | Borrower 2 Updated Credit Score: Experian | The individual borrower's overall score and the loan's overall score should be provided. These scores are frequently mismapped in source files without an impact to the overall score. The overall credit score is used to underwrite the loan and any issues with these fields are typically clerical in nature. |
| 73 | Borrower 2 Updated Credit Score: TransUnion | The individual borrower's overall score and the loan's overall score should be provided. These scores are frequently mismapped in source files without an impact to the overall score. The overall credit score is used to underwrite the loan and any issues with these fields are typically clerical in nature. |
| 88 | Original AVM Forecast Standard Deviation Scoring Model | Cannot consistently provide |
| 95 | Updated AVM Forecast Standard Deviation Scoring Model | Cannot Consistently Provide |
| 99 | Monthly Income All Borrowers | This would typically only be used to double check the DTI, which is provided separately. Making this field redundant |
| 101 | Monthly Debt All Borrowers | This would typically only be used to double check the DTI, which is provided separately. Making this field redundant |
| 103 | Pledged Assets | Not provided today |

| | | |
|---|---|---|
| 133 | Number of Modifications for Loss Mitigation | We have not seen this consistently provided in RPLs |
| 144 | Covered / High Cost Flag | Definition needs to be more specific and in consideration w/ how the TPRs are currently providing. As currently labeled and defined, different TPRs may give different results on the same loan. |
| 145 | Higher-Priced Mortgage Flag | There should be limited value in this - there's already QM designation provided, making this redundant. This is duplicated by the higher priced determination in QM (higher priced covered transaction). |
| 147 | MERS ID | Unclear what value this would add, not provided today |
| 151 | Mortgage Insurance Requirement Flag | The only place this would be useful is on seasoned RPL, and it's not clear this would be a dependable field on seasoned collateral - remove this |
| 152 | MI Lender Paid MI Early Termination LTV | we don't provide this today |
| HELOC04 | HELOC Drawn LTV | Can be otherwise calculated |
| HELOC05 | HELOC Drawn Combined LTV | Can be otherwise calculated |
| HELOC08 | Senior Lien Originator | Unable to provide |

## ANNEX C

## MARKUP OF 1992 DEFINITION AGAINST 2004 DEFINITION

~~“[A]sset-backed~~***Asset-backed*** *security*~~”~~ means a security that is primarily serviced by the ~~cashflows~~cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely ~~distribution~~distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases.

(2) The following additional conditions apply in order to be considered an *asset-backed security:*

(i) Neither the depositor nor the issuing entity is an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) nor will become an investment company as a result of the asset-backed securities transaction.

(ii) The activities of the issuing entity for the asset-backed securities are limited to passively owning or holding the pool of assets, issuing the asset-backed securities supported or serviced by those assets, and other activities reasonably incidental thereto.

(iii) No non-performing assets are part of the asset pool as of the measurement date.

(iv) Delinquent assets do not constitute 50% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(v) With respect to securities that are backed by leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute:

(A) For motor vehicle leases, 65% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(B) For all other leases, 50% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(3) Notwithstanding the requirement in paragraph (c)(1) of this section that the asset pool be a discrete pool of assets, the following are considered to be a discrete pool of assets for purposes of being considered an *asset-backed security:*

(i) *Master trusts.* The offering related to the securities contemplates adding additional assets to the pool that backs such securities in connection with future issuances of asset-backed securities backed by such pool. The offering related to the securities also may contemplate additions to the asset pool, to the extent consistent with paragraphs (c)(3)(ii) and (c)(3)(iii) of this section, in connection with maintaining minimum pool balances in accordance with the transaction agreements for master trusts with revolving periods or receivables or other financial assets that arise under revolving accounts.

(ii) *Prefunding periods.* The offering related to the securities contemplates a prefunding account where a portion of the proceeds of that offering is to be used for the future acquisition of additional pool assets, if the duration of the prefunding period does not extend for more than one year from the date of issuance of the securities and the portion of the proceeds for such prefunding account does not involve in excess of:

(A) For master trusts, 50% of the aggregate principal balance of the total asset pool whose cash flows support the securities; and

(B) For other offerings, 50% of the proceeds of the offering.

(iii) *Revolving periods.* The offering related to the securities contemplates a revolving period where cash flows from the pool assets may be used to acquire additional pool assets, provided, that, for securities backed by receivables or other financial assets that do not arise under revolving accounts, the revolving period does not extend for more than three years from the date of issuance of the securities and the additional pool assets are of the same general character as the original pool assets.

***Instructions to Item 1101(c).***

1. For purposes of determining non-performing, delinquency and residual value thresholds, the "measurement date" means either:

a. The designated cut-off date for the transaction ( *i.e.*, the date on and after which collections on the pool assets accrue for the benefit of asset-backed security holders), if applicable; or

b. In the case of master trusts, the date as of which delinquency and loss information or securitized pool balance information, as applicable, is presented in the prospectus for the asset-backed securities to be filed pursuant to § 230.424(b) of this chapter.

2. Non-performing and delinquent assets that are not funded or purchased by proceeds from the securities and that are not considered in cash flow calculations for the securities need not be considered as part of the asset pool for purposes of determining non-performing and delinquency thresholds.

3. For purposes of determining non-performing, delinquency and residual value thresholds for master trusts, calculations are to be measured against the total asset pool whose cash flows support the securities.

4. For purposes of determining residual value thresholds, residual values need not be included in measuring against the thresholds to the extent a separate party is obligated for such amounts ( *e.g.*, through a residual value guarantee, residual value insurance or where the lessee is obligated to cover any residual losses).