February 4, 2010

Via email: Comments@FDIC.gov

Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Comments

Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection with a Securitization or Participation After March 31, 2010 (RIN # 3064 – AD55)

Ladies and Gentlemen:

TYI, LLC appreciates the opportunity to submit this letter in response to the request of the Federal Deposit Insurance Corporation (the “FDIC”) for comments on its Advance Notice of Proposed Rulemaking with respect to proposed amendments regarding the treatment by the FDIC, as receiver or conservator of an insured depository institution, of financial assets transferred by the institution in connection with a securitization or a participation after March 31, 2010 (the “ANPR”).

Introduction

The Goal of Transparency and a Proposed Solution

One of the FDIC’s goals for the safe harbor is that “by increasing transparency in securitizations, investors (which may include banks) can decide whether to invest in a securitization based on full information with respect to the quality of the asset pool and provide additional liquidity only for sustainable origination practices.”

The IMF has estimated the global financial system lost $4.1 trillion during the credit crisis. Several hundred billion dollars of those losses resulted from not having adequate transparency in securitizations. The losses would have been avoidable if the markets had not continued to support unsustainable origination practices by purchasing new securities after loan performance data indicated these practices should stop in late 2006. At that time, firms like Goldman Sachs and Morgan Stanley proved that investors who receive loan-level performance data daily and therefore full information will stop supporting unsustainable origination practices. As documented by the Wall Street Journal, such firms recognized that risk was mispriced and they shorted asset-backed securities.

Since some market participants have access to performance data daily, the FDIC should require that each securitization eligible for the safe harbor provide all market participants with performance data on a daily basis on the individual loans that support the securitization and the implication of this performance for each part of the structure of the securitization. If all market participants receive equal and full information on a daily basis, they can evaluate the risk and return of the securitization in both the primary and secondary markets. This is true whether the transaction is a securitization or a re-securitization.

New Infrastructure – Providing Transparency Using Today's Technology

To provide all market participants with accurate and unbiased loan-level performance data on a daily basis will require the development by independent parties of a new data-handling infrastructure to collect, standardize and disseminate this information.

The new infrastructure would be built using existing information technology and will be optimized for analyzing and monitoring securitizations. There are no technical barriers to providing all market participants with performance data on a daily basis today.

Loan-level information should be provided daily for all asset types backing securitizations. This would apply whether the securitization is publicly traded or privately placed or is backed by a relatively small number of commercial mortgage loans or a large number of credit card receivables.

Besides loan-level detail, the information provided daily should include online reports. These reports would show detailed information on the ongoing performance of each tranche, including losses that were allocated to each tranche and the remaining balance of financial assets supporting each tranche as well as the percentage coverage for each tranche in relation to the securitization as a whole.

Trustworthy – Perceived to be Accurate and Unbiased

The loan-level performance data provided by the new data-handling infrastructure must be trusted in such a manner that, like stock price data from the New York Stock Exchange ("NYSE"), trusting the data is not a question. It must come from a data-handling infrastructure overseen and operated by independent third parties who have no actual or perceived conflicts of interest. Only then can all securitization market participants use the data provided on a daily basis to value, price and trade asset-backed securities.

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Having existing market participants either directly or indirectly controlling the new data-handling infrastructure presents competitive and financial conflicts of interest. These conflicts simply cannot be escaped by erecting so-called Chinese walls. There are firms without conflicts that are perfectly capable of developing and maintaining the new data-handling infrastructure. The involvement of existing market participants in the new data-handling infrastructure would tilt an otherwise level playing field without clear value added.

Firms like IBM and Oracle have the resources and expertise to manage the day to day operation of the infrastructure. My firm has the subject matter expertise, as reflected in a U.S. patent covering this type of data handling infrastructure, to coordinate the development and ongoing operation of this infrastructure.

Cost – Built into New Securitizations and Offset by the Benefits of Transparency

The cost of providing loan-level performance data daily should be built into the flow of funds (the "waterfall") for each new securitization transaction. This cost would be offset by the lower yield required by investors who no longer have to receive extra compensation (in the form of higher yields) because they cannot see the loan-level performance data daily through the opacity of current reporting practices. Offering loan-level data daily will be an effective tool for increasing the demand for and reducing the cost of securitizations.

If the cost of providing loan-level performance data daily is built into each new securitization transaction, then this data can be made available for free to market participants. This will create competition in the value added portion of the information supply chain as third party pricing services would be expected to use such loan-level data in order to provide services that reduce investors' reliance on ratings or dealer pricing models. With third party pricing services also comes information based trading that reflects competing views of the future and more liquid secondary markets.

Based on the cost of comparable information services for securitizations, the anticipated annual cost of providing market participants with loan-level performance data on a daily basis for an individual securitization transaction would be approximately 5 basis points (0.05%) of the principal amount of the loans supporting the transaction.

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A Market Test for New Infrastructure

It was reported on the January 24, 2010 Financial Times web site that the FDIC is potentially considering securitizing assets from failed banks. According to this report, the FDIC has over $36 billion of assets on its books from institutions that failed during the financial crisis. If the FDIC elects to go forward with securitizing these assets, the FDIC could test how market participants, particularly investors, respond to loan-level performance data daily as part of its securitization effort. For a $36 billion securitization, the cost of providing data on a daily basis would be approximately $18 million per year (0.05% times $36 billion) paid out of the waterfall for the securitization. In addition, there would be a one-time set-up cost in order to get the program started.

Minimum Requirements for Restoring Investor Confidence

The three things necessary to increase transparency in securitizations and restore investor confidence in securitization markets are:

a) Performance data on a daily basis on the individual loans that support the securitization and the implication of this performance for each part of the structure of the securitization;

b) A data-handling infrastructure which allows all market participants to look at information on their desktop for a particular securitization at a summary level or to drill down into loan-level detail to answer specific questions for monitoring and valuing the securitization; and

c) Data that can be trusted.

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Frequency of Disclosure

Best Practice is to Look at Loan-Level Performance Daily

The most important issue in improving disclosure standards in securitizations is the frequency with which loan-level performance data is disclosed to market participants. To date, most of the industry's focus has been on the less important issue of what specific standardized data elements should go into the disclosure of loan-level data. Without the right disclosure frequency, the benefits of standardized data are limited because the data cannot be the basis for market participants making fully informed investment decisions.

In May 2009, the European Parliament passed the Amended European Capital Requirements Directive. The Directive sets the global standard for best practices in securitizations. Under this legislation, investors are required to know what they own and issuers are required to provide the necessary data.

In the context of securitizations, knowing what one owns requires understanding the structure of the securitization and the impact of the underlying assets' performance. This performance must be regularly monitored from the time an initial investment is contemplated through purchase and until the asset-backed security matures or is sold. Successful monitoring requires readily available, timely, reliable and relevant information on the underlying assets.

As exemplified by Goldman Sachs and recommended by its CEO in an October 12, 2009 Financial Times column as the basis for systemic risk monitoring, the best practice in knowing what one owns when it comes to a loan or securities portfolio is to look at every position every day. Packaging loans into a securitization should not change the best practice -- monitoring their performance daily -- for investors.

Current Collateral Performance Reporting Practices

The predominant frequency of reporting in U.S. securitizations is once-per-month. Once-per-month reporting is permitted in the U.S. under the Securities and Exchange Commission Regulation AB, 17 C.F.R. §§ 229.1100-1123.

There is a process built into most securitization transactions to generate a once-per-month report. At the beginning of the month, the servicer or sub-servicer performing the daily billing and collecting function transmits to the trustee, at a minimum, a monthly servicer report that reflects the daily data for the prior month. The trustee then forwards the monthly servicer report to other market participants.

Once-per-month or less frequent reporting did not prevent the several hundred billion dollars of losses in or the freezing of the securitization market, nor did it subsequently help the market to thaw.

Information Asymmetry: The Gap Between Current and Best Practices

Current reporting practices create an information gap in the securitization markets. Currently, through their billing and collecting subsidiaries, firms like Goldman Sachs and Morgan Stanley have access to information on the performance of the underlying loan collateral on a daily basis. All other market participants, including investors and rating agencies, must wait to receive summary information in a once-per-month or less frequent report.

The gap between the information available to most securitization market participants and the daily information available to some securitization investors (particularly those that have billing and collecting subsidiaries) can be described as “information asymmetry”. Columbia University Professor Joseph Stiglitz won a Nobel Prize in Economics for observing that in markets with information asymmetry, when the firms with the information take advantage of the firms without such information, the firms without such information leave the market until the information advantage is eliminated.

Some Firms Have Used Information Asymmetry to Their Benefit

The press has reported on how some firms have used information asymmetry in the securitization market to their benefit.

On November 9, 2007, the Wall Street Journal’s Heard on the Street column documented how Morgan Stanley used its daily access to subprime loan performance data from its ownership of a subprime mortgage company. According to the column, Morgan Stanley used such loan performance data to profitably short the securitization market. Morgan Stanley’s reported use of this information suggests that there is no legal or Chinese wall between an investor’s access to performance data daily and its trading and/or underwriting businesses.

Morgan Stanley was not the only firm that used its superior daily access to loan performance data to profitably trade in the securitization market. On January 21, 2010, the Wall Street Journal discussed Goldman Sachs’ acquisition of a subprime mortgage lender. Goldman invested in the subprime lender when it was launched in 2005 and bought the firm in 2007. According to the article, “mortgage experts say the acquisition likely gave Goldman a clearer view of the market as other parts of the company made bets on home loans.” These bets generated nearly $4 billion in profits for Goldman.

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Investors Link Loan-Level Performance Data and Their Return to the Market

On December 3, 2008, the global structured finance industry trade groups published Restoring Confidence in the Securitization Markets. They asked McKinsey & Company to conduct both an on-line survey of their membership and in-depth interviews with over 100 members including issuers, investors, dealers, servicers and rating agencies. McKinsey reported that stakeholders view disclosure and valuation as most critical to restarting the markets. The number one ranked factor in relative importance to restoring confidence in the securitization market in the near-term was disclosure of information on underlying assets. Confidence in data and assumptions informing valuation methodologies was second.

According to Total Securitization, an industry trade publication, as a member of the Global ABS Researcher Panel Discussion on June 3, 2009, a J.P. Morgan vice president said "in an investor survey just carried out by the bank asking what would bring them back to the market, 60% said a greater level of deal information was their number one requirement." He cited this statistic in support of a fellow panelist's observation: "We don't have all the information we need. The loan-level data is not available. We can't rely on the rating agencies, so we need data that allows us to make our own educated forecasts. The more information we get … the better."

On December 24, 2009, the Employee's Retirement System of the Government of the Virgin Islands sued Morgan Stanley on the grounds that Morgan Stanley defrauded it and other investors in a collateralized debt obligation ("CDO") arranged by Morgan Stanley. The assets of the CDO included credit default swaps that referenced residential mortgage-backed securities. The lawsuit alleges that Morgan Stanley had "unparalleled access to material non-public information…that other investors did not have" concerning the deteriorating quality of the loans underlying the CDO and that Morgan Stanley was betting against the mortgages that it was marketing to investors. It can be inferred that if the investors in the CDO would have had access daily to the same data as Morgan Stanley, the investors wouldn't have invested in the CDO that is the subject of this lawsuit.

On January 29, 2010, the American Securitization Journal published the findings of its Winter 2009 survey of the dealers, servicers, issuers, rating agencies and investors who are members of the American Securitization Forum ("ASF"). When asked "what effect will having improved information on underlying loans in ABS deals, such as ASF's Project RESTART, have on your willingness to participate in securitization transactions," fifty-six percent (56%) responded that they would be more likely to participate.

At a minimum, the surveys and lawsuit referred to above highlight three facts:

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1. Investors want more information on the assets supporting securitization transactions. They are not satisfied with what is currently available through prospectuses, dealer price quotes and once-per-month or less frequent remittance reports.
2. The buy-side is aware of the informational advantage that firms like Goldman Sachs and Morgan Stanley have in the securitization market. To level the playing field, the buy-side wants more frequent disclosure of collateral performance data.
3. Without more frequent disclosure of collateral performance data, investors in securitizations are being asked to trade against these same firms who have already shown they will use their information advantage to the detriment of the investors both in the assembly and the recommendation of securities to purchase. Many investors recognize that this is a losing proposition and, as predicted by Professor Stiglitz, have been staying away from the securitization market. Even with substantial subsidies, securitization market activity today is low compared to pre-credit crisis levels.

Eliminating Information Asymmetry in the Securitization Market

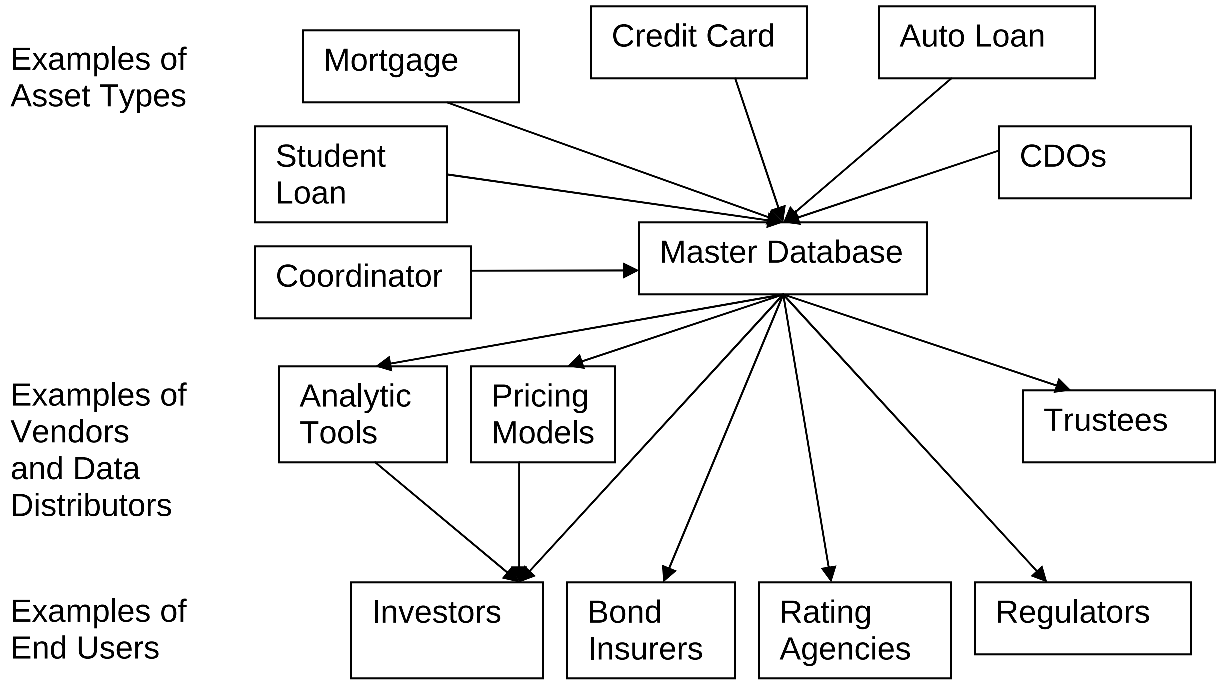
The best billing and collection practices require that the firms that perform the billing and collecting of loans backing securitizations track those loans on a daily basis. The information systems used to track the loans are also the source of information for the once-per-month or less frequent reports. The way to eliminate information asymmetry is to get the data daily from these information systems and not wait for the once-per-month or less frequent reports.

With today's technology, this data can be collected, verified, standardized, analyzed and distributed each day so that it is available to all market participants.

New Infrastructure

How Loan-Level Performance Data is Provided Daily

An important issue in improving disclosure standards in securitizations is how securitization data is provided daily to market participants. What is the appropriate infrastructure for collecting, storing and distributing asset-backed security loan-level deal specific performance information daily for the securitization market? The chart below shows the basic framework.



The collateral performance data will be collected electronically on a daily basis from every servicer and/or sub-servicer that handles the daily billing and collecting for every securitization whether or not the securitization was publicly issued or privately placed. This collateral performance data will be stored in a master database (the "Master Database").

Information That Will be Made Available to Market Participants

The information in the Master Database will be made available to end users either directly for free over the Internet or through existing data distribution channels (such as Bloomberg and Reuters). Existing vendors and data distributors in the securitization market can continue to sell their reporting, analyzing, modeling, forecasting and pricing services to end users using information from the Master Database.

Besides loan-level detail, daily reports should be made available online that show the implication of the loan performance for each part of the structure of the securitization. This would include detailed information on the ongoing performance of each tranche, including losses that were allocated to each tranche and the remaining balance of financial assets supporting each tranche as well as the percentage coverage for each tranche in relation to the securitization as a whole.

Each end user will be able to obtain the securitization data and reports that the end user wants. Each market participant will be able to choose the level of detail

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that it wants to see regarding the loan-level data. Some, like investors in AAA-rated tranches, might choose pool or tranche summarized loan-level information. However, these investors need the option to be able to drill down into the loan-level data daily in order to know what they own. Investors in subordinated tranches, such as hedge funds, might want to have the loan-by-loan data daily because they are first in line to absorb any losses and would want to closely monitor the performance of the underlying assets.

In order to accommodate U.S. firms that need to comply with Sarbanes-Oxley, the data for loans backing publicly offered securitizations will be made available to all market participants at the same time each day. The data for loans backing privately offered securitizations will be made available daily to a subset of market participants who would otherwise have the right to get such information.

Support for and Coordination of the Master Database

There are many high quality firms with no conflicts of interest, such as IBM and Oracle, which can supply all of the technical resources necessary to support the day-to-day operation of the Master Database. The selected firm will do the heavy lifting to support the data-handling infrastructure. It will be responsible for the ongoing collection of the data from the servicers and sub-servicers, the verification and validation of this data, the standardization of this data using industry templates when available, the linking of the data to the specific securitization, the production of summary reports and the dissemination of the information to market participants.

What these firms lack is the proven subject matter expertise to see the pitfalls in designing, developing and implementing a daily loan-level deal specific data-handling infrastructure for securitizations. These firms need to be given the right design for the Master Database and specific tasks if the data-handling infrastructure and Master Database are to be completed in a timely manner. In addition, these firms have to be overseen on an ongoing basis once the infrastructure is in place in order to promote the proper functioning of the Master Database.

The industry specific subject matter expertise behind the design of the Master Database and the data-handling infrastructure resides with an independent coordinator (the “Coordinator”).

The role of the Coordinator is critical. It bridges the gap between the servicers and the other participants in the securitization markets. It works with the market participants to be sure that they obtain the data that they need on a daily basis. It establishes the various processes and systems necessary for the servicers to submit the loan-level data electronically daily. It reduces both the complexity and the industry’s cost of providing loan-level deal specific performance information daily to each market participant's desktop while maintaining the highest possible quality standards for the data. It maximizes the flexibility of the transparency transmission mechanism so that it can meet the evolving needs for transparency into the future.

Expertise is the single most important factor for evaluating and selecting the Coordinator. My firm has the expertise required for the Coordinator role. I have devoted a substantial portion of my career to developing daily loan-level reporting methodologies for the securitization industry. As an example of my subject matter expertise, I patented a data-handling infrastructure for the securitization markets. This patented infrastructure includes collecting, storing and distributing borrower privacy protected, deal specific, loan-level performance information daily.

Trustworthiness of Data

Perceived to be Accurate and Unbiased

Improving disclosure standards in securitizations requires providing accurate and unbiased securitization data daily to market participants in such a manner that, like stock price data from the NYSE, trusting the data is not a question.

The European Central Bank recently published a Public Consultation with respect to securitizations. The Public Consultation recognizes that in order to provide deal specific loan-level information to all securitization market participants, a new data-handling infrastructure will be needed to collect, store and distribute the information to the market.

The current infrastructure has actual conflicts of interest like Goldman Sachs and Morgan Stanley receiving data daily on the loans backing securitizations and trading on this information before other market participants received this data.

The new infrastructure for collecting, storing and distributing loan-level data should be free of actual or perceived conflicts of interest. All market participants need to know that they can trust the data to credibly value, price and trade asset-backed securities. This is necessary if the new infrastructure is going to help restore confidence in the securitization market.

The new data-handling infrastructure and the daily loan-level deal specific data should also be perceived as free of the types of structural conflicts of interest that would be present if the infrastructure was controlled by and the data offered by a single existing market participant. Each existing market participant would be perceived as being able to gain a competitive advantage if it controlled the new data-handling infrastructure. The involvement of existing market participants in the new data-handling infrastructure would tilt an otherwise level playing field without clear value added.

Full Disclosure Requirement

Any firm that is proposed to be involved in either the day-to-day operation of the Master Database or the Coordinator role should be required to make a full disclosure of all competitive and financial interests in the design of the database, the presentation of the data, the analysis of the data, and the use of the data including:

- Is the firm engaged in a related business that could gain a competitive advantage from its role? Examples of such related businesses include data distribution, pricing services, trustee services, monitoring, analytic solutions, consulting, ratings services, investment as a principal or agent or portfolio manager, and underwriting.
- Does the firm have investments that could benefit from its role, such as long or short positions in securitization transactions?

Accuracy of Data

The new data handling infrastructure should also provide an audit trail. Market participants should know that the data they are receiving from the Master Database is the same as the data submitted by the servicers or sub-servicers to the Master Database.

Global Cost/Benefit Analysis for Providing Loan-Level Data Daily

What would have happened if there had been access to loan-level deal specific data daily and its forced recognition of the deterioration in loan underwriting and performance in the years leading up to the current financial crisis? It has been reported that securitization investors like Goldman Sachs and Morgan Stanley who had this data daily recognized that risk was mispriced, stopped buying new securities by late 2006 and in fact went further and shorted the subprime market.

Benefit of Receiving Loan-Level Performance Data Daily

A significant amount of losses could have been avoided if other investors had access to loan-level deal specific data daily and had been able to accurately assess the risk in securitizations. According to the Securities Industry and Financial Market Association, over $1.75 trillion in non-agency mortgage backed securities, home equity loan-backed securities and CDOs were issued globally between the time Goldman Sachs and Morgan Stanley decided to stop buying such securities and the beginning of the credit crisis in 2007. Analysts and traders estimate that there were several hundred billion dollars of losses on these thinly traded securities. These losses would have been avoidable if either the other investors had exerted market discipline (based on more up-to-date data) by not providing liquidity for unsustainable origination practices or regulators had noticed that securities firms (such as Goldman Sachs and Morgan Stanley) with access to loan-level performance data daily were placing massive shorts on the market and intervened. In addition, there were other avoidable losses in the financial system as there were loans made during this time period that ended up on the balance sheets of financial institutions both to replace the loans sold into the capital markets and to grow the financial institutions' internal loan portfolios. If market discipline had been exerted in late 2006, these loans might not have been made. These loans have also incurred a significant amount of losses. At a minimum, the benefit to the financial system from providing loan-level deal specific data on a daily basis would be several hundred billion dollars of losses avoided.

Cost of Providing Loan-Level Performance Data Daily

The annual cost of providing loan-level deal specific data daily for securitization transactions will be much lower than the losses described above. In order to provide this data, a data-handling infrastructure will be needed to collect, store and distribute this information. Based on the cost for comparable information services for securitizations, the on-going annual cost of the proposed infrastructure for loan-level deal specific performance data daily would be approximately 5 basis points (0.05%) of the principal amount of the loans that are supporting a particular securitization.

Benefit Outweighs Cost

By spending 0.05% per year of the amount of securitized loans, the securitization market can avoid repeating the several hundred billion dollars of losses from not being able to accurately assess and price the risk of securitizations. Spending such amount will also restore confidence in and restart the securitization markets.

How Should Providing Information on a Daily Basis be Paid For?

The cost of providing loan-level performance data daily should be built into the flow of funds (the waterfall) for each securitization transaction. The data should be made available for free to all market participants.

Why Should the Cost be Included in new Securitizations?

In today's markets, investors in securitization transactions require extra compensation (in the form of a higher yield) because they cannot see the current loan performance data through the opacity of once-per-month or less frequent

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reporting practices. By offering loan-level performance data daily, issuers would save themselves this cost of opacity.

The cost of opacity in securitizations, which can be referred to as the "opacity premium", comes in the form of higher interest rates and greater over-collateralization. One way to measure the opacity premium is to look at the increase, since the credit crisis began, in the risk and liquidity premiums in the primary issuance market for securitizations. Even with substantial government subsidy programs, the increased opacity premium reflects the concern that, without loan-level deal specific data daily, investors may have to hold an asset-backed security for the life of the deal. This is because other investors who might buy the asset-backed security in the secondary market are asked to independently value the asset-backed security using stale data and therefore are unlikely to buy it.

How large is the opacity premium in securitizations? For those issuers who can't tap the capital markets on acceptable terms, the cost of opacity is the ability to access the capital markets. For those issuers who need government subsidies in order to access the securitization market, the cost of opacity is the need to comply with the rules for qualifying for the subsidy. For those issuers who can access the capital markets without a government subsidy, the cost of opacity includes the higher spread they are paying, the higher level of over-collateralization they must provide, the fewer and smaller the riskier tranches of the deal and the more risk they must retain. Depending on the collateral asset type, analysts report that the opacity premium for non-subsidized issuers is between 50 and 100 basis points (0.50%-1.00%) annually.

Offering loan-level deal specific data daily will be an effective tool for increasing the demand for and reducing the cost of securitizations. When there is no opacity and market participants have full information, an active secondary market for securitizations can be maintained. When investors know that there is a liquid market for reselling asset-backed securities, this will drive primary market demand. It will also lower the issuers' costs as the investors will not require the current level of extra compensation for the illiquidity of such asset-backed securities. Based on conversations with investors, for issuers who can access the capital markets, the size of the reduction in the opacity premium will save more than the cost of providing loan-level data daily through a Master Database.

Timing to Implement

Based on discussions with several of the largest global issuers and leading information consulting firms, the data-handling infrastructure solution for securitization transactions discussed in this letter can be implemented in approximately a twelve (12) to eighteen (18) month timeframe.

Achieving a Major Improvement in ABS Transparency Requires Data on a Daily Basis

Valuation Models Need Daily Loan-Level Performance Data to Work

Without loan-level data daily, market participants can't independently analyze and credibly value asset-backed securities based on full information. As pointed out by well-known economists Harry Markowitz and John Taylor, the only way to value these asset-backed securities is to have the information on the underlying collateral.

In the absence of loan-level performance data on a daily basis, the securitization market has relied on dealer and ratings-based models that use out-of-date information. All the dealer models, including cash flow, correlation and spread, used for valuing asset-backed securities failed in August 2007 when BNP Paribas could no longer credibly value asset-backed securities for a fund. Ratings-based models failed shortly thereafter. In the fall of 2007, Moody's and S&P testified before the U.S. Congress that they did not have the data necessary to make timely updates to their ratings.

Without access to loan-level deal specific performance data daily, no amount of improvement in these models would provide the credibility to restore confidence for a liquid, functioning secondary market for securitizations. Data provided on a daily basis should be the starting point for modeling. In addition, such data would be used to check the accuracy of the assumptions in the model against the actual performance of the loans underlying the asset-backed securities.

Secondary Market Trade Price Reporting Needs Independent Valuation to Work

One frequently mentioned way to improve transparency in securitizations is a secondary market trade price reporting system. A secondary market trade price reporting system cannot achieve the same outcome as a system that provides loan-level data on a daily basis. Price data by itself does not tell the value of an asset-backed security. To make a buy/hold/sell decision, investors need to be able to independently value the asset-backed security using current cash flow information and then compare this valuation with the prices shown by dealers. Price transparency without daily data is just market participants bidding blindly.

For What ABS Classes Could There be Problems Obtaining Data?

From a technological perspective, given the proposed data-handling infrastructure, in terms of capturing and standardizing the loan-level data daily, no asset classes are particularly problematic.

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Some market participants are proposing that a specific standardized set of data fields, known as a “template”, be provided for loan-level data as the solution to the lack of transparency in securitizations. This proposed solution has two significant limitations. First, it does not address the frequency with which market participants need data. Second, waiting for a template to be developed and agreed to before data can be provided ensures that nothing happens in the interim.

Focusing on templates is a distraction as they are not a requirement for collecting and standardizing the data in the Master Database and making it available to all market participants. As a result, whether templates exist or not for a specific asset class should not stand in the way of providing loan-level data daily for all asset classes to market participants. For those asset classes without a template, the solution is to collect and standardize all the information in the Master Database, allow the market participants to have access to all the data in the Master Database, and allow market participants to select what data they would like to receive.

What Impediments, if any, Would Servicers Face in Submitting Loan-by-Loan Information to Fulfill the Loan-Level Data Requirements?

From the technological perspective, given the proposed data-handling infrastructure, there are no significant impediments to servicers providing daily loan-by-loan information.

General Questions

The following responds to some of the questions in the ANPR.

2. If the FDIC were to adopt changes to the conditions required for the safe harbor similar to those contained in the preliminary regulatory text, what transition period would be required to permit implementation?

Based on my conversations with industry participants and information consulting firms, using the Master Database described earlier, loan-level deal specific data should be available to all market participants daily within approximately twelve (12) to eighteen (18) months of adoption by the FDIC.

Capital Structure

The starting point for answering the FDIC’s questions on capital structure is the following question: do the market participants have all of the relevant information on the individual loans that support the asset-backed security and the structure of the asset-backed security so they can evaluate the risk and return of the security? Unless investors have access to loan-level performance data on a daily basis, investors don't have all the relevant information for evaluating the risk and return on an asset-backed security. This is true whether the deal has one or ten tranches or no external credit support or full external credit support.

The FDIC should require that each securitization eligible for the safe harbor provide market participants with performance data on a daily basis on the individual loans that support the securitization and the implication of this performance for each part of the structure of the securitization, so that market participants can evaluate the risk and return of the securitization in both the primary and secondary markets. This is true whether the transaction is a securitization or a re-securitization.

Disclosure

9.1 What are the principal benefits of greater transparency for securitizations?

The best way to achieve greater transparency for securitizations is by providing loan-level data daily on an on-going basis to all market participants. There are three major benefits to this approach.

First, providing market participants with loan-level data on a daily basis will promote robust and liquid primary and secondary markets for securitizations. Daily loan-level data should be the starting point for market participants independently analyzing and valuing securities in both the primary and secondary markets and then making buy, sell and hold decisions. In addition, with this data there is an opportunity for growth by independent valuation firms to complement the in-house capabilities of securitization investors and reduce reliance on both the rating agencies and the proprietary pricing models of firms like Goldman Sachs and Morgan Stanley.

Second, if investors are provided with full information regarding asset-backed securities, they can do a better job of aligning the pricing of each individual security with the risks of the underlying assets. This will help to encourage good underwriting practices at the banks because the pricing of future deals will reflect the quality of the underwriting of the assets that support their outstanding securitizations.

Third, access to loan-level deal specific performance data daily should limit the excesses of future credit cycles. In the credit cycle leading up to the current crisis, fewer problematic securitizations would have been completed and fewer problematic loans would have been originated if market participants, namely investors and regulators, had loan-level deal specific data daily. With this data, market participants would have been forced to confront the deterioration in loan underwriting and performance sooner in the credit cycle. As a result, they would have exerted more discipline and have reduced the ultimate size of the losses by buying far fewer securities backed by loans of dubious value.

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9.2 What data is most useful to improve transparency?

The most useful data to improve transparency is loan-level data provided daily for the loans that support the securitization.

9.3 What data is most valuable to enable investors to analyze the credit quality for the specific asset securitized?

The most valuable data to enable investors to analyze the credit quality for the specific asset securitized is all the data that is tracked for each loan by the firm doing the daily billing and collecting of the securitized assets.

9.4 Does this differ for different asset classes that are being securitized? If so, how?

No. The Master Database can collect all loan-level performance data daily, and end users, such as investors, can choose data that is most relevant to their valuation and investing decisions.

10. Should disclosures required for private placements or issuances that are not otherwise required to be registered include the types of information and level of specificity required under Securities and Exchange Commission Regulation AB, 17 CFR 229.1100-1123, or any successor disclosure requirements?

Yes, to the extent that the loan-level information is provided daily.

11.1 Should qualifying disclosures also include disclosure of the structure of the securitization and the credit and payment performance of the obligations, including the relevant capital or tranche structure?

Yes. Market participants need this on a daily basis if they are to understand both the performance of the underlying obligations and the implication of this performance for each part of the structure of the securitization and properly evaluate the risk and return of investing in the securitization (either in the primary or in the secondary markets).

Technically, it is easy to include all of this information in a database and make it available to all market participants using the data-handling infrastructure discussed previously. Including these additional data elements will not change the cost of providing loan-level deal specific data daily in any material respect.

11.2 How much detail should be provided regarding the priority of payments, any specific subordination features, as well as any waterfall triggers or priority of payment reversal features?

The following is the rule of thumb for what should be disclosed and how much detail should be provided: **If it were not disclosed, would investors have full information?**

12. Should the disclosure at issuance also include the representations and warranties made with respect to the financial assets and the remedies for such breach of representations and warranties, including any relevant timeline for cure or repurchase of financial assets.

Yes. This disclosure should also be readily available over the life of each security. The proposed data-handling infrastructure would readily support this without changing the basic cost of providing loan-level deal specific data daily.

13. What type of periodic reports should be provided to investors? Should the reports include detailed information at the asset level? At the pool level? At the tranche level? What asset level is most relevant to investors?

Daily reports that specify loan-by-loan information should be required for all asset classes. Each market participant should be able to choose the level of detail that it wants to use. Some, like investors in the AAA-rated tranches, might choose pool or tranche summarized loan-level information. However, these investors need the option to be able to drill down into the loan-level data daily in order to know what they own. In addition, investors, such as hedge funds, that purchase the riskiest tranches of the securitizations that facilitate creation of the AAA-rated tranches, might want to have the loan-by-loan data daily because they are first in line to absorb any losses and would want to closely monitor the performance of the underlying assets.

In an interview with Risk.Net on January 22, 2010, a member of the executive board of the ECB was asked “are investors equipped to analyze the very high number of loans there might be in an RMBS trust, for example?” His response was that “large institutional investors would be prepared, as they already conduct loan-by-loan analysis for those transactions where loan-level data exists. Smaller investment managers may not be so willing to spend the time and resources to analyze the loan data, so may instead resort to third-party service providers. The availability of the data would improve the quality of the monitoring processes conducted by investors and rating agencies by allowing the early identification of developments in the underlying assets. We believe this initiative would improve the information set, which would obviously yield benefits for all market stakeholders.” This same logic could be applied to other securitizations that are backed by a large number of loans or receivables including credit card securitization trusts.

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14. Should reports include detailed information on the ongoing performance of each tranche, including losses that were allocated to such tranche and remaining balance of financial assets supporting such tranche as well as the percentage coverage for each tranche in relation to the securitization as a whole? How frequently should such reports be provided?

Yes. Daily reports should be made available that include detailed information on the ongoing performance of each tranche, including losses that were allocated to such tranche and the remaining balance of financial assets supporting such tranche as well as the percentage coverage for each tranche in relation to the securitization as a whole. This will be built into the Master Database discussed above.

15. Should disclosure include the nature and amount of broker, originator, rating agency or third-party advisory, and sponsor compensation? Should disclosures include any risk of loss on the underlying financial assets retained by any of them?

If the decision is made to disclose compensation or retained loss exposure, the Master Database discussed above can support the disclosure.

16. Should additional detailed disclosures be required for RMBS? For example, should property level data or data relevant to any real or personal property securing the mortgage loans (such as rents, occupancy, etc.) be disclosed?

At a minimum, all of the data elements included in American Securitization Forum's Project Restart proposal should be included. To the extent that the daily billing and collecting systems have additional data elements, these can be easily captured and included in the Master Database.

18. What are the primary benefits and costs of potential approaches to these issues?

Please see a) the Global Cost/Benefit Analysis for Providing Loan-Level Data Daily and b) the answer to Question 9.1 above.

Conclusion

To restore confidence in the securitization market, market participants must perceive that the changes in disclosure practices adopted by the FDIC will actually work. The foundation for this is the Master Database that will collect, standardize and disseminate loan-level data on a daily basis for securitization transactions.

An effective loan-level disclosure system should be developed around six core principles.

1. **It should treat all participants equally.** No market participant should be given a timing advantage when accessing material information relating to securitizations that have the benefit of the safe harbor.

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2. **It should be fair.** It is only fair that all market participants be able to receive on their desktops at the same time in an easily understood and useable format the most recent performance of the underlying loans and the implication of this performance for each part of a securitization's structure.
3. **It should provide information on a daily basis.** The best practice in managing a loan or securities portfolio is to look at every position every day. In order to know what they own, securitization investors must be able to track the performance of the individual loans backing each asset-backed security they own on a daily basis. Packaging the loans into a security does not change best practices.
4. **It should be trusted.** For loan-level information on a daily basis to be trusted and used by market participants to credibly value, price and trade asset-backed securities, it must come from an infrastructure that is managed by and overseen by independent third parties that have no conflicts of interest. The independent third parties must not actually be or be perceived to be in a position where they can gain a competitive advantage in the market or in a related business from access to the loan-level information before other market participants have access to that information.
5. **It should minimize technical costs and complexity.** Using a single central database for securitization transactions minimizes the issues for both the firms submitting the loan-level data daily and the market participants receiving the information. By contrast, using multiple databases for receiving information from servicers and sub-servicers would add unnecessary cost and complexity to the transparency solution.
6. **It should be paid for by each securitization.** The cost of providing data daily should be built into each new securitization and the data should be provided for free to all market participants. This cost will be offset by the lower yield required by investors who no longer have to be paid extra compensation (in the form of higher yield) because they cannot see the loan performance data through the opacity of current securitization reporting practices.

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Thank you again and I very much appreciate the opportunity to submit these comments. If you have any questions, please do not hesitate to contact me. You can reach me at (781) 453-0638 or at tyillc@comcast.net.

Sincerely,

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