TYI, LLC

August 2, 2010

Via email: rule-comments@sec.gov

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Release Nos. 33-9117; 34-61858 (File No. S7-08010)

Ladies and Gentlemen:

TYI, LLC appreciates the opportunity to submit this letter in response to the request of the Securities and Exchange Commission (the "SEC") for comments on its proposed rule to significantly revise Regulation AB (the "Proposed Rule").

This comment addresses the following questions: (1) whether Schedule L-D data should be required at any other time, such as daily or monthly for all asset classes; and (2) whether Schedule CC data should be required at any other time, such as daily, weekly or monthly. These two questions address the fundamental issue of the frequency with which performance data for the individual loans and receivables that underlie a securitization transaction should be disclosed so that investors have timely access to this data. This comment also examines the use of the SEC EDGAR database for the loan-level data and the structural features of each deal.

Conclusion

The SEC should require that with respect to a loan or receivable that is an underlying exposure for a securitization transaction, any observable event relating to such loan or receivable should be disclosed on the day the observable event occurs or as promptly thereafter as is possible. An "observable event" means, with respect to a loan or a receivable that is collateral for a securitization, any of the following: 1) payment (and the amount thereof) by the obligor on such loan or receivable; 2) failure by the obligor to make payment in full on such loan or receivable on the due date for such payment; 3) amendment or other modification with respect to such loan or receivable; or 4) the billing and collecting party becomes aware that such obligor has become subject to a bankruptcy or insolvency proceeding.

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(781) 453-0638
43 Mary Chilton Road, Needham, Massachusetts 02492

The SEC should not collect loan-level information itself but rather it should require originators and sponsors make the data available to investors through a third party database.

Example Highlighting Choices Available for Frequency of Disclosure

Consider a securitization that includes four loans as its underlying exposures. Each loan is scheduled to make principal and interest payments once per month. Loan 1 makes its payments in week 1 of the month. Loan 2 makes its payments in week 2 of the month. Loan 3 makes its payments in week 3 of the month. Loan 4 makes its payments in week 4 of the month. As of the end of last month, all the loans were current. This month, however, is a different story. Loan 1 made its payment in week 2 rather than in week 1. Loan 2 paid only 70% of its principal and interest in week 2 and nothing else the remainder of the month. Loan 3 received a modification that reduced its payment by 50%. Loan 4 made no payment at all.

There are several ways to report the observable events for these loans.

At one extreme, which reflects current securitization industry practices, the observable events for the four loans would be collected and then reported on a once per month or less frequent basis after the end of the month. This reporting frequency has two fundamental problems.

1. It prevents investors from effectively monitoring and knowing what they own currently. Almost by definition, the timing of these reports renders them out of date when they are made available to investors. The lack of timeliness forces investors to guess historical facts that could be easily known if these facts were not held for release in a once per month or less frequent report. From an investor's point of view, the existing monthly securitization reporting system is equivalent to the servicer collecting information in a brown paper bag and then, after the information has aged, delivering the stale information to investors in a once per month report.
2. Once per month or less frequent reporting creates information asymmetry and the opportunity for investors to be taken advantage of. Firms such as Goldman Sachs, HSBC and Morgan Stanley have subsidiaries involved in billing and collecting loans and receivables backing securitized transactions. The owners of the billing and collecting entities have access to observable event data as it occurs and insights into the loans or receivables that are not currently available to other investors in securitization transactions.

At the other extreme, reports would be generated for all four loans on a daily basis regardless of whether an observable event has occurred. This reporting

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frequency has a fundamental problem. Reporting every single loan every day would cause the creation of a significant amount of useless data. If there is no observable event, there is no new information for investors. Daily reporting that includes not only loans with observable events, but also loans without observable events would create its own form of opacity as investors would have to sort through the data to find the loans that did have an observable event.

Between these two extremes is the alternative to link the timing of reporting to securitization investors to the occurrence of an observable event with respect to the individual underlying loans and receivables. For example, if a payment is received on loan 1 in week 1, then investors would be notified about only loan 1 on the day the payment is received or as promptly as is practicable thereafter. Similarly, if loan 1 is modified or the obligor files for bankruptcy, then investors would be notified regarding that observable event on the date it occurs or as promptly as is practicable thereafter. This reporting frequency has three fundamental advantages.

1. It is consistent with how observable events are tracked and reported by the databases which handle the daily billing and collecting of the underlying loans and receivables. For example, consider an observable event-based report that can be accessed by any person who holds a credit card. The individual credit cardholder can, using existing technology, access a web site of the credit card issuer on any day of the month and review all charges and payments that have been made on the credit card on each day during the month. Similarly, the credit card issuer can, using existing technology, on any day of the month review all the charges and payments that have been made on each day during the month on i) all of its credit cards, ii) a subset of credit cards which are collateral for a securitization or iii) an individual credit card. Credit institutions have considerable expertise in observable event-based reporting. This same expertise and frequently the same information systems can be used to support observable event-based reporting for securitizations.
2. Observable event-based reporting allows investors to monitor performance of the loans and receivables supporting a securitization as frequently as they would like. Investors will have the choice of how frequently they want to monitor performance. Some investors in securitization transactions, particularly those investing in the riskiest tranches of a deal or who use independent valuation services, will want to monitor the performance of loans and receivables as observable events on those loans and receivables occur. Denying these investors the ability to monitor observable events as they occur is counter-productive as it does not restore confidence and as a result diminishes the interest in and investment appetite for securitizations.

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3. Observable event-based reporting eliminates the informational asymmetry and the related informational advantage of the firms participating in originating, billing and collecting these or similar type loans and receivables of the type that are collateral for securitization transactions. It is superior to erecting Chinese walls between trading and the origination, billing and collecting functions. Erecting Chinese walls are of limited value because financial institutions must manage their risk. To do this requires leaping over the Chinese walls and managing all of the financial institution's exposure across their many functional areas.

If the SEC required observable event-based reporting over the life of each securitization, how would such reporting be implemented? One method for implementing such reporting would be through a clearinghouse managed by a third party with none of the conflicts of interest of existing market participants. Using existing information technology, the parties responsible for billing and collecting the underlying exposures for securitization transactions would provide information on observable events relating to the applicable loans and receivables to the clearinghouse. That clearinghouse would not only manage the observable event database, but would also provide access to the observable events, the underlying loan and receivable exposures and structural features of the securitization to investors in securitization transactions. All data would be borrower privacy protected to the equivalent of the existing standards that apply in the U.S. for the protection of personally identifiable information under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The data would be available at no charge to investors and regulators. The annual cost for linking a securitization to the clearinghouse and providing access to the data would be five basis points (0.05%) or less of the aggregate amount of such securitization. It is expected that the annual cost would be built into the cash flow waterfall of the securitization transaction. The expected lower cost of funding that would apply to a securitization for which observable event-based reporting was available would offset the cost of providing observable event-based reporting.

The Proposed Rule Does Not Protect Borrower Privacy

An unintended consequence of the Proposed Rule is that the SEC will be facilitating a breach of borrower privacy. The SEC is requiring specific data fields to be disclosed. For example, these include the date a mortgage is originated, the amount of the mortgage and the standard metropolitan statistical area of the mortgage. Individual borrowers in the U.S. can be identified with a very high degree of accuracy by searching publicly available databases using these proposed data fields.

The failure to protect borrower privacy can be expected to have at least one consequence. European issuers will be less likely to participate in the U.S.

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securitization market and this will limit investment opportunities for U.S. investors.

In Europe, there are national borrower privacy laws which restrict the disclosure of data relating to individual borrowers. However, the Proposed Rule would require the disclosure of information that could be combined with third party databases to identify individual European borrowers and this may violate European privacy laws. In order to avoid violating these laws, it can be expected that European issuers will reduce their issuance of securities in U.S. markets and deprive U.S. investors of the opportunity to invest in those securities.

The Proposed Rule Will Not Make Deals Comparable

One of the goals of the Proposed Rule is standardizing the information to facilitate the ability "to compare and analyze the underlying asset-level data of a particular asset pool as well as compare them with other pools." As written, the Proposed Rule will not facilitate the comparison between securitizations.

According to a recent article in The Economist, "banks were the first to use mainframes in the 1960s; many are still using the original applications because it is risky to swap them out…as a result, banks tend to operate lots of different databases producing conflicting numbers…often in slightly different formats." (See "Computer Says No: Big Banks Need IT Reform Almost as Badly as Regulatory Change" in July 24, 2010 edition.) Bringing the data from these legacy systems directly to the EDGAR system is not going to allow investors to make comparisons as the data is not comparable in the systems where such data currently resides.

In order to compare two deals against each other, the data in each field must have more than just a standardized format -- such data must actually match the definition in the Proposed Rule. The following gives some examples of potential problems with data fields that may not be uniformly represented on different mortgage systems within an issuer and between issuers:

- Are interest rates stated or actual? Is the underlying type of mortgage a fixed rate mortgage or an ARM? What index is being used?
- What is the basis on which interest is being calculated (30 / 360 day; Actual / 360; Actual / Actual; Actual / 365)?
- How are prepayments represented? How is the prepayment 'speed' quoted?
- Are fees and penalties applied against interest, principal, or are they just treaded as additional fees?
- Importantly, timing of resets may not be uniformly represented. Often, old rates are used and once the rate adjustment occurs, the interest and principal is recalculated and adjusted in arrears.

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(781) 453-0638
43 Mary Chilton Road, Needham, Massachusetts 02492

- How are errors in the reporting of the distribution of funds out of escrow handled?

To achieve the goal of making deals comparable requires a significant amount of work, knowledge and financial resources. The raw data will have to be “scrubbed” to insure that the data in each field is consistently defined within an issuer and across issuers. For each deal, the data also has to be properly mapped. These are tasks better performed by private market participants running a clearinghouse.

Like EDGAR, such a clearinghouse would distribute the data for free to investors. Unlike EDGAR, such a clearinghouse would have the data fields specified by the SEC plus any additional data fields that are available to investors today.

There Is a Better Solution

The primary goal of the SEC in proposing revisions to the regulations covering the securitization market practices is “to enhance investor protection by providing investors with timely and sufficient information.” The SEC asserts “that all investors and market participants should have access to the information necessary to assess the credit quality of the assets underlying a securitization transaction at inception and over the life of the transaction.”

There is a better alternative to the SEC defining what data fields to collect and being involved in the day-to-day operation of the loan level database. The alternative is for the SEC to neither gather data as the database manager nor define the data fields needed for disclosure but to instead require disclosure on an observable event-based basis of all data fields tracked by the firms handling the daily billing and collecting function.

These data fields are already being disclosed on a once per month or less frequent basis. Firms like LoanPerformance and Trepp access these reports and are offering many more data fields than are included in the SEC proposal. The SEC could achieve its goals with a simple disclosure requirement that changes the frequency with which the data is disclosed so that investors can access the data while it is still timely.

The private sector, which has the knowledge to handle the operational problems as it has been managing similar databases for years, will create the loan-level database in a clearinghouse. The clearinghouse would eliminate the ability to identify the borrowers while at the same time preserving and potentially enhancing the comparability and informational value of the data.

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(781) 453-0638
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Recommendation

The SEC should require that in connection with securitizations for all asset types the party that is directly involved in the billing and collecting of the individual loans or receivables in those securitizations provide reports to all investors in those securitizations on the day an observable event occurs with respect to each such loan or receivable or as promptly thereafter as is practicable.

Observable event-based reporting is necessary so that investors can have access to all the information they need to make a fully informed investment decision.

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,

Richard G. Field
Managing Director

www.tyillc.com
(781) 453-0638
43 Mary Chilton Road, Needham, Massachusetts 02492