

December 23, 2019

Chairman Jay Clayton
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Asset-Level Disclosure Requirements for Residential Mortgage-Backed Securities (“RMBS”)

Dear Mr. Clayton

Pentalpha Surveillance LLC (“*Pentalpha*” and “*we*”) is pleased to submit this letter to comment on the request for public input from investors and other market participants related to your public statement concerning asset-level disclosure requirements for residential mortgage-backed securities (“*Public Statement*”). Pentalpha and its affiliates have been engaged by individual securitization trusts, financial institutions, institutional investors and agencies of the U.S. Government, and we are primarily dedicated to providing independent oversight of loan securitization trusts’ ongoing operations. In addition, our principal, James Callahan, recently served as Co-Chair of the U.S. Treasury’s Deal Agent Committee, which was an informal working group of industry representatives who participated in a series of discussions facilitated by the U.S. Treasury as part of its Private Label Securitization (“*PLS*”) Initiative. The Treasury’s PLS Initiative provided a forum for a large number of industry participants (investors, mortgage originators and aggregators, mortgage servicers, trustees, potential Deal Agents and rating agencies) to address several topics, including servicer oversight, representations and warranties enforcement and the role of the trustee.

We applaud the Chairman for recognizing the critical role that securitization plays in the U.S. capital markets, and in particular, the significant role that RMBS issuance plays in facilitating capital formation in the U.S. housing sector. In the Public Statement, you correctly note that there are a number of factors that may be contributing to the absence of SEC-registered RMBS offerings. The Public Statement specifically requests comment on whether any of the SEC’s asset-level disclosure requirements adopted in 2014 are a contributing factor to the lack of SEC-registered RMBS issuances. Although we are not an issuer of RMBS, we have been a key participant in more than 50 post crisis MBS transactions with an original unpaid principal balance in excess of \$50 billion. As a result, we believe we have a unique perspective in our role acting as a governance party in RMBS. Based on our experience, we agree that the additional asset-level data points required by Regulation AB in an SEC-registered offering have been a contributing factor to the lack of SEC-registered RMBS issuances. To help alleviate the burden imposed on issuers while also ensuring that investors are provided with material information about the assets, we believe that asset-level disclosure requirements in Regulation AB should be modestly reduced. There have been some proposals by the Structured Finance Association (“*SFA*”) related to which data fields should be forgiven. While we always could use more data, the issue of materiality is important to consider and we support the SFA proposal.

While incremental changes to the asset-level data points in Regulation AB would help level the playing field with private-label RMBS issuances in the Rule 144A markets, we believe other enhancements are necessary to truly facilitate the reappearance of private capital to RMBS. The financial crisis demonstrated that there were deep structural problems in some securitization trusts. These structural problems related to poor representation and warranty enforcement mechanisms, conflicts of interest (or perception thereof) by parties, biased servicing practices and a lack of transparency across many levels of the collateral and structure. These problems were further compounded by the structural flaw in securitization that an independent party was not included in transactions with “teeth” to oversee, monitor and help the trustee remedy these structural problems on behalf of all investors.

In 2016, at the request of the U.S. Treasury, a working group of industry representatives participated in a series of discussions to address several topics, including servicing oversight, representations and warranties enforcement and the role of the trustee. The working group, co-led by Alessandro Pagani, head of securitized assets at Loomis, Sayles & Company, and James Callahan, principal at Pentalpha, focused on the request by investors for the inclusion of a Deal Agent, an independent party that would provide a specified amount of governance and oversight of the trust, while also subject to duties of care and loyalty.

For information on this initiative, please reference the introduction document on the working group's efforts and the Sample Deal Agent Agreement, which are available at <http://www.fairmortgagemarkets.org/>. For ease of reference, we have attached the proposed Deal Agent Framework as Exhibit A to this letter. The Deal Agent Framework, crafted and supported by many PLS Initiative participants, aims to improve RMBS transactions by ensuring that all parties to the securitization contracts fulfill their contractual obligations and are subject to the oversight of an entity empowered with enforcement authority in the event such party determines events of non-compliance. This key new entity, the Deal Agent, would be a party to the securitization contracts, act as a supervisory and governance specialist to help maximize the value of trust assets, and have the authority (either directly or through direction to the trustee) to enforce these contracts on behalf of all investors. While a small sub set of the Deal Agent's functions have been implemented within recent private securitizations, many investors have concluded that their interests are still not protected sufficiently. They prefer to entrust a specialized and independent governance party to help oversee the trust's ongoing operations and do so with care and loyalty. When combined with the functionality of the Trustee and Securities Administer, they collectively create a robust and low cost governance solution. The ESG investment community could give securitizations high marks.

As the Commission is considering changes to its securitization rules to revive the private-label RMBS market (so that it can act as a high volume funding source to loans that the GSEs currently fund and more), we believe improved governance is critical to help ensure that investors and other market participants have confidence in the securitization structure in stressed environments. In response to domestic and international investor demands, some issuers have begun to add subsections of the Deal Agent concept in their securitizations, and they deserve praise. We think the total "package" of governance and oversight is appropriate for the markets to comfortably handle the volumes of loans that may not be financed via GSE channels in the future. Robust and material collateral data plus improved ongoing supervision and governance to remediate the flaws found will make the RMBS markets sustainable. It is not about data only.

We greatly appreciate the Chairman's consideration of this important issue. If the Commission or the staff desires, we would be happy to discuss further any of the points in this letter.

Sincerely,



James Callahan
Executive Director
Pentalpha Surveillance LLC

cc: Jay H. Knight, Bass, Berry & Sims PLC

EXHIBIT A

[Attach this document]

<http://www.fairmortgagemarkets.org/internet/website.nsf/framework/DealAgentFrameworkIntro.pdf>

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Proposed Deal Agent Framework: Background and Introduction

Prior to the 2008 financial crisis, the US non-agency residential mortgage (RMBS) market had over \$2.5 trillion dollars outstanding and was a key source of private capital for the US mortgage system. The new origination RMBS market has remained effectively closed since 2008 and, while many factors may have contributed, numerous investors cite serious deficiencies within existing RMBS transactions for their lack of engagement in the new issue market. The “Deal Agent Framework” is a proposal to reform the securitization contracts for U.S. RMBS transactions in a manner that we believe would significantly enhance the governance protocols built into the current U.S. RMBS structures.

This proposal is based on over 18 months of discussions facilitated by the U.S. Department of Treasury (“Treasury”) under its “Private Label Securitization (PLS) Initiative”. The Treasury’s PLS Initiative provided a forum for a large number of industry participants (investors, mortgage originators and aggregators, mortgage servicers, trustees, potential Deal Agents and rating agencies) to address several topics, including: servicer oversight, representations & warranties enforcement and the role of the trustee. Over time, a substantial portion of the group’s conversations focused closely on the request by investor representatives for the inclusion in the trust of an independent party (the “Deal Agent”) that would represent the interests of all investors in the trust, subject to robust and continuous fiduciary duties of care and loyalty.

The resulting Deal Agent Framework, crafted and supported by many PLS Initiative participants, aims to improve RMBS transactions by ensuring that all parties to the securitization contracts fulfill their contractual obligations, and are subject to the oversight of an entity empowered with enforcement authority in the event such party determines events of non-compliance. This key new entity, the Deal Agent, would be a party to the securitization contracts, act in a fiduciary-like capacity to maximize the value of trust assets, and have the authority (either directly or through direction to the trustee) to enforce these contracts on behalf of all investors. While some of the Deal Agent’s functions were previously assigned to other entities within the trust, many investors have concluded that their interests would be best protected by entrusting the governance of the trust primarily to a party that is subject to fiduciary duties of care and loyalty.

In addition to enforcing the existing contractual responsibilities of the trust parties, the Deal Agent would be authorized to act on behalf of all investors to negotiate amendments to the securitization contracts. This would allow the trust to adapt to unforeseen events in order to protect the best interests of all investors. This is a major enhancement from current securitization structures, where the amendment process is extremely difficult and faces the

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hurdles of a special purpose vehicle that has historically been designed to be passive and is hampered by conflicts of interest and significant operational challenges posed by the requirement for bondholder voting. Various provisions were discussed to ensure that the Deal Agent performed its role in a balanced fashion.

We are publicly releasing the “Key Principles of the Deal Agent Framework” to explain the goals of the proposal, disseminate it to participants in the broader market, and solicit feedback from additional parties. The Key Principles attached should be viewed as the essential elements that Framework proponents believe are necessary for the Deal Agent construct to accomplish its intended goals:

- provide fair protections to all investors in the trust;
- allow trust parties to adapt to events not specifically contemplated in the securitization contracts;
- increase transparency into those actions.

On behalf of the Framework’s proponents, we hope that issuers and other transaction parties will consider these goals as they design new RMBS transactions. Should they incorporate the proposed Framework, we believe that many influential and impactful investors will be encouraged to re-engage in what would amount to a significantly reformed new issue U.S. RMBS market.

Thank you to Treasury for facilitating and encouraging open dialogue across many parties with sometimes diverging interests. Thank you to all the participants in the working group who have shared their deep and diverse experiences and put in countless hours of work toward the shared goal of improving and reforming the structure of RMBS. While the proposed Deal Agent Framework has been extensively debated and we believe it has gained acceptance among many active participants in the working group, particularly among investors, we do not represent that a unanimous consensus has yet been achieved. We expect the dialogue that gave rise to the proposed Framework will continue among proponents and those who are still considering or support alternative constructs.

In addition, we believe the proposed Deal Agent Framework is complementary to the efforts by Structured Finance Industry Group's RMBS 3.0 Task Force and to the fiduciary model advanced by the Association of Institutional INVESTORS. We therefore encourage RMBS 3.0 participants to evaluate the proposed Framework as they continue their work toward the goals we share.

Additional work is necessary toward the practical implementation of the Deal Agent Framework, particularly the enhancement of the underlying securitization contracts to allow the Deal Agent to perform its duties to the required standard of care and loyalty. Furthermore,

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securitization economics are impacted by factors that are beyond the control of securitization practitioners, and these challenges may delay the Framework's implementation. However, along with other proponents, we firmly believe that the eventual implementation of the proposed Deal Agent Framework is a condition necessary for meaningful, sustainable private funding returning to the U.S. RMBS market and for a gradual and responsible expansion of mortgage credit to U.S. consumers.

Sincerely,

Co-Chairs of the Deal Agent Committee¹

Alessandro Pagani
Head of Securitized Assets
Loomis Sayles & Company

James Callahan
Principal
Pentalpha Global

¹ The Deal Agent Committee refers to an informal working group of industry representatives, who have participated in a series of discussions facilitated by the US Treasury as part of its Private Label Securitization (PLS) Initiative. In facilitating discussions related to the PLS Initiative, Treasury did not and does not seek advice or recommendations for any federal government policy, decision, or activity. The proposed Deal Agent Framework and Key Principles may not represent the views of all the participants in the US Treasury's PLS Initiative.