

November 21, 2023

**BY EMAIL:** rule-comments@sec.gov

Ms. Vanessa A. Countryman  
Secretary  
US Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Release Nos. 33-11232; 34-98368; 39-2551; IC-34996; File No. S7-15-23

Dear Ms. Countryman:

We are submitting this letter in response to the request of the Securities and Exchange Commission (the “Commission”) for comments relating to its proposed rules (the “Proposed Rules”) regarding access to and management of EDGAR accounts, as set forth in Release Nos. 33-11232; 34-98368; 39-2551; IC-34996; File No. S7-15-23, dated September 13, 2023 (the “Release”). In particular, in Section III.G, the Commission posed several questions relating to the impact of the Proposed Rules on asset-backed securities (“ABS”) filers in particular. We represent a number of issuers of commercial mortgage-backed securities (“CMBS”) and appreciate this opportunity to provide input with respect to the Proposed Rules as they relate to CMBS filers.

## **1. Setup Issues for Serial Trusts**

In Question #41 of the Proposed Rules, the Commission asks: “Should new serial companies have their account administrator information automatically copied from the ABS issuer’s account administrator information, so those account administrators could access the dashboards for those serial companies? Likewise, should other information be automatically inherited by new serial companies from the ABS issuer, such as the ABS issuer’s contact information, users, and technical administrators (if any)?”

For CMBS issuers, allowing automatic inheritance by the individual serial trusts of all information from the depositor would be the most efficient approach. In CMBS, the individual issuer is a serial trust that can only act through the depositor and other appointed service providers. These serial trusts do not have their own employees distinct from the depositor, and we expect each serial trust to have the same account administrators and contact information as the depositor. We expect certain service providers for the serial trust to be appointed as

## C A D W A L A D E R

delegated entities pursuant to the securitization transaction documents, and those may vary between serial trusts. Nonetheless, we believe the most administratively convenient approach is to automatically populate the account administrators, users, technical administrators and delegated entities and allow the serial trust's account administrator to add or remove access as required.

Additionally, we request that this same inheritance process apply to existing serial trusts that are being transitioned to the new credentials. Because CMBS depositors create multiple new filers per year, and the expected time to full payoff of an SEC-registered CMBS transaction is commonly ten years, many depositors have dozens of actively reporting serial trusts, and several have more than fifty. Accordingly, the administrative burden to establish account administrators, delegated entities and users for each of the reporting entities will be meaningful. These burdens would be significantly relieved if a depositor's existing serial trusts inherited the information from the related depositor, and that depositor could then review, update and confirm the prepopulated information.

The Commission also asks: “[W]ould there be any issues associated with requiring ABS issuers to have transitioned to individual account credentials before the ABS issuer can create new serial companies?”

Updating the depositor's account credentials before creating a new serial trust would not be burdensome. However, if the depositor is unable to create a new serial trust until all of the depositor's actively reporting serial trusts have been updated, then we expect that approach to be significantly more time-consuming due to the need to prepare and confirm the information in the contemplated bulk enrollment spreadsheet. Therefore, being required to update all associated filers before forming a new serial trust could impact a registrant's ability to bring new transactions to market and impact access to the CMBS markets. Accordingly, if the Commission decides to require the depositor to have transitioned its account credentials before forming a new serial trust, we request that the Commission allow the formation of new serial trusts even if associated serial trusts have not yet transitioned their account credentials.

Additionally, we request that the EDGAR Next system allow depositors to remove and replace an account administrator, technical administrator, user or delegated entity for all serial trusts associated with a particular depositor simultaneously. We expect that account information will change over the life of a serial trust: account administrators and users may cease to be employees of the depositor and therefore need to be replaced. Being required to make individual changes for each of the related serial trusts would be inefficient, and it would be contrary to the Commission's stated goal of enabling filers to be better able to identify and manage the universe of persons authorized to submit filings through EDGAR on their behalf.

The Commission also asks: “To what extent are these concerns already addressed by the delegation function, given that delegation would allow filers to delegate the authority to file to another EDGAR account?”

The delegation function on its own somewhat ameliorates the administrative concerns but does not fully resolve them. While each serial trust could name the depositor as a delegated entity for its filings, that identification would need to be made by each serial trust individually. Even with delegation, the existing framework contemplates a number of items that can only be updated or confirmed individually for each serial trust.

## **2. Annual Confirmations for Serial Trusts**

In Question #42 of the Proposed Rules, the Commission asks: “[S]hould we allow the annual confirmations of administrators and users for an ABS issuer to also apply to the serial companies associated with that ABS issuer, if the same administrators, users, delegations, and corporate and contact information are associated with each serial company?”

We believe that such an approach is both appropriate and efficient. A CMBS depositor’s ability to engage in offerings using its registration statement on Form SF-3 is dependent on that depositor and each issuing entity previously established by the depositor having made the necessary timely filings with the Commission. Accordingly, each CMBS depositor monitors the filings of each related serial trust to ensure compliance, and it is appropriate to permit the depositor to confirm account administration and authorized filers for each serial trust. On an operational level, we do not expect individual serial trusts to have account administrators, technical administrators, users or delegated entities that are not also performing the same functions for the depositor, although the depositor may have certain additional account administrators, technical administrators, users or delegated entities who are not assigned to all of the related serial trusts. Therefore, depositor-level confirmation of its authorized parties would also encompass all individuals assigned roles with respect to each individual serial trust.

## **3. Conclusion**

Thank you for the opportunity to comment on the Proposed Rules. We look forward to improved EDGAR filer access and account management, and we hope that the Commission will consider our suggestions to reduce the administrative burden on CMBS depositors and other similarly situated ABS issuers who maintain numerous individual filer CIKs. If you have any questions regarding the foregoing, please contact Robert Kim at (212) 504-6258, David Burkholder at (704) 348-5309, Henry LaBrun at (704) 348-5149 or Greg Prindle at (212) 504-6984.

CADWALADER

Sincerely,

*Robert Kim*

*David Burkholder*  
*Henry LaBrun*

*Greg Prindle*

By: Robert Kim, David Burkholder, Henry LaBrun and Greg Prindle  
On Behalf of: Cadwalader, Wickersham & Taft LLP