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November 15, 2010

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

Re: File Number S7-24-10

Dear Ms. Murphy:

MBIA Inc., on behalf of its primary insurance subsidiaries, particularly MBIA Insurance Corp., appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC") regarding certain proposed rules under Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

As an active member of the financial guarantee insurance industry, we are aware that the Association of Financial Guaranty Insurers ("AFGI") has submitted a detailed letter for your consideration with respect to proposed rules covering disclosure of representation and warranty obligations by originators and securitizers of financial assets. We fully support and endorse the recommendations conveyed in their letter to you dated November 15, 2010, a copy of which is attached to this letter as Exhibit A.

In particular, we would strongly urge the SEC to adopt rules requiring full disclosure of demands made to date under the contractual representations and warranties governing securitizations of residential mortgages ("RMBS"). Such disclosure rules should apply, without exception, for all outstanding RMBS securities as of the date of enactment of the Dodd-Frank Act. We believe that such reporting is critical for the protection of investors and financial guarantee insurers, and that only through the enhanced disclosure and transparency that would be afforded through such reporting requirements can we expect a return of investor confidence and acceptance within the RMBS market.

We appreciate the opportunity to provide you with our thoughts on these issues and would welcome any questions you may have. We look forward to working constructively with you as the Dodd-Frank Act is implemented.

Sincerely,

Exhibit A

A▪F▪G▪I
ASSOCIATION OF FINANCIAL GUARANTY INSURERS

Unconditional, Irrevocable Guaranty ®

November 15, 2010

VIA FEDERAL EXPRESS
VIA E-MAIL

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

Re: File Number S7-24-10

Dear Ms. Murphy:

The Association of Financial Guaranty Insurers ("AFGI") appreciates the opportunity to provide the Securities and Exchange Commission ("SEC") with its comments regarding the proposed rules under Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act as published in the Federal Register[1] (the "Proposed Rules"). AFGI is the trade association for financial guaranty insurers and reinsurers.

As described in more detail below, AFGI supports full disclosure surrounding the performance of loan-level representation and warranty ("Rep and Warranty") obligations supporting asset-backed securities ("ABS") subject to SEC disclosure requirements. Given the current turmoil surrounding performance of Rep and Warranty obligations on outstanding residential mortgage-backed securities ("RMBS"), AFGI specifically supports extending the new disclosure requirements to outstanding RMBS.[2] AFGI submits that application of the proposed disclosure requirements to outstanding RMBS is in the best interests of investors, would not place an unreasonable burden upon RMBS sponsors or other participants, and would be an important element in clarifying performance issues raised in the current financial downturn that might not resurface for many years to come if applied exclusively to sponsors of new issues.

AFGI members issue and reinsure financial guaranty insurance on a wide range of ABS, including RMBS. When residential mortgage loans are sold to an RMBS issuer, loan-level Reps and Warranties made by the seller or originator are generally made to or ultimately assigned to the RMBS trustee for the benefit of the RMBS holders. When an AFGI member provides its insurance to the RMBS trustee for the benefit of the RMBS holders, the insurer typically receives the benefit of, and relies upon, the Reps and Warranties.

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[1] 75 Fed. Reg. 62718 (October 13, 2010) (to be codified in 17 C.F.R. Parts 229, 240 and 249).

[2] Throughout this letter, we address RMBS because repurchase claims are most concentrated in those types of ABS. We believe the same principles and arguments for historical disclosure contained in this letter are also applicable to other types of ABS, such as commercial mortgage backed securities. This letter does not address the proposed Rule 17g-7 relating to proposed disclosure requirements for NRSROs, which AFGI favors.

Disclosure under the Proposed Rules should be historical and triggered upon the rules becoming final.

The Proposed Rules provide for disclosure of information relating to demands to repurchase or replace residential mortgage loans sold by the sponsor into a securitization trust for the benefit of RMBS holders, based on breaches of loan-level Reps and Warranties made or assigned to the securitization trust. The Proposed Rules contemplate that the new scope of disclosure will commence when the securitizer first offers an Exchange Act–ABS[3] or organizes and initiates an offering of Exchange Act-ABS after the effective date of the final rules (the "Final Rules") implementing the Proposed Rules as may be modified. The SEC requested comment as to whether the Proposed Rules' disclosures should be prospective only or historical.[4] AFGI urges that the Proposed Rules' disclosures should (1) be historical in the case of RMBS, for all existing securitizations of the securitizer and for new securitizations of the securitizer, whether registered or unregistered, (2) commence within a reasonable period after the effective date of the Final Rules and not be triggered by new ABS issuance, and (3) be followed by monthly updates for all existing and any new securitizations. AFGI proposes limiting the historical application of the Proposed Rules to RMBS since the current controversy surrounding Rep and Warranty obligations has largely centered upon RMBS, recognizing the burden of applying the new rules to other ABS where such application, balanced against the cost of implementation, does not seem warranted at this time. For this purpose, RMBS includes securities backed by home equity lines of credit, and other second lien and/or first lien residential mortgage loans.

Representations and Warranties

Reps and Warranties relate to the quality, characteristics, enforceability and legal compliance of the residential mortgage loans and related real property. Typically, Reps and Warranties are made or assigned to the securitization trust that holds the loans in a pool for the benefit of the RMBS holders. Reps and Warranties are breached when a mortgage loan or related real property deviates from stated criteria, which can differ by seller or originator, loan type, vintage or other attributes. Typically, a pooling and servicing agreement or other operative agreement requires that, upon discovery of a Rep and Warranty breach as to a residential mortgage loan that materially and adversely impacts a security holder's interests in the loan, notice should be given to the Rep and Warranty provider and others, and the Rep and Warranty provider should repurchase the loan at a defined purchase price or replace the loan with an

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[3] The Exchange Act—ABS reference is to asset backed securities as defined in the Securities Exchange Act of 1934, which is a broader definition than is found in Regulation AB (17 C.F.R. Part 229.1100), a subpart of Regulation S-K.

[4] Background, 75 Fed. Reg. 62723 (October 13, 2010) ("Should the disclosure requirement only be applied prospectively, i.e., disclosure would be required only with respect to repurchase demands and repurchase and replacement s beginning with Exchange Act—ABS issued after the effective date of the rule? Should disclosure only be required with respect to repurchase activity after the effective date? If so, please explain why limiting disclosure to activity regarding Exchange Act—ABS issued after the effective date would be consistent with the Act, as it specifies that the disclosure be provide by any securitizer across all trusts.").

eligible substitute loan.[5] The Proposed Rules would require identification of so-called "put-back" demands by originator name.[6] AFGI members are cognizant of the adverse impact on the value of insured RMBS caused by poor loan underwriting or faulty loan documentation, which may be reflected in claims of Rep and Warranty breaches and subsequent repurchases or replacements. Should disclosure under the Proposed Rules show that repurchase demands in an RMBS securitization are concentrated to certain originators or other Rep and Warranty providers, such information would be material to insurers in making underwriting decisions as well as investors in making investment decisions with respect to RMBS associated with such originators or providers.

Furthermore, AFGI members have observed a failure on the part of RMBS servicers that were also originators to self-report Rep and Warranty breaches,[7] and a resistance on the part of RMBS Rep and Warranty providers to repurchase or replace loans put back to them because of Rep and Warranty breaches. Application of disclosure requirements to outstanding RMBS transactions would enable investors, insurers and other market participants to (a) monitor compliance with such obligations, (b) enforce available rights and remedies with respect to such obligations, and (c) distinguish among originators and other Rep and Warranty providers on the basis of repurchase requests and their responses to such requests, all of which should, in turn, encourage RMBS servicers, trustees, sponsors and originators to comply with their Rep and Warranty-related obligations. AFGI submits that this result would be in the best interest of RMBS investors and their insurers, and would add much needed transparency to the market for RMBS.

AFGI members also desire to review disclosure of "fulfilled and unfulfilled repurchase requests" regarding Rep and Warranty breaches that have arisen and continue to arise in both currently outstanding RMBS and future issued RMBS. Just as the fulfilled and unfulfilled repurchase requests may affect the value of RMBS, the repurchase requests themselves may affect the likelihood of a claim under the insurance issued by AFGI members. Regulation AB already requires the disclosure, if material, of the impact of financial guaranty insurance

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[5] Typical RMBS pooling and servicing language: "Upon discovery by any of the parties hereto of a breach of a representation or warranty made pursuant to Section 2.03(b) that materially and adversely affects the interest of the Certificateholders or the Certificate Insurer in any Mortgage Loan, the party discovering such breach shall give prompt notice thereof to the other parties and the Certificate Insurer. The Seller herby covenants that within 90 days of the earlier of its discovery or its receipt of written notice from any party of a breach of any representation or warranty made by it pursuant to Section 2.03(b) which materially and adversely affects the interests of the Certificateholders or the Certificate Insurer in any Mortgage Loan sold by the Seller to the Trust, it shall cure such breach in all material respects, and if such breach is not so cured, shall, (i) if such 90-day period expires prior to the second anniversary of the Closing Date, remove such Mortgage Loan (a "Deleted Mortgage Loan") from the Trust Fund and substitute in its place a Qualified Substitute Mortgage Loan, in the manner and subject to the conditions set forth in this Section; or (ii) repurchase the affected Mortgage Loan or Mortgage Loans at the Purchase Price in the manner set forth below…"

[6] 75 Fed. Reg. 62735 (October 13, 2010) (to be codified at 17 C.F.R. § 240.15Ga-1(iv)) ("Disclose the name of the originator of the underlying assets (column (c)).").

[7] See note 5.

designed to ensure timely payment of RMBS.[8] Regulation AB also currently requires disclosures by issuers of Reps and Warranties in public transactions.[9] Consistent with an underlying purpose of the Securities Exchange Act of 1934 to ensure fair and honest markets,[10] disclosure of historical fulfilled and unfulfilled repurchase requests can better allow a determination of the fair valuation of currently held RMBS in the secondary market, which in turn would allow for more accurate reporting of contingent liabilities associated with insurance provided by AFGI members. Further, the analysis of disclosures of historical fulfilled and unfulfilled repurchase requests would allow market participants to identify problematic originators, and would allow AFGI members, investors and other market participants to better assess the risk associated with such originators in future transactions.

Loan-level Reps and Warranties are relied upon, including for financial guaranty insurance underwriting.

Insurance provided by AFGI members lowers the cost of issuance of RMBS, which reduces the costs of securitization, which in turn translates into lower borrowing costs for homeowners. Prior to committing to insure RMBS, AFGI members typically perform an insurance underwriting review of the proposed transaction, including ascertaining the extent to which Reps and Warranties affirm the characteristics of the underlying mortgage loans, and rely upon that information to determine the level of subordination or other credit protection needed to qualify the RMBS for insurance. Going forward, Rep and Warranty performance data is expected to be an important part of this underwriting review, just as AFGI members have used other performance data under Regulation AB, Item 1100 (General), Item 1121 (Distribution and Pool Performance Information), and other items, for the past five years.[11] Thus, the proposed disclosure of historical information regarding RMBS repurchase claims would assist AFGI members in evaluating credit risk on outstanding and proposed RMBS. Disclosure of outstanding Rep and Warranty repurchase or replacement data would assist investors and other market participants, including AFGI members, in evaluating loan origination underwriting effectiveness and loan quality trends.

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[8] Regulation AB, Item 1114(a)(1) ("To the extend material, describe the following, including a clear discussion of the manner in which each potential item is designed to affect or ensure timely payment of the asset-backed securities: (1) Any external credit enhancement designed to ensure that the asset-backed securities or pool assets will pay in accordance with their terms, such as bond insurance, letters of credit or guaranties...").

[9] Regulation AB, Item 1111(e) ("Summarize any representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction, and describe briefly the remedies available if those representations and warranties are breaches, such as repurchase obligations.").

[10] 15 U.S.C. § 78a(2).

[11] See, for example, Regulation AB, Item 1100(b) (historical delinquency and loss information), and Item 1121 (for example, distribution and pool performance information relating to amounts drawn under credit enhancements such as bond insurance, delinquency and loss information for the period, advances made or reimbursed during the period, material modifications, extensions, or waivers to pool terms, fees, penalties or payments during the distribution period).

Proposed Rules—triggering events

Under the Proposed Rules, historical information regarding required repurchases based on Rep and Warranty breaches would be disclosed after finalization of the rules in one of two ways:

(1) (a) A securitizer is required to file Form ABS-15G at the time a securitizer first offers an Exchange Act-ABS or organizes and initiates an offering of Exchange Act-ABS, registered or unregistered, after the effective date of the proposed rules, as adopted. Disclosure under Form ABS-15G would be limited to the last five years of activity immediately preceding the initial filing as of the end of the preceding month; and

(b) a securitizer is required to file Form ABS-15G monthly with updated information on EDGAR within 15 days of the end of each calendar month, so long as the securitizer has ABS outstanding and held by non-affiliates; and

(2) (a) to the extent that the underlying transaction agreements contain a covenant to repurchase or replace an underlying asset for a Rep and Warranty breach, the issuer is required to disclose in a prospectus both the sponsor's Rep and Warranty repurchase and replacement history, and the securitizer's CIK number to enable investors to locate the securitizer's Form ABS-15G filings regarding other securitizations on EDGAR; and

(b) an issuer is required to include in the Form 10-D filed regarding the assets in a particular securitization of a securitizer both (i) a reference to the Form ABS-15G filings on EDGAR for all the securitizer's securitizations, and (ii) the securitizer's CIK number to enable investors to locate the securitizer's Form ABS-15G filings regarding other securitizations on EDGAR.

Thus, while both types of securitizer disclosures under the Proposed Rules provide historical information regarding previously issued RMBS, the triggering events underlined above make such disclosure dependent upon the securitizer making a new issuance. The prospect of new issuance by many securitizers, however, appears unlikely in many cases and, in other cases, may be delayed for a long period following the effective date of the Final Rules. Holders of outstanding RMBS whose sponsors are not currently issuing new RMBS would, under the Proposed Rules, receive no disclosure of fulfilled and unfulfilled repurchase and replacement claims, at a time that Rep and Warranty repurchase claims and disputes for RMBS are increasing. On balance, we submit that the RMBS market should not be deprived of this material information during the period when such information is most material to investors as well as insurers.

Historical reporting is achievable because Regulation AB reporting is required under pooling and servicing agreements, and has been at least since 2006.

As noted above, Regulation AB already requires disclosure of Reps and Warranties of originators in RMBS transactions.[12] Since at least 2006-7, RMBS securitization pooling and servicing agreements contain requirements that one or more of the trustee, trust administrator, and servicer provide certain information required to be reported by the issuer/depositor under Regulation AB,[13] and issuers have been filing the requisite Form 10-D for RMBS securitizations. RMBS pooling and servicing agreements typically require the trustee, the servicer, or both, to process repurchase requests based on originator breaches of loan-level Reps and Warranties. Therefore, the trustee, trust administrator or servicer in a securitization should have reportable knowledge regarding past repurchase demands that it could provide to the issuer/depositor for reporting using Form 10-D. AFGI believes the mechanisms to obtain information under Regulation AB pursuant to existing pooling and servicing agreements and to provide the information to the issuer/depositor have been in place since at least 2006-7, and can be used to assist the issuer to disclose the historical repurchase information required under the Proposed Rules.

Conclusion

For the reasons set forth above, AFGI respectfully submits that the disclosure requirements under the Proposed Rules should apply to outstanding and proposed RMBS, requiring that issuers of RMBS: (1) disclose historical data under the Proposed Rules for demands for, and fulfillments and non-fulfillments of, loan repurchases and replacements based upon Rep and Warranty breaches; (2) update such disclosures on a monthly basis; and (3) begin such disclosures upon the finalization of the rules, instead of waiting for securitizers' first offerings of RMBS after finalization of the rules.

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[12] See note 9.

[13] Some pooling and servicing agreements require servicer and trustee cooperation with the depositor/issuer filings under Regulation AB, as amended, and some also have a clause like the following:

> Each of the parties acknowledges and agrees that the purpose of Sections…of this Agreement is to facilitate compliance by the Sponsor, the Master Servicer, the Securities Administrator and the Depositor with the provisions of Regulation AB promulgated by the Commission under the Exchange Act (17 C.F.R. §§ 229.1100—229.1123), as such may be amended from time to time and subject to clarification and interpretive advice as may be issued by the staff of the Commission from time to time. Therefore, each of the parties agrees that (a) the obligations of the parties hereunder shall be interpreted in such a manner as to accomplish that purpose, (b) the parties' obligations hereunder will be supplemented and modified as necessary to be consistent with any such amendments, interpretive advice or guidance, convention or consensus among active participants in the asset-backed securities markets, advice of counsel, or otherwise in respect of the requirements of Regulation AB and (c) the parties hall comply with requests made by the Master Servicer, Securities Administrator, Sponsor or the Depositor for delivery of additional or different information as the Master Servicer, Securities Administrator, Sponsor or the Depositor may determine in good faith is necessary to comply with the provisions of Regulation AB.

We appreciate this opportunity to comment on the disclosure of repurchase or replacement of loans breaching Reps and Warranties. Should you have any questions about the foregoing, please feel free to contact me at 212-339-3482 and bstern@assuredguaranty.com. My mailing address is Assured Guaranty, 31 West 52nd Street, New York, New York 10019.

Very truly yours,

ASSOCIATION OF FINANCIAL GUARANTY INSURERS

By: 

Bruce E. Stern
Chairman of Government Affairs Committee