30 Broad Street, 28th Floor
New York, NY 10004-2304
Tel 212.509.1844
Fax 212.509.1895
www.cmbs.org

July 12, 2004

By E-Mail: rule-comments@sec.gov

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549
Attention: Jonathan G. Katz, Secretary

Re: Registration, Disclosure and Reporting Requirements for Asset-Backed Securities (Release Nos. 33-8419; 34-49644; File No. S7-21-04)

Ladies and Gentlemen:

The Commercial Mortgage Securities Association (the "CMSA") is submitting this letter in response to the request of the Securities and Exchange Commission (the "Commission" or "SEC") for comments on its release (the "Release")[1] of proposed rules and forms (the "Proposed Rules") to address the registration, disclosure and reporting requirements for asset-backed securities ("ABS") under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). The CMSA appreciates the opportunity to provide its views and looks forward to working with the Commission as it moves forward with this important undertaking. We have tailored our comments below to be consistent with the articulated purposes of the Proposed Rules and to highlight what we think may be certain unintended results of the Proposed Rules for participants in the commercial mortgage-backed securities ("CMBS") markets.

I. OVERVIEW

A. General

The CMSA is an international trade organization whose mission is to improve the liquidity of commercial real estate debt securities through access to the capital markets. The CMSA represents close to 300 members, including investors in CMBS, issuers of CMBS and other organizations that provide services to the commercial mortgage origination and securitization industry. More information about the CMSA is available on the CMSA's Internet home page at http://www.cmbs.org.

[1] SEC Release Nos. 33-33-8419; 34-49644; File No. S7-21-04 (May 3, 2004).

B. Endorsement of ASF Letter and ABA Letter

Since many CMSA members are also active members of the American Securitization Forum ("ASF") and many of our members in the legal profession are also active members of the American Bar Association ("ABA"), we are familiar with the views and proposals contained in the comment letters to be submitted by the ASF and the ABA (the "ASF Letter" and the "ABA Letter," respectively) concerning the Proposed Rules. The CMSA concurs with the comments to be submitted by the ASF and the ABA and endorses their positions, in particular as to matters not addressed in this letter. In this letter, the CMSA intends to supplement the comments to be submitted by the ASF and the ABA by commenting on provisions in the Proposed Rules that are particularly pertinent to the commercial mortgage securitization industry.

C. Primary Concerns

The following is a summary of the primary concerns that the CMSA will address in this letter:

1. We are concerned with the transition periods provided in the Proposed Rules. Implementation of the proposed changes with respect to disclosure and reporting requirements in order to comply with the Proposed Rules will require significantly more time than the periods allocated in the Proposed Rules. We are particularly concerned with the application of the new rules to existing transactions, where the parties that have access to the required information (such as servicers and significant obligors) are not contractually obligated to deliver that information and no compensation has been provided for the preparation of that information. Therefore, we request that ongoing ABS transactions be grandfathered from compliance with the Proposed Rules and that the transition period for new transactions be extended, as further described in this letter.

2. We are concerned that proposed shelf eligibility requirements, when read in conjunction with the broad scope of the proposed extension of the reporting compliance requirement to the "sponsor," will create uncertainties in the marketplace that, in turn, will drive issuers to the less liquid private placement market, raise the cost of financing through CMBS and ultimately increase the cost of borrowing in the commercial mortgage market. For these reasons we ask the Commission to remove the "sponsor" from the reporting compliance requirements and to revise the shelf eligibility requirement to better reflect the way information is gathered and reported in the CMBS industry.

3. We are concerned that certain of the Proposed Rules do not reflect the practices that CMBS market participants have developed to provide CMBS investors with focused and useful disclosure and reporting that is specifically tailored for CMBS investors. We therefore ask the Commission:

- to concur with our conclusion that static pool data is not material to investors in CMBS;

- to broaden the scope of the proposed definition of "ABS Informational and Computational Materials" so that the term codifies existing market practice and the Commission's prior no-action letters; and

- to reconsider the Commission's position regarding delivery of market making prospectuses because of the existing information that is readily available to investors in the secondary market.

4. We are concerned that the reporting responsibilities contemplated by the Proposed Rules do not take into account the roles of the various parties to a CMBS transaction. We therefore request that the requirements for Form 10-K and the related attestations be revised so that responsibilities are allocated to the parties that are best equipped to ensure and enforce their performance, as we will discuss below.

II. SECURITIES ACT REGISTRATION

A. Form S-3 Eligibility – Extension of the Exchange Act Reporting Compliance Requirement to the "Sponsor"

General. Form S-3 currently requires, as a condition for eligibility, that the registrant has filed in a timely manner all reports required to be filed under Sections 12 or 15(d) of the Exchange Act during the twelve calendar months and portion of a month immediately preceding the filing of the Form S-3 registration statement. As applied to depositors who set up separate trusts for issuances of CMBS, this means that a depositor may not file a new Form S-3 registration statement unless each of the securitization trusts established by such depositor has filed, in a timely manner, all required Exchange Act reports during the preceding twelve calendar months.

The Commission's proposed changes to Form S-3 would extend the reporting compliance requirement to the "sponsor." Under proposed Form S-3, an ABS depositor would not be permitted to register additional securities on a new Form S-3 registration statement unless each of the securitization trusts established, directly or indirectly, by the depositor *or the sponsor* has filed all of the required Exchange Act reports in a timely manner during the twelve calendar months preceding the filing of the new Form S-3 registration statement.

In its comment letter, the ASF observed that extending the reporting compliance requirement to the sponsor raises a number of concerns, and we concur with all of the ASF's comments on this matter. However, some of the issues raised by the ASF have particular relevance for the CMBS industry and we have addressed these issues below.

Difficulty of Identifying the Sponsor of an S-3 Registration Statement. Under the Proposed Rules, the "sponsor" for a particular transaction is "the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity."[2] In today's CMBS market, most publicly-offered CMBS transactions include mortgage loans contributed by more than one mortgage loan originator, with some transactions including collateral from as many as seven or eight unaffiliated originators. Under such multi-seller structures, it is difficult to determine which sellers would be deemed sponsors of the related transaction.

The definition of "sponsor," when read in conjunction with proposed Form S-3, makes it impossible for most CMBS registrants to determine if they are eligible to use Form S-3. In most CMBS programs, the identities of the mortgage loan sellers (and therefore, under the proposed definition, the identity of the sponsors) can change from offering to offering and are not known at the time a registration statement is filed. It is therefore impossible to determine, at the time the Form S-3 registration statement is filed, whether the sponsor has complied with the reporting requirements of the Exchange Act, since the sponsors for the related takedowns have not yet been identified.

Multi-Business Sponsors. In addition to selling commercial mortgage loans to CMBS depositors, several major mortgage loan sellers in the CMBS industry are also providers of credit in markets other than the commercial real estate market, such as the residential mortgage market and other consumer credit markets. Such lenders rely, at least in part, on selling those other financial assets into securitization programs in order to bring liquidity to those other credit markets. In other words, the same sponsor may sell commercial mortgage loans, residential mortgage loans, auto loans and student loans to different depositor entities, affiliated and otherwise. With respect to these mortgage loan sellers, extending the reporting compliance requirement to a sponsor of a transaction creates two distinct problems.

First, in the event one securitization trust to which the sponsor sold assets fails to file a required Exchange Act report in a timely manner, the sponsor would be prohibited from participating in a new Form S-3 registration statement for *any* asset class for twelve months. We agree with the ASF that reporting violations in one business should not affect other businesses. In a large diverse financial institution, entirely different units maintain different businesses and common sponsorship only exists as a matter of convenience or, in some cases, as a result of compliance with applicable banking regulations.

Second, even if it were possible to identify each sponsor when a Form S-3 registration statement is filed, checking the reporting compliance record of each issuing entity into which a sponsor had contributed assets during the prior twelve months, as to both timeliness and substantive

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[2] It is unclear whether the Commission intended that a transaction could have more than one sponsor. In the event that the SEC did not intend for any transaction to have more than one sponsor, we endorse the changes to the definition of "sponsor" suggested in the ASF Letter.

compliance with the rules, would be practically impossible from a logistical standpoint and prohibitively expensive. One sponsor could potentially be responsible for literally hundreds of transactions involving different asset types, the filings of each of which would have to be checked before such sponsor participates in the filing of a new Form S-3 registration statement.[3]

The CMSA is concerned that the increased cost of compliance with the Proposed Rules and the attendant uncertainties the Proposed Rules impose on a sponsor's ability to execute proposed offerings will drive issuers to offer CMBS in the private placement market. A limited market for CMBS transactions will ultimately increase the yields on CMBS securities by precluding certain categories of investors from investing in CMBS. This, in turn, could raise the cost of borrowing in the commercial real estate market. During the recent slow down in the U.S. economy, the commercial real estate market served as a robust counterbalance to the uncertain performance of the stock market. Preserving the liquidity of the commercial real estate lending market is an important factor in supporting the nation's overall economy.

Use of a Currently-Effective Form S-3 Registration Statement. The commentary to the Proposed Rules indicates that the Commission proposes to codify its position that "previously established reporting obligations regarding other asset-backed securities transactions by the sponsor or the depositor must have been satisfied to maintain Form S-3 eligibility for new transactions."

Some industry participants have expressed concern that the words "new transactions" may mean that the Commission intends to restrict the use of a currently-effective Form S-3 registration statement and not merely the ability to file a new Form S-3 registration statement. These industry participants are concerned that the Commission means to require, as a condition for *each takedown*, a fully compliant reporting history for the twelve months immediately preceding the takedown for the related depositor and for each related sponsor.

However, like the ASF, we understand the Commission's reference to "new transactions" to refer to new takedowns off a *new* Form S-3 registration statement. We do not believe the Commission intends to restrict the use of a currently-effective Form S-3 registration statement. We fully endorse the ASF's arguments in favor of this interpretation.

In addition to the arguments raised by the ASF, we note that any other interpretation of proposed Form S-3, coupled with the extension of the reporting compliance requirement to the sponsor, would cause enormous disruption of the CMBS markets.

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[3] In addition, if the Commission intends to restrict the use of currently-effective Form S-3 registration statements as a result of a faulty Exchange Act reporting, these filing records would have to be checked on a monthly basis (as to both timeliness and substantive compliance)

Consider the following example:

(i) A CMBS transaction referred to in the market as "2005-C1" closes in January of 2005. The 2005-C1 transaction includes collateral from five unaffiliated mortgage loan sellers.

(ii) The party responsible for filing misses the deadline in March of 2005 for an Exchange Act filing relating to the 2005-C1 transaction.

(iii) Under the proposed definition, each of the five unaffiliated mortgage loan sellers may be a "sponsor" of the 2005-C1 transaction. Each of those mortgage loan sellers may also be a "sponsor" of any subsequent transaction into which it sells commercial mortgage loans.

(iv) If the Commission intends the reporting requirement to be a condition to use a *currently effective* Form S-3 registration statement (instead of a condition to file a *new* Form S-3 registration statement), then each of the five mortgage loan sellers would be barred from selling commercial mortgage loans (or, as discussed above, any other financial asset) into *any* public ABS transaction (via an affiliated depositor, or otherwise) until March of 2006, since each of them would have a "missed filing" on their record until that time.

(v) If any of these five mortgage loan sellers were involved in another securitization that began marketing and/or priced prior to the filing deadline in March 31, 2005, but was scheduled to close thereafter, the transaction would have to be abandoned.

This rule would require depositors and underwriters, as a due diligence matter for each takedown, to investigate the filing record of every transaction into which each mortgage loan seller had sold assets of any type during the twelve months prior to the date of the transaction, including the month of the scheduled closing. Not only would this add enormous cost to transactions (and thereby risk driving CMBS transactions out of the public capital markets) but, more significantly, it would create uncertainty during the offering period of every transaction. Since filings are made monthly by each issuing entity for the applicable Exchange Act reporting period, one could easily envision a new transaction being halted immediately prior to closing because of a defective Exchange Act filing for a prior securitization involving a common sponsor. The specter of such a disruptive event would make it very difficult for investors to commit capital to transactions, hedge positions in upcoming deals or otherwise plan their investment calendar, and would ultimately result in poorer pricing of CMBS (relative to other non-ABS securities) and, ultimately, a higher cost of financing for the real estate industry.

We do not believe that the Commission intends this draconian result. Indeed, the plain language of proposed Form S-3 itself does not support this interpretation of the Proposed Rules. However, the language of the commentary creates an ambiguity and we therefore respectfully request that the Commission clarify in the adopting release for the final ABS rules that the Commission does not intend to restrict the use of a currently effective Form S-3 registration statement as a result of a missed Exchange Act filing. We note that the Commission always has the stop-order option at its disposal if, in the case of violations that warrant this result, the Commission deems it appropriate to suspend a registrant's ability to use a currently-effective shelf registration statement.

Analysis and Proposals of the ASF and the ABA. The ASF Letter and the ABA Letter make three critical points regarding the reporting compliance requirement and Form S-3 eligibility:

> First, the ASF Letter suggests that the Commission proposes to extend the reporting compliance requirement to the sponsor in order to prevent a practice employed by depositors who lost Form S-3 eligibility because of faulty Exchange Act filings. The related parent financial institution could set up a new depositor entity (with a clean filing record) and file a new Form S-3 registration statement. Although this could be a costly and time-consuming process, this was the only option for such financial institutions who had used up their shelf capacity, other than sell their commercial mortgage loans into securitizations sponsored by unaffiliated depositors. We agree with this analysis and recognize that extending the reporting compliance requirement to the sponsor eliminates this option because the missed filing taints the sponsor's record even if a new depositor has been established. However, as we have described above, extending the reporting compliance requirement to the sponsor can also lead to ambiguous, unworkable and draconian results.
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> The ASF Letter proposes an alternative means of preventing this practice. Under the ASF's solution, when a depositor is precluded from filing a Form S-3 registration statement as a result of its failure to satisfy the reporting compliance requirement, until such time as such depositor is again eligible to file a Form S-3 registration statement, neither such depositor nor any of its affiliates[4] may file a Form S-3 registration statement to register ABS of the asset type covered by the Form S-3 registration statement under which the Exchange Act filings were missed. The ASF's proposed rule would eliminate

[4] In connection with this proposal we ask the Commission to clarify that:

(1) if a sponsor acquires a depositor that was not in compliance with Exchange Act reporting prior to the acquisition, and such acquisition is not part of a transaction designed to avoid the reporting requirements of the Exchange Act, only the acquired depositor and not the acquirer's pre-existing depositors would be ineligible to use Form S-3, and

(2) if there are affiliates of the depositor that are engaged in a pre-existing ongoing business involving securitization of the asset type covered by the Form S-3 registration statement under which the Exchange Act filings were not timely filed, and such ongoing business was not designed to avoid the reporting requirements of the Exchange Act, such affiliate should not be ineligible to use its separate Form S-3 registration statement or file a new registration Statement on Form S-3 in connection with its ongoing business.

the option of establishing the new depositor, but would not require an examination of the reporting record of one or more sponsors and thereby avoid the complexities associated therewith.

Second, given the real consequences of a missed Exchange Act filing, the ASF Letter also proposes that Form S-3 eligibility should not be lost due to delinquencies that are involuntary, immaterial, inadvertent or due to administrative error.

Third, the ABA Letter proposes that Form 12b-25 be modified to more closely reflect the Exchange Act filing process for ABS and issuers' dependence on third parties to prepare and deliver the information necessary for issuers to comply with their new Exchange Act reporting obligations.

Requested Action. We urge the Commission to adopt each of the three proposals listed above. In addition, we request that the Commission clarify in the adopting release that a failure to file an Exchange Act report in a timely manner would not restrict a depositor's ability to use a currently-effective Form S-3 registration statement.

B. Requirement for Separate Base Prospectus and Form of Prospectus Supplement for Each Country of Property Securing the Pool Assets

General. The CMSA agrees with the comment in the ABA Letter requesting that the Commission remove the proposed change to the Instructions to Form S-3 requiring that "a separate base prospectus and form of prospectus supplement also must be presented for each country of origin or country of property securing pool assets . . ." There have been many public CMBS offerings to date that have included U.S. commercial mortgage loans together with mortgage loans secured by properties located in Canada, Mexico or Puerto Rico. The prospectus supplements for these offerings disclosed the information material to investments in those foreign countries. The proposed instruction, as written, would preclude these types of CMBS offerings from being issued publicly because a single base prospectus covering mortgage loans secured by properties in multiple countries would not be permitted. The CMSA does not believe that this proposal will provide any benefit to investors. Instead, investors interested in CMBS offerings backed by mortgage loans secured by properties located in different countries will be forced into the Rule 144A market.

In addition, coincident with the recent global expansion of the CMBS market, many European issuers have offered CMBS backed by mortgage loans secured by properties located in multiple European countries. Limiting the ability of U.S. CMBS issuers to publicly offer CMBS backed by mortgage loans secured by properties located in multiple countries would put the U.S. CMBS market at a competitive disadvantage relative to its counterparts overseas.

The level of disclosure for any of these offerings would not be affected by removing the proposed addition to the Instructions to Form S-3. As is the case with similar offerings today, the prospectus supplement for such an offering would describe the material aspects of a loan secured by a property in a non-U.S. country no less completely or effectively than had such disclosure been included in the base prospectus at the time of registration. Other than potential differences in applicable laws, there is no reason to distinguish between loans secured by non-U.S. rather than U.S. commercial properties. Each loan is an income producing obligation, fully secured by commercial real estate. Just as domestic CMBS disclosure documents describe the unique features of the laws of different states containing significant concentrations of mortgaged properties, to the extent an asset pool contains a significant concentration of properties located in a particular country outside the U.S., the related prospectus supplement would highlight the unique features of applicable local law in that country.

Requested Action. Accordingly, we request that the Commission remove the proposed change to the Instructions to Form S-3 requiring that "a separate base prospectus and form of prospectus supplement also must be presented for each country of origin or country of property securing pool assets."

In the alternative, if the Commission elects not to revise the proposed Instructions to Form S-3, the CMSA requests that (i) the Commission clarify that U.S. territories, such as Puerto Rico, Guam and the U.S. Virgin Islands, are considered part of the United States for the purposes of the Proposed Rules and (ii) the Commission provide an exception for asset pools where less than 10% of the mortgage loans (based on initial principal balance) are secured by properties in a particular foreign jurisdiction as of the date such assets were contributed to the asset pool.

III. DISCLOSURE

A. Static Pool Data

General. One of the most significant elements of the Proposed Rules is the new requirement that registrants include in ABS prospectuses, to the extent material, disclosure concerning the delinquency and loss experience of static pools of periodic originations and/or purchases by the sponsor of assets of the type to be securitized for, generally speaking, the previous three fiscal years. The Proposed Rules would also require disclosure of such information, if material, on a pool level basis with respect to prior securitized pools involving the same asset type established by the sponsor during this period. In addition, to the extent material, disclosure would be required for delinquency and loss information regarding the asset pool, on a static pool basis.

We believe that the new requirement, as written, would make compliance by issuers of certain types of ABS difficult and expensive. For that reason, we endorse the suggestions made with regard to static pool data in the ABA Letter, as such changes would relate to classes of ABS where static pool data provides material disclosure. With regard to the types of CMBS that are most commonly sold in SEC-registered offerings, it is the position of the CMSA that static pool data is not material to investors in making their investment decisions and could, in fact, be misleading.

Investor Reaction. We understand that the new requirement for disclosure of material static pool data has been proposed, in part, in response to concerns raised by ABS investors. However, investors participating in ABS industry panels have distinguished among different varieties of ABS with regard to the usefulness of static pool data. The underlying theme of investor comments has been that the greater the ability of investors to evaluate the assets to be included in an ABS transaction, the less the need for static pool data. Investors indicated that the greatest need for static pool disclosure is in "master trust" transactions with revolving pool structures, followed by ABS transactions containing large numbers of relatively homogenous assets. Participating investors indicated a high level of satisfaction with current disclosure practices in CMBS offerings and did not indicate that the addition of static pool data would add to their ability to make informed investment decisions in such securities. We believe this high level of satisfaction is, in part, attributable to the efforts of the CMSA to work with its members from the CMBS investor, issuer, underwriter, servicer and trustee communities to improve investor reporting and disclosure on CMBS transactions. This has lead some members of the ABS investing community to refer to CMBS disclosure as "best-in-class" among the different ABS asset classes.

The following is a discussion of the factors that distinguish CMBS from certain other types of ABS regarding the materiality of static pool data.

Non-homogenous Pool Assets. While CMBS transactions share many structural features with other types of ABS, the heterogeneous nature of commercial mortgage loans provides an important distinction between CMBS and many of the other common types of SEC-registered ABS. Investors in ABS transactions backed by large pools of relatively homogenous assets or by revolving pools of homogenous assets do not have the ability to assess the individual credit quality of the underlying assets nor do investors find it necessary to perform such assessments because of the actuarial nature of the risks present in those transactions. CMBS transactions, by contrast, typically contain fewer and larger assets, making it possible for CMBS issuers to disclose much more detailed information about each individual pooled asset. CMBS investors have the opportunity to evaluate the most important features of each individual underlying asset, whereas investors in other types of ABS must rely on their assessment of a sponsor's ability to originate high-quality assets as a means to judge the credit quality of the assets included in a particular ABS transaction. Static pool data, if disclosed, would be used primarily as a gauge of the quality of a sponsor's origination program. Since CMBS investors rely on a much more direct approach for evaluating the credit quality of pool assets, the static pool data is of much less relevance to CMBS investors and does not constitute material disclosure for CMBS transactions. Also, because of the highly heterogeneous nature of the assets in most CMBS transactions, it would be difficult, if not impossible, to provide static pool information for prior securitized pools involving "the same asset type" since even with a similar type of commercial property (*e.g.*, hotels or office buildings) the details of the properties and loans may be materially different such that information on those prior securitized pools may be immaterial or potentially misleading to investors in any other transaction.

Commercial Mortgage Loans are Secured By Income Producing Assets. Credit underwriting for commercial mortgage loans differs fundamentally from credit underwriting for financial assets used to provide consumer credit (*e.g.*, residential mortgage loans, auto loans, credit card receivables). Credit decisions with respect to secured consumer credit receivables are made based on the creditworthiness of the borrower as well as the value of the collateral. Credit decisions with respect to unsecured consumer credit receivables are made based primarily on the creditworthiness of the borrower, since there is no collateral to evaluate. With these types of financial assets, it is the borrower's income that is expected to service the debt, rather than income from any collateral. By contrast, debt service on most commercial mortgage loans is expected to be paid from income produced by the collateral property, and credit decisions are therefore made primarily by evaluating the actual or potential income of the property as well as the value of the property. Most borrowers under the loans in a CMBS transaction are special purpose entities and the loans are non-recourse to those borrowers so that the borrowers' credit quality is almost entirely irrelevant. Evaluation of a commercial real estate project is not unlike evaluation of other types of commercial ventures. What is the likelihood that the venture will produce strong, steady income? What is its cost structure? What foreseeable events could disrupt income or increase costs? Summary financial information regarding each property is also disclosed to investors in CMBS offerings for their use in evaluating investments in such securities. For example, it is typical in publicly offered CMBS transactions to disclose the net operating income and underwritten net cashflow of the property (or group of properties) securing each underlying mortgage loan.[5] In addition, CMBS investors are given information to help them evaluate the likelihood of the continued performance of the properties, such as property type, location, age of property, information about the largest tenants of the property (much of which information would be presented as Tabular Disclosure as described below under "Disclosure of Certain Information Regarding Individual Commercial Mortgage Loans") as well as general disclosure about the risk factors for investing in properties of the types included in the pools. Other types of ABS transactions do not have as comprehensive disclosure because there is no analogous information collected or evaluated in the credit process.

Inclusion of Static Pool Data Could be Misleading. In view of the heterogeneous nature of commercial mortgage loans, the relatively higher asset concentration in CMBS transactions and the ability of CMBS investors to evaluate commercial mortgage loans in a manner similar to an evaluation of operating companies, we are concerned that the inclusion of static pool data in CMBS prospectuses may not only be immaterial, but may actually be misleading to investors. While static pool data may be relevant to investment decisions that rely on actuarial data, investments decisions regarding CMBS are based on the individual pool assets. Encouraging investors to focus on a sponsor's prior origination experience in a context where so much more

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[5] See the portion of our letter entitled "Significant Obligor Financial Statements" below for a discussion of disclosure practices regarding mortgage loans constituting significant portions of CMBS asset pools.

probative disclosure is available may cause investors to improperly substitute reliance on the sponsor's track record for an independent evaluation by such investor of information that is much more directly relevant to the investment decision at hand. Imagine if the prospectus for an initial public offering of an operating company encouraged investors to focus on the performance of securities issued by other companies in the same market sector, rather than on the prospects and management of the company actually being offered. That could cause some investors to invest based on a hot market rather than on a real analysis of the company being offered. We are concerned that disclosure of static pool information concerning the strong performance of loans originated in the past by a particular sponsor could have a similar potential to mislead investors in a market where much more probative disclosure is available to help them make their investment decisions.

Requested Action. In light of the foregoing factors, the CMSA requests that the Commission acknowledge in the adopting release for the Proposed Rules that static pool information, though material and helpful to investors in certain types of ABS, may not be material for other types of ABS, perhaps citing CMBS as an example. In addition, we request that the adopting release caution issuers against including such disclosure in transactions where the disclosure may be immaterial and where such disclosure may be misleading or may encourage investors not to fully evaluate available disclosure that is more probative of the credit quality of the particular investment.

B. Servicer Disclosure

General. The CMSA supports the comments and proposals regarding servicer disclosure that are in the ABA Letter and the ASF Letter. In addition to those comments, the CMSA has the following specific comments with respect to disclosure regarding primary and sub-servicers (which, as currently drafted, includes a trustee that performs bond administrative functions).

Proposed Item 1107 requires disclosure regarding primary servicers or sub-servicers that service 10% or more of the pool assets in a particular ABS transaction. CMBS trust funds generally do not have direct contractual privity with sub-servicers, and the master servicer at the trust level is generally directly liable to the trust (and accordingly, to the related security holders) for the actions taken by the sub-servicers. Therefore, disclosure regarding sub-servicers in a typical CMBS prospectus supplement is generally limited to the existence of any known sub-servicing arrangements and a brief description of the material features of such arrangements. Proposed Item 1107 would require much greater disclosure for each such sub-servicer, including describing its historical servicing experience, providing an overview of its current servicing operations and disclosing its financial condition to the extent such condition might have a material impact on its servicing of pool assets. In addition, proposed Item 1107(b) would require the sub-servicing agreement for each 10% sub-servicer to be filed as an exhibit to the issuer's registration statement.

In the context of servicing, the typical CMBS investor's primary concern is with the entity to which the trust fund has ultimate recourse. In the typical CMBS sub-servicing relationship, it is the master servicer that reviews, synthesizes and processes information and to the extent required performs advancing functions. In certain cases, the master servicer is also liable for the activities of the sub-servicer. Accordingly, increased disclosure regarding sub-servicers should not be necessary except when the sub-servicer itself has a direct contractual obligation to the trust.

In addition, in accordance with our comments below to the definition of the term "servicer," as defined in proposed Item 1101(j), we respectfully submit that the disclosure information required by Item 1107 is not material to the roles generally performed by a trustee and would provide no significant benefit to investors.

Requested Action. In light of the foregoing, we request that the Commission adopt the proposals enunciated in the ABA Letter and the ASF Letter, including the proposal to limit servicer disclosure to servicers that maintain direct contractual responsibility to the related ABS trust fund. We also request clarification that with respect to those servicers for which disclosure is required, the percentage threshold relates to the aggregate principal balance of pool assets as of the cut-off date for the initial issuance of the related securities, and that the "detailed discussion" of servicing procedures required by proposed Item 1107(a)(2) be expressly limited to *material* details.

In addition, consistent with our comments in the following paragraphs, we request that trustees that do not actively service pool assets be excluded from the disclosure requirements of proposed Item 1107.

C. Trustee Disclosure

General. There are different levels of responsibility that a trustee can assume in a CMBS transaction. These roles are defined within the governing documents of a transaction. A trustee is neither directed nor expected to perform any roles not specifically outlined in the governing documents. Roles customarily assumed by the trustee, or performed on behalf of the trustee in CMBS transactions, include:

1) Bond Administrator – As bond administrator, the trustee performs calculations of security payments (*i.e.* calculation agent) based upon the deal structure and the available cash and prepares distribution date reports along with REMIC tax reports and filings to the SEC. By contractual design, reasonable reliance is placed upon information provided by the servicer or master servicer regarding the loan or receivable payments and the current status of such loans or receivables. The trustee is under no obligation to perform any review of the servicer or master servicer.

2) Trust Administrator – As trust administrator, the trustee has the responsibility to monitor compliance with respect to the transaction documents. No fiduciary responsibility is assumed and reasonable reliance of the compliance information received from the transaction parties is provided.

3) Trust Fiduciary – As trust fiduciary, the trustee is obligated to perform the fiduciary role of protecting the investors by ensuring that all contractual obligations defined in the Indenture, Pooling and Servicing Agreement, and other security documents, are adhered to. Ensuring such compliance generally does not require detailed review, but rather the trustee is permitted to reasonably rely upon the assertions and notices received from the transaction parties.

4) Paying Agent – As paying agent, the trustee receives funds from the servicer(s), which are then distributed to bondholders and other transaction parties. The paying agent is authorized to distribute payments as directed by the servicer, bond administrator, trust administrator or such other contractually obligated parties.

5) Registrar – As registrar, the trustee is responsible for completing bond transfers, as well as recording and tracking the owners of the bonds or notes.

6) Back-up Servicer – As back-up servicer, the trustee's role is to facilitate transfer of the servicing responsibilities to the new servicer per the terms of the transaction documents.

The duties of a trustee in any particular transaction can be any one or combination of the above roles.

The definition of the term "servicer," as proposed in 1101(j), includes "any person responsible for the management or collection of the pool assets or making allocations or distributions to holders of the asset-backed securities." As drafted, this definition would treat trustees that perform bond calculations and distributions to investors as "servicers."

We endorse the ASF's suggested changes to the definition of the term "servicer" as well as the proposal by the ASF to move the elements that relate to bond administration into a separate definition and to reduce the level of background information and other information required for trustees that are not responsible for servicing pool assets. The appropriate disclosure items for trustees that are not involved in the actual servicing of the pool assets are the items in proposed Item 1108.

Requested Action. In light of the foregoing, we request that the Commission adopt a definition of trustee, as proposed by the ASF, that acknowledges the various roles of trustees in securitization transactions and distinguishes between trustees that have certain responsibilities to security holders and owner trustees that typically do not have any meaningful responsibilities to securityholders. The definition of "servicer" should explicitly carve-out trustees to the extent that they are only performing the core trustee functions and are not otherwise acting as a servicer with respect to the pool assets.

D. Disclosure of Certain Information Regarding Individual Commercial Mortgage Loans

General. Proposed Item 1110(b)(9) requires for any CMBS transaction, to the extent material, disclosure of a list of enumerated characteristics of each commercial mortgage loan included in the related asset pool. As set forth below in greater detail, certain items in the list, while appropriate to disclose with regard to the most significant loans in the pool, simply are too detailed to be provided for the smaller loans in a CMBS transaction.

As described above under “Static Pool Data,” the typical CMBS prospectus supplement includes extensive information regarding each commercial mortgage loan included in the pool, often provided in tabular fashion as an appendix to the prospectus supplement. In addition to such tabular information (“Tabular Disclosure”), a typical CMBS prospectus supplement will also include more detailed narrative disclosure regarding the largest commercial mortgage loans in the pool, which would certainly include any loan constituting more than 10% of the pool.

The Tabular Disclosure usually includes information that generally corresponds to the characteristics listed in proposed Item 1110(b)(9), including (i) the location and present use of each mortgaged property, (ii) the net operating income for each mortgaged property, (iii) the net cash flow for each mortgaged property, (iv) the current occupancy rate for each mortgaged property, and (v) the identity, square feet occupied by and the lease expiration dates for the three largest tenants at each mortgaged property. In addition, the narrative portion of each prospectus supplement typically sets forth the nature and amount of all other material mortgages, liens or encumbrances against each mortgaged property. Under current practice, the other characteristics listed in proposed Item 1110(b)(9) are generally provided in a narrative format with respect to the largest loans in the pool. Such information includes descriptions of proposed renovations and improvements, description of general competitive conditions, description of management of the properties, principal businesses carried on and full rent-roll information (“Narrative Disclosure”). Such information is not readily discloseable in tabular format and is not typically disclosed concerning the smaller loans in a CMBS asset pool.

Publicly-offered CMBS transactions often include from 150 to 300 commercial mortgage loans, with balances ranging from $75,000,000 and higher to $1,000,000 and lower. Given the large number of commercial mortgage loans included in a typical CMBS pool, most Narrative Disclosure is not material for all but the largest loans in the pool.

Requested Action. We recognize that under proposed 1110(b)(9), disclosure of these characteristics is only required “to the extent material.” However, we are concerned that in the absence of clear guidance from the Commission, market participants may, to avoid legal uncertainty, begin including all such information on each mortgage loan in the pool, which would result in investors being overwhelmed with the most detailed information regarding the smallest mortgage loans in the pool. We therefore request that the Commission provide more guidance regarding the application of these disclosure requirements. Specifically, we believe that inclusion of Narrative Disclosure should only be required with respect to the commercial mortgage loans that represent, by dollar value, 10% or more of the balance of the pool (as measured on the date of issuance).

E. Significant Obligor Financial Statements

General. We believe that the financial statement requirements for significant obligors set forth in the Proposed Rules are generally consistent with the positions that the Commission has taken in the past. However, there are certain inconsistencies between the requirements for obligors whose assets comprise over 10% of an asset pool but not more than 20% of such pool ("Over-10% Assets") and those for obligors whose assets comprise over 20% of an asset pool ("Over-20% Assets"). The Proposed Rules require that for Over-10% Assets, selected financial data required by Item 301 of Regulation S-K be provided. Item 301 of Regulation S-K requires for the most recent *five* fiscal years (or longer if necessary to keep the information from being misleading), the following selected financial data be provided: net operating revenues; income (loss) from continuing operations (overall and per common share); total assets; long-term obligations and preferred stock; and cash dividends per common share. This requirement to provide financial data for five years or longer is greater than the requirement for Over-20% Assets. The Proposed Rules would require that for Over-20% Assets audited financial statements meeting the requirements of Regulation S-X be provided. Regulation S-X audited financial statements generally include *two* years of balance sheets (Rule 3-01) and *three* years of statements of income and cash flows (Rule 3-02). Accordingly, the requirement of five years' information for Over-10% Assets seems inconsistent with the shorter time period required for financial statements for Over-20% Assets.

In addition, with respect to Over-20% Assets, practitioners and accountants in the CMBS industry have taken the position, which Commission personnel have endorsed in discussions with practitioners, that for newly acquired properties, Rule 3-14 income statements may be used instead of Rule 3-01 and Rule 3-02 financial statements. Rule 3-14 income statements are income statements that exclude certain items "not comparable to the proposed future operations of the property," such as depreciation, income tax and mortgage interest on prior assets. By excluding such non-comparable items, Rule 3-14 income statements may provide more meaningful information than traditional financial statements. In addition, Rule 3-14 financial statements are required only for the most recent fiscal year, rather than for three years, if (i) the property is not acquired from a related party, (ii) material factors considered by the registrant in assessing the property are described in the filing (the rule gives several examples of these factors), and (iii) the registrant indicates in the filing that, after reasonable inquiry, it is not aware of any material factors that would cause the reported financial information not to be necessarily indicative of future results. Support for use of the time periods set forth in Rule 3-14 is contained in Topic 1.I of Staff Accounting Bulletin No. 103, in the answer to Question 1, which states that property financial statements should be provided for "the periods contemplated by Rule 3-14."[6]

Requested Action. Accordingly, we suggest that the time periods for the required financial information for Over-10% Assets be reduced to be consistent with the time periods for the required financial statements for Over-20% Assets. In addition, we suggest that, consistent with the practice for Over-20% Assets, the requirements for Over-10% Assets be revised for assets secured by newly acquired properties, so that the time period and type of information required is consistent with that required for Over-20% Assets secured by newly acquired properties. For example, if an asset would meet the requirements to provide only one year of Rule 3-14 income statements if that asset were an Over-20% Asset, then if that asset is an Over-10% Asset, the only information that should be required is one year's net operating income. We also note that the Commission's position permitting use of Rule 3-14 income statements for newly acquired properties with respect to Over-20% Assets should continue to apply under the new rule.

F. Credit Enhancement

General. In almost all commercial mortgage securitizations, if a borrower is delinquent in making a monthly payment, the servicer is generally required to advance that payment in order to prevent a temporary interruption in the monthly distributions to investors. In most cases, if the servicer fails to make an advance, the trustee is required to make that advance. Although proposed Item 1113(a)(2) requires disclosure regarding "[a]ny mechanisms to ensure that payments on the asset-backed securities are timely, such as liquidity facilities," we understand the Commission's proposal as not requiring disclosure of a servicer's or trustee's advancing obligations as *liquidity facilities*. Our understanding is based on our reading of proposed Item 1107(b)(4), which specifically requires a description of "the terms of any arrangements whereby the servicer is required or permitted to provide advances of funds regarding collections, cash flows or distributions." Additionally, requiring disclosure on such arrangements as liquidity facilities would introduce a redundant disclosure obligation inconsistent with the Commission's initiatives to ensure clear and concise disclosure for investors.

Requested Action. Accordingly, we request that the Commission clarify proposed Item 1113 to indicate that the term *liquidity facilities* as used in proposed Item 1113 does not apply to servicer and trustee advances.

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[6] Question 1. concerns traditional corporate issuers that have invested in real properties. The answer to question 1. notes that mortgage assets with equity characteristics are similar to an investment in real property. It adds that if a registrant has an asset that exceeds 20% of the offering amount, even if the asset does not have equity characteristics, property financial statements "for the periods contemplated by Rule 3-14" should be provided. Although Topic 1.I was not written for commercial mortgage-backed securities offerings, as stated in the Commission's release with respect to the Proposed Rules, the requirements for significant obligors were developed by "analogizing to the standards in Topic 1.I."

IV. COMMUNICATIONS DURING THE OFFERING PROCESS

A. Definition of ABS Informational and Computational Materials

General. The CMSA applauds the Commission's efforts to codify the concept of permitting the use of ABS informational and computational materials that are currently permitted under the Commission's no-action letters, as well as the Commission's initiative to streamline the conditions set forth in those no-action letters for using and filing such materials.

While the Commission has stated in the Release that it does "not intend to change the general scope of the materials that may be used," the CMSA agrees with the comment set forth in the ABA Letter that the proposed definition of "ABS informational and computational materials" is narrower than the materials currently permitted to be used under the existing no-action letters. As an example in support of this position, under the Commission's no-action letter to the Public Securities Association, dated March 9, 1995, "Structural Term Sheets" are described as providing ". . . certain factual information regarding the financial terms of an ABS offering, including the description of the structure of the securities offered (*e.g.*, the number of classes, payment priorities and *credit enhancement*), *the anticipated ratings for each class* and *other similar information relating to the proposed structure for the offering*." [emphasis added] However, under the proposed definition, ABS informational and computational material would only include "written communication consisting *solely* of one or some combination of the following: . . ." The list that follows does not specify credit enhancement, anticipated ratings for each class or other information relating to the proposed structure for the offering, such as expected tax treatment of the securities and eligibility of the securities for purchase by certain investors (*e.g.*, pension plans).

Information in a typical CMBS structural and collateral term sheet today includes: the closing date; the pricing date; the identity of the mortgage loan sellers; the identity of the underwriters; the identity of the primary, master and special servicers; the identity of the trustee, paying agent, fiscal agent and other transaction parties; a description of any credit enhancement and related credit enhancers; the anticipated ratings of the securities and identity of the rating agencies; information relating to the servicing of the loans; the expected tax treatment of the securities; and the eligibility of the securities for purchase by certain investors. Because the proposed definition uses the term "solely," the above-identified items, which are typically included in CMBS structural and collateral term sheets today, would no longer be permitted.

Requested Action. In order to achieve the intention of the Commission, as stated in the Release, of having the definition of ABS informational and computational material include "the existing structural term sheets, collateral term sheets and computational material," in addition to providing flexibility for the inclusion of new types of information that develop in the market, which investors may need in the future, the CMSA endorses the ABA's suggested change to the proposed definition of ABS informational and computational material (i.e., to permit the inclusion of "any information deemed material by the issuer or underwriter, as applicable").

Alternatively, the CMSA suggests expanding the detailed list in the proposed definition to specifically include the information that is typically included in CMBS structural and collateral term sheets but would not be permitted under the proposed definition, as described above. In addition, we believe the new definition should include a category that is flexible enough to capture new types of information that may be developed, which investors may need in the future. This would avoid numerous requests for no-action relief from the SEC when new types of information that do not fit squarely within the proposed definition are requested by investors to be included in ABS informational and computational information.

Finally, the CMSA notes that many of the structural and collateral term sheets today include photographs, maps, site plans, stacking plans and other graphic materials depicting the properties that secure the significant loans included in the CMBS transactions. The CMSA requests that the Commission clarify that such graphic materials are permitted under the definition of ABS informational and computation materials pursuant to Item 1101(a)(2), which allows for the inclusion of “descriptive factual information regarding the pool assets underlying an offering of asset-backed securities.” Such materials are particularly useful in the context of understanding a commercial property. We believe the use of these graphic materials is fully consistent with the Commission’s broader “plain English” and related initiatives to enhance the utility and accessibility of information to investors.

V. ONGOING REPORTING UNDER THE EXCHANGE ACT

A. Definition of Significant Obligor

General. Proposed Item 6 in Part II of Form 10-D and proposed Item J(2) of the General Instructions to Form 10-K require the disclosure of updated financial information for significant obligors in periodic Exchange Act Filings for ABS transactions. The definition of significant obligor refers to obligors, properties, or lessees that represent 10% or more of the asset pool, but does not specify the time as of which such 10% calculation is required to be made. It is unclear whether such calculation is to be made as of the date of issuance of the ABS, resulting in significant obligors being only those obligors judged “significant” at the time the related ABS are issued, or if the calculation must be repeated as of the date of each Exchange Act filing, which would have the result that obligors that were not significant obligors at issuance may subsequently become significant.

It is likely that only borrowers under very large commercial mortgage loans will constitute significant obligors at issuance of a CMBS transaction. However, as a result of normal amortization, prepayments and other routine events occurring subsequent to the issuance of a series of CMBS, even the smallest loan in a CMBS pool could eventually come to represent 10% of the asset pool outstanding from time to time. Indeed, the obligor of any financial asset included in any type of ABS transaction could eventually become a 10% obligor of such ABS transaction even though, at issuance, such obligor represented only a small percentage of the asset pool. This problem is particularly acute for issuers who choose not to “de-list” their transactions when they are first eligible to do so, and instead continue their Exchange Act reporting for the duration of their ABS transactions' existence, allowing more time for amortization, prepayments and other routine events to change the composition of the related ABS pool.

The borrowers under large commercial mortgage loans typically have the resources and sophistication to provide lenders with financial statements that are sufficient to allow a CMBS issuer to comply with its ongoing financial reporting requirements. Since it is predictable that such borrowers may be significant obligors in the CMBS transaction of which they will eventually become a part, typical loan documents for such large loans require such borrowers to provide sufficient financial reporting. By contrast, borrowers under smaller mortgage loans will generally have less resources and sophistication and may be unable to comply with such a financial reporting burden. If it were necessary for lenders who use CMBS as a source of funding to require such financial reporting from even small borrowers in preparation for the financial reporting requirements that may eventually apply in a CMBS transaction, then many small borrowers may be forced to seek loans from lenders that do not participate in the securitization markets. This would have the unfortunate effect of denying the efficient financing provided by the capital markets to the smallest, least sophisticated borrowers while their larger competitors enjoy those benefits. Moreover, the CMSA does not believe that disclosure of financial information for commercial mortgage loans that are too small to constitute significant obligors in the original CMBS issuance would provide any significant benefit to CMBS investors.

Requested Action. Accordingly, we request that the Commission clarify in the definition of "significant obligor" that the date of measurement of the percentage of the asset pool represented by an obligor, property or lessee is the original date of issuance of the ABS. It should not be necessary to recalculate such percentage concentration each time an Exchange Act filing is required to be made.

B. Market Making Prospectuses

General. Footnote 86 of the Release indicates that the extensive disclosure in the registration statement is required to be kept current for use in ABS market-making and remarketing transactions, either by filing of new prospectuses or filing of updated information on Form 8-K. In light of the disclosure obligations contained in the Proposed Rules and the historical practice of incorporating filed distribution date statements as described in the ABA Letter, the CMSA shares the ABA's concern with respect to footnote 86 of the Release and its potential impact on broker/dealers that are affiliated with the issuer and servicer in a particular transaction. Like the ABA, the CMSA believes that this is an appropriate occasion for the Commission to reconsider the applicability of the dealer exemption in Section 4(3) of the Securities Act, and either eliminate or modify the market-making prospectus delivery obligation with respect to ABS. While the distinction drawn by the ABA between ABS and corporate securities is applicable with respect to ABS generally, it is particularly true of CMBS given the heterogeneous nature of commercial mortgage loans discussed above. The material information relating to the issuer of CMBS is the performance and other information relating to the particular pool of commercial mortgage loans backing the CMBS. Such information is readily available to secondary market purchasers of CMBS via the distribution date statements that are already required in CMBS transactions, and that will continue to be required in enhanced form when Form 10-D is adopted. Moreover, the CMBS market in particular is one for which there currently is substantial additional loan-level asset information via the internet. Such information routinely includes current loan balances and payment status as well as further detailed information with respect to delinquent, specially serviced, modified or liquidated loans. We thus share the ABA's observation that the receipt of a market-making prospectus in today's marketplace is not viewed as significant by CMBS investors, and that the requirement to deliver a market-making prospectus imposes a competitive disadvantage and compliance burden on broker/dealers with affiliated servicers without any corresponding protection benefit for investors that is not already adequately afforded by the antifraud provisions of Exchange Act Rule 10b-5.

Requested Action. Accordingly, we endorse and urge the Commission to adopt the ABA's proposal to make the market making prospectus delivery obligation inapplicable to ABS or, in the alternative, to provide that a market-making prospectus is not required if the prospectus for the ABS discloses that (i) distribution statements containing the information required in Item 1119 or Regulation AB are available to investors free upon request and (ii) current loan level information is available on a website available to all investors.

C. Report of Compliance with Servicing Criteria and Accountant's Attestation

General. The CMSA commends the Commission's initiative to enunciate a consistent set of servicing criteria for ABS. However, the CMSA agrees with both the ABA and the ASF that the assessment report and accountant's attestation required under proposed Item 1120 is fundamentally flawed. As indicated in the ABA Letter, since the servicing function in some ABS transactions and in almost all CMBS transactions is performed by multiple third parties, which in most cases are not affiliated with the depositor, the role of "responsible party" will generally fall, by default, to the depositor. Because the depositor has no role in the servicing function and lacks the expertise to properly assess a servicer's performance, the depositor is generally in the worst position of all the parties to a transaction to provide the required assessment. The ASF Letter observes that accounting firms will not be able to issue an attestation under the AICPA's Statement of Standards for Attestation Engagements unless the responsible party is responsible for the actual compliance with the servicing criteria by all parties performing a servicing function, including the internal controls of such parties. As a practical matter, depositors will not be able to assume such responsibilities.

As an alternative to the servicer assessment regime under proposed Item 1120(2), the ABA Letter suggests an expansion of the servicer compliance statements required under proposed Item 1121 to include an assessment by the applicable servicer of that party's servicing platform in accordance with the criteria of proposed Item 1120(d). The accountants for such servicer would then deliver an attestation with respect the servicer's compliance statement. The depositor would then be required to collect all such servicer compliance statements and accountants' attestations and file them with its Form 10-K.

The proposal advanced by the ASF is very similar to the ABA's proposal except that it contemplates that the Form 10-K report would require the responsible party to either (i) confirm that it has received all of the required assessments and attestations or (ii) identify any parties that failed to deliver their required assessment or attestation.

Requested Action. The CMSA believes that adopting either such proposed alternatives would be appropriate and provide a more meaningful assessment to investors.

In addition, consistent with our comments above regarding the definition of the term "servicer" and the exclusion of the trustee from such term, we request that trustees that are not responsible for servicing pool assets should not be required to deliver an independent attestation by an accountant. Such attestation would be of little value to investors since the trustee's bond distributions are scrutinized on a monthly basis by the investors (who are primarily institutional investors) receiving such payments.

D. Additional Items Relating to Ongoing Reporting Under the Exchange Act

Although the CMSA has generally endorsed the comment letter being submitted by the ASF, the CMSA wishes to call specific attention to the following matters and emphasize its support of the ASF's positions on these items:

- In response to the Commissions request for comment on the ability to suspend filing under Section 15(d) of the Exchange Act, we strongly feel the ability to suspend filing under Section 15(d) should not be modified. [7]

- Form 10-D should be limited to the filing of periodic distribution date reports. Other events should continue to be reported on Form 8-K in accordance with current practice, except that the period within which to file such reports would be 15 days. Since CMBS transactions typically involve multiple parties, the proposed four day time period for filing Form 8-K is not practical. [8]

- The rules for filing Form 10-D should incorporate an extension mechanism comparable to Rule 12b-25. An extension of at least five business days would be appropriate. This

[7] Please see the discussion in the ASF Letter under the heading "Ongoing Reporting Under the Exchange Act—Determining the "Issuer" and Operation of Section 15(d) Reporting Obligation—Section 15(d) Reporting Obligation."

[8] Please see the discussion in the ASF Letter under the heading "Ongoing Reporting Under the Exchange Act—Distribution Reports on Proposed Form 10-D—General Comments."

extension will be particularly important for filings in transactions that require information from third parties. The rules should also provide that immaterial and inadvertent late filings should not result in the loss of Form S-3 eligibility. [9]

- The wholesale incorporation of Item 1119 of the Proposed Rules into Item I of the proposed Form 10-D goes far beyond current practice. Form 10-D should be limited to reporting what is needed to inform investors and the market of the ongoing performance of the pool assets. [10]

E. Request to Improve EDGAR Filing System

Lastly, the CMSA requests that the Commission update the EDGAR filing system to allow for a more efficient and less costly method of filing documents on EDGAR. In many cases, ABS informational and computational materials could number one hundred pages or more. While the EDGAR system now allows for HTML files, the burden on the issuer to convert those materials to HTML has not decreased. Converting these materials to HTML requires just as much time, if not more, as converting to ASCII. In light of the Commission's proposal to eliminate the ability of an issuer to file ABS informational and computational information in paper format under Rule 311 of Regulation S-T, the CMSA requests the Commission to consider updating EDGAR to allow for the filing of PDF, Word and Excel files. EDGAR is currently capable of accepting PDF files, but only as unofficial copies attached to the official file that must be in ASCII or HTML. The CMSA believes that allowing the filing of PDF, Word and Excel files as an alternative to documents converted to ASCII or HTML would result in a significant reduction in time and expenses to ABS issuers as well as allow ABS issuers to comply more easily with the filing deadlines with which such issuers must comply.

In addition, the CMSA requests that the Commission consider extending the EDGAR filing hours such that electronic transmissions made up to midnight are considered as filed on that date of transmission.

VI. TRANSITION PERIOD

General. The CMSA agrees with the position taken by the ABA and the ASF regarding the insufficiency of the transition period proposed in the Release. Although the release is in part a codification of existing practice, many of the proposals in the release will impose substantial new obligations on various industry participants, in particular by changing the way in which issuers meet their disclosure requirements under the Securities Act and their reporting requirements

[9] Please see the discussion in the ASF Letter under the heading "Ongoing Reporting Under the Exchange Act—Distribution reports on Proposed Form 10-D—Filing deadlines/extensions for Form 10-D."

[10] Please see the discussion in the ASF Letter under the heading "Ongoing Reporting Under the Exchange Act—Distribution Reports on Proposed Form 10-D—Item 1 of Form 10-D; Distribution and Pool Performance Information."

under the Exchange Act. In many cases the Proposed Rules require issuers to obtain information from third parties that are not obligated, and may not be willing, to deliver such information, such as servicers, significant obligors and significant credit enhancers. Imposing the Proposed Rules on existing transactions will not only require parties to perform services to which they have not agreed, but will also require them to do so without compensation. Since CMBS deals are structured to allocate all of the income received from the pool assets, there will be no funds available in existing transactions to compensate the parties that bear the burden of the increased obligations imposed by the Proposed Rules without short-changing investors. Even for new transactions, the amount of time necessary to implement the new disclosure, reporting and attestation regimes will be considerably longer than the period allocated in the Proposed Rules.

Requested Action. Accordingly, we concur and strongly endorse the requests of the ABA and the ASF, and ask the Commission:

(A) to exempt issuers of outstanding ABS from the reporting requirements in the Proposed Rules, which exemption should be without regard as to whether a prospectus delivery requirement exists after the effective date of the new rules;

(B) to extend the transition period for take-downs off existing shelf registration statements to two years after the effective date of the new rules; and

(C) to extend the transition period for new registration statements to twelve months after the effective date of the new rules.

We hope that these comments are helpful to the Commission and its staff. The CMSA would be happy to respond to any questions regarding any of the points raised in this letter.

Very truly yours,

Dottie Cunningham
Chief Executive Officer