



**AMERICAN SECURITIZATION FORUM
ASF PROJECT RESTART™
ASF MODEL RMBS REPURCHASE PRINCIPLES RELEASE
AUGUST 30, 2011**

The American Securitization Forum¹ (“ASF”) supports efforts to align the incentives of issuers and originators with investors of residential mortgage-backed securities (“RMBS”) and we believe these incentives should encourage the application of sound underwriting standards by both the originator and securitizer in connection with the mortgage loans that are securitized. ASF began the process to better align incentives and information among securitization participants over three years ago, when we launched our Project on Residential Securitization Transparency and Reporting (“ASF Project RESTART”),² which is an industry-developed initiative to help rebuild investor confidence in RMBS. As part of this effort, ASF developed and finalized loan-level disclosure and reporting packages (the “ASF RMBS Disclosure and Reporting Packages”) that have since been proposed by the Securities and Exchange Commission through Regulation AB II,³ as well as a set of model representations and warranties (the “ASF RMBS Model Reqs”) aimed at infusing transparency and comparability across securitization transactions. Today, ASF releases a model set of RMBS repurchase principles (the “ASF Model RMBS Repurchase Principles”) for investigating, resolving and enforcing remedies with respect to representations and warranties in RMBS transactions involving newly originated mortgage loans. The ASF Model RMBS Repurchase Principles appended to this release have been developed by our broad membership and represent a consensus recommendation by, in particular, our RMBS issuer and investor members for future transactions.

As part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), Congress also decided to address alignment of incentives, but opted to employ credit risk retention and assign a team of regulators with the difficult task of implementing regulations that attempt to create more “skin in the game,” but still permit appropriate access to credit. While ASF believes that appropriately developed risk retention rules can aid in achieving an appropriate alignment of incentives, we believe that the rules proposed by the regulators (the “Proposed Risk Retention Rules”) ⁴ are not sufficiently tailored to the various asset classes that are securitized and will likely cause a host of negative unintended consequences.⁵ Instead, ASF

¹ The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com.

² For more information on ASF Project RESTART, see <http://www.americansecuritization.com/restart>.

³ Regulation AB II effectively responds to the disclosure mandate of Section 942 of Dodd-Frank.

⁴ See <http://www.sec.gov/rules/proposed/2011/34-64148.pdf>.

⁵ Our comprehensive comment letter, dated June 10, 2011, addressing the Proposed Risk Retention Rules can be found at http://www.americansecuritization.com/uploadedFiles/ASF_Risk_Retention_Comment_Letter.pdf and our supplemental

continues to advocate that “skin in the game” for originators and issuers of RMBS would be better implemented through appropriate representations and warranties that issuers provide with respect to securitized loans coupled with an effective repurchase framework that is consistent with our ASF Model RMBS Repurchase Principles.

Without exception, our originator, issuer and investor members view appropriate representations and warranties and effective enforcement provisions as significant risk retention for RMBS transactions. In fact, ASF believes that risk retained through representations and warranties results in an even greater amount of skin in the game than the 5% risk retention mandated by Dodd-Frank because a repurchase is for 100% of the loan’s unpaid principal balance. Furthermore, the principal goal of any risk retention initiative should be to establish and reinforce commercial incentives for originators and issuers to create and fund mortgage loans that conform to stated underwriting standards and other securitization eligibility criteria, thereby making those parties economically responsible for the stated attributes and underwriting quality of securitized loans. Our RMBS issuer and investor members strongly agree that the ASF Model RMBS Repurchase Principles effectively achieve that goal, and in a more direct manner than the Proposed Risk Retention Rules.

Appropriate “skin in the game” for securitization transactions begins with representations and warranties, which are used to allocate the origination risk of mortgage loans between the issuers of the securities and the investors who purchase them. The allocation of origination risks begins when a mortgage loan is sold by an originator for inclusion in a securitization trust. This sale is accompanied by representations and warranties regarding the mortgage loans being sold, including representations and warranties relating to the mortgaged property securing the loan, the documentation for the loan, the manner in which the loan was originated and its compliance with applicable law. Generally, if a loan is found to have breached the representations and warranties and such breach is sufficiently material, the loan can be “put back” or returned to the seller who is obligated to repurchase it, essentially effecting a 100% risk retention. Much like a defective product would be returned to the store from which it was sold, a materially defective mortgage loan would be returned to the issuer or other representing party through its removal from a securitization trust for the applicable repurchase price (or a qualified substitute loan, if applicable).

Many investors believe that the repurchase process set forth in most existing securitization contracts does not provide applicable parties with an adequate means to pursue a repurchase demand nor does it effectively specify mechanisms to identify breaches or resolve a question as to whether a breach occurred. For these reasons, our membership began working towards the ASF Model RMBS Repurchase Principles to delineate a consensus framework for enforcing remedies with respect to representations and warranties in RMBS transactions by, among other things, establishing the role of a new “independent reviewer” that will have access to the files of applicable mortgage loans to determine if a breach has occurred and requiring a robust mechanism for the investigation and resolution of disputes regarding breaches of transaction representations and warranties. The basic elements of the framework involve (i)

review of pool assets by an independent third party that is given access to the loan files for compliance with representations and warranties following the occurrence of an agreed-upon “review event,” (ii) recommendation by the independent third party to the securitization trustee of whether or not to demand repurchase of, or substitution for, the pool asset by the representing party and (iii) if the representing party disputes the independent third-party’s findings, submission of the dispute to a binding dispute resolution process. We believe that the ASF Model RMBS Repurchase Principles are generally consistent with the re-proposed conditions for shelf eligibility for asset-backed securities proposed by the Securities and Exchange Commission on July 27, 2011 (Release Nos. 33-9244; 34-64968).⁶ Insofar as the re-proposed conditions provide for (1) the appointment of an unaffiliated “credit risk manager” to review pool assets for compliance with transaction representations and warranties, (2) a dispute resolution mechanism involving mediation or arbitration if the obligated party does not repurchase the relevant assets after demand and a specified time for investigation and (3) a mandatory mechanism to facilitate direction of trust actions by investors, it reflects the same philosophical approach underpinning the ASF Model RMBS Repurchase Principles, although ASF intends to review the particulars of the proposals and comment as appropriate.

ASF believes that the strong third-party mechanism set forth in the ASF Model RMBS Repurchase Principles will ensure that representations and warranties in future RMBS transactions are subject to clearly defined enforcement mechanism, with the beneficial effect of causing asset originators to exercise caution in underwriting and deterring transfers of substandard assets to securitization vehicles. We recommend that all future RMBS transactions of newly-originated mortgage loans include a repurchase framework that is consistent with the ASF Model RMBS Repurchase Principles.⁷

* * * * *

⁶ See <http://www.sec.gov/rules/proposed/2011/33-9244.pdf>.

⁷ ASF is recommending the implementation of the ASF Model RMBS Repurchase Principles to help align incentives of issuers and investors in future RMBS transactions. ASF is not mandating the implementation or adoption of any recommendation contained in this release. This release should not be interpreted to create or grant any enforceable rights, including repurchase rights, to any party nor should any party read any statement contained herein as creating or granting to such party any such enforceable rights. The enforceable rights of parties to a particular transaction continue to be governed by the contracts and agreements associated with such transaction. Finally, nothing in this release should be read as any statement or acknowledgment as to the materiality of the ASF Model RMBS Repurchase Principles for securities law purposes as such materiality can only be determined on a case by case basis.

APPENDIX

ASF Model RMBS Repurchase Principles August 30, 2011

1. Going forward, each Pooling and Servicing Agreement or comparable operative document governing publicly offered residential mortgage-backed securities (“RMBS”) transactions that provides for repurchase or substitution of, or indemnification with respect to, breaches of representations and warranties regarding the mortgage loans (each, a “Pooling Agreement”) should provide for an independent reviewer (the “Independent Reviewer”) who is appointed and in place on the closing date. A free writing prospectus relating to the RMBS should disclose the identity of the Independent Reviewer and describe, in clear language, the relevant provisions of the Pooling Agreement dealing with the Independent Reviewer.
2. The Independent Reviewer should be independent of (i.e. should not control, be controlled by or be under common control with) the sponsor, depositor, trustee, master servicer and servicer of the RMBS, the party making the representations (the “Representing Party”), any investor in the RMBS, any insurer of the RMBS, or any of their affiliates, and of any entity engaged to perform due diligence in connection with the issuance of the RMBS. The Independent Reviewer should have no pecuniary interest in whether remedial action with respect to breaches of representations and warranties is required to be taken under the Pooling Agreement.
3. The Independent Reviewer should have such knowledge and experience with respect to mortgage loan origination and underwriting as is necessary to perform its review obligations under the Pooling Agreement and to satisfy the criteria of each hired rating agency rating the particular RMBS transaction and should have sufficient internal controls necessary to comply with its requirements under the Pooling Agreement and applicable law including, without limitation, all requirements of Regulation AB. The Pooling Agreement should provide for the annual delivery by the Independent Reviewer of an officer’s certificate to the effect that the Independent Reviewer continues to meet the eligibility criteria of the Pooling Agreement as of the date of the certification.
4. Within a reasonable and specified time following the occurrence of a “Review Event” specified in the Pooling Agreement, the Independent Reviewer should review each mortgage loan that either (i) was previously liquidated or became real estate owned (REO) or (ii) has become delinquent for a period specified in the Pooling Agreement but has not yet been liquidated for the purpose of determining whether a breach exists of a representation and warranty made with respect to such loan that meets the threshold for remedial action specified in the Pooling Agreement.

5. Within a reasonable and specified time following the occurrence of a Review Event, the Independent Reviewer should have access to copies of all credit files, collateral files, servicing files and of the underwriting guidelines used to originate the mortgage loans as may be required by it in order to perform its review. In order to facilitate access to such files and/or guidelines maintained by the Representing Party or another person (the “Retaining Party”) in the event of the bankruptcy or insolvency of such party, the Pooling Agreement or other operative documents governing the RMBS should provide for (i) the delivery of electronic copies of any credit files or applicable underwriting guidelines maintained by a Retaining Party to the trustee of the RMBS in connection with the issuance of the RMBS or upon the occurrence of a “credit event” (such as a ratings downgrade or other event set forth in the operative documents and disclosed in a free writing prospectus) with respect to such Retaining Party and (ii) delivery of such files or guidelines by the trustee to the Independent Reviewer in the event that such Retaining Party is the subject of, or has been discharged from its file delivery obligations by, a bankruptcy or insolvency proceeding, provided that the trustee is reimbursed from the trust’s assets for the reasonable cost of effecting such delivery.
6. A Review Event should be based on the occurrence of objective factors, which may, as appropriate to the transaction, take into consideration collateral attributes, collateral performance, transaction features and the level of pre-issuance due diligence performed on the mortgage loans. Examples of objective factors would be cumulative losses, delinquencies or average loss severity on the mortgage loans in the pool exceeding a threshold specified in the Pooling Agreement.⁸ The Pooling Agreement may provide that Review Events cease to become applicable under the circumstances specified in the Pooling Agreement, such as, for example, after a specified interval following the issuance date of the RMBS or if only a de minimis number of mortgage loans previously reviewed were found to have had breaches of representations and warranties that meet the Pooling Agreement threshold for remedial action.
7. The Independent Reviewer should, within a reasonable and specified time following its review, advise the trustee regarding whether, in its opinion, a breach of a representation or warranty has occurred that meets the threshold for remedial action specified in the Pooling Agreement, and the trustee or its agent should demand in accordance with the procedures in the Pooling Agreement that the Representing Party cure the breach or take the applicable remedial action by the end of the specified cure period. The Representing Party should be entitled to present the trustee or the Independent Reviewer with evidence rebutting such determination during the cure period. Once a loan has been reviewed by the Independent Reviewer following the occurrence of a Review Event, such loan may not be eligible for further review by the Independent Reviewer following the occurrence of any subsequent Review Event.

⁸ Our investor members believe that it is also appropriate for investors to be able to trigger a Review Event if an objective trigger proves to be ineffectual. Our issuer members believe that the inclusion of a unilateral trigger conflicts with an otherwise independent process that is defined and fixed at issuance by enabling reviews at the direction of an interested party.

8. The trustee or its agent should enforce the Representing Party's obligations and should have the authority to bring action on behalf of the trust. For example, the trustee or its agent should be required to enforce the obligation of the Representing Party (or each Retaining Party, if not the Representing Party) to deliver copies of credit files and/or underwriting guidelines to the trustee upon the occurrence of a credit event.
9. A Representing Party that disagrees with the findings of the Independent Reviewer may, if the trustee or the Independent Reviewer has not withdrawn its demand by the expiration of the cure period, request that the trustee or its agent submit the repurchase demand to a binding dispute resolution process specified in the Pooling Agreement.
10. Certificateholders having the requisite percentage of ownership specified in the Pooling Agreement should be entitled to remove the Independent Reviewer, subject to the appointment of a duly qualified successor that meets the criteria set forth in the Pooling Agreement. To facilitate the administration of such right of removal, the Pooling Agreement should provide for a mechanism maintained by the trustee to facilitate either communication among, or a vote by, beneficial owners of certificates, such as a voluntary investor registry or other mechanism. The Pooling Agreement should specify the method for selecting a successor Independent Reviewer.
11. The monthly distribution date statement delivered to holders of the RMBS should disclose the occurrence of any Review Event during the reporting period.