Bank of America

Legal Department

November 15, 2010

VIA E-MAIL: rule-comments@sec.gov

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

Re: File Number S7-24-10
Release Nos. 33-9148; 34-63029
RIN 3235-AK75
Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Murphy:

Bank of America appreciates the opportunity to submit this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments regarding its rule proposed pursuant to Section 943(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") regarding disclosure by securitizers of fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer (the "Proposed Rule").

Bank of America is actively engaged in providing credit to individual consumers, small and middle market businesses, and large corporations. We served as issuer of the first publicly registered offering of non-agency residential mortgage pass-through certificates in 1977 and continue to act as a leader in the securitization market today. By supporting lending and allowing for an efficient redeployment of capital and new credit creation, securitization brings financing to Main Street. Given our role in these markets, we understand the significant impact that the Proposed Rule would have on the securitization market and could have on the provision of credit generally in the primary consumer market.

The Proposed Rule is one of the many rules required to be adopted by the Commission related to the securitization industry under the Dodd-Frank Act. Unlike the amendments to Regulation AB under the Securities Act of 1933, as amended (the "Securities Act"), proposed by the Commission in April 2010 (the "Reg AB II Proposals"), the parameters of the Proposed Rule and the other rules required to be adopted under the Dodd-Frank Act are established by Congress. We appreciate the enormity of the task facing the Commission with respect to the rulemaking process under the Dodd-Frank Act and the fact that the Commission is limited by

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the Dodd-Frank Act in its ability to respond to comments that conflict with the reforms required by the Dodd-Frank Act.

As indicated in Bank of America's comment letter on the Reg AB II Proposals,[1] we believe that changes are needed in the securitization industry to restore investor confidence. However, we are concerned about the effect of the Proposed Rule on the securitization market. The Proposed Rule requires disclosure by a securitizer of fulfilled and unfulfilled "repurchase requests" across all trusts, on a retrospective basis, including trusts established for securitizations of separate and distinct asset classes. Absent a prescribed standard as to what constitutes a repurchase request and other clarifications discussed in this letter, we believe that such disclosure would result in dissemination of potentially misleading information that provides no meaningful basis for comparison between securitizers and is of little or no benefit to investors. Moreover, the Proposed Rule requires disclosure of information that historically has not been consistently and reliably captured. This substantially increases not merely the burden and expense but also the liability risk profile for securitizers, which would factor into their decision as to whether to use securitization to support consumer and business lending. In some cases, it may prevent a securitizer from participating in the securitization markets altogether. Thus, we are concerned that the Proposed Rule in its current form would yield no meaningful benefits to investors while exposing securitizers to unwarranted liability and unduly impeding the restoration of efficient and sustainable capital markets.

Summary of Comments on Proposed Rule

- *The rule should require reporting on credible repurchase requests only.*
  - We do not believe that the number of repurchase requests (including potentially frivolous claims) gives insight into a securitizer's record of breaches of its representations and warranties or its compliance with the related remedial provisions.
  - For transactions entered into following the effective date of the rule, a repurchase request should be subject to reporting only if such repurchase request meets the requirements prescribed in the transaction documents for submitting such a request.
- *The rule should require disclosure of repurchase requests only for transactions entered into following the effective date of the rules.*
  - Because no obligation to report repurchase requests was previously in effect, neither Bank of America nor, to our knowledge, any other securitization market

[1] See letter from Gregory A. Baer, Deputy General Counsel, Bank of America Corporation, to Elizabeth M. Murphy, Securities and Exchange Commission, dated August 2, 2010 (available at http://www.sec.gov/comments/s7-08-10/s70810-108.pdf).

participant tracked all of the data regarding fulfilled and unfulfilled repurchase requests required by the Proposed Rule.

- The differing methods that were used by securitizers and trustees to record and track repurchase demands and that would be used to assemble historical repurchase information would produce inconsistent information that would provide an inaccurate basis for comparison between securitizers.

- If reporting is required with respect to transactions that closed prior to the effective date of the rule, a repurchase request should be subject to reporting only if such repurchase request: is made by a party with standing; identifies the representation/warranty that was breached and the facts supporting the existence of the breach; and provides evidence that the harm/damage will be sufficient to trigger the repurchase obligation.

➢ *If the reporting of information regarding repurchase activity for transactions predating the effective date of the rule is retained, Section 11 liability should not apply to any information for transactions that predate the effective date of the rule.*

- Securitizers and issuers should not be subject to potential Section 11 liability for information that previously was not subject to reporting and for which there were (or are) insufficient controls in place to ensure the accuracy of such information.

- As in the case of static pool information for transactions prior to 2006, repurchase request history for transactions prior to the effective date of the rules should not be deemed to be a prospectus, part of a prospectus or part of the registration statement.

➢ *The rule should require a securitizer to report repurchase request history by asset class, not for all asset classes.*

- Disclosure for all asset classes is not meaningful and imposes obstacles to accessing credit markets.

- Reporting by asset class is consistent with Congress's intent to provide meaningful disclosure to investors.

➢ *The ongoing reporting obligation should be quarterly rather than tied to a monthly remittance cycle, and reporting should only be required if any repurchase activity has occurred.*

➢ *Greater clarity is needed with respect to the disclosure requirements under the rule, and the Commission should adopt a safe harbor under certain securities laws for the information disclosed as required by the rule.*

- *Prospectus disclosure requirements should be subject to a materiality threshold.*

- *The tabular disclosure should better track the resolution process with respect to repurchase requests.*

    - Form ABS-15G should be revised to include tabular presentation of the status of a repurchase request in the following categories: "Subject of Demand," "Repurchased or Substituted," "Rescinded," "Rejected" and "Pending Review."

- *Agency securitizations should be excluded from the rule; and the definition of securitizer in agency transactions should be clarified.*

    - Investors in securities issued or guaranteed by an agency primarily rely on the credit profile of the agency rather than the underlying assets (or related representations and warranties) when making an investment decision.

    - If agency securitizations are not excluded from the rule, the Commission should clarify that the definition of "securitizer" in securitizations by Fannie Mae and Freddie Mac refers to the agency – not the seller or sellers transferring the assets to the agency.

- *A transition period of at least 18 months from the effective date of the rule should be provided.*

    - Securitizers will require time to implement the systems for tracking and recording repurchase requests necessary to comply with the rule.

    - If the reporting obligation applies to transactions that predate the effectiveness of the rules, securitizers will need sufficient time to attempt to assemble and verify the information required under the rule, to the extent such information is available.

Comments on Proposed Rule

The rule should require reporting of credible repurchase requests only.

The Proposed Rule does not establish any criteria as to what constitutes a repurchase request. Instead, under the Proposed Rule, information regarding all repurchase requests is required to be reported. We do not believe reporting on all repurchase requests is required under Section 943 or a meaningful measure of whether a securitizer has breached its representations and warranties or has complied with the related remedial provisions in the transaction documents.

Frequently, repurchase requests are tied to portfolio performance (*i.e.* delinquencies and losses), which are driven primarily by economic conditions and by the inherent, disclosed credit risks associated with the obligors on the loans collateralizing the securities, neither of which is the subject of representations and warranties by a securitizer. Because investors seek to recoup losses as portfolio performance decreases, investor requests for repurchases increase as portfolio performance decreases, regardless of whether the decrease in performance is related to a breach of the securitizer's representations and warranties. For example, since the collapse of the residential mortgage market in 2007, many repurchase requests have been made without grounds other than delinquency in payment or higher than expected losses with respect to a loan. In many cases, investors assert breaches of representations and warranties that do not exist in the relevant transaction documents (*e.g.*, representations with respect to property value or fraud). Investors frequently make "shotgun" repurchase requests (blanket requests made in the hopes of triggering some repurchase obligation by the securitizer) in an effort to recoup credit related losses through repurchases by a securitizer. Unfounded repurchase requests provide an unreliable and potentially misleading view of a securitizer's compliance with its representations and warranties in a transaction and the related remedial provisions.[2]

The absence of specific criteria as to what constitutes a repurchase request would also lead to variations in the way different securitizers comply with the rule, thereby rendering the reporting of little to no value as a means of comparing securitizers. While additional disclosure with respect to the scope of the repurchase requests covered by the disclosure, status and resolution of repurchase requests might serve to address some of these issues, we do not believe that reporting all repurchase requests would provide investors with any meaningful, readily understandable metric for measuring underwriting deficiencies, whether a securitizer

[2] We believe this issue to be particularly acute in the case of residential mortgage-backed securitizations, where the collapse of the mortgage market and increase in delinquency and loss levels on residential mortgage loans resulted in widespread demands by investors for repurchases by securitizers. These numbers, however, do not serve to give an investor an accurate picture of a securitizer's compliance with its underwriting criteria, the extent to which it breached representations and warranties, or even its compliance with related remedial provisions. The numbers more likely reflect on the liberality or strictness of the securitizer's underwriting criteria for loans originated at that time (which, for many securitizers, has changed) and loan performance during especially poor economic conditions.

breached its representations and warranties in a manner that requires a repurchase under the relevant transaction documents, or a securitizer's compliance with related remedial provisions.

We believe repurchase activity should be reported on the basis of credible repurchase requests only. To this end, repurchase activity should be presented on the basis of a prescribed mechanism for evaluating breaches, submitting demands and enforcing repurchase obligations. An example of this is set forth in the Securities Industry and Financial Markets Association ("SIFMA") comment letter on the Reg AB II Proposals filed with the Commission on August 2, 2010.[3] SIFMA's proposal provides for third-party review of asset files, a mechanism for the review party to make demands (and for investors to request that the review party make demands) and a resolution process. However, while a third-party review may not be necessary for asset classes other than residential mortgage backed securities given the low to non-existent repurchase requests related to those asset classes, the criteria for making a repurchase request on the securitizer should be specified in the transaction documents for all asset classes, and compliance with such criteria should be the basis for determining which repurchase requests are subject to reporting.[4]

While we do not believe that repurchase activity should be reported for transactions that predate the effective date of the rule, if the Commission retains this requirement, the Commission should establish minimum criteria to determine which repurchase requests are subject to reporting as discussed below.

Disclosure requirements should only apply to transactions entered into following the effective date of the rules.

The disclosure requirements should only apply to transactions entered into following the effective date of the rules. The information for transactions that predate the effective date of the final repurchase reporting rule would necessarily be incomplete, as no transaction party is responsible for tracking and reporting investor claims or demands. Unlike static pool information, which many securitizers were able to derive from their existing servicing systems, neither Bank of America nor, to our knowledge, any other securitization market participant has an existing reporting and tracking system for all of the data regarding fulfilled and unfulfilled repurchase requests required by the Proposed Rule. The Commission's proposal to permit a securitizer to explain by means of a footnote that information regarding repurchase requests made *on a trustee* prior to the effective date of the rules is not available belies the fact that *no transaction party* is required to track and record information regarding repurchase activity.

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[3] See letter from Richard A. Dorfman, Managing Director and Head of Securitization, and Timothy W. Cameron, Esq., Managing Director, Asset Managers Group, Securities Industry and Financial Markets Association, to Securities and Exchange Commission, dated August 2, 2010, at 16-20 (available at http://www.sec.gov/comments/s7-08-10/s70810-79.pdf).

[4] We believe that reporting on the basis of prescribed criteria will also decrease the possibility of intentional manipulation of repurchase activity, either by investors or litigants seeking to leverage their position or a securitizer seeking to improve its record.

Even if the rule allows a securitizer to include a footnote explanation of past data,[5] the differing methods of recording and tracking repurchase demands and assembling information by securitizers and trustees from transactions that predate the effective date of the rule would produce inconsistent information that would be an inaccurate basis for comparison between securitizers. Additionally, requiring a securitizer to disclose information that it had no expectation would ever have to be preserved (let alone form the basis of potential Securities Act and Exchange Act liability) and for which there were (or are) insufficient controls in place to ensure accuracy of information, can be expected to impede a securitizer's efforts to access the capital markets.

While we strongly believe disclosure requirements should not apply to transactions entered into before the effective date of the rules, if the Commission retains the requirement to report on these transactions, the Commission should establish minimum criteria to determine which repurchase requests are subject to reporting. These criteria would attempt to correlate to the manner in which securitizers historically have assembled information regarding repurchase requests. As noted above, repurchase requests can be made for a variety of reasons, and in many instances, unless sufficiently substantiated, would not necessarily be recorded in a securitizer's systems. To facilitate more accurate reporting, we propose that a repurchase request should be subject to reporting only if such repurchase request: is made by a party with the right under the transaction documents to bring a claim to enforce a repurchase request; identifies the representation and warranty that was breached and the facts supporting the existence of the breach; and provides evidence that the harm suffered or damage incurred is sufficient to trigger the repurchase obligation. We believe that establishing such a reporting standard may enable a securitizer to produce information that is more accurate and, as discussed above, more useful to investors in assessing a securitizer's repurchase activity.

If the retroactive reporting obligation is retained, Section 11 liability should not apply to information required under the rule for transactions that predate the effective date of the rule.

If the Commission retains the requirement for information from transactions that predate the effectiveness of the rules, the information should not be considered to be a prospectus or part of the prospectus for the securities and should not be deemed to be part of the registration statement. As discussed above, securitizers do not have reporting and tracking systems for all of the data regarding fulfilled and unfulfilled repurchase requests required by the Proposed Rule.[6] As a result, it would be unwarranted to expose securitizers and issuers to

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[5] See footnote 6 below.

[6] Moreover, for transactions that predate the effective date of the rule, much of the information that would be required to be disclosed, particularly under the broad definition of "repurchase request" articulated by the Proposed Rule, would need to be obtained by securitizers from trustees or other transaction parties (*e.g.*, master servicers). However, the transaction documents for such transactions do not require such parties to record or report such information. As such, securitizers will not be able to obtain, in a consistent and comprehensive manner, the information required to satisfy the disclosure requirements under the Proposed Rule related to such transactions, either before or after the effective date of the rule. The text accompanying footnote 27 in the

potential Section 11 liability for mandatory disclosures, without regard to materiality, of historical information that has not previously been required to be included in a registration statement. As with Regulation AB and static pool information for transactions closed prior to 2006, if information must be disclosed for transactions that predate the effectiveness of the rules, the information should not be deemed to be a prospectus, part of a prospectus or part of the registration statement. We believe securitizers might choose not to securitize if they were exposed to potential Section 11 liability on such data, particularly if their auditors cannot express an opinion on whether disclosed repurchase data fairly reflects the data required to be reported under the Proposed Rule.

Reporting by a securitizer should be done separately by asset class.

The Proposed Rule requires a securitizer to provide repurchase information for all asset classes in which the securitizer has repurchase obligations where securities are held by non-affiliates of the securitizer. Given differences in the asset classes, any meaningful comparison of securitizers can only be done within the same asset class. We believe that requiring repurchase history to be presented by a securitizer separately by asset class would give effect to Congress's intent under Section 943 to provide meaningful information to investors. Additionally, while the definition of the term "securitizer" is not on its face limited to a securitizer with respect to a specific asset class, we believe that the usage of the term "securitizer" in other sections of the Dodd-Frank Act indicates that Congress intended that a person acting as a securitizer of one asset class is different from the person acting as the securitizer of another asset class.

Additionally, if the five year retroactive reporting obligation in the Proposed Rule is retained, data regarding certain asset classes may not be available to, or readily verifiable by, a securitizer. If reporting is required for all asset classes, this could prevent a securitizer from accessing the markets. For example, if the retroactive reporting obligation is retained, a securitizer that securitizes both auto loans and residential mortgage loans may be unable to engage in an auto loan securitization transaction if it cannot produce the required data for its residential mortgage loan securitization transactions, thereby potentially impeding securitizations in the segments of the securitization market that have successfully continued during the financial crisis.

Ongoing reporting obligations should not be tied to a monthly remittance cycle, and, after the initial filing on Form ABS-15G, reporting should only be required if any repurchase activity has occurred.

The data required to be disclosed on Form ABS-15G is not tied to a monthly remittance cycle. Instead, a securitizer's obligation to repurchase an asset can span one or more remittance periods. We recommend that the information be provided on a quarterly basis as is

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proposing release, and the Instruction to (a)(1)(v) in Rule 15Ga-1, acknowledge that this circumstance will arise but fail to recognize that this circumstance will persist even after the effective date of the rule for transactions that predate the effective date.

the case for regularly filed corporate reporting under the Exchange Act. To enable a securitizer to verify as much of the information as can practically be verified, Form ABS-15G should be due 60 days from the end of each fiscal quarter. Like static pool information required to be disclosed under Item 1105 of Regulation AB, information presented in a quarterly report should be as of a date no later than 135 days from the quarter end.

We request that the Commission specify that filing a Form ABS-15G report is not required after the initial filing on Form ABS-15G, unless repurchase activity has occurred. For transactions such as auto and credit card securitizations, where repurchase requests are infrequent, such additional reporting would not provide any meaningful information to investors.

Greater clarity is needed with respect to the disclosure requirements, and the Commission should adopt a safe harbor under certain securities laws for the information required to be disclosed as required by Rule 15Ga-1.

In the proposing release the Commission states that disclosure by a securitizer of the information required under Rule 15Ga-1 would not prevent the issuer from relying on a private placement exemption under the Securities Act. However, the Commission goes on to note that disclosure of information that is not required by the rule may jeopardize such reliance. Rule 15Ga-1 is not specific as to the scope of the information that must be provided in response to the rule, particularly if a securitizer provides information through footnotes. To address this uncertainty, the Commission should provide specific instructions in Form ABS-15G as to the information to be provided under Rule 15Ga-1 (which should include instructions that a securitizer may include in its reports on Form ABS-15G information regarding the source and nature of the information or otherwise as necessary to ensure that the required information is not misleading to investors). Absent specificity as to the information to be disclosed, there is a danger that an issuer may be found to have made a general solicitation, or, in registered transactions, that the issuer has used an illegal prospectus due to a securitizer's reports under Rule 15Ga-1. This uncertainty places issuers in an unacceptable situation. We request that the Commission clarify the Form ABS-15G requirements and that it adopt a safe harbor specifying that information provided in response to Rule 15Ga-1 will not preclude an issuer from relying on a private placement exemption and will not constitute an illegal prospectus.

Prospectus disclosure requirements should be subject to a materiality threshold.

Consistent with Securities Act and Exchange Act disclosure and reporting requirements, we believe the disclosure of historic repurchase activity required under Items 1104 and 1121 of Regulation AB should be subject to a materiality threshold. Additionally, we believe that the information presented in the prospectus should be presented in periodic increments as of a date not later than 135 days prior to the date of first use of the prospectus.

Form ABS-15G should be revised to permit more tabular presentation of claim history.

In the release regarding the Proposed Rule the Commission requests comment as to whether Form ABS-15G should be revised to require additional information, such as the date of claim, the date of repurchase, whether claims have been referred to arbitration, whether the claims are in a cure period, and the costs associated and expenses borne by each issuing entity. The Commission also asks if securitizers should be required to provide narrative disclosure of the reasons why repurchase or replacement is pending. We believe Form ABS-15G should be revised to include tabular presentation of the status of a repurchase request in the following categories: "Subject of Demand," "Repurchased or Substituted," "Rescinded," "Rejected" and "Pending Review." We believe these categories reflect the manner in which the repurchase request and resolution process works in practice and believe that investors would more easily comprehend information presented under these categories than were the information to be presented through footnotes. We do not believe that securitizers are likely to have captured other data regarding repurchase requests, and adding a requirement to do so would produce a significant amount of data of dubious value to investors.

Agency securitizations should be excluded from the rule; the definition of securitizer in agency transactions should be clarified.

We do not believe that historic repurchase history should be required for securities issued or guaranteed by Ginnie Mae, Fannie Mae or Freddie Mac (referred to as "agency transactions"). Representations and warranties in agency transactions differ from representations and warranties in non-agency transactions in that many are tailored to address specific criteria of the agency. In addition, the transaction agreements and standards and practices for exercising remedies in agency transactions are distinct from those in non-agency transactions. (For example, in certain agency transactions, the agency makes the repurchase request on the seller once the loan is removed from the transaction by the agency.) As a result, including historic repurchase activity for agency transactions together with a securitizer's other transactions may be misleading to investors in non-agency transactions. Additionally, we believe investors in securities guaranteed by an agency primarily rely on the credit profile of the agency rather than the underlying assets (or related representations and warranties) when making an investment decision. This would appear to place agency transactions outside the scope of transactions with which Congress was concerned when it adopted Section 943.

If agency securitizations are not excluded from the rule, we request that the Commission clarify the definition of "securitizer" to specify that, for securitizations by either Fannie Mae or Freddie Mac, Fannie Mae or Freddie Mac, as applicable, is the securitizer, not the seller or sellers transferring assets to Fannie Mae or Freddie Mac. We believe investors would benefit from this clarification as the historic repurchase activity would be made available by a single source, in a single filing, prepared by the party that makes the repurchase requests.

A transition period of at least 18 months from the effective date of the rule should be required.

Securitizers will require time to implement the systems for tracking and recording repurchase requests necessary to comply with the rule. If the reporting obligation applies to transactions that predate the effectiveness of the rule, securitizers will need sufficient time to attempt to assemble and verify all the information required under the rule. Accordingly, if the reporting obligation applies to transactions that predate the effectiveness of the rule, we request that the Commission adopt a transition period of at least 18 months following the effective date. A considerably shorter implementation period would be appropriate if, consistent with our views expressed in this letter, the reporting obligation applies only to transactions executed after the effective date of the rule.

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We appreciate the opportunity to comment on the Proposed Rule. If the Commission or its staff has questions regarding the comments contained herein, you may contact the undersigned at (980) 386-6669 and we would be happy to address them.

Respectfully submitted,

Kenneth L. Miller
Deputy General Counsel
Bank of America Corporation