

# U.S. Structured Finance Newsletter

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## MBA PROPOSES STANDARD PURCHASE AND SALE AGREEMENTS

On August 6, 2009, the Mortgage Bankers Association (MBA) released a request for comment on its recommendation for an industry standard purchase and sale agreement (Agreement)<sup>1</sup> which ends on September 8, 2009. The request is part of an MBA initiative to help increase liquidity and efficiency in the non-conforming residential mortgage market. It is hoped that the Agreement will become the standard form for industry participants to use voluntarily for whole loan purchases and sales, made with an eye toward potential securitization.

The Agreement standardizes the structure of mortgage sale and servicing agreements to save time and money relative to legal and business reviews of transaction documents by allowing preparers and reviewers of transaction documents to locate particular terms more easily. The Agreement also incorporates established standards of practice and best practices in the purchase and servicing of non-conforming residential mortgage loans, while carving out terms that are subject to negotiation for inclusion in a term sheet or other separate document.

DBRS believes that the proposal by the MBA to standardize purchase and sale agreements is a welcome initiative because it will promote consistency in the way transactions are executed. Additionally, the ability to easily review the documents would allow industry participants to compare the underlying terms of deals without having to read hundreds of pages to find the appropriate sections.

The MBA proposal comes on the heels of the American Securitization Forum's (ASF) Project on Residential Securitization Transparency and Reporting<sup>2</sup> ("Project RESTART" or the "Project"), an initiative aimed at restoring investor confidence in mortgage and asset-backed securities. As part of the ongoing development of the Project, the ASF has issued (1) a request for comment on its new ASF RMBS Model Representations and Warranties; and (2) the Final Release of the ASF RMBS Disclosure and Reporting Packages. The Project has been recognized by senior policymakers and market participants as a necessary industry initiative to improve the securitization process by developing commonly accepted and detailed standards for transparency, disclosure and diligence.

By increasing data and standardizing available information, institutional investors will be able to better distinguish pools of high quality loans from those of a lesser quality. The resulting differentiation will produce greater market discipline, as market forces will serve to reward originators who deliver higher quality packages of mortgage and consumer loans, while penalizing those originators who do not. In addition, the differentiation will also enable more complete and accurate valuations of existing transactions backed by these loans—a necessary condition for generating much needed secondary market liquidity.

DBRS believes the MBA Agreement proposal combined with the ASF's Project RESTART will serve to level the playing field for investors and issuers by making all of the data, documents and reps and warranties consistent throughout the industry. Further, the added transparency and stronger repurchase obligation provisions, that allow investors to enforce buybacks defective mortgages, will create strong disincentives for originators to produce loans that have features that make them unable to be securitized. All of these initiatives are very important and have already begun to rebuild investor confidence and restore capital flows to the securitization market, which has just recently seen the first RMBS securitized transaction to be rated in almost a year.<sup>3</sup>

For questions or comments, please contact Kathleen Tillwitz at [ktillwitz@dbrs.com](mailto:ktillwitz@dbrs.com).

1. <http://www.mortgagebankers.org/MBAModelLoanPurchaseAgreementProposal.htm>
2. <http://www.americansecuritization.com/restart>
3. <http://dbrs.com/research/229602/u-s-structured-finance-newsletter/rmbs-securitizations-back-on-the-horizon.pdf>