



Sample Letter Sent to Public Companies on Accounting and Disclosure Issues Related to Potential Risks and Costs Associated with Mortgage and Foreclosure-Related Activities or Exposures

In October 2010, the Division of Corporation Finance sent the following illustrative letter to certain public companies as a reminder of their disclosure obligations to consider in their upcoming Form 10-Qs and subsequent filings, in light of continued concerns about potential risks and costs associated with mortgage and foreclosure-related activities or exposures.

October 2010

Name
Chief Financial Officer
ABC Company
Address

Dear Chief Financial Officer:

The purpose of this letter is to remind you of disclosure obligations that you should consider for your upcoming Form 10-Q and subsequent filings in light of continued concerns about potential risks and costs associated with mortgage and foreclosure-related activities or exposures.

Items that should be considered include, without limitation, the impact of various representations and warranties regarding mortgages made to purchasers of the mortgages (or to purchasers of mortgage-backed securities) including to the government-sponsored entities (GSEs), private-label mortgage-backed security (MBS) investors, financial guarantors and other whole loan purchasers. While not an exhaustive list, these representations and warranties may include the following:

- ownership of the loan;
- validity of the lien securing the loan;
- the absence of delinquent taxes or liens against the property;
- the process used to select the loan for inclusion in a transaction;
- the loan's compliance with any applicable loan criteria established by the buyer, including underwriting standards;
- delivery of all required documents to the trust; and
- the loan's compliance with applicable federal, state and local laws.

In addition, we understand that some issuers are undertaking reviews

of their loan documentation and foreclosure practices, and, in some cases, have suspended foreclosures pending completion of such reviews.

Item 303 of Regulation S-K requires you to discuss, in your Management's Discussion and Analysis of your Forms 10-Q or Form 10-K, any known trends or any known demands, commitments, events or uncertainties that you reasonably expect to have a material favorable or unfavorable impact on your results of operations, liquidity, and capital resources. Item 103 of Regulation S-K requires disclosure of legal proceedings, including proceedings known to be contemplated by governmental authorities. Item 1 of Part II of Form 10-Q requires you to address legal proceedings when they first become a reportable event and in subsequent quarters when there have been material developments.

In addition, ASC Subtopic 450-20 (SFAS 5) requires you to establish accruals for litigation and other contingencies when it is probable that a loss has been incurred and the amount of the loss can be reasonably estimated. When a loss is not both probable and estimable, an accrual is not recorded, but disclosure of the contingency is required to be made when there is at least a reasonable possibility that a loss or an additional loss has been incurred. The disclosure should indicate the nature of the contingency and give an estimate of the possible loss or range of loss or state that such an estimate cannot be made. Rule 10-01(a)(5) of Regulation S-X requires the disclosure of material contingencies in interim financial statements.

As appropriate, you should provide clear and transparent disclosure regarding your obligations relating to the various representations and warranties that you made in connection with your securitization activities and whole loan sales. In addition, you should discuss any implications of any foreclosure review, including potential delays in completing foreclosures, if applicable. These disclosures should address your role as an originator, securitizer, servicer, and investor, as applicable. Depending on your circumstances, please consider the following points as you prepare your Form 10-Q and subsequent filings:

- Risks and uncertainties associated with potentially higher repurchase requests as a result of any foreclosure review process and any changes to the methodology or processes you use to estimate any repurchase reserve;
- Litigation risks and uncertainties related to any known or alleged defects in the securitization process, including any potential defects in mortgage documentation or in the assignment of the mortgages;
- Litigation risks and uncertainties related to any known or alleged breach of the pooling and servicing criteria, including any potential defects in the foreclosure process;
- Risks and uncertainties associated with any agreements or understandings, including for indemnification and settlement, with title, mortgage, and bond insurers regarding coverage;
- Potential effects of defects in the securitization process or improper application of the pooling and servicing criteria on the valuation and any possible impairment of your mortgage servicing

rights (MSR);

- Potential effects of defects in the securitization process or improper application of the pooling and servicing criteria on the recognition or impairment of servicing advances, and related effects to your liquidity; and
- Potential effects of changes in the timing of sales of loans, other real estate owned, and mortgage-backed securities resulting from such issues to your liquidity and any related effects on the valuation and impairment of these assets.

In addition, if you have established a reserve relating to representations and warranties attributable to loans that you have sold, you should consider providing a roll-forward of this reserve presenting separate amounts for increases in the reserve due to changes in estimate and new loan sales and decreases attributable to utilizations/realization of losses.

This is not an exhaustive list of the disclosures you should consider. It is your responsibility to determine the disclosures that should be provided in your particular circumstances.

Some of these issues are not limited to financial institutions that sold or securitized mortgages or mortgage-backed securities. Issuers that engage in mortgage servicing, title insurance, mortgage insurance, and other activities relating to residential mortgages should also consider the impact of these and similar issues for their disclosures.

Please contact me if you have any questions.

Sincerely,

Senior Assistant Chief Accountant