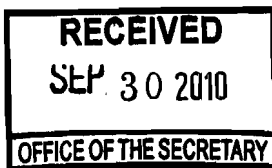




Process loans, not paperwork.™

R.K. Arnold
President & CEO



September 29, 2010

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

Re: Request for Meeting on proposed Amendments to Regulation AB Regarding
Asset-Backed Securities, File Number S7-08-10

Dear Ms. Murphy:

The purpose of this letter is to request an opportunity to meet and follow-up on concerns we have about negative mischaracterizations of the MERS MIN that have been voiced by the American Securitization Forum (ASF) in connection with Regulation AB. In advance of that meeting, MERS respectfully submits the following analysis for subsequent discussion.

Contrary to the ASF's unsupportable arguments, the MERS MIN is uniquely and ideally suited to meet the Commission's goals and the larger financial system's needs as the industry asset identifier for mortgage assets.

By contrast, the ASF's proposed system, ASF LINC™, does not and cannot serve as the unique mortgage identifier, and is inherently and intrinsically unsuited for this purpose. We know from their submission that the ASF would like the Commission to designate their numbering and tracking system as the preferred means of asset identification.¹ For the reasons detailed below, we urge the Commission to reject ASF's proposal.

KEY CONTEXT

The Commission's proposed Regulation AB will require the disclosure of disaggregated data for each individual asset that backs a security. The regulation promotes data transparency by uniquely identifying individual assets through a numbering system (like the MERS MIN) and then using that system as a means to link the assets with real time information about the assets (like FICO scores, additional debt, credit information, repayment status) so that investors have confidence in the data and understand how their assets might perform.

This identification and tracking of individual assets and related data is at the heart of the Commission's improved disclosure requirements; it is also critical to the broader efforts of regulators, the industry, and others to promote greater transparency and stability for the global financial system.

¹ Further, we request that the Commission designate the ASF Loan Identification Number Code ("ASF LINC™") as the appropriate asset identification number for securitizations backed by assets other than securities. ASF LINC™ is a unique asset identification number developed solely for use in connection with assets that may be pooled and sold in the capital markets. Unlike the MERS Mortgage Identification Number cited by the Commission, ASF LINC™ is available to originators and securitizers, without charge, and is designed for use with all asset classes, not just mortgages." (page 47 ASF submission)



MERS strongly believes that the financial industry, consumers, regulators, and the national economy would benefit by the application of standard, uniform systems of unique identification for certain assets, including but not limited to mortgages. Such a system of identification would break down data stove pipes and allow for the tracking and analysis of information regarding assets for diverse purposes and from multiple perspectives. It would be highly beneficial for applications from fraud detection to risk management.

These systems should be able to track the asset and related data for the full life of the asset, from the earliest stages of creation forward throughout its entire life; this identification should remain constant, regardless of who creates, holds or owns the asset or how that asset is associated with other financial products; and the identification systems must be widely accepted and utilized by the industries that create the assets, and must promote the easy gathering, linking, and exchanging of information.

CAPSULE ARGUMENTS AND RECOMMENDATIONS

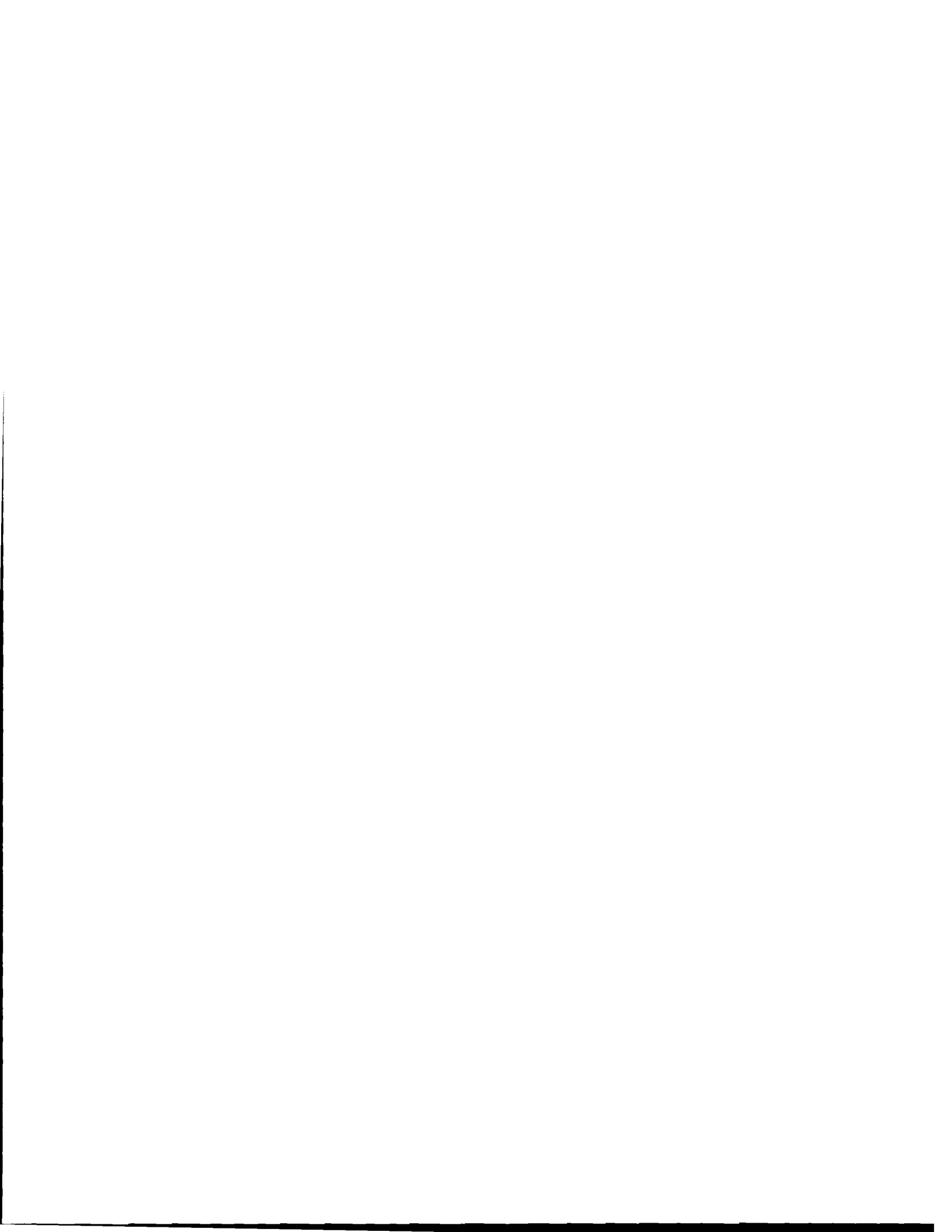
- I. It is unnecessary (and perhaps undesirable) for all types/classes of assets to use a single numbering system. Instituting a new number for the mortgage class of assets will result in unnecessary system development costs, longer lead times for compliance, and decreased transparency.
- II. Non-proprietary systems are good public policy. The ASF LINC™ is proprietary; the MERS MIN is not proprietary.
- III. Full life asset identifiers are good public policy. The MERS MIN is a full life identifier. The ASF LINC™ does not and cannot serve this purpose. Because the origination date is embedded in the number, the ASF LINC™ cannot be applied until after origination—it is a post-closing number. This works against the usefulness of the ASF LINC™ for discovering mortgage fraud and abuse that may occur in the pre-closing application and origination phases of a mortgage asset's life.
- IV. If the Commission determines that a new asset identification system is preferable for its required disclosures, mandating the inclusion of the MIN and similar full life asset identifiers will strengthen the value and integrity of the Commission's disclose requirement and is consistent with important public policy goals for investors and regulators.

I. A Single Asset Identifier For All Asset Classes Is Neither Necessary Nor Desirable

For the automotive industry, the universal identification system is the Vehicle Identification Number, or VIN, which is stamped on autos before they even leave the assembly line and stays with the vehicle for its entire life. Every automaker uses the VIN, and the VIN is incorporated into countless data systems as the standard unique identifier for vehicles.

For the mortgage finance industry, the MERS MIN fills this role. As you know from our submission, the MERS MIN grew out of an industry wide effort to establish an electronic platform for tracking of mortgages as they moved from origination through securitization. The MERS® System is well established; over 3,000 MERS members have registered more than 65 million loans on the MERS® System since its establishment in 1997. The MERS MIN has also been recognized and endorsed by the Mortgage Bankers Association as the industry standard unique asset identifier.

The ASF has asserted its belief that there needs to be a single identification number for all assets that might be covered by a Regulation AB disclosure. However, there is no basis to conclude that it is either desirable or necessary to have a single identifier for all asset classes.



As the Commission recognized in Regulation AB, assets can and do vary greatly. The industry infrastructure behind each asset class is supported by different systems and business processes.

The Mortgage Identification Number (MIN) is the industry-standard for uniquely identifying mortgage loans. The MIN is the fastest and least expensive way for the industry to meet the Commission's asset identification requirements for mortgage-back asset disclosures. The MIN is already integrated with every mortgage origination, servicing, custody and investor delivery system. It is used by virtually everyone in the mortgage industry, including those in both the primary and secondary markets. Fannie Mae, Freddie Mac and Ginnie Mae identify mortgage loans using the MIN. Several states and many municipalities rely on the MIN to locate contact information for their vacant property preservation efforts. The Federal Bureau of Investigations routinely searches the MERS® System using the MIN to investigate mortgage fraud cases. There is already a tremendous body of data that exists and is identified and linked together with the MIN. Development and implementation of a new numbering system could significantly limit the utilization of this legacy data.

The adoption of a new, different, and/or conflicting numbering system would result in greater confusion, unnecessary system development costs, longer lead times for compliance and decreased transparency by making it more difficult to track assets across multiple data and reporting systems. Likewise, other uniform identification schemes and data sets may be in place for other asset classes. Indeed, the Commission's proposal for Regulation AB suggested that for securities that rely upon a pool of other securities, the CUSIPs of the pooled securities would be the logical individual asset identifier. Adopting a single, all asset classes identification scheme is forcing a "one-size fits all" solution onto a very complex and diverse market, with few (if any) apparent benefits and many significant limitations and costs.

Given its current, extensive integration into the mortgage finance industry and the tremendous body of historical data captured in its system, the MERS MIN would seem to be the logical asset identifier for mortgage-backed securities, and would be a very helpful part of such an asset identification and disclosure regime.

II. Non-Proprietary Systems are Good Public Policy and Encourage Better Use

Likewise, ASF's assertions regarding the relative costs of the MERS MIN and the ASF LINC™ do not stand up to close scrutiny. In support of their desire for a special designation as the sole asset identification number, the ASF tout that their number would be "assigned" free of charge.² However, they don't say how their registry system would be paid for; from what is known about it, it seems most likely that they are building a proprietary tracking system that would license the down-stream use of their number, thus creating a captive revenue stream. To our knowledge, there is no publicly available information about how the ASF and Standard & Poor's intend to charge for the use of ASF LINC™, although based on Standard & Poor's administration of the CUSIP, it would likely involve a licensing fee and potentially access fees when inquiring on loan records identified by the ASF LINC™ in Standard & Poor's proprietary data base.

In contrast, the MERS fee schedule is publically available at www.mersinc.org.

² See American Securitization Forum press release, "ASF Loan Identification Number Code (ASF LINC™) for Securitized Loans Developed by ASF and Standard & Poor's FIRMS," September 24, 2009, <http://www.americansecuritization.com/story.aspx?id=3623> ("*Assigned* at no cost to issuers, the ASF LINC is stored in a central loan data repository administered by S&P FIRMS," (emphasis added)).



In essence, the ASF (with their partners at S&P) are seeking to privatize the value of the identifier and registry system. Once created, when anyone wants to directly use the identifier or access the collected data, or indirectly utilize the identifier by reference to link and track other information for legitimate purposes, they could be required to pay a fee.³ A proprietary system like this is not good public policy. It inhibits the use of the identifier and the subsequent flow and linking of information.

The MERS MIN is not a proprietary platform. Contrary to the ASF's implicit assertion, MERS does not charge any fee for generating a MIN; MERS charges a modest up-front fee of 97 cents for registering the MIN on the MERS® System. The registration process ensures the uniqueness and integrity of the MIN and also associates the MIN with property, borrower and loan level information. But once a mortgage has been registered and the MIN has been assigned, there is no additional charge for the use of that number in other contexts, other than transactional fees to update the MERS® System when the loan is sold. Similarly MERS does not charge a licensing or other fee to any software developer or publisher that wishes to incorporate MERS MIN functionality into their product. In other words, the value of the registry is not privatized into MERS, but instead remains available for the greater public to utilize in a wide range of applications.

Our concern is that there are organizations that see a financial opportunity in using the Commission's rulemaking process to supplant the existing nonproprietary MERS MIN platform, so that they can become the sole repository and seller of that information.

Implicit in ASF's comments regarding the "free vs. fee" cost of ASF LINC™ vs. MERS MIN creation is the idea that the MIN's small fee will somehow discourage or inhibit the use of the MERS® System. However, the industry-wide adoption and usage of the MERS MIN and the MERS® System reflects a very different reality. The clear, upfront and minimal cost of the MERS® System, coupled with the non-proprietary nature of the MERS MIN, has encouraged the type of widespread acceptance that is essential for an industry-standard asset identification system.

III. The ASF LINC™ Cannot Function As The Full-Life Asset Identification For Mortgages

The implementation of Regulation AB likely will create new troves of valuable information regarding countless assets. However, as we have stated previously, this information becomes exponentially more useful and valuable if it can be linked to asset data held in other data repositories. Making these links requires a unique asset identifier, and to be most effective, the asset identifier must be created at the earliest stages of asset creation. This is essential because one of the critical functions of an asset identifier is the detection of fraud and other illegal activities. For real estate, criminal activity like fraud or predatory lending generally occurs during the application and approval stages of the mortgage loan creation.

The MERS MIN is assigned at the beginning of the mortgage loan creation process. The number can be retained, with information maintained, updated and modified in the appropriate data systems, throughout the process, from earliest origination through to closing and onward for the full life of the loan. Because this historical and real-time information may be gathered and updated for the entire loan cycle, the MIN is an excellent tool for helping to detect and prevent mortgage fraud and abuse.

By contrast, the ASF LINC™ number employs "embedded logic" which incorporates information about the asset directly into the asset number itself. This is a fundamental flaw that severely limits the use of the

³ The S&P website already presents a data product built around the ASF LINC™, the Global Data Solutions U.S. RMBS Edition (see, <http://www.standardandpoors.com/products-services/GDS-RMBS/en/us>).



ASF LINC™ as the asset identification number for mortgages. One data element that ASF proposes to incorporate is the loan origination date—the date when the loan closed.⁴ As a result, this number may only be generated after the mortgage has closed. The ASF LINC™ is a post-closing number; it cannot be used to gather and track asset data before the closing, and therefore cannot be used to fight mortgage fraud and abuse.

By analogy, it would be like assigning a car's VIN only after a customer had purchased and registered the car (rather than on the assembly line at the factory), and having no way to track that car and its history until after it is sold.

We recognize that these issues—tracking of information for other applications, the prevention of mortgage fraud and abuse—may exceed the Commission's core objectives regarding asset-back securitization disclosures. However we believe that, as there is no detriment to the Commission's core criteria and operational objectives, sound public policy would argue for the adoption of rules and policies that favor systems that offer the greatest flexibility and potential for utility for other users.

IV. Including An Industry Standard Full-Life Asset Identification Enhances The Commission's Disclosure Requirement

MERS strongly believes that the Commission's proposed asset identification number could and should incorporate the accepted industry standard asset identification system for each class of assets. However, even if the Commission elects to create a new, asset-back-securities-disclosure-specific system of asset numbering, it should still provide for and require the inclusion of any industry standard full-life identification system that may exist for the relevant asset class. Requiring this information will strengthen the value and integrity of the Commission's disclosure for investors, and serve other important public policy objectives as well.

The Commission's proposed Regulation AB is premised on the idea that investors and regulators should be able to examine all of the individual assets in the asset pool supporting a particular security offering. To promote this, the Commission requires that the issuer assign each asset in the security's pool a unique ID, and that this same ID be used for that asset whenever that issuer makes a disclosure about that security.

The MERS MIN provides the capability to identify the mortgages for the entire life of the loan, and to identify the same loan across multiple reports and disclosures. Like a VIN, each MIN is unique, created at the birth of the loan and remains unchanged for the entire life of the loan. It is independent of any originator, consolidator, issuer or investor's internal system. Inclusion of the MERS MIN (and other, similar industry standard full-life asset identifiers) in the SEC's required disclosure will ensure that investors and regulators will be able to determine with certainty that they have a full and accurate picture of the relevant relationship. It is for this reason—the absolute necessity of establishing the validity and reliability of data—which MERS believes so strongly that industry asset identification numbers like the MERS MIN must be included.

If the SEC requires a number different from the MIN for securitized loans, the MIN will continue to be required by investors in the conforming marketplace since it is so highly integrated into that infrastructure, including existing seller/servicer agreements, purchase and sale agreements, custodial agreements, etc. Rather than relying on this existing infrastructure, the SEC would require lenders, servicers and investors to invest time

⁴ For a summary of the ASF LINC embedded logic, see <http://img.en25.com/Web/StandardandPoors/ASF%20LINC.pdf>.



and money into integrating the new numbering system with no additional benefits accruing to any constituents in the real estate finance industry except the pecuniary interests of ASF and Standard & Poor's.

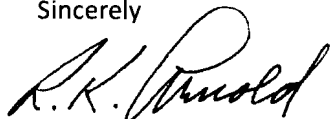
It will also ensure that the disclosure data can be cross-referenced and utilized for other critical purposes. As previously stated, law enforcement, and state and local governments are currently using the MIN for purposes not directly related to the securitization market. It is sound public policy for the Commission to favor systems and standards that promote this type of information linkage, which can further enhance our understanding of the economy as a whole.

For these reason, we believe it is necessary and appropriate for the Commission to permit and require the inclusion of the full-life asset identifiers in its disclosure requirements, either as the primary or a secondary asset identifier.

CONCLUSION

We would appreciate the opportunity to meet with you or your designee to discuss these factual disparities and answer any questions you might have with the goal of achieving a final AB regulation that produces the greatest transparency and interoperability at the lowest cost.

Sincerely

A handwritten signature in black ink, appearing to read "R.K. Arnold". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

R.K. Arnold
President and CEO
MERSCORP, Inc.

