

## **ABS Transparency Eligibility Criteria for CMBS**

1. In order to be eligible in the Bank's operations, the following requirements will apply to Commercial Mortgage Backed Securities (CMBS) transactions, in line with the Bank's Market Notice on 20 December 2011. The requirements fall into five categories:

- Loan level information
- Transaction documentation
- Transaction overviews
- Standardised monthly investor reports
- Cash flow models

2. The data and information made available will be required to be provided under the terms set out in the 'Access to Information' section below.

3. These detailed eligibility requirements for CMBS will come into effect from 1 January 2013, following which there will be a twelve month implementation period and securities not meeting the new transparency requirements will continue to be eligible but have an additional 5 percentage point haircuts applied each month they are non-compliant. Additional haircuts will be added each month until 1 January 2014 when transactions no longer meeting the criteria would be made ineligible.

### Loan Level Information

4. Anonymised loan-level data must be made available to investors, potential investors and certain other market professionals acting on their behalf. Such data must be available in a recognisable spreadsheet format (e.g. .xls, .csv, .xlsx) and provided on at least a quarterly basis on, or within one month of, an interest payment date. The information on the assets must be no more than one month old at the time of publication. For large files, multiple spreadsheets may be provided.

5. The Bank will require loan-level data to be provided using the applicable template published on its website at <http://www.bankofengland.co.uk/markets/money/eligiblecollateral.htm>. The Bank's CMBS loan level template has been designed to be, wherever possible, consistent with the loan-level requirements of other authorities, and reflects in particular those which have been developed by the ECB.

6. In order for this requirement to be considered satisfied the mandatory fields should be completed on a comply or explain basis. The Bank expects that all issuers should be able to complete the majority of these fields. Where issuers are not currently able to provide certain data fields this will not automatically render the transaction ineligible. The Bank will look to assess the rationale for not

providing the data using information in any supplementary material (e.g. an investor reporting glossary) before determining eligibility, and may choose to add additional haircuts to the transaction. In time, the Bank will expect all fields in the template to be populated. The Bank will reserve the right to request additional data in respect of any given transaction.

7. The definitions used for the loan-level data should, where possible, be consistent with those given in the template, or those considered to be standard market practice including where relevant, the definitions as published by the ECB. Where issuers are not able to report using these published definitions, they will need to clearly state the definitions used for the purposes of their data set. Issuers should make clear in their loan-level data, or in an accompanying glossary, which definitions they use. The Bank would encourage the use of standardised definitions, and expects the industry to move in this direction. The Bank would not expect there to be marked divergence from published definitions, and may apply higher haircuts to transactions where this is the case.

8. Investors accessing loan level data shall keep it confidential use it only for the purposes of evaluating the security and its performance and shall not use it to seek to identify individual borrowers.

#### Transaction Documentation

9. The following requirements in relation to the publication of transaction documentation have applied to all asset class since 1<sup>st</sup> July 2011.

10. The prospectus, together with the closing transaction documents, including any public documents referenced in the prospectus or which govern the workings of the transaction (excluding legal opinions), will be required to be made available to investors, potential investors and certain other market professionals acting on their behalf. Where applicable these will include, but not be limited to: the asset sale agreement (and any relevant declaration of trust), servicing, back-up servicing, administration and cash management agreements, trust deed, security deed, agency agreement, account bank agreement, guaranteed investment contract, incorporated terms or master trust framework or master definitions agreement, swap documentation, subordinated loan agreements, start-up loan agreements and liquidity facility agreements, as well as any other relevant underlying documentation. Included in this requirement will be documentation covering any related, including otherwise private or unlisted transactions where there are any interactions which could impact the cash flows on the transactions for which eligibility is being considered.

11. For CMBS transactions, the Bank will also require any relevant inter-creditor agreements are made available.

12. Consistent with the Bank's other ABS Transparency criteria where transaction documents contain commercial terms (e.g. arrangement costs associated with a swap or tenant names), the Bank

would not object to such terms being redacted for the purposes of publication, but only if these are previously non-public documents and refer to sunk costs which do not and could not impact the cash flows of the transaction.

### Transaction Overview

13. Transaction overviews will be required for any new issuance or existing platforms which may issue further transactions.

14. This overview should list all the key features of the transaction, including issues relating to deal structure, asset characteristics, cash flows, credit enhancement and liquidity support features, note holder voting rights, the relationship between note holders and other secured creditors in a transaction and the triggers in the transaction and the consequences of them being breached.

15. A template for these overviews for CMBS transactions can be found on the Bank's website at <http://www.bankofengland.co.uk/markets/money/eligiblecollateral.htm>. This template is not prescriptive and should be used as a guide by issuers/originators/arrangers to provide information relevant to a given transaction.

### Standardised Monthly Investor Reports

16. The Bank will require that investor reports, containing a standard set of minimum information be made available. These standardised monthly investor reports should be downloadable in a recognisable spreadsheet format (e.g. .xls, .xlsx, .csv) and must be provided within one month of the relevant reporting date. A full specification of the minimum information expected to be included in these reports is detailed in Annex A of these requirements.

17. For private placement or unlisted issuance, the Bank will require that line-by-line information on each such issuance be reported in the same manner as for public issuance, with the exception of the coupon. The weighted average of the coupon on all private placements or unlisted bonds can instead be reported, via providing a 50 basis point range within which the weighted average coupon resides, once private placement or unlisted issuance comprises more than 30% of the total issuance volume.

18. The Bank will also require that any market notices related to the transaction be published alongside the investor reports on the website.

### Cash Flow Models

19. A waterfall cash flow model will be required to be made available by or on behalf of the transaction originator, arranger or cash manager (the 'Information Provider'). The cash flow models

must accurately represent how cash is applied through the waterfall, given the priority of payments. A full specification is included in Annex B.

20. Cash flow models may be provided in either a spreadsheet format or on a website maintained by or on behalf of the transaction originator or arranger; or in a proprietary format on the platform of a third party provider, but access must be free of charge to users. The calculations used by the cash flow model should be transparent to the user (either within the model or by the provision of plain English payment rules) and the results of a cash flow run must be capable of being recorded and retained by the user.

#### Access to Information

21. The Bank requires that all the information and data it requires for the purposes of its transparency criteria be made freely available to relevant market participants. This may be via a secure website or 'data room' managed by or on behalf of the Issuer and/or Information Provider.

22. To gain access to the secure website or data room, investors (or other appropriate third parties) may be required to keep this information confidential, with the only permitted use being for the purpose of evaluating the asset backed security for potential investment and for ongoing evaluation of the performance of the security.

23. While the use of a secure website or data room may require users to register prior to access, the registration process should not result in a significant delay to access. Disclaimers, where used, should not seek to detract from the validity of the information nor disassociate the provider from them.

24. Other restrictions on access for legal / regulatory reasons are permissible but must be clearly justified. The Bank would expect an explanation of the reasons behind such restrictions. For the avoidance of doubt, the Bank would expect the following European Economic Area (EEA) domiciled users to have access to the information:

- a. Banks and other recognised financial institutions
- b. Any person or institution that has invested in asset backed securities and covered bonds
- c. Organisations or individuals compiling research to be distributed to financial institutions and other wholesale investors
- d. Market data or cash flow model providers to the investor community
- e. Governmental bodies, regulatory authorities and central banks
- f. Recognised rating agencies

- g. Any other party which would normally be considered to be a market professional and is a potential investor in asset backed securities and covered bonds
- h. Professional advisers representing any of the above.

#### Non-UK Transactions

25. CMBS backed by collateral from non-UK jurisdictions will be required to comply with the Bank's eligibility criteria. The Bank will adopt a principles based approach to non-UK transactions, with exemptions granted only where criteria are not relevant. Any such requests for exemptions should be discussed with the Bank on an individual basis.

26. The Bank template for loan-level data on CMBS published today is applicable for all EEA transactions, subject to any additional legal/regulatory requirements on the disclosure of information in those jurisdictions. In the event the published template is not suitable for a given portfolio of assets, the Bank will require files containing loan level data to be compiled utilising the most applicable templates published by the relevant authorities for the given jurisdiction.

27. Transaction documents, standardised investor reports, cash flow models and transaction overviews for non-UK transactions should be based on the requirements outlined above, but should also feature information on structural, asset or legal nuances particular to the given jurisdiction.

28. The Bank will be willing to provide feedback to issuers contemplating adherence with the eligibility criteria, in an effort to address any queries regarding this policy.

29. The Bank reserves the right to require additional information for any reason, at any time.

Bank of England

20 December 2011

## **Annex A; Investor Reporting Requirements for CMBS**

In order for a transaction to be eligible for use as collateral with the Bank, the following (where applicable and available) will be required to be included in monthly investor reports for CMBS transactions. In due course, the Bank expects all the applicable data below to be provided.

### **1. Transaction Details**

- Reporting date
- Reporting period start
- Reporting period end
- Accrual period
- Next payment date
- Contact details – names, addresses, email addresses and telephone numbers in case of queries related to the report
- Links to any relevant servicer commentary report
- Web link(s) to applicable transaction information (glossary, transaction documents, loan-level data, cash flow models)

### **2. Asset Details**

#### **Portfolio characteristics**

Summary information on the asset pool, including:

- Aggregate principal balance at the beginning and end of the period
- Aggregate number of mortgage loans
- Aggregate number of properties
- Weighted average number and percentage contribution of properties per loan
- Current whole and senior loan balances
- Details of the number and balances of loans and properties added to/removed from the pool and any repurchases or substitutions during the period
- Mortgage loan collections (scheduled and unscheduled principal and interest) during the period
- Current weighted average seasoning, remaining term and yield (pre-swap)

- Lease maturity summary broken down by percentage contribution to the total number of leases
- Details of any additional collateral
- Current period and cumulative defaults and losses (following any recoveries) (all by number and balance).

#### Redemption Information

Tabular information on any redemption related events including:

- Loan event and related amortisation
- Voluntary prepayment from cash allocated reverse sequentially
- Voluntary prepayment from disposal allocated pro-rata
- Release premium allocated sequentially
- Recoveries allocated sequentially

#### Performance Ratios

- Percentage of loans which have a covenant breach
- Percentage of loans which have repaid
- Percentage of loans which are in payment default
- Percentage of loans which are subject to a cash sweep
- Percentage of loans which are in special servicing or are currently on servicer watchlists

#### Stratification Tables

Stratification tables showing total outstanding balance and number of loans and properties broken down for certain key characteristics by, % of total number, current principal balance, and % of total balance. For all stratification tables with numerical values (e.g. principal balance, lease term) the maximum, minimum and weighted average values for the given variables should also be shown with the tables. Alternatively, these numbers could be included in the portfolio characteristics section above.

Given the Bank's requirement for detailed loan-level data to be made available on a quarterly basis, the Bank does not consider it necessary also to require a large number of mandatory stratification tables in the investor reports. The list of required stratification tables below therefore includes only a relatively small number of key stratification tables. However, the Bank would not expect issuers that already report additional stratification tables to stop reporting them, and issuers should continue to include all stratification tables that they consider appropriate or that may be required by other investors.

- Loan to value ratio and covenants

- Interest coverage ratios and covenants
- Geographical region
- Debt service coverage ratios and covenants
- Amortising type
- Remaining loan term
- Occupancy rate
- Property type
- Remaining lease term
- Most recent property valuation date

### **3. Structure and Liabilities Details**

- Details of all outstanding issuance, including: series name; issuer; issue date; full capital structure; ratings (original and current); currency; issue size; applicable exchange rates; outstanding amount; bond coupon including step-up coupon and date; current rate; expected maturity date; legal final maturity date; bond structure (e.g. hard bullet/ soft bullet/ pass-through); identifier (e.g. ISIN); stock exchange listing; CRD II retained amount and method of retention (if applicable); controlling class of noteholder where there exists an A/B intercreditor relationship.
- The above information must also be reported for privately placed or unlisted bonds, with the exception of the coupon information, for which a weighted average of the coupon on all private placement or unlisted bonds can instead be reported. Where such transactions pay interest on a different basis, different weighted averages should be reported, each covering all the privately-placed or unlisted bonds that pay interest on the same basis.
- For each class of notes, the credit enhancement and liquidity support derived from different supporting components (e.g. note subordination, over-collateralisation and reserve funds). Identify any specific carve out classes such senior interest-only classes and their method of payment (i.e. based upon what is due or what is received), residual class notes and any class of notes which are backed by different security to the rest of the CMBS capital structure (e.g. class V) including details of such different security and any subordinated loans which have a junior lien on the CMBS assets.
- List of all key parties and their current ratings (both short-term and long-term) together with any related trigger levels. Examples of counterparties to be included are: issuer, servicer, cash

manager, account bank(s), guaranteed investment contract provider(s), liquidity facility provider(s), master servicer, special servicer, swap provider(s) and any related back-up/standby providers.

- Details of any swaps, including: counterparty and notional, applicable rates, payments made/received, any collateral postings. For private placements and unlisted bonds, bands within which the payments made/received sit can be provided in lieu of the actual payment legs.
- Details of scheduled and actual principal and interest distributions to each note and any current period and cumulative shortfalls including penalty interest including a clear statement of which waterfall mode the transaction is in.
- For worked-out loans, a detailed loss determination including cost items and distribution of recoveries.
- Details of all payments made according to any applicable “waterfalls” (referring to the prospectus for details if appropriate) and any excess spread.
- A breakdown of all the available funds for the transaction, and a list of all pertinent ledgers (e.g. current and cumulative appraisal reduction amount, prepayment penalty allocation), transaction accounts, liquidity facilities and servicer advances, showing their opening balances, any aggregated debits/credits for each period, targeted values and closing balances. For any accounts from which investments are made, the average balance of investments in different asset classes, for example: cash, sovereigns, own name securities, RMBS, ABS, commercial paper.
- List of all material triggers/events referred to in the prospectus, such as counterparty-related triggers (which might be incorporated into the above list of key parties), performance triggers, issuer events of default and available funds caps etc, including a brief summary of the consequences if it is breached (referring to the prospectus for details if appropriate), and the current status of the trigger/event.
- Details of any tests, such as yield and pre-maturity tests, including details of calculations (if applicable) including a brief summary of the consequences if it is breached (referring to the prospectus for details if appropriate).

#### **4. Glossary**

A glossary of all definitions used in the report. Examples of terms for which definitions should be provided include, but are not restricted to:

- Arrears and how the number of months in arrears is calculated

- Default definitions (e.g. 90/180/360 days or when a borrower is classified as insolvent)
- LTVs – whether these include capitalised interest or fees. For indexed LTVs, the method used for indexing
- ICR (interest coverage ratio), DSCR (debt service coverage ratio)

## **Annex B: Cash Flow Model Requirements**

### **Global Requirements for Cash Flow Models**

- Cash Flow models may be provided in whichever format the Information Provider chooses (e.g. website, downloadable program or spreadsheet) however it should enable the user to input key collateral data as well as output results using a recognisable spreadsheet format (e.g. .csv, .xls or .xlsx).
- The model should incorporate data from a pre-configured table of inputs to drive a cash flow model, provided by the Information Provider, and output the resulting cash flows for the expected life of the relevant bond.
- Whilst inputs and outputs are bespoke to each transaction, at a minimum the Bank would expect inputs to cover asset specific (e.g. principal and interest received, delinquencies and defaults), liability specific (e.g. note balances, trigger breaches) and sundry factors (e.g. interest and exchange rates). The output of the cash flow model should clearly show the activities (e.g. waterfall payments, account balances, note balances etc.) for the life of the transaction i.e. until assets have been exhausted under the assumptions being run.
- The model should incorporate all features of the transaction which are not open to change or interpretation (e.g. note interest margins, waterfalls etc.).
- The model will be required to be updated should there be any changes to the structure which may impact the cash flows. For example, updates would not be required to reflect the amortisation of notes (note balances should be an input to the model) but will be required if there are changes which may impact the published model or to reflect changes to the transaction which may have occurred (e.g. the breach of a given trigger).
- The Bank would not object to legal liability disclaimers on the cash flow models however such disclaimers should be reasonable, for instance they should not look to disassociate the model from the Information Provider or the transaction.
- The Information Provider may accompany the model with guidance notes, including instructions, assumptions made and further information, however the notes should not be unreasonably long or excessively technical.
- Where the model may utilise a scripting code the Information Provider should make the code available, setting out in clear detail how the model operates i.e. which accounts funds are assumed to come from, and how those funds are applied in the waterfall
- The Bank will perform qualitative reviews of the cash flow models provided for transactions and if the model is not considered to provide a reasonable basis on which to simulate the transaction, the deal could be considered ineligible.

All models will be expected to include the following example inputs and outputs where relevant to a given transaction. This list is not intended to be exhaustive and is expected to be used as a guide only.

## **Inputs**

### **Static Variable Inputs** *(single input to reflect the starting position for the model)*

- Opening Balances; portfolio, outstanding notes, cash/account balances, ledgers (£)
- Starting GIC / cash balances – reserve fund, accumulation (£)

### **Time Variable Inputs** *(the user must be able to supply a value for each period of the cash flow run)*

#### **Economic Variables**

- Interest rate (e.g. 3M Libor rate) (% per period)
- Currency Exchange Rates (e.g. £/\$ or £/€ per period)

#### **Cash Flows**

- Portfolio balances (£ per period)
- Principal & Revenue received (£ per period)
- Losses allocated (£ per period)
- Other income streams (e.g. recoveries, Guaranteed Investment Contract interest etc) in the event they are applied any differently in the waterfall. (£ per period)
- If applicable to the waterfall or structure, performance variables which may influence payment rules (e.g. CPR, arrear percentages)
- Special loss<sup>1</sup> – this could instead be connected to a stress event (£ per period)

#### **Stress Event Dates**

- Originator Downgrade (e.g. AAA, A) or Default (Yes/No)
- Insolvency Event or Post Enforcement Waterfall Trigger breach (Yes/No)
- Transaction specific trigger event dates – where such triggers may not be driven by the liabilities model (e.g. delinquency trigger breach) (Yes/No)

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<sup>1</sup> This could be utilised to model a shortfall of the resources available to the transaction which becomes known on a specific date, and which is assumed to be applied in a specific way from that date or be used to reflect events not fully described in the documents and as such should be considered a ‘reasonable estimate’.

### Counterparty

- Counterparty Downgrade (e.g. AAA, A) or Default (Yes/No) (e.g. swap counterparty default occurring in a given period)
- Stressed Service Provider Fees (e.g. servicer, account bank) (£ per month/year as applicable)

### Outputs

- Waterfall payments (£ per period)
- Note, account and ledger balances (£ per period)
- Swap payments (£ per period)

### **Factors Specific to CMBS Cash Flow Modelling Requirements**

- Appraisal Reduction Amounts (%) – any mechanisms which are designed to reduce servicer advances to loans which have had their value eroded.