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10-19-2010

### Fannie Mae Counsel letter to the FCIC, 2

Jeffrey Kilduff

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October 19, 2010

### **BY ELECTRONIC MAIL**

Mr. Gary Cohen  
Financial Crisis Inquiry Commission  
1717 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, DC 20006-4614

**Re: Responses to Requests for Data**

Dear Gary:

On behalf of Fannie Mae, I have enclosed data responsive to your requests to Alfred Pollard regarding private label securities ("PLS") and Fannie Mae's rights to request repurchases of loans held out of portfolio as compared to loans held in portfolio. Set forth below is an explanation of various aspects of the information we are submitting.

### **Steps taken to determine whether to exercise rights to request repurchases of PLS**

You have asked for information describing the steps taken by Fannie Mae to determine whether to exercise its repurchase rights. Fannie Mae is engaged in an ongoing, systematic evaluation of the performance of its PLS portfolio to determine its right to require sellers to repurchase, as well as other rights it has against securitizers of mortgages who have failed to comply with the transaction documents applicable to the PLS. To this end, Fannie Mae first identifies PLS backed by subprime or Alt-A mortgages that are performing poorly by evaluation of various loan performance metrics, including delinquency rates, early default rates, and actual default rates to evaluate current losses and to project future losses.

Second, Fannie Mae prioritizes the worst PLS performers, and determines whether the relevant counterparties are financially viable and what rights are available to Fannie Mae under the applicable Pooling and Servicing Agreement ("PSA"). After the worst-performing PLS with viable counterparties and enforceable rights are identified, Fannie Mae requests loan files for non-performing loans in the applicable mortgage pool from the trustee, issuer, or counterparty who acts on behalf of the certificateholders to enforce their rights under the PSA. There is no required minimum threshold used to determine whether or not to exercise a repurchase right. Fannie Mae evaluates each bond individually and considers action against every viable

counterparty. Fannie Mae also includes in its analysis any documents that it receives from the Federal Housing Finance Agency ("FHFA") that FHFA received in response to its PLS subpoenas and shared with Fannie Mae.

If loan files are provided, Fannie Mae reviews the loan files or directs trustees to review the loan files with the assistance of third-party forensic review firms and determines whether there were any breaches of representations and warranties under the applicable PSA.

#### Steps taken to exercise rights to request repurchases of PLS

You next asked us to describe the steps that Fannie Mae has taken to exercise its PLS repurchase rights. When Fannie Mae believes that a rep or warranty was violated, it provides notice to the trustee, issuer, or counterparties (depending on the requirements of the applicable PSA) and requests that party to issue a repurchase request. Fannie Mae continues to do so on an ongoing basis. You also asked "[w]hat the GSEs have done to void their obligations under the guarantees" in the event they discover violations of reps and warranties or fraud. Fannie Mae does not generally have obligations with respect to third parties based on the loans underlying PLS.

#### Where are the GSEs in the process?

You have also asked where Fannie Mae is in the process of exercising its PLS repurchase rights. Fannie Mae's investigations are ongoing, and it is evaluating its options to pursue any and all remedies available to it. Fannie Mae is working closely with FHFA, and it expects these reviews and repurchase requests to continue for the immediate future and well into 2011.

#### PLS purchases

You have next asked us to provide data regarding Fannie Mae's total purchases of PLS and total losses associated with PLS. You asked us to include information about what amounts, if any, were written off, and what amounts, if any, were taken as OTTI. Finally, you asked us to identify which PLS that Fannie Mae purchased were subject to a FHFA subpoena. All of this information, as well as other data related to PLS that we believe the Staff will find helpful in its review, can be found in two spreadsheets on the enclosed a CD labeled FM-FCIC-N\_00012. The first spreadsheet, "FCIC PLS CMBS purchases with Deal Name and Impairments\_201010.xls," includes information about PLS purchased from 2005 to 2008. The second spreadsheet, "FCIC 2003-2004 PLS purchases with Deal Names and Impairments\_201010.xls," includes information about PLS purchased in 2003 and 2004. Each of these spreadsheets contains the following information current through June 30, 2010:

- purchase settlement date
- CUSIP
- product
- purchase unpaid principle balance ("UPB")

- current UPB
- whether it is currently wrapped by a guaranty
- purchase price
- current price
- current 60+ delinquency rate
- original rating
- current rating
- deal name
- bond
- INTEX name
- whether the bond was the subject of a FHFA subpoena
- 2009 credit impairment
- 2010 credit impairment through Q2

Repurchase requests issued – out-of-portfolio vs. retained in portfolio

You have asked us to identify which repurchase requests that Fannie Mae has issued applied to loans held out-of-portfolio as compared to the repurchase requests that Fannie Mae has issued for loans that it held in its own portfolio. As we set forth in our May 5, 2010 and June 8, 2010 correspondence with the Staff, Fannie Mae managed its credit book without regard to whether a loan was held on- or off-balance sheet because it retained the entire credit risk regardless of location. Moreover, effective January 1, 2010, Fannie Mae adopted two new accounting standards and, as a result, the substantial majority of MBS trusts that were previously held off-balance were consolidated and the underlying assets, which were typically mortgage loans, were recorded on Fannie Mae's consolidated balance sheet. Thus, Fannie Mae does not differentiate between loans held on-balance sheet and loans held off balance sheet when analyzing or issuing repurchase requests. Fannie Mae has previously provided you with the total number of loans and dollar amount of recoveries for repurchases completed to date for single family loans, both in the aggregate and for Fannie Mae's top ten lenders (by unpaid principal balance, or "UPB"), by year, for 2007, 2008, and 2009, as well as the latest available data for 2010. Fannie Mae has also provided you with the same information with respect to repurchase requests that are currently outstanding. That information, broken out by calendar year, can be found in the chart that we provided on September 21, and which has been numbered FM-FCIC-2\_00004757-00004759.

\* \* \*

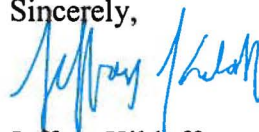
We wish to stress that the documents and information we have provided with this letter did not previously exist in this form at Fannie Mae. Fannie Mae used various technology and manual resources to generate the data for production in response to your requests. While Fannie Mae believes that the information is reasonably accurate, Fannie Mae cannot make an absolute representation that it is complete or that there were not some inadvertent errors in its preparation,

especially given the expedited timeframe within which it was generated and produced. We will provide further updates or corrections if we discover missing information or errors.

As you have discussed at length with Alfred Pollard of FHFA, the documents and information provided by Fannie Mae to the FCIC contain highly confidential, proprietary, and/or non-public information regarding the Company, most of which is or will be the subject of actual or potential litigation. Therefore, on behalf of the Agency, Fannie Mae requests that the Commission and Staff treat this information with the highest level of confidentiality. We further ask that should the Commission seek to use any of this information in its written report or intend to disclose it publicly in any way, it pre-screen the documents with me and with counsel to FHFA before doing so.

Should you have any questions, please do not hesitate to contact me. I can be available at your convenience to discuss any of this.

Sincerely,



Jeffrey Kilduff  
of O'MELVENY & MYERS LLP

cc: Mr. Thomas Stanton (via email)  
Ms. Wendy Edelberg (via email)  
Mr. Greg Feldberg (via email)  
Mr. Christopher Seefer (via email)  
Mr. Tom Krebs (via email)  
Mr. Tom Borgers (via email)  
Ms. Clara Morain (via email)  
Mr. Alfred Pollard (via email)  
Ms. Charlotte Reid (via email)  
Ms. Julie Katzman (via email)  
Mr. Jonathan Griffith (via email)  
Mr. Evan Stolove (via email)  
Mr. Michael Spence (via email)  
Mr. Michael Walsh (via email)

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