April 10, 2017

Ms. Stephanie Heller
Deputy General Counsel & Senior Vice President
Federal Reserve Bank of New York
33 Liberty Street
New York NY 10045

Re: Proposed National Mortgage Note Repository Act – draft dated January 27, 2017

Dear Stephanie:

We would like to thank you and the other members of your staff for taking time to receive and understand our previous comments[1] relating to the proposed National Mortgage Note Repository Act ("Proposal"). Given our unique position as the operator of the only national mortgage registry for the past 20 years, the focus of our comments in this letter pertain to the explicit and implicit policy positions that are reflected within the Proposal.

As you may be aware since our letter in May of 2016, a majority equity stake in MERSCORP Holdings, Inc. ("MERSCORP") was purchased by Intercontinental Exchange ("ICE"), a global leader in the operation of exchanges, clearinghouses and data repositories. This investment by a large, well-capitalized and highly regulated company reflects that our organization has value and growth potential, is significant to the industry and has turned the corner on previously reported challenges. As part of this investment, ICE has committed to rebuild the MERS® System infrastructure and host it in the same Tier 4 data center as the New York Stock Exchange. After the new system is delivered in 2018, ICE intends to acquire the remaining ownership stake of MERSCORP.

Today, the MERS® System has more than 5,000 members, including most major investors, servicers, warehouse lenders, Federal Home Loan Banks (FHLBs), vendors and title companies. Additionally, approximately 1,000 government entities subscribe to MERS® Link, a free service for government entities which provides them with specified information from the MERS® System. More than 75% of all residential first mortgage loan originations name Mortgage Electronic Registration Systems, Inc. ("MERS") as mortgagee in the security instrument. The remaining 25% market share is largely originations from large banks (who are MERS® System members) that retain the servicing for the life of the loan. Currently, MERS is named as mortgagee for approximately 28 million active mortgages loans, with more than 99 million mortgage loans registered since inception. The MERS® System continues to operate in every county of every state. This is a testament to

[1] Letter to Stephanie Heller, Federal Reserve Bank of New York, May 9, 2016. https://www.mersinc.org/media-room-docman/1190-merscorp-holdings-comment-to-frb-new-york-on-proposed-national-mortgage-repository-act/file.

the strength of our business, despite the large number of legal and regulatory challenges over the past 12 years.

MERSCORP has operated three mortgage related registries: one is successful, one has strong potential, and one failed. Based on our experience, we would like to share some observations about conditions necessary for a successful registry. For a voluntary registry to succeed, it is not sufficient to only have a well-thought out legal structure. There must also be a value proposition that makes users want to participate. It seems to us that the Proposal has focused mainly on creating a workable legal framework, and has not given sufficient consideration to developing a successful business strategy with quantifiable benefits to users. While the direct cost of the proposed repository will be borne by those registering loans, ultimately costs of the repository will be borne by homeowners if it succeeds and taxpayers if it fails.

For this reason, we believe a cost benefit analysis must be a core aspect of the Proposal before moving forward.

Today, more than 99% of MERSCORP's registrations are tied to MERS serving as original mortgagee and the related MERS® System. This is where MERS is the mortgagee (or beneficiary on a deed of trust) on behalf of the lender and its assigns (i.e., subsequent aggregators and investors). The value proposition, when compared to a non-MERS mortgage, is more liquidity and fewer assignments of the security instrument resulting in less paperwork, fewer errors and a reduction in fees, all of which drives down the cost of a mortgage loan. Consequently, MERS® System Members ("Members") use MERS because of the benefits it provides.

Based on our experience and industry feedback, here are some of the factors that we believe are necessary for a successful registry:

- Realistic value proposition: the benefits and costs must be known, compelling and properly distributed to incent usage and compliance.
- Strong legal foundation and legal certainty: there will be legal challenges at every step. At the peak, there were thousands of outstanding cases involving MERS. When it comes to foreclosure, many judges give the homeowner the benefit of the doubt in the event of any uncertainty and may allow a lawsuit to proceed resulting in the costly defense of a meritless lawsuit.
- National in scope: participants do not want to make significant process, training and technology investments that are not uniform. If MERS and the MERS® System operated in only half the states, it is unlikely we would have progressed to become a national mortgage registry.
- Strong support from liquidity and securitization providers: this means not only lenders, investors and servicers, but also warehouse lenders, FHLB's, title companies and vendors, need to be integrated and participate.
- Patient capital and time: the MERS® System had all of the above and it took five years to reach a 25% market share and 10 years to establish a 50% market share.

We believe that the Proposal seeks to address issues that were valid concerns during the financial crises; however, in the ten years since the crises, most of the stated issues the

Proposal seeks to address, have been solved, diminishing the value of a second registry. For example:

- Questions of Standing to Enforce: There has been 12 years of litigation, through most every state's Appellate and Supreme Courts, clarifying who had standing to foreclose and what evidence is needed. Investors and services have adapted their processes to address this issue. And, more importantly, the volume of foreclosure litigation is substantially reduced from its peak.
- Improved transparency: There are now federal laws and regulatory requirements requiring disclosure any time the investor or servicer changes or the borrower asks for such information. MERSCORP addresses this through its free phone or web based service for borrowers to determine or confirm who the investor or servicer is for their home loan.
- Uncertainty about the use of nominees is clearer: MERS acts as nominee in all counties of every state. Regulators and rating agencies understand this and recognize MERS as nominee.
- Wide Adoption: 75% of all mortgage loans and 100% of all eNotes are registered with MERSCORP. Virtually everyone in the mortgage industry is a member of the MERS® System, and most loan origination, servicing and investor systems used in the mortgage industry have built-in functionality to deliver data to both the MERS® System and the MERS® eRegistry.
- High Degree of Accuracy: Data on the MERS® system, when matched with Servicers' systems, is over 99% accurate.

We believe that a national mortgage note repository would need to address the following challenges:

- Voluntary Usage vs. Mandate: If use of the repository is voluntary, it will likely result in adverse selection, resulting in lower volumes of the more risky mortgages. But if use of the registry is to be mandated, it will be much more difficult to garner support for the Proposal. Lenders and servicers are not likely to support another material mandated process change after recent experiences with CFPB servicing rules in 2014, TRID in 2015 and HMDA in 2018.
- Lack of accessibility to small businesses: About 80% of MERS® System members originate and sell to larger aggregators. Many may not have the net worth to stand behind reps and warrants and would be disadvantaged by the cost and operational procedures of using "gateways" as outlined in the Proposal. This will likely result in fewer choices for consumers to the detriment of both consumers and small business.
- Cost-benefit analysis: Limited work has been done to estimate the financial costs and benefits to those who will need to use the registry. As proposed, costs will be passed on to homeowners and/or taxpayers.
- Legal considerations: Even with a perfect bill and solid drafting, the legal underpinnings of a new registry will be complex and challenging.
- Operational Consideration: The Proposal leaves virtually all of the operational decisions to a government regulator. There is no guarantee this will result in an efficient, low cost solution.
- Data driven vs. paper or images: The Proposal relies on outdated technology that does not provide reliable data. The mortgage industry is moving towards "lights-out"

processing with the ability to extract data from digital contracts and promissory notes (e.g., MISMO "Smart Docs").

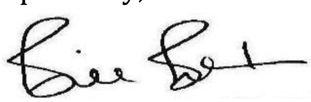
One specific change to the Proposal which could increase its success would be to amend Section 4 (relating to the repository operator). The Proposal should either not address the nature of the operator or include the option of a for-profit company as an operator. Today, virtually every operator of a national repository or registry is for-profit. Limiting the options of operators also limits its likelihood of success.

There may also be an unintended consequence arising from Section 14 (c), which establishes the registrant of the electronic mortgage note as the mortgagee of record. Most investors are not structured to receive service of process, and other mail required by state law, that is delivered to the mortgagee of record. As a result, the servicer will most likely be the registrant and the investor will be the authorized transferor for a high percentage of loans submitted to the registry. Today, it is a requirement of Fannie Mae, Freddie Mac and Ginnie Mae that either MERS or the servicer be the mortgagee of record. We also note that this would obviate the role of MERS for 75% of all existing mortgages, resulting in a costly structural change that has not been agreed to by the industry.

Speaking on our behalf, we are a stronger organization than we were pre-financial crisis having gone through extensive legal challenges and regulatory reviews. We continue to improve and invest in the future, and now do so with an even stronger and better capitalized parent.

In closing, MERSCORP and ICE remain committed to working with you as a domain expert.

Respectfully,



Bill Beckmann
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