National Mortgage Note Repository Act of 2017

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a)   SHORT TITLE.—This Act may be cited as the "National Mortgage Note Repository Act."

(b)   TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SECTION 2. FINDINGS; PURPOSES.

(a)   FINDINGS.—The Congress finds as follows:

(1)   Robust secondary markets for residential mortgage loans and securities backed by residential mortgage loans enhance the liquidity and efficiency of the national housing finance market.

(2)   The current paper-based practice of the national housing finance market is error-prone and costly. Nearly all other financial instruments are tracked and transferred electronically.

(3) The financial crisis that began in 2007 revealed weaknesses in the legal and market infrastructure supporting the transfer and enforcement of residential mortgage loans, including:

(A) the absence of a quick, simple and accurate way for borrowers to determine the owner of their mortgage notes and whether that person has authorized its servicer to modify the obligation evidenced by the note;

(B) recordkeeping practices that have resulted in challenges to the fundamental tenet of American law that the right to enforce a mortgage or deed of trust follow from the right to enforce the associated mortgage note;

(C) inconsistencies among negotiable instrument, secured transaction, and real property laws in their treatment of the conveyance of interests in real property; and

(D) uncertainties as to the effectiveness of the use of agents, nominees and others in the transfer of mortgage notes, and the role of the beneficial owner in a proceeding to enforce a mortgage note.

(4) These weaknesses were some of the factors that impeded resolution of troubled residential mortgage loans and the return of private capital to the market for securities backed by residential mortgage loans.

(5) A national system to maintain residential mortgage notes electronically, to identify the person with the rights to act with regard to such notes, and to facilitate the transfer of such rights, would assist borrowers and mortgage note holders.

(6) The residential mortgage industry has not created such a system.

(b) PURPOSES.—The purposes of this Act are:

(1) to provide greater transparency to borrowers concerning the person who may collect, enforce, or modify a residential mortgage note and the associated mortgage when that note is on the national repository system;

(2) to enhance efficiency and liquidity in the secondary markets for residential mortgage loans and residential mortgage-backed securities through a national repository system (and related rules governing the system) that identify the person that may enforce a residential mortgage note or foreclose on a residential mortgaged property;

(3) to provide for the conversion of paper residential mortgage notes to electronic entries on a national repository system and for the use of repository records in place of the paper notes;

(4) to foster the use of electronic residential mortgage notes and to provide legal certainty for their transferability and enforceability; and

(5) to effectuate these purposes in a manner that provides protections to borrowers, including preserving state consumer protection laws.

SECTION 3. DEFINITIONS

For purposes of this Act, the following definitions apply:

()   ADVERSE CLAIM.—means a property claim (including judgment lien or other liens) of a *person* with respect to an *electronic mortgage note*. *Adverse claims* may arise from events occurring before or after submission of the *mortgage note* to the *repository system*.

()   ALTERATION.—means an alteration as defined in *UCC* Section 3-407.

()   AUTHORIZED TRANSFEROR.—means a *person* who has been authorized by a *registrant* to effect a *registered transfer*.

()   BOARD OF GOVERNORS.—means the Board of Governors of the Federal Reserve System.

()   BORROWER.—means a *person* owing performance on a *mortgage note* that is secured by the *mortgage*, but does not include a secondary obligor except as provided in regulations promulgated pursuant to this Act. Multiple *borrowers* on the same mortgage note are separate *persons* under the Act.

()   CFPB.—means the Consumer Financial Protection Bureau.

()   [COMMON-INTEREST COMMUNITY.—means real property with respect to which a *person*, by virtue of ownership of a unit, is obligated to pay real property taxes or insurance premiums or for maintenance, improvement of other real property, or services described in a declaration or other governing document, however denominated. The term includes properties held by a cooperative-housing corporation. [In this paragraph, "ownership" includes a leasehold interest if the lease term is at least [20] years, including renewal options.]]

()   CONTROL SYSTEM.—means any system determined by order of the *regulator* that is employed to evidence the transfer of interests in a *transferable record* or *controlled record* and can reliably establish the identity of the *person* to whom the *transferable record* or *controlled record* was issued or transferred.

()   CONTROLLED RECORD.—means a *record* in a *control system* that (i) is not a *transferable record* and (ii) evidences an *obligation* to pay and is secured by a *mortgage*.

()   ELECTRONIC MORTGAGE NOTE.—means a *record* on the *repository system* created by the *repository operator* pursuant to subsection 8(c)(3) that has the effect given in subsection 9(a).

()   FDIC.—means the Federal Deposit Insurance Corporation.

()   GATEWAY.—means a *person* designated as a *gateway* by the *repository operator* pursuant to section 7.

()   INSTRUMENT.—means an instrument as defined in *UCC* Article 9.

()   KNOWLEDGE AND KNOWS.—have the meanings assigned in *UCC* Article 1.

()   MODIFICATION.—means any change to the terms of an *obligation* that is secured by a *mortgage*. The term does not include:

     (i)   a change made in an oral agreement;

     (ii)   an agreement that [ALT 1: qualifies as a short-term forbearance program under *RESPA* or would qualify as a short-term forbearance program under *RESPA* if the

       obligation were subject to *RESPA*] [ALT 2: allows a *borrower* to forgo making certain payments or portions of payments of the *obligation* for a period that is six months or less]; or

    (iii)   an agreement under which the *borrower* does not retain an ownership interest in the *residential* real property that is the subject of the *mortgage* that secures the *obligation*.

()   MORTGAGE.—means a consensual interest in real property that secures an *obligation*, including a deed of trust. Where a *mortgage* is reflected in a "short form", references to *mortgage* in this Act are references to the master mortgage.

()   MORTGAGE NOTE.—means an *instrument*, a *transferable record*, or a *controlled record* secured by a *residential mortgage*.

()   NCUA.—means the National Credit Union Administration.

()   NEGOTIABLE INSTRUMENT.—means a negotiable instrument as defined in *UCC* Article 3.

()   NOTICE, NOTIFY and GIVES NOTICE.—as used in section 11 and subsections 10(e), 14(c), 19(b), and 19(c), have the meanings assigned in *UCC* Article 1.

()   OBLIGATION.—means a debt of a *person* and any duty or liability ancillary to the debt of a *person*.

()   OCC.—means the Office of the Comptroller of the Currency.

()   PERSON.—means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

()   RECORD.—means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, except for recordings of an oral communication.

()   RECORDER'S OFFICE.—means the office of a *person* authorized under the laws of a *State* to maintain the official *records* of interests in real property in that *State* or a subdivision of the *State*.

()   REGISTERED TRANSFER.—means a change in the identity of the *registrant* in the *repository system* that is the effect of an instruction by the *registrant* or the *authorized transferor* of the relevant *electronic mortgage note* received by the *repository operator*. An instruction of a *registrant* to reflect a change of its name on the *repository system* is not a *registered transfer*.

()   REGISTRANT.—means, with respect to an *electronic mortgage note*, the *person* identified on the records of the *repository system* as the *registrant* of such *electronic mortgage note*.

()   REGULATOR.—means the Federal Housing Finance Agency.

()   REPOSITORY OPERATOR.—means the entity [Alt 1: organized under] [Alt 2: licensed by] this Act to operate the *repository system*.

()   REPOSITORY SYSTEM.—means the electronic database and *registered transfer* service established by the *repository operator*.

( )   RESIDENTIAL.—means real property improved with not more than four dwelling units. The term includes:

    (i)   a detached or attached single-family unit;

    (ii)   a single-family manufactured-housing unit or a time share in a dwelling unit if either is treated as real property under law of the *State* where the property is located;

    [(iii) real property on which construction of not more than four dwelling units has commenced;] and

    [(iv)] a single-family unit in a *common-interest community*.

( )   RESPA.—means the Real Estate Settlement Procedures Act of 1975, 12 U.S.C. § 2601 *et seq*. (as amended [prior to the enactment of this Act]) and the regulations promulgated thereunder.

( )   RLN (Record Locator Number).—means the unique identifier generated by the *repository system* and distributed according to regulation or *system rules,* and assigned to a *mortgage note* submitted to the *repository system*.

( )   STATE.—means a state of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and any other territory or insular possession subject to the jurisdiction of the United States.

( )   SYSTEM RULES.—means the rules the *repository operator* adopts concerning the operations, security, and rights or obligations of *persons* who may use the *repository system*.

( )   TRANSFERABLE RECORD.—means a transferable record as defined in 15 U.S.C. § 7021, except that no recording of an oral communication may be the basis of a *transferable record*.

( )   UCC.—means the version of the Uniform Commercial Code enacted in the relevant *State*.

( )   The following terms are defined elsewhere in the Act:

    ( )   Appropriate federal banking agency is defined in subsection 5(a).

    ( )   Conversion, except as used in reference to the tort of conversion in subsection 9(c), is defined in subsection 8(c)(3).

    ( )   Discharge, except as used in subsection 9(b), is defined in subsection 11(a).

    ( )   Other financial supervisor and regulator is defined in subsection 15(c).

[ALT A] SECTION 4. REPOSITORY OPERATOR

(a)   ORGANIZATION.—

    (1)   NAME.—The name of the *repository operator* is "National Mortgage Note Repository."

    (2)   FEDERAL CHARTER.—The *repository operator* is a federally chartered, not for profit corporate instrumentality of the United States and shall not be subject to title 5 or 31 of the United States Code except: (i) subject to subparagraph

(e)(2)(D) of this section and (ii) that the whistleblower protections in 5 USC § 2302(b)(8) shall apply. The *repository operator* shall come into existence when the *regulator* appoints the initial board of directors and promulgates the initial bylaws.

    (3)   PERPETUAL EXISTENCE. —The *repository operator* has perpetual existence until dissolved by act of Congress.

(b)   PURPOSES.—The purposes of the *repository operator* are:

    (1)   to develop, maintain and operate the *repository system* contemplated in this Act;

    (2)   to establish standards and procedures for disposition of *residential mortgage notes* and related paper documents submitted to the *repository system*, including safekeeping, long-term storage, or destruction;

    (3)   to establish standards and procedures, consistent with privacy concerns, for making data held in the *repository system* available to stakeholders and to the public;

    (4)   to secure and protect data collected and maintained by the *repository system* against unauthorized access, *alteration*, use or disclosure; and

    (5)   to ensure that *repository system records* accurately reflect the *records* and instructions submitted to the *repository operator*.

(c)   POWERS.—The *repository operator* shall have power:

    (1)   to adopt and use a corporate seal;

    (2)   to make contracts, incur liabilities, borrow money, and issue notes, bonds and other *obligations*;

    (3)   to purchase, receive, hold, and use real and personal property and other assets necessary for the conduct of its operations, provided that the *repository operator* shall not assert any property interest in an *obligation* evidenced by an *electronic mortgage note*;

    (4)   to sue and (subject to the provisions of this Act) be sued in any court of law or equity;

    (5)   to appoint by its board of directors such officers as it may determine and to define their duties and compensation;

    (6)   to prescribe by its board of directors bylaws consistent with this Act and other applicable law or regulation; and

    (7)   to exercise by its board of directors or duly authorized officers or employees all powers granted by this Act and such incidental powers as shall be necessary or appropriate to carry out its purposes.

(d)   ORGANIZATION; GOVERNANCE.—

    (1)   BOARD OF DIRECTORS.—The board of directors is the governing body of the *repository operator*. The board of directors shall perform the duties usually appertaining to the office of directors of [not-for-profit corporations][designated financial market infrastructures] and all such duties as are prescribed by law.

(2)   INITIAL ORGANIZATION.—Within [three] months of the date of enactment of this Act, the *regulator* shall promulgate bylaws for the *repository operator* and the *regulator* and the *CFPB* shall appoint directors subject to paragraph (3) of this subsection. The *regulator* shall appoint the initial seven directors and the *CFPB* shall appoint two directors, and a quorum shall consist of five, including at least one director appointed by the *CFPB*. Any director appointed by the *regulator* or the *CFPB* may be removed from the board of directors at the pleasure of the appointing agency. The bylaws may establish provisions consistent with the Act relating to the qualifications for directors, their terms of service, and such other matters with respect to directors as may be appropriate. The bylaws shall provide that subsequent directors be elected subject to paragraph (3) of this subsection.

(3)   SELECTION OF DIRECTORS.—There shall be nine directors who shall be elected or appointed as follows:

    (A)   two directors, neither of whom may be officers or employees of the *CFPB*, shall be appointed by the *CFPB* to represent the interests of *borrowers* and the public at large;

    (B)   at least one director and no more than two shall be a member of an association whose membership represents *residential mortgage note* originators;

    (C)   the remaining directors shall represent interests of *registrants* and *gateways* of different types and sizes, with due consideration to the need for directors who have expertise in electronic documentation and systems and information security (including cybersecurity), and to such other interests as are consistent with the purposes of this Act.

(4)   BYLAWS.—The bylaws, in conjunction with this statute, shall be the organizational documents of the *repository operator*. The bylaws shall specify the organizational law of a *State* to fill the gaps in this Act. The board of directors may at any time modify the bylaws of the *repository operator*, subject to the approval of the *regulator*.

(e)   FUNDING.—

(1)   INITIAL FUNDING.—There is authorized to be appropriated $150,000,000.00 for the establishment of the *repository operator*.

(2)   REPAYMENT OF INITIAL FUNDING.—The *repository operator* shall repay to the Treasury of the United States the amount of the initial funding provided in paragraph (1) of this subsection, plus interest, within the 10-year period beginning on the date that the *repository system* commences business.

    (A)   Interest shall be payable semiannually in arrears and shall accrue for each day from the time funds are disbursed until repaid at a per-annum rate equal to 100 basis points above the rate set forth for the first day of each semiannual interest period in Federal Reserve publication H.15(519) under

"U.S. government securities—Treasury constant maturities—Nominal—10-year" or such comparable source as the *regulator* may designate.

(B)   Principal may be repaid in whole or in part at any time during the 10-year period at the discretion of the *repository operator*. Repayments of principal shall be accompanied by accrued interest on the amount repaid.

(C)   The *regulator* may extend the repayment term for up to five additional one-year periods.

(D)   Until it has repaid the Treasury in full, with interest, the *repository operator* is a "mixed-ownership Government corporation" for purposes of 31 U.S.C. §§ 9101-06. After that, it no longer remains a "Government corporation" under 31 U.S.C. § 9101.

(3)   ONGOING FUNDING.—

(A)   COLLECTION OF FEES.—Except as prohibited by subsections 16(b)(1)(A), 16(b)(4), and 16(b)(5), the *repository operator* may establish and collect fees for the services provided by the *repository system*. Such fees may differentiate between classes or types of services and users of services.

(B)   ESTABLISHMENT OF FEE SCHEDULE.— If the *repository operator* establishes fees, it shall establish such fees by *system rule* at a level sufficient to permit it to maintain the operations of the *repository system*, make payments pursuant to paragraph (2) of this subsection, pay its annual assessments to the *regulator* and establish and maintain levels of liquidity and capital required by the *regulator*.

(f)   EXEMPTION FROM TAXATION.—The *repository operator* shall be exempt from all taxation imposed by the United States or any *State*, county, municipality, or local taxing authority, except taxes upon real estate.

(g)   SUPERVISION. —The *repository operator* shall be subject to the exclusive supervision of the *regulator*, and shall not be subject to supervision by any other Federal department or agency [except the Financial Stability Oversight Council] or by any *State*.

(h)   INSOLVENCY OF REPOSITORY OPERATOR.—

(1)   Once it has opened for business, the *repository operator* may not be a debtor under title 11 of the United States Code and shall not be subject to the insolvency, reorganization, conservatorship, receivership, or other similar laws of any *State*.

(2)   If the *repository operator* has opened for business and (i) cannot timely make the payments required by paragraph (2) of subsection (e) or (ii) if the *regulator* otherwise determines that the *repository operator* is insolvent, the *regulator* may operate the *repository operator* in conservatorship under such rules and procedures as the *regulator* may prescribe.

(3)   No action at law affecting the *repository operator* (including any conservatorship described in paragraph (2) of this subsection) may affect any rights in or duties to any *obligation* evidenced by an *electronic mortgage note*.

[ALT B] SECTION 4. REPOSITORY OPERATOR

(a) APPLICATION TO BECOME REPOSITORY OPERATOR.—

    (1) REGULATIONS.—Within [three] months of the date of enactment of this Act, the *regulator* shall issue regulations governing the application process for obtaining the license to be the *repository operator*. The *regulator* may license only one *person* at any given time to become the *repository operator.*

    (2) CONTENTS OF THE APPLICATION.—An application for licensing of the *repository operator* shall include:

        (A) the applicant's organizational documents;

        (B) a detailed business plan for commencing the operations of the *repository operator*, including a budget;

        (D) information on the operational resources of the applicant, including the expertise of individuals associated with the applicant, and the expertise of any other *persons* associated with the applicant, such as trade associations;

        (E) identification of the proposed senior managers of the *repository operator*, and the relevant experience of such individuals; and

        (F) any other information the *regulator* determines to be necessary to evaluate the likely success of the proposed *repository operator*.

(b) LICENSING CRITERIA.—

    (1) LICENSE.—Not later than [the end of the 2-year period following the date of the enactment of this Act], the *regulator* shall issue a license for the *repository operator* to the applicant that the *regulator* determines, in the *regulator's* sole discretion, has the managerial and operational resources to perform consistent with the purposes of this Act, especially the purposes described in subsection (c) of this section.

    (2) LICENSING CRITERIA.—In making a determination under paragraph (1):

        (A) the *regulator* shall consider (i) the competence, experience, and integrity of the applicant, the proposed senior managers of the applicant, and any other *persons* associated with the applicant, (ii) the operational resources and future prospects of the applicant, and (iii) the applicant's material dependencies on service providers and the relationship between those service providers and the applicant;

        (B) the *regulator* shall confirm that the applicant is:

            (i) a cooperative, which membership shall be open to *gateways*, *authorized transferors*, and *registrants*; and

            (ii) organized in a non-profit form; or

            (iii) organized as a cooperative that distributes any profits only to the members of the cooperative in fair proportion to their usage of the *repository system*;

(C) the *regulator* shall confirm that the organizational documents of the applicant specify that, if the applicant obtains a license, amendment of the organizational documents will require the *regulator's* permission; and

(D) the applicant shall demonstrate to the satisfaction of the *regulator* that its governance structure, including its organizational documents, will ensure adequate representation of all interested *persons*, including *mortgage note* originators, *borrowers*, *registrants*, *authorized transferors, gateways,* and investors in *residential mortgage* backed securities. The organizational documents must provide that the *CFPB* shall appoint individuals (not officers or employees of the *CFPB*) to represent *borrowers* and the public at large and such individuals will make up at least twenty percent of the governance structure.

(c) PURPOSES.—The purposes of the *repository operator* are:

(1) to develop, maintain and operate the *repository system* contemplated in this Act;

(2) to establish standards and procedures for disposition of *instruments* and paper documents submitted to the *repository system*, including safekeeping, long-term storage, or destruction;

(3) to establish standards and procedures, consistent with privacy concerns, for making data held in the *repository system* available to stakeholders and to the public;

(4) to secure and protect data collected and maintained by the *repository system* against unauthorized access, *alteration*, use or disclosure; and

(5) to ensure that *repository system records* accurately reflect the *records* and instructions submitted to the *repository operator*.

(d) CONSEQUENCES OF LICENSURE.—The following consequences attach to issuance of the *repository operator* license:

(1) the successful applicant becomes eligible for the funding described in subsection (e) of this section;

(2) once the successful applicant has accepted such funding, it shall be treated as if it were a "mixed-ownership Government corporation" for purposes of 31 U.S.C. §§ 9101-06, until it has repaid all such funding in full, with interest; and

(3) the successful applicant obtains the status of *repository operator* under this Act and assumes all rights, powers and duties of the *repository operator*.

(e) FUNDING.—

(1) INITIAL FUNDING.—There is authorized to be appropriated $150,000,000.00 for the establishment of the *repository operator*.

(2) REPAYMENT OF INITIAL FUNDING.—The *repository operator* shall repay to the Treasury of the United States the amount of the initial funding provided in paragraph (1) of this subsection, plus interest, within the 10-year period beginning on the date that the *repository system* commences business.

(A) Interest shall be payable semiannually in arrears and shall accrue for each day from the time funds are disbursed until repaid at a per-annum rate equal to 100 basis points above the rate set forth for the first day of each semiannual interest period in Federal Reserve publication H.15(519) under "U.S. government securities—Treasury constant maturities—Nominal—10-year" or such comparable source as the *regulator* may designate.

(B) Principal may be repaid in whole or in part at any time during the 10-year period at the discretion of the *repository operator*. Repayments of principal shall be accompanied by accrued interest on the amount repaid.

(C) The *regulator* may extend the repayment term for up to five additional one-year periods.

(3) ONGOING FUNDING.—

(A) COLLECTION OF FEES.—Except as prohibited by subsections 16(b)(1)(A), 16(b)(4), and 16(b)(5), the *repository operator* may establish and collect fees for the services provided by the *repository system*. Such fees may differentiate between classes or types of services and users of services.

(B) ESTABLISHMENT OF FEE SCHEDULE.— If the *repository operator* establishes fees, it shall establish such fees by *system rule* at a level sufficient to permit it to maintain the operations of the *repository system*, make payments pursuant to paragraph (2) of this subsection, pay its annual assessments to the *regulator* and establish and maintain levels of liquidity and capital required by the *regulator*.

(f) SUPERVISION. —The *repository operator* shall be subject to the exclusive supervision of the *regulator*, and shall not be subject to supervision by any other Federal department or agency [except the Financial Stability Oversight Council] or by any *State*.

(h) FAILURE OF *REPOSITORY OPERATOR*.—

(1) The *regulator* may terminate the license of the *person* acting as *repository operator* if:

(A) the *repository operator* has not opened for business within [2] years of obtaining the license to act as *repository operator* and the *regulator* determines in its discretion that:

(i) the *person* acting as *repository operator* has not made adequate progress in establishing the business operations of the *repository system*; or

(ii) the *person* acting as *repository operator* has engaged in waste of appropriated funds made available for establishment of the *repository system*;

(B) the *repository operator* cannot timely make the payments required by section 4(e)(2);

(C)   the *regulator* otherwise determines that the *repository operator* is insolvent;

(D)   the *regulator* determines that the *repository operator* has failed to comply with orders or directives of the *regulator*; or

(E)   the *repository operator* commits a material act of malfeasance.

If the *regulator* terminates the license of the *person* acting as *repository operator* under subparagraphs (B)-(E) of this paragraph, it shall assume operational responsibility over the *repository system* unless and until another applicant receives a license. The *person* acting as *repository operator* shall cooperate with the *regulator* in the transition of duties and responsibilities concerning the *repository system* as the *regulator* or its designee shall reasonably require. All assets of the *person* acting as *repository operator* shall vest in the *regulator*, and the value of such assets shall offset the claim of the United States to repayment of any funds advanced by the Treasury.

(2)   As long as the *person* who is licensed as the *repository operator* retains its license, it may not be a debtor under title 11 of the United States Code and shall not be subject to the insolvency, reorganization, conservatorship, receivership, or other similar laws of any *State*.

(3)   No action at law affecting the *repository operator* may affect any rights in or duties to any obligation evidenced by an *electronic mortgage note*.

SECTION 5. REGULATOR

(a)   REGULATIONS.—The *regulator* shall issue regulations pursuant to the Administrative Procedure Act. In exercising this authority, the *regulator* shall consult with (i) the *CFPB* on matters that affect the rights and *obligations* of consumers, and (ii) any *appropriate federal banking agency* (as defined in 12 U.S.C. § 1813) on matters of concern to such agencies in the exercise of their supervisory responsibilities. In addition, before issuing regulations addressing data security, including cyber security, the *regulator* shall consult with those federal agencies with responsibility for the security of both private and public critical infrastructure. The *regulator* shall issue regulations:

(1)   requiring the *repository operator* to have governance arrangements in place that, among other things:

(A)   promote the safety and efficiency of the *repository system*; and

(B)   support the stability of the broader financial system, other relevant public interest considerations such as fostering fair and efficient markets and providing consumer protections, and the legitimate interests of stakeholders.

(2)   governing the safety and soundness of the operations of the *repository system* including capital requirements of the *repository operator*;

(3) establishing limitations, if any, on *mortgage notes* eligible to be submitted to the *repository system*;

(4) identifying *records* (if any) that may be submitted to the *repository operator* in addition to those expressly addressed in the Act;

(5) establishing qualification standards for *gateways*;

(6) establishing technical, procedural, and substantive data submission requirements for submission of *mortgage notes* and *modifications* into the *repository system* that advance the purposes of this Act;

(7) governing the *repository system*'s information security and system security programs, including such programs' technical adequacy, scalability, and reliance on current technical standards;

(8) further defining the scope of the warranties established in this Act;

(9) in consultation with the American Law Institute and the Uniform Law Commission, addressing amendments to the *UCC* made by a *State* subsequent to the enactment of this Act;

[(10) concluding that one or more provisions of section 9 or 12 shall not apply in any *State* that adopts revisions to the *UCC* (i) in a form approved by the Uniform Law Commission and the American Law Institute and (ii) that the *regulator* finds to be substantively identical to the specific provisions in section 9 or 12 at issue];

(11) mandating that the *repository operator* implement appropriate resiliency plans to prevent the occurrence of a prolonged outage of the *repository system* and have appropriate contingency plans in the event of a prolonged outage of the *repository system*;

(12) addressing such other matters as it deems necessary or appropriate to carry out the purposes of this Act; and

(13) as otherwise expressly contemplated by this Act.

(b) SUPERVISION AUTHORITY.—The *regulator* has the authority to supervise:

(1) the *repository operator*; and

(2) with respect solely to its role as a *gateway*, any *gateway* except a *gateway* that is (i) a *recorder's office* or (ii) supervised by the *Board of Governors*, the *FDIC*, the *NCUA*, the *OCC*, or the *CFPB*,

as if the *repository operator* or the *gateway* were a "depository institution" and the *regulator* the *appropriate federal banking agency*, within the meaning of 12 U.S.C. § 1813.

(c) ANNUAL ASSESSMENT.—

(1) The *regulator* shall establish and collect from the *repository operator* an annual assessment in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses (including administrative costs and expenses) of the *regulator* related to its oversight of the *repository operator*.

(2) The *regulator* [**Alt 1:** may] [**Alt2:** shall] also assess examination fees on other entities it supervises under paragraph (b)(2) of this section, solely to cover the reasonable costs and expenses (including administrative costs and expenses) of the *regulator* related to each such entity's supervision.

(3) The funds received by the *regulator* from assessments under this subsection shall not be construed to be government or public funds or appropriated money.

(4) The *regulator* is not authorized under the Act to assess fees on consumers or consumer representatives. This paragraph does not prejudice any rights of the *regulator* to assess fees under other law.

(d) A *person* adversely affected by a final decision of the *regulator* may appeal such final decision to the United States Court of Appeals for the circuit in which the appellant is domiciled or to the United States Court of Appeals for the District of Columbia Circuit within 30 days after the earlier of the date of publication of such decision in the Federal Register or notice to such *person* by the *regulator*.

(e) For purposes of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the *regulator* is the "supervisory agency" of the *repository operator*.

SECTION 6. SYSTEM RULES

(a) ISSUANCE.—The *system operator* shall adopt *system rules* as required by this Act and may adopt *system rules* as it deems necessary to effect the purposes of this Act.

(b) EFFECTIVENESS.—A *system rule* is not effective unless it is adopted according to the procedures of this section.

(c) APPROVAL PROCESS FOR PROPOSED SYSTEM RULES.—

(1) FILING; NOTICE AND COMMENT PROCESS.—The *repository operator* may file a proposed *system rule* with the *regulator*, accompanied by a concise general statement of the basis and purpose of such proposed *system rule*. The *regulator* shall promptly publish such proposal and general statement in the Federal Register. The *regulator* shall give interested *persons* an opportunity to submit written data, views, and arguments concerning such proposed *system rule*.

(2) REVIEW OF PROPOSED SYSTEM RULES.—Not later than 180 days after the date of publication of a proposed *system rule* under paragraph (1) of this subsection, the *regulator* shall:

(A) by public order in accordance with the Administrative Procedures Act, approve or disapprove the proposed *system rule*; or

(B) publish in the Federal Register a notice of its intent to hold one or more hearings in accordance with procedures to be prescribed by regulation and the timeframe after which, in accordance with the Administrative Procedures Act, it will by public order approve or disapprove the proposed *system rule*.

(3) STANDARDS FOR APPROVAL AND DISAPPROVAL.—

(A)   The *regulator* shall approve a proposed *system rule* if it finds that such proposed *system rule* is consistent with the requirements and purposes of this Act.

(B)   The *regulator* shall disapprove a proposed *system rule* if it does not make a finding described in subparagraph (A).

(4)   CONSULTATION.—The *regulator* shall consult with and consider the *CFPB*'s views before approving or disapproving a proposed *system rule*.

(d)   EXIGENCIES.—Notwithstanding any other provision of this section, the *regulator* may permit a proposed *system rule* to have immediate effect if it appears to the *regulator* that an emergency exists requiring expeditious or summary action. Such *system rule* shall be promptly published in the Federal Register along with the *regulator's* reasons for expeditious action. Any *system rule* approved under this provision shall be published as an interim final rule, unless it is intended to expire with the emergency.

SECTION 7. GATEWAYS

(a)   THE ROLE OF A GATEWAY.—The *repository operator* is authorized to change the *records* of the *repository system only* in response to communications transmitted to the *repository operator* through a *gateway* or as directed by court order.

(b)   REQUIREMENTS FOR GATEWAYS.—The *repository operator* shall establish requirements for *gateways* by means of *system rules* consistent with the qualification standards in the regulations issued pursuant to subsection 5(a)(5) of this Act. Such requirements must include, among other things, data quality requirements, information security requirements and financial responsibility requirements.

(c)   ROLE OF THE *REPOSITORY OPERATOR*.—

(1)   Any *person*, including a *recorder's office*, may request that the *repository operator* treat it as a *gateway*. The *repository operator* shall grant this request if it finds that the requestor satisfies the regulations and the *repository operator's* qualification requirements.

(2)   From time to time, but not less than biennially, the *repository operator* shall review whether a *person* may continue to act as a *gateway*.

(3)   If, at any time, the *repository operator* knows that a *person* acting as a *gateway* no longer meets the regulatory and the *repository operator's* qualification requirements, the *repository operator* shall promptly revoke such *person's* status as a *gateway*.

(d)   ADVERSE DECISIONS.—

(1)   A *person* may appeal any adverse decision of the *repository operator* concerning *gateway* status to the *regulator*. The *regulator* shall review the *repository operator's* decision for conformance with this Act, regulations issued pursuant to this Act, and *system rules*. The *regulator* may not grant any preliminary relief during the pendency of this review.

(2) The *repository operator* is immune from any suit based on its refusal to authorize a *person* to act as a *gateway* or its decision to revoke such authorization.

(e) The *repository operator* shall maintain a public list of *gateways*.

SECTION 8. SUBMISSION OF MORTGAGE NOTES

(a) USE OF *REPOSITORY SYSTEM*.—No *person* shall be required, by virtue of this Act, to submit a *mortgage note* to the *repository system*. A *person* eligible to submit a *mortgage note* to the *repository system* under subsection (b) shall do so only by using a *gateway*. A *gateway* does not become the *person* submitting a *mortgage note* by virtue of its role in the submission process.

(b) PERSONS ELIGIBLE TO SUBMIT.—A *person* is eligible to submit a *mortgage note* to the *repository system* if such *person* is:

    (1) the holder, or other *person* entitled to enforce the *instrument*, under Article 3 of the *UCC* if the *mortgage note* is a *negotiable instrument*;

    (2) the *person* with control of the *transferable record* if the *mortgage note* is a *transferable record*; or

    (3) the *person* with the power to enforce the *mortgage note* as determined by *State* law other than Article 3 of the *UCC* if the *mortgage note* is not a *negotiable instrument* or *transferable record*.

(c) CREATION OF *ELECTRONIC MORTGAGE NOTES*.—

    (1) ELIGIBLE MORTGAGE NOTES.—The *repository operator* may accept the submission of a *mortgage note* if:

        (A) an *RLN* is associated with the *mortgage note* and the related *mortgage*;

        (B) the related *mortgage* with the associated *RLN* has been submitted for recording in the *recorder's office* where the real property is situated; and

        (C) the *mortgage note* is submitted to the *repository system* by a *person* who is (i) eligible to submit the *mortgage note* under subsection (b) and (ii) is the mortgagee of *record* (or has submitted records to the appropriate *recorder's office* that will result in such *person* becoming the mortgagee of record). A person who may submit a *mortgage note* under subsection (b) is deemed the mortgagee of record for purposes of this subparagraph even if the mortgage identifies another *person* as holding the mortgage in the capacity of nominee.

    (2) DATA REQUIREMENTS.—A *person* eligible to submit a *mortgage note* must comply with any relevant *system rules* or regulations concerning the method to be used to submit data, data quality standards, required submission format, and required data. At a minimum, the *person* eligible to submit a *mortgage note* must submit:

        (A) the *mortgage note*, including any alonges or *modifications* to the note that were made prior to submission;

(B)   [if not evident on the *mortgage note*, a *record* of each transfer (or for *transferable records* or *controlled records*, change of control) of the *mortgage note* prior to submission;]

(C)   a copy of the entire *mortgage* associated with the *mortgage note*, and if not evident on the face of the *mortgage*, *record*(s) demonstrating:

(i)   that the *mortgage* is recorded (or has been submitted for recording in the appropriate recorder's office),

(ii)   that an *RLN* has been associated with the *mortgage*, and

(iii)   the identity of the mortgagee of record (or if the mortgagee of record is a nominee, the deemed mortgagee of record under subsection 8(c)(1)(C));

(D)   the identity of any servicer(s) (including any master servicers or sub-servicers) of the *obligation* evidenced by the *mortgage note*;

(E)   a statement as to whether a servicer has authority to modify the *obligation* evidenced by the *mortgage note*, and a general statement as to the basis and scope of that authority;

(F)   if the *person* submitting the *mortgage note* does not have a beneficial interest in the *mortgage note*, the identity of the *person* or *persons* with such beneficial interest and the capacity of the *person* submitting the *mortgage note* (e.g., trustee, agent, as servicer for, etc.); and

(G)   contact information of the *borrower* as *known* to the submitter.

(3)   *CONVERSION TO ELECTRONIC MORTGAGE NOTE.*—Upon receipt of a *mortgage note* and all required data submitted in compliance with this section, the *repository operator* shall:

(A)   create a *record* in the *repository system* establishing the *electronic mortgage note* in substitution for the submitted *mortgage note*; and

(B)   identify the *person* submitting the *mortgage note* as the initial *registrant* of the *electronic mortgage note* in the *repository system.*

Together the acts described in subparagraphs (A) and (B) shall constitute *conversion* of the *mortgage note* into an electronic mortgage note in the *repository system.* After *conversion* of the *mortgage note* in the *repository system*, a *person* may become a *registrant* of the *electronic mortgage note* only if the *repository system* identifies such *person* as the *registrant.*

(4)   SUBMISSION NOT CONFORMING TO THE REQUIREMENTS FOR SUBMISSION.—

(A)   Even if the submission of the *mortgage note* was inconsistent with some or all of the requirements of paragraphs (1) and (2) of this subsection 8(c):

(i)   a *mortgage note* submitted to the *repository system* is converted to an *electronic mortgage note;* and

        (ii)   to the extent that the *obligation* evidenced by an *electronic mortgage note* is enforceable, the *registrant* is the holder or other *person* entitled to enforce.

    (B)   This paragraph applies to any *record* that is not a *mortgage note*. Notwithstanding any other provision of this Act, if such record is submitted to the *repository operator*, the submission does not result in the creation of an *electronic mortgage note* by the *repository operator* or alter the legal nature of the obligation evidenced by such record.

    (C)   The *repository operator* is liable for accepting a *mortgage note* that was submitted inconsistently with the requirements of paragraphs (1) and (2) of this subsection 8(c) only if it *knew* about the inconsistencies at the time it converted the *mortgage note* to an *electronic mortgage note*. Any such liability is limited by subsection 19(c) of this Act.

(d)   GATEWAY'S WARRANTIES RELATING TO MORTGAGE NOTE SUBMISSIONS.—

    (1)   If a *record* purporting to be a *mortgage note* is submitted to the *repository operator* within [ten] business days of the date the *mortgage note* is executed and the person submitting the *mortgage note* is the named obligee, the *gateway* used to submit the *mortgage note* warrants to any *person* that, as of the time of submission:

        (A)   the *person* submitting the *mortgage note* to the *repository operator* qualifies as an eligible submitter under subsection (b) of this section;

        (B)   the submission is of a *mortgage note* that is eligible under subsection (c)(1) of this section;

        (C)   all data transmitted by the *gateway* to the *repository system* are an accurate reflection of the data received by the *gateway;* and

        (D)   if the *mortgage note* is:

            (I)   a *negotiable instrument* or *transferable record*, the *gateway* has not previously submitted another *negotiable instrument* or *transferable record* documenting the same *obligation* as the one being deposited; or

            (II)   neither a *negotiable instrument* nor a *transferable record*, the *gateway* has not previously submitted a copy of the *mortgage note.*

    (2)   With respect to any other *mortgage notes* submitted to the *repository operator*, the *gateway* used to submit that *mortgage note* makes the warranties of paragraph (1) of this subsection and further warrants that, as of the time of submission:

        (A)   there has been no *alteration* to the *mortgage note*;

        (B)   the signature or other authentication of the *borrower* on the *mortgage note* was authorized;

        (C)   there is no *adverse claim* to the *mortgage note*; and

(D)   the submission of the *mortgage note* includes any alonges or *modifications* that were made prior to submission.

For a *mortgage note* that was executed before the date on which the *repository system* first begins to accept submissions, each warranty of this paragraph is made only to the *borrower(s)* under that *mortgage note*. For all other *mortgage notes* within the scope of this paragraph (2), each warranty of this paragraph runs to any *person*.

(3)   DAMAGES.—A *person* found to have been damaged by a breach of one of the warranties in paragraphs (1) and (2) is entitled solely to the direct economic losses caused by the breach, except that a *borrower* may also recover reasonable attorney's fees. A *person* remains liable for a warranty given under this subsection even after it ceases to be authorized to act as a *gateway*. The warranties provided in this subsection are the only warranties provided by a *gateway* under this Act but do not replace, and are in addition to, any other remedies available to *borrowers* or other *persons* under this Act or other law.

(e)   *REPOSITORY OPERATOR'S* WARRANTY.—With respect to any *electronic mortgage note*, the *repository operator* warrants that all data in the *repository system* are an accurate reflection of the data received through the *gateway*.

SECTION 9. LEGAL EFFECT OF *CONVERSION*

(a)   EFFECT OF *CONVERSION*.—

(1)   *CONVERSION* OF A *MORTGAGE NOTE.* —

(A)   The *obligation* evidenced by an *electronic mortgage note* has the same effect and validity as the *obligation* evidenced by the *mortgage note* prior to *conversion* to an *electronic mortgage note*. Without limiting the foregoing, and except with respect to the standing of the registrant, the *conversion* of a *mortgage note* does not limit any right that a *borrower* may have to assert a claim or a defense, including a defense of fraud, forgery, or alteration.

(B)   The *mortgage note* ceases to be the embodiment of the *obligation* upon *conversion*. Any claim to a property right in the *mortgage note* becomes an *adverse claim upon conversion* of the *mortgage note* to an *electronic mortgage note*.

(2)   RECONVERSION. —Once a *mortgage note* is converted to an *electronic mortgage note,* it may not be reconverted to a *mortgage note* or otherwise withdrawn from the *repository system* unless so authorized by this paragraph. The *regulator* may promulgate regulations for reconverting *electronic mortgage notes* to *mortgage notes* or otherwise withdrawing them from the *repository system* solely in connection with assuming the operations of the *repository system* as conservator

in accordance with section 4 and only if necessary to support the safe and sound functioning of the *residential mortgage* market.

(b) APPLICATION OF UCC ARTICLE 3.—

   (1) Subject to paragraph (2) of this subsection and subsections 12(b), 18(a)(1), and 19(a)(2):

      (A) an *electronic mortgage note* that was created based on the submission of:
         (i) an *instrument* that at the time of submission was a *negotiable instrument;* or
         (ii) a *transferable record* that at the time of submission was in a *control system*

         shall be treated as a *negotiable instrument* for all purposes;

      (B) an *electronic mortgage note* that was created based on the submission of:
         (i) an *instrument* but not a *negotiable instrument*; or
         (ii) a *controlled record*

         shall be treated as a *negotiable instrument* for all purposes, except there can be no holder in due course of such an *electronic mortgage note*; and

      (C) subject to subsection 13(e)(1), the *person* identified by the *repository system* as the *registrant* of an *electronic mortgage note* has the rights that a holder would have if the *electronic mortgage note* were a *negotiable instrument*, except as otherwise provided by subparagraph (B) of this paragraph.

   (2) POST-CONVERSION DESTRUCTION OF THE INSTRUMENT.—An *instrument* that is converted to an *electronic mortgage note* pursuant to this Act and is destroyed during or after submission to the repository operator shall not be treated as destroyed or result in the discharge of the *obligation* on the *instrument* for purposes of Article 3 of the *UCC* if the *instrument's* destruction was required or permitted by *system rules* or regulations; and

   (3) PAYMENTS BY *BORROWER* AFTER *CONVERSION*.—

      (A) Subject to subparagraph (D), an *electronic mortgage note* is paid to the extent payment is made by or on behalf of a *borrower* as directed by a *registrant*.

      (B) Subject to subparagraph (D), an *electronic mortgage* is paid to the extent payment is made by or on behalf of a *borrower* to a *person* that formerly was a registrant only if at the time of the payment the *borrower* has not received adequate notification of a *registered transfer* of the *electronic mortgage note* to a new *registrant*. Adequate notification is either notice pursuant to section 17 or as determined by other law.

      (C) Subject to subparagraph (D), to the extent of a payment under subparagraphs (A) and (B), the *obligation* of the *borrower* is discharged

even though payment is made with *knowledge* of an *adverse claim* to the *electronic mortgage note* by another person.

  (D) The obligation of a *borrower* is not discharged under subparagraphs (A) through (C) if the *person* making the payment *knows* that payment is prohibited by injunction or similar process of a court of competent jurisdiction.

(c) APPLICATION OF THE LAW OF CHATTELS.—

  (1) An *electronic mortgage note* is not subject to the law of bailment.

  (2) The liability of a *person* (other than the relevant *gateway* or the *repository operator*) who wrongfully prevents the *registrant* or *authorized transferor* from exercising its rights in the *electronic mortgage note* is similar to the liability for the torts of conversion or trespass to chattels.

  (3) Notwithstanding the foregoing, a *mortgage note* is subject to the law governing tangible movable property and this Act does not limit any remedies available with respect to a *mortgage note*, except, if a *mortgage note* is subsequently *converted* into an *electronic mortgage note*, the remedies shall not include recovery of the relevant *mortgage note.*

(d) CONTINUOUS POSSESSION.—

  (1) The *person* identified by the *repository system* as the initial *registrant* shall be treated for all purposes of law as having had continuous possession or control of the *mortgage note* throughout the submission and *conversion* process.

  (2) Subject to subsection 13(f), the *person* identified by the *repository system* as the *registrant* shall be treated for all purposes of law to have had continuous possession of the *electronic mortgage note* associated by the *repository system* with such *registrant* from the time *the registrant* is so identified until another *person* becomes the *registrant* of such *electronic mortgage note.*

(e) An *electronic mortgage note* is:

  (1) not a security for purposes of:

    (A) federal or *State* securities regulatory laws; or

    (B) *UCC* § 8-102(a)(15)(iii)(A);

  (2) located in the District of Columbia for purposes of Article 9 of the *UCC* to the extent the location of the *electronic mortgage note* is relevant ; and

  (3) not subject to *State* abandoned property law.

SECTION 10. MODIFICATIONS

(a) The *regulator* shall issue regulations for the submission to the *repository system* of *records* evidencing *modifications* of the *obligation* evidenced by an *electronic mortgage note.* Such regulations shall conform as closely as possible to the regulations governing submission of the *mortgage note*, including with respect to appropriate warranties of the *gateway* and the *repository operator*. The regulations shall:

(1)   require that records evidencing *modification* be submitted through a *gateway* by a specified time;

(2)   require the *registrant* to pay a fine to the *repository operator* for each business day of delay in submitting the *modification*;

(3)   impose liability on a *registrant* for any harm to the *borrower* caused by a delay in submission of the records evidencing *modification*.

(b)   Any indemnity or other agreement requiring a *borrower* to pay fees or other amounts to a *registrant* for the purposes of the *registrant* recovering fines paid by it to the *repository operator* under subsection (a) shall be unenforceable. A *registrant* that charges fees or other amounts under an indemnity or other agreement that is unenforceable under this subsection shall be liable to the *borrower* for (i) the greater of the amount that it paid and [$2,000] and (ii) reasonable attorney's fees.

(c)   The *registrant* may submit any other *record* that identifies changes to: (i) the identities or names of the parties to the *obligation* evidenced by the *electronic mortgage note*, (ii) title to the property securing the *obligation* evidenced by the *electronic mortgage note*, or (iii) the *mortgage*. The *repository operator* shall associate such additional *records* with the *electronic mortgage note* to which they relate.

(d)   The submission of, or failure to submit, any *modifications* under subsection (a) of this section shall have no effect on whether the *modification* is enforceable, with the enforceability to be determined under other law.

(e)   WARRANTIES RELATING TO MODIFICATION.—

(1)   In any *registered transfer*, the transferring *registrant* warrants that it has submitted to the *repository system records* of any *modification* to the *obligation* evidenced by the *electronic mortgage note* to which it is a party and any *modification* of which it has *notice*. This warranty runs to the *borrower(s)* under the relevant *electronic mortgage note* and all proximate and remote transferees of the *electronic mortgage note*.

(2)   In any judicial or non-judicial foreclosure proceeding or any judicial proceeding to enforce the electronic mortgage note, the *registrant* warrants to the *borrower* that, prior to the initiation of the enforcement proceeding, it has submitted to the *repository system* any *modification* to the *obligation* evidenced by the *electronic mortgage note* to which it is a party and any *modification* of which it has *notice*.

SECTION 11. DISCHARGE

(a)   "D*ischarge*" means any act that terminates the *obligation* of a *borrower* evidenced by the *electronic mortgage note*, including full performance, satisfaction, strict foreclosure, foreclosure producing an amount payable to the *registrant* of the *electronic mortgage note* sufficient to pay the *obligation* in full, bankruptcy discharge, agreement (*e.g.*, deed in lieu), or court order. Full payment does not constitute *discharge* if the *registrant* or a

person acting for the *registrant* has an ongoing duty to make advances under a line of credit.

(b)   REGULATIONS.— The *regulator* shall issue regulations:

(1)   requiring that the *registrant* give the *repository operator* notice of *discharge* of a *borrower's obligation* evidenced by an *electronic mortgage note* to the *repository system*;

(2)   establishing a process by which a *borrower* may (i) give notice to the *repository operator* of the *borrower's* belief that its *obligation* or the *obligation* evidenced by the *electronic mortgage note* has been *discharged* and (ii) request that the *registrant* or, if applicable, the court issuing a court order *discharging* the *obligation* confirm such *discharge* to the *repository operator*;

(3)   providing for an appropriate remedy for the *registrant's* failure to give the *repository operator* notice of a *discharge known* to such *registrant*; and

(4)   requiring the *repository operator* to update the *repository system* to reflect any *discharge* of a *borrower's obligation* evidenced by an *electronic mortgage note*.

The notice requirement in this section does not replace: (i) any requirement under other law to deliver or record a satisfaction of *mortgage* or (ii) any associated penalties for failure to comply with such requirement.

(c)   Once the *records* of the *repository system* reflect that the *obligation* evidenced by an *electronic mortgage note* has been *discharged* with respect to all *borrowers*, such *electronic mortgage note* shall cease to be transferable.

(d)   Except to the extent that regulations require a different retention period or as otherwise required by law, the *repository operator* shall destroy all *records* relating to an *electronic mortgage note* [30] years after such *electronic mortgage note* (i) is *discharged* as to all *borrowers* or (ii) has matured and no notice of *discharge* or other instructions have been received by the *repository system*.

SECTION 12.   REGISTERED TRANSFERS AND SECURITY INTERESTS

(a)   REGISTERED TRANSFERS.—

(1)   REGISTERED TRANSFER PROCESS.—The *repository operator* is authorized to change the identity of the *registrant* (i) subject to subsection 13(e)(1), only upon its receipt of an instruction from the *registrant* or an *authorized transferor* directing the *repository operator* to make a *registered transfer* or (ii) in response to a court order.

(2)   INEFFECTIVE TRANSFERS.—

(A)   Except as provided in subparagraph (C), a *registrant* or *authorized transferor* may not transfer an *electronic mortgage note* outside the *repository system*.

(B)   If a *registrant* attempts to make a *registered transfer* of less than the entire *obligation* evidenced by the *electronic mortgage note* on the *repository system*, the *repository operator* shall not effect the *registered transfer*.

[(C)   The Act does not limit the right of a *registrant* to assign its rights to payments outside of the *repository system*, either partially or in whole, except insofar as provided in this subparagraph. Such an assignment (i) only affects the rights and *obligations* between the *registrant* and its assignee as determined under other law, and (ii) has no effect on the rights and *obligations* of the *borrower* or the *repository operator*.]

(3)   Subject to paragraph (4), a *registered transfer* is deemed to be accompanied by an unqualified indorsement by the *registrant*, as applicable, of the *electronic mortgage note* in the name of the *registrant* with the transfer warranties set forth in *UCC* Article 3.

(4)   A *registrant* may instruct the *repository operator* that the *electronic mortgage note* is accompanied by an indorsement other than the type described in paragraph (3) so long as such instruction comports with *system rules*. The *repository operator* shall enter the instruction in the *repository system* in a manner that permits the *borrower* and all future *registrants* to view the nature of the indorsement.

(5)   Any act of the *repository operator* that changes the identity of the *registrant* conveys to the new *registrant* of *the electronic mortgage note* the transferor's right to enforce the associated *mortgage* or, in the case of a *mortgage* that takes the form of a deed of trust, the transferor's status as beneficiary of the deed of trust.

(b)   UCC ARTICLE 9 SECURITY INTERESTS.—

(1)   [The act of submitting a *mortgage note* to the *repository operator* and the *conversion* of such *mortgage note* by the *repository operator* does not affect the attachment, perfection, or priority of a security interest granted in the *mortgage note* that was granted before submission and *conversion*. For purpose of this paragraph, the location of a *mortgage note* is determined by its location immediately before submission.]

(2)   For purposes of *UCC* Article 9, a description of collateral consisting of an *electronic mortgage note* is sufficient if it identifies the collateral

(A)   as an *electronic mortgage note*; or

(B)   by the type of collateral defined in the *UCC* that corresponds to the *mortgage note* that was converted to the *electronic mortgage note* by operation of section 8.

Any description or indication of a *mortgage note* that was sufficient before *conversion* is a sufficient description or indication of the related *electronic mortgage note*. This paragraph supplements the rules of section 9-108 of the *UCC*

and does not prevent satisfaction of section 9-108 of the *UCC* under the provisions of that section.

(3) This Act does not preclude the creation of a security interest in an *electronic mortgage note* under Article 9 of the *UCC*. A secured party, other than the *registrant* or an *authorized transferor*, may enforce its security interest only as an *adverse claim*. A secured party who is not the *registrant* but is an *authorized transferor* may exercise its *registered transfer* power and become the *registrant* to enforce its security interest.

(c) TIMING WITH RESPECT TO REGISTERED TRANSFERS AND AUTHORIZED TRANSFERORS.— *System rules* shall determine when:

(1) *Registered transfers* are effective;

(2) Instructions creating, modifying, transferring, or destroying *authorized transferor* status are effective;

(3) Waivers of a *registrant's* powers to enforce or transfer are effective.

SECTION 13. AUTHORIZED TRANSFERORS

(a) An *authorized transferor* may effect a *registered transfer* of the *electronic mortgage note* to itself or any other *person*, including making any indorsements in the name of the *registrant* as contemplated by section 12. In effecting such a *registered transfer*, the *authorized transferor* also has the power to instruct the *repository operator* pursuant to paragraph 12(a)(4).

(b) There can be only one *authorized transferor* of an *electronic mortgage note* at any given time.

(c) A *person* becomes an *authorized transferor* of an *electronic mortgage note* when the *repository operator* creates a *record* of the *person's* status as an *authorized transferor* on the *repository system* in response to an instruction from the *registrant* or the *authorized transferor*.

(d) A *person* ceases to be an *authorized transferor* of an *electronic mortgage note* when:

(1) such *electronic mortgage note* has been subject to a *registered transfer* by the *registrant*;

(2) the *repository operator* revokes the *person's* status as an *authorized transferor* in response to an instruction from

(A) the *authorized transferor* to revoke the status or confer the status on another *person,* or

(B) from the *registrant*, unless the instruction originally conferring *authorized transferor* status provides that the status is irrevocable by the *registrant*; or

(3) the *electronic mortgage note* has been marked as *discharged* by the *repository operator* in accordance with section 11.

(e) OTHER POWERS.—

(1)   Notwithstanding the existence of an *authorized transferor*, the *registrant* of an *electronic mortgage note* retains its power to make a *registered transfer* and enforce the *electronic mortgage note* (and associated *mortgage*), unless the *registrant* waives either or both of these powers, in which case the *repository operator*, upon its receipt of an instruction from the *registrant* waiving its power(s):

    (A)   shall create a *record* on the *repository system* of the extent of the waiver; and

    (B)   if the power to make a *registered transfer* is waived, shall not act on a *registered transfer* instruction received from the *registrant*.

A waiver under this subsection 13(e)(1) is irrevocable by the *registrant*, but automatically terminates if there is no longer an *authorized transferor*.

(2)   Notwithstanding the existence of an *authorized transferor*, the *registrant* retains all of the duties of a *registrant* established under this Act. An *authorized transferor* does not have any of the duties of a *registrant*.

(3)   Nothing in this section gives the *authorized transferor* any rights in the *electronic mortgage note* other than the power to make a *registered transfer*.

(f)   POSSESSION.—Notwithstanding subsection 9(d), if a *registrant* waives its right to make a *registered transfer* in accordance with subsection 13(e)(1), upon the *repository operator's* receipt of a waiver instruction from the *registrant*, the *authorized transferor* (and not the *registrant*) shall be deemed to be in possession of the *electronic mortgage note* for purposes of *UCC* Article 9.

SECTION 14. MORTGAGES ASSOCIATED WITH DEPOSITED MORTGAGE NOTES

(a)   A *person* shall submit a document containing an *RLN* for recording in a *recorder's office* only if the named mortgagee has submitted (or, promptly after the document is submitted for recording with the *recorder's office,* will submit) the related *mortgage note* to the *repository system*.

(b)   The creation by the *repository operator* of a *record* in the *repository system* reflecting a change in the identity of the *registrant* of an *electronic mortgage note* that is secured by the recorded *mortgage* has the same effect under *State* law as recordation of an assignment of a *mortgage* from one *registrant* to another.

(c)   Notwithstanding contrary *State* law, the *registrant* of an *electronic mortgage note* is deemed the mortgagee of record for all purposes, including for release of the *mortgage*. Any law that requires notice be given to a *person* identified in the *recorder's office* as mortgagee is satisfied by giving notice to the *registrant* of the related *electronic mortgage note*.

(d)   Submission of a *mortgage* to the *repository system* does not have the legal effect of recording the *mortgage* or establishing or affecting its validity or priority. *Notice* of

discharge of an *electronic mortgage note* provided to the *repository system* under section 11 does not have the legal effect of delivering or recording a satisfaction of *mortgage*.

SECTION 15. SUPERVISORY INFORMATION SHARING

(a)   Upon request, the *regulator* may share information obtained through the exercise of its supervisory or regulatory authority under this Act with *other financial supervisors and regulators* to the extent the requested information is relevant to the *other financial supervisor's or regulator's* exercise of its authority.

(b)   Upon request, o*ther financial supervisors and regulators* may share information obtained through the exercise of their supervisory or regulatory authority with the *regulator* if the information concerns a *gateway* and is relevant to the requirements and standards for certification.

(c)   For purposes of this section, "other financial supervisors and regulators" are:

(1)   The *Board of Governors*, the *CFPB*, the Commodity Futures Trading Commission, the *FDIC*, the Federal Trade Commission, the *NCUA*, the *OCC*, and the Securities and Exchange Commission; and

(2)   *State* banking, *mortgage* broker, *mortgage* lender, and insurance regulators.

SECTION 16. RECORDS, ACCESS RIGHTS, AND DATA SECURITY

(a)   CREATION AND MAINTENANCE OF RECORDS.—The *regulator* shall issue regulations directing the *repository operator* to:

(1)   promptly and accurately record and maintain *records* of *electronic mortgage notes*, *registered transfers*, *modifications*, and other instructions or data required by this Act, regulations, or *system rules* and submitted to the *repository system*;

(2)   accurately capture the optical information of any paper document that is submitted to the *repository system* in accordance with technical standards prescribed by *system rules* or regulation; and

(3)   establish a process for identifying and correcting incorrect information submitted to or maintained by the *repository system*.

(b)   ACCESS RIGHTS.—

(1)   The *regulator* shall issue regulations governing access to information in the *repository system.* The regulations shall take into account the specific needs of *borrowers, registrants, authorized transferors, gateways*, courts, title searchers, persons with valid subpoenas, scholars, governmental entities, the general public, potential purchasers, and others identified by the *regulator* as needing access. The regulations shall:

(A)   subject to security procedures to verify the identity of a borrower or a representative of the borrower seeking to access information from the *repository system,* provide each *borrower* or each *person* identified by the *borrower* as its representative access to all information concerning an

electronic mortgage note on which such *borrower* is obligated (i) promptly after the *repository operator* received a request for the information in accordance with relevant system rules, (ii) without cost to the *borrower* or any *person* the *borrower* identifies representative, and (iii) in an accessible format;

(B)   require the *repository operator* to establish a process for a *borrower* to provide contact information to the *repository operator*;

(C)   allow a *registrant* or *authorized transferors* to access all information concerning the *electronic mortgage notes* for which it is the *registrant*;

(D)   provide access to all *records* relating to an *electronic mortgage note* that is the subject of an adjudication to the court in which such action is pending;

(E)   protect the privacy interests of the *borrower*; and

(F)   protect the confidentiality of all [personally identifiable] data that are not otherwise publicly available.

(2)   The *registrant* or *authorized transferor* may instruct the *repository operator* that another *person* is authorized to access the information concerning an *electronic mortgage note*. After it receives the instruction, the *repository operator* may grant access to such authorized *person*. The instruction constitutes a warranty by the *registrant* or *authorized transferor* to the *borrower* that the authorized *person* will keep the information confidential and not use it for any marketing purpose. This warranty expires if the authorized person becomes the *registrant* or *authorized transferor*.

(3)   Subject to paragraph (1) of this subsection, the *repository operator* may establish *system rules* concerning the time and manner in which information requests may be made and responded to, procedures for obtaining certified *records* from the *repository system*, and any fees associated with requests for information or certified records.

(4)   The *repository operator* shall offer each *recorder's office* free access to the *records* of the *repository system* that reflect the identity of current and prior *registrants*, and any indication that the *obligation* to the *registrant* has been *discharged*. Such access shall be limited to *records* relating to *electronic mortgage notes* secured by property in the *recorder's office*'s jurisdiction.

(5)   The *repository operator* shall offer each title company free access to the *records* of the *repository system* that reflect the identity of current and prior *registrants*, and any indication that the *obligation* to the *registrant* has been *discharged.*

(c)   DATA SECURITY.—The *repository operator* shall maintain an information security program designed to protect the security and confidentiality of information in the *repository system*, to protect against any anticipated threats or hazards to the security or integrity of the information, and to protect against unauthorized access to the information. In supervising the *repository operator* and its activities, the *regulator* shall follow

guidance issued by the Federal Financial Institutions Examination Council on information security programs, including cyber security and critical dependencies.

SECTION 17. POST-SUBMISSION INFORMATION

(a)   NOTICE BY REPOSITORY OPERATOR.—

    (1)   The *repository operator* shall send a notice to the *borrower*:

        (A)   when it converts a *mortgage note* to an *electronic mortgage note,* stating the fact of *conversion*; and

        (B)   whenever there is a change to the *repository system records* associated with an *electronic mortgage note* for which the *person* is a *borrower*.

    A notice provided under this paragraph (a)(1) may disclose only that there has been a change to the *repository system records* that the *borrower* can see by accessing the *repository system*. The form of the notice shall be prescribed by regulation. In developing the regulation, the *regulator* shall develop the notice for clarity and consumer comprehension, target the notice to a reading level no higher than eighth grade, and require that the *repository operator* include information instructing the borrower as to how to access the *repository system*.

    (2)   If the *borrower* has identified itself to the *repository operator* in accordance with *system rules*, the *repository operator* shall send the notice required in paragraph (1) to the *borrower* as provided in the manner specified in the *borrower*'s identification to the *repository operator*. If the *borrower* has not identified itself to the *repository operator* in accordance with *system rules*, the *repository operator* shall send the notice required in paragraph (a)(1) to the *borrower* through regular mail at an address provided by the *registrant*.

    (3)   The *repository operator* may not impose a fee or other charge on the *borrower* for the notices.

(b)   *NOTICE BY REGISTRANT*.—

    (1)   When disclosure to a *borrower* is required under *RESPA* or 15 USC § 1641(g) with respect to an *obligation* evidenced by a *mortgage note,* the *registrant* shall also cause the disclosure to be provided to the *repository operator*; and

    (2)   To the extent *known* by the *registrant* or any master servicer or sub-servicer of the *registrant*, such *registrant* must provide the following information to the *repository operator* within a reasonable period of time of the registrant or any master servicer or subservice knowing of any change following submission:

        (A)   contact information of the *borrower* obtained after *conversion* of the *mortgage note*; and

        (B)   the identity and contact information of any successors to the *borrower*.

SECTION 18. PRESENTMENT AND EVIDENCE; AGENCY

(a)   PRESENTMENT AND EVIDENCE.—

(1)   In the case of *electronic mortgage notes* and related *records*:

     (A)   any statute, regulation, other rule of law, or legal process that requires that an original or a copy of any documentation or other information that has been submitted to or created by the *repository system* be presented, produced, exhibited, provided, available, or retained for any purpose is satisfied by the related *record* of the *repository system* that is certified by the *repository operator*;

     (B)   a *record* of the *repository system* certified by the *repository operator* that identifies the current *registrant* of an *electronic mortgage note* serves as irrebuttable proof of the identity of the *person* with such status on the *repository system*, but the validity of the content of all other certified *records* of the *repository system* is determined by other law;

     (C)   all *records* of the *repository system* that are certified by the *repository operator* shall be self-authenticating; and

     (D)   the *regulator* shall issue regulations governing certification by the *repository operator* of *records* of the *repository system*.

(2)   Any *record* that is described in subsection 8(c)(4)(B) or is submitted in connection with such a *record* may be offered as evidence with whatever admissibility and weight the court may decide to give it.

(b)   AGENCY.—The extent to which a *person* may act through an agent or other representative is determined by other law.

SECTION 19. REPOSITORY OPERATOR'S RESPONSIBILITY FOR FRAUD AND ERROR; REPOSITORY OPERATOR'S LIABILITY

(a)   MULTIPLE SUBMISSIONS OF THE SAME *MORTGAGE NOTE*.—

(1)   If the *repository operator* believes that a *mortgage note* was submitted more than once, it shall notify all putative *registrants* and the *borrower* and shall not effect any *registered transfer* of such *electronic mortgage notes* until either:

     (A)   All putative *registrants* identified agree as to the identity of the sole *registrant* with respect to the *mortgage note* and provide *notice* to the *repository operator* in accordance with *system rules*; or

     (B)   A court order resolves the identity of the true *registrant* or determines that the relevant *mortgage note* was submitted only once and that any supposed duplicate submissions of that *mortgage note* were submissions of different *mortgage notes*.

(2)   Multiple originals of the same *mortgage note* are subject to paragraph (1) of this subsection, even if some or all of them take the form of a *negotiable instrument* or *transferable record.*

(b)   REPOSITORY ERRORS.—This section does not apply to errors made by a *gateway* or a *gateway's* customer that are accurately reproduced by the *repository operator*.

(1) If the *repository operator knows* that it erroneously identified a *registrant* or erroneously identified two different *persons* as the *registrant* of the same *electronic mortgage note*, it shall correct the error.

(2) If the *repository operator* reasonably believes that it erroneously identified a *registrant* or erroneously identified two different *persons* as the *registrant* of the same *electronic mortgage note*, it may correct the error.

(3) If the *person* erroneously identified as a *registrant* on the *repository system* causes a *registered transfer* of the *electronic mortgage note* before the *repository operator* corrects an error of the type described in paragraph (1) or (2), then upon correcting the error, the *repository operator* shall:

    (A) compensate the *person* losing *registrant* status if that *person* is a holder in due course [and acted in good faith in acquiring the *electronic mortgage note* for value]; and

    (B) be subrogated to the rights of the holder in due course to the extent the *repository operator* has compensated a *person* pursuant to subparagraph (A).

(4) The *repository operator* shall promptly *notify* any *persons* that its records indicate could be affected by operation of paragraph (1), (2) or (3) of this subsection.

(c) LIABILITY.—

(1) Unless otherwise provided in the Act, in connection with its role as *repository operator*, the *repository operator* is:

    (A) liable only to *registrants, gateways, adverse claimants,* and *authorized transferors* for failure to comply with this Act, regulations issued pursuant to this Act, or *system rules* and this liability is limited to economic loss caused by the failure.

    (B) Not liable to any *person* for consequential or punitive damages.

(3) The *repository operator* shall not be liable to any *person* because of a force majeure event, if the *repository operator* exercises the diligence the circumstances require. Any *registrant* or other *person* that cannot carry out a legal *obligation* due to the effect of the force majeure event on the *repository operator* or *repository system* is excused from acting until (i) it receives notice that the force majeure event no longer affects the *repository operator* or *repository system* and (ii) has a reasonable time to act.

(4) The *repository operator* may be liable for failure to act on an instruction it receives from a *registrant or authorized transferor* or court if it has had a reasonable time to act on the instruction and has failed to do so.

(5) The *repository operator's* acts pursuant to regulations or its *system rules* are immune from antitrust claims.

SECTION 20. NOTICE TO REPOSITORY OPERATOR OF ADVERSE CLAIMS; RELIEF FOR ADVERSE CLAIMS AGAINST THE REPOSITORY OPERATOR

(a)   Notice to the *repository operator* of an *adverse claim* is not effective and the *repository operator* shall not recognize the *adverse claimant* unless said *adverse claimant* obtains a restraining order, injunction or other appropriate court order effective against the *repository operator*.

(b)   For purposes of this section, a court order is issued by an appropriate court if issued by:

    (1)   a federal court, *State* court of general jurisdiction, or *State* court with special jurisdiction over real estate with personal jurisdiction over the *registrant* associated with the *electronic mortgage note* at issue in the *adverse claim*; or

    (2)   a court with personal jurisdiction over the *repository operator*, if no federal court or *State* court of general jurisdiction or special jurisdiction has personal jurisdiction over the *registrant*.

(c)   The *repository operator* shall notify the *registrant* promptly of any effective notice of *adverse claim* under subsection (a).

(d)   The only relief for an *adverse claim* against the *repository operator* shall be injunctive, ordering the *repository operator* either not to effect a *registered transfer* during the pendency of the action or to make the *adverse claimant* the *registrant*.

SECTION 21. PREEMPTION AND CONSTRUCTION

(a)   RULE OF CONSTRUCTION.—This Act may not be construed as annulling, altering, affecting, or exempting any *person* subject to the provisions of this Act from complying with, the statutes, regulations, orders, or interpretations in effect in any *State*, except to the extent that a provision of law is inconsistent with the provisions of this title, and then only to the extent of the inconsistency. A determination regarding whether a statute, regulation, order, or interpretation in effect in any *State* is inconsistent with the provisions of this title may be made by the *regulator* on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b)   CONSTRUCTION. —Except as expressly provided in the Act, this Act does not address the rights of *borrowers*, and *obligations* of *persons* to *borrowers*, including with respect to:

    (1)   recovery of monetary damages, whether under statute or other law, resulting from foreclosure-related conduct, including any misrepresentations about authority to foreclose of any *person*;

    (2)   requirements for review of loss mitigation options, including required mediation and conferences;

    (3)   *borrower* claims under *State* and other federal laws arising from the misconduct of (i) persons who submit *mortgage notes* to the *repository operator*, (ii) *gateways* or (iii) *registrants*;

    (4)   notice requirements; or

(5)   any consumer protection laws that do not interfere with the intent and purpose of this Act.

SECTION 22. JURISDICTION, VENUE AND CONFLICT OF LAWS

(a)   Except as provided in this section and subsections 9(e)(2)[, 12(b)(1)], and 20(b), nothing in this Act shall affect the rules used to determine jurisdiction, venue or applicable law.

(b)   *REPOSITORY OPERATOR*.—

   (1)   Any suit of a civil nature at common law or in equity to which the *repository operator* is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of the suit.

   (2)   The *repository operator*, as defendant, may remove a suit to a United States district court by following the procedure otherwise provided by law for the removal of causes.

   [(3)   LOCATION OF THE *REPOSITORY OPERATOR*.—The *repository operator* is located in the jurisdiction in which the chief executive office of the *repository operator* is located. [**Chartered instrumentality version only**.]]

(c)   FEDERAL SUBJECT MATTER JURISDICTION.—

   (1)   Except as provided in subparagraph (2), this Act does not establish federal subject-matter jurisdiction with respect to:

      (A)   the enforcement of an *electronic mortgage note* or the associated *mortgage*;

      (B)   any warranty compelled by this Act that is extended by [the *repository operator* or] a *gateway*; or

      (C)   in private litigation, any warranty compelled by this Act that is extended by a *registrant*.

   (2)   This Act does not preclude the assertion of diversity, ancillary, pendent or supplemental jurisdiction with respect to the actions described in paragraph (1).