

MEMO# 32033

November 4, 2019

SEC Chairman Issues Statement Requesting Public Input on Disclosure Requirements for Residential Mortgage-Backed Securities - ICI Member Call on November 12, 2019

[32033]

November 4, 2019 TO: Closed-End Investment Company Committee
Fixed-Income Advisory Committee
ICI Global Trading & Markets Committee
SEC Rules Committee RE: SEC Chairman Issues Statement Requesting Public Input on Disclosure Requirements for Residential Mortgage-Backed Securities - ICI Member Call on November 12, 2019

On October 30, 2019, SEC Chairman Jay Clayton issued a statement (“Statement”) requesting public input from investors and other market participants on asset-level disclosure requirements for residential mortgage-backed securities (RMBS).^[1] The Statement is summarized and available below.

ICI will hold a member call on November 12th, from 3-4 pm, to discuss the Statement and whether ICI should submit comments on behalf of the fund industry. If you would like to participate in the call, please contact Jennifer Odom at jodom@ici.org and she will provide you with the dial-in information. If you plan to participate, please be prepared to share your input and comments on the call.

Background

In 2010, following the financial crisis, the SEC proposed amended rules addressing the registration, disclosure, and reporting requirements for asset-backed securities (ABS), which it subsequently adopted in 2014.^[2] Among other things, the SEC’s 2014 rules included new rules for registered ABS offerings of certain asset classes, including RMBS. The RMBS rules require issues to disclose a wide variety of data on each asset in the pool at the time of an offering and on an ongoing basis.

The SEC’s 2014 ABS rule amendments require, for certain asset types, specified asset-level disclosure for each asset in the pool; provide more time for investors to review and consider

a securitization offering; revise the eligibility criteria for using “shelf offerings;” and make revisions to reporting requirements. ICI generally supported these reforms, which we believed would improve ABS disclosure and reporting and provide protections to ABS investors.[\[3\]](#)

Request for Feedback

Chairman Clayton observes that activity in the SEC-registered RMBS space has been very limited since the financial crisis, and no SEC-registered RMBS offerings have taken place since the SEC adopted revised ABS rules in 2014. Recently, the US Department of Treasury published a housing finance reform plan that recommends, among other things, that the SEC review its RMBS asset-level disclosure requirements to assess the number of required reporting fields and to clarify the defined terms for SEC-registered private-label securitization issuances.[\[4\]](#)

The Chairman requests feedback on whether any portion of the SEC’s 2014 ABS rules are a significant contributing factor to the absence of SEC-registered RMBS offerings. He notes that the SEC’s rules require 270 data points for each mortgage in an SEC-registered RMBS offering, while RMBS offerings by Fannie Mae and Freddie Mac generally have approximately 100 data points for each mortgage.[\[5\]](#)

In light of the absence of SEC-registered RMBS offerings, the Chairman has requested the SEC staff to review the SEC’s RMBS asset-level disclosure requirements with a view toward facilitating SEC-registered RMBS offerings. The Chairman requests public input from investors, issuers, and other market participants. He notes that any proposed revisions should ensure appropriate investor protection, including access to information material to an investment decision.

Questions for Consideration

The Statement includes a series of questions on which the Chairman requests feedback, divided into several categories, including: (i) the state of the RMBS market, (ii) general questions about RMBS asset-level disclosure requirements, (iii) request for feedback on existing requirements, and (iv) questions on available asset-level data and individual privacy concerns. To facilitate your consideration of these questions and discussion on our upcoming call, we have listed these questions in an Appendix to this memorandum.

Appendix – Questions for Consideration

The State of the RMBS Market

- Considering the state of the post-crisis RMBS market and the housing market more generally, why have there been no SEC-registered RMBS offerings since 2013?
- To what extent, if any, are the Commission’s asset-level disclosure requirements adopted in 2014 a contributing factor to the lack of SEC-registered RMBS issuances?
- To what extent have other factors, such as the dominance of Freddie Mac, Fannie Mae, Ginnie Mae and other governmental entities and government-sponsored enterprises in the residential mortgage securitization market, the risk retention requirements and/or other filing requirements for registration, contributed to the absence of any SEC-registered RMBS offerings?

The RMBS Asset-Level Disclosure Requirements

General Questions

- Have circumstances in the RMBS market changed since both the lead-up to the 2008 financial crisis and the adoption of the rule revisions in 2014 and, if so, how?
- In light of any such changes in the market, should the asset-level disclosure requirements that the Commission adopted in 2014 be reconsidered?
- Should the asset-level disclosure requirements be conformed to the practices of private-label RMBS issuers offering securities in the Rule 144A exempt markets?
- Recognizing that there are differences in the structure of the securities being offered and the nature of the markets, how should the Commission consider the asset-level disclosures provided in RMBS offerings by Fannie Mae and Freddie Mac?
- Are there other standards that should be considered as benchmarks for RMBS asset-level disclosure requirements? If so, which ones and why? For example, should one or more asset-level data points be revised to better align with MISMO (Mortgage Industry Standards Maintenance Organization) standards? If so, how should they be revised and why?
- Should the Commission reconsider a “provide-or-explain” regime under which issuers could choose the data they will provide, and omit data points, with the condition that an explanation be included? Should “provide-or-explain” apply to all data points or should it be limited to certain data points (e.g., data points not generally included in offerings by Fannie Mae and Freddie Mac and Rule 144A issuers)? If so, which data points are appropriate and why?
- Would permitting issuers to omit responses in such a way detrimentally reduce the comparability and standardization of the asset-level data points for RMBS? Should the Commission address this lack of comparability and, if so, how?
- Should the Commission provide RMBS issuers with a provide-or-explain regime if the same flexibility is not available for other ABS asset classes that are required to comply with asset-level disclosure requirements?

Request for Feedback on Existing Requirements

- Should one or more data points required by the SEC in its 2014 rulemaking be revised? If so, which specific data points should be revised and why?
- Should any data points be eliminated, and if so, why? Does the Commission’s rationale for adopting certain of the data points articulated in the 2014 Adopting Release remain valid in today’s market? Should the revision or elimination of certain data points be time related? For example, should the Commission identify a set of data points that could be eliminated or subject to a “provide-or-explain” process after the asset (1) has been outstanding for more than one year, (2) is performing and (3) has not been non-performing since origination?
- Would the elimination of any of the data points be reasonably expected to adversely affect investors’ ability to analyze the quality and performance of the underlying assets? If so, which specific data points should be retained and why?
- Are there any specific data points that are unclear or confusing? If so, how should they be revised? Is there any interpretive guidance that the Commission or staff could provide to help clarify these issues?
- Are the responses to these questions different for the data provided in initial filings at the time of the offering versus the data provided in ongoing filings (i.e., at the time of filing each Form 10-D)?

Available Asset-Level Data and Individual Privacy Concerns

- Are issuers foregoing SEC-registered RMBS offerings because they are unable to provide more granular zip code information to investors due to privacy concerns that such information would be made publicly available on EDGAR?
- What level of geographic information do investors believe is necessary to perform adequate risk and return analysis on the underlying assets and the securities offered? What level of geographic information do investors receive in unregistered transactions? Is this level of information sufficient to ensure that investors receive all asset level information that would reasonably be expected to affect an investment decision in the securities offered?
- Are there alternative ways to present this information that would minimize re-identification risk yet still satisfy investors' needs, such as using other geographic indicators or providing aggregated data or ranges? If so, how should the data be aggregated, and why would those groupings or ranges be appropriate?

Sarah A. Bessin
Associate General Counsel

endnotes

[1] Available at <https://www.sec.gov/news/public-statement/clayton-rmbs-asset-disclosure>.

[2] See Asset-Backed Securities Disclosure and Registration, 79 Fed. Reg. 57184 (Sept. 24, 2014), available at <https://www.govinfo.gov/content/pkg/FR-2014-09-24/pdf/2014-21375.pdf> ("2014 Adopting Release"). The SEC had begun ABS-related rulemaking in April 2010, but then re-proposed rule amendments in 2011 to take into account certain provisions of the Dodd-Frank Act. The SEC re-opened the comment period on its proposals in February 2014 to obtain public comment on a potential approach for the dissemination of sensitive asset-level data.

[3] See Letters to Ms. Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, from Karrie McMillan, General Counsel, Investment Company Institute, dated Aug. 2, 2010, available at <https://www.ici.org/pdf/24465.pdf>; and Oct. 4, 2011, available at <https://www.ici.org/pdf/25532.pdf>. The SEC did not adopt several rule amendments proposed in 2010 and 2011, most notably amendments that would have enhanced disclosures for certain privately offered "structured finance products." ICI was generally supportive of this proposal, although we (i) recognized the differences among the various types of structured finance products and recommended that the SEC evaluate them on a product-by-product basis, and (ii) were concerned about the implications of the proposal for asset-backed commercial paper and tender option bonds and recommended that they be excluded from any new disclosure requirements by the SEC.

[4] For a summary of the Treasury housing finance reform plan, please see ICI Memorandum No. 31958 (Sept. 11, 2019), available at https://www.ici.org/my_ici/memorandum/memo31958.

[5] He also notes that potential issuers of SEC-registered RMBS have expressed concerns regarding the scope and interpretation of the SEC's asset-level disclosure requirements.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.