

Clients & Friends Memo

SEC Provides Guidance on Regulation AB

December 5, 2005 Earlier today, Max Webb, Assistant Director of the Division of Corporation Finance at the SEC spoke at the American Securitization Forum's Reg AB - The Answers Conference. The discussion covered lessons learned from the SEC's Pilot Program and answers to certain interpretive questions posed to the SEC by the ASF. This memo provides highlights of these discussions.

Max Webb prefaced his comments by stating the views that he expresses are his own and not necessarily of the SEC and therefore should not be relied upon as authoritative in any manner.

Registration Statement Filings and Review Expectations.

- Each issuer should expect their registration statement filing to be reviewed and it would be prudent to factor review time into an issuer's specific deal process.
- The Staff's goal is to provide comments within 30 days after the initial filing, 10-15 business days after the first amendment and less time for subsequent amendments. Mr. Webb noted that the Staff has limited resources and if all issuers file their registration statements during the same period, that could delay the Staff's timing for issuing comments.
- No extension of the March 31, 2006 date requiring a Regulation AB compliant registration statement to be effective is contemplated or likely, especially given that issuers have had one year to prepare their filings to be compliant.
- For a period of time, particularly between January 1, 2006 and March 31, 2006, the Staff may likely review 424 filings, although no stop orders would be expected to be issued based on such reviews, and the Staff may review Exchange Act reports to determine their adequacy.
- For those registration statements that include multiple prospectus supplements and/or multiple base prospectuses, in order to expedite the Staff's review process, the Staff will request that courtesy copies be sent to the examiner that include an unmarked version of one supplement and/or one base prospectus, with all other prospectus supplements and/or base prospectuses marked against the unmarked supplement or prospectus, as applicable.

Certain Comments That All Issuers Can Expect to Receive From the Staff.

- Confirm for S-3 eligibility purposes, that the depositor and each issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor, with respect

to asset-backed securities involving the same asset class, is compliant with its Exchange Act filings during the preceding 12 months.

a. In order for the SEC to audit Exchange Act compliance, the Staff will request that the issuer provide the SEC with CIK codes for the depositor and its affiliates that issue ABS in the same asset class.

b. If not in compliance, issuers should contact the SEC to determine if a waiver would be appropriate. Mr. Webb indicated that it would be better practice to notify the SEC of the missed filing at the time of discovery as opposed to the time of filing a new Form S-3 registration statement (as it would likely be easier to identify the reason for the failure at the time of failure), although either approach would work.

- Amend underlying agreements that are filed as exhibits to the registration statement to require parties to such agreements that are participating in the servicing function to deliver the required assessments and attestations within the time period that the related Form 10-K filings to which they are required to be attached are required to be filed. The Staff will not allow an issuer to go effective until these amendments to the exhibits are made.
- In the forms of prospectus supplements, include bracketed language that will address the Regulation AB disclosure requirements for situations contemplated in the base prospectus (e.g., if the base prospectus provides that subservicers may be engaged, include bracketed language in the form of prospectus supplement that addresses the disclosure meeting the requirements of Regulation AB that will be provided). This will serve as a reminder to the issuer, and since the Staff generally does not review 424 filings, will provide comfort to the Staff that the required information will be provided for each applicable transaction.
- If a prospectus supplement will include annexes that include disclosure required to be in a prospectus under Regulation AB (e.g., collateral pool tables), include an affirmative statement in the prospectus supplement that such annexes are incorporated into the prospectus supplement. This is to avoid any confusion as to whether an annex is part of the registration statement or not.
- Use the terms “Issuer” and “Issuing Entity” properly. The depositor is the “Issuer” and the trust or other entity that issues the securities is the “Issuing Entity”.

SEC Telephone Interpretations on Regulation AB.

- To be posted on the SEC website in the near future.
- Four of the interpretations were previewed:
 - a. An interpretation will clarify that Item 1100(b) of Regulation AB (which requires that delinquency and loss information is to be presented in buckets of 30 or 31 days until the related assets are written off or charged off as uncollectible) only applies to the information presented for the specific asset pool being securitized. Item 1100(b) does not apply to

static pool information or any party's portfolio information, the related disclosure of which should be governed by the principles of materiality.

b. An interpretation will clarify who is a "servicer" under Regulation AB. The Staff will make clear that it is a principles based definition and a party's title (e.g., trustee, custodian, etc.) will not be determinative. The determination will depend on whether the party is responsible for managing the cash stream at any point from the time it comes from the borrowers through the time that it is remitted to security holders, including making distribution allocations.

c. An interpretation will clarify that the determination of whether a significant derivative or credit enhancement provider meets the 10%/20% thresholds under Items 1114(b)(2) or 1115(b) of Regulation AB is not made solely at the time of issuance, but on an on-going basis. Therefore updated financial information for such party may be required to be included in a Form 10-D filing, even if such information was not required previously, if the 10%/20% thresholds are met at the end of the period that the Form 10-D is required to be filed.

d. An interpretation will clarify that the servicing criteria identified in Item 1122 of Regulation AB is static and the assessment reports required to be delivered thereunder may not modify the criteria to be reported on. To the extent the processes utilized by a party in servicing assets are different from that set forth in the criteria, the report should address how the processes are different from the servicing criteria in Item 1122.

Static Pool Presentation.

- As between graphic presentation versus tables of numbers, Mr. Webb believes that graphic presentation is much more useful and easier to use. He strongly encourages issuers to utilize the graphic presentation method and predicts that graphic presentation will quickly evolve into a best practice for presenting static pool information.
- Issuers will not be permitted to include terms and conditions for use of web sites that include static pool information referenced in prospectuses (e.g., by clicking on an "accept" button) in order for a person to access the site.

Benefits of the Pilot Program.

- Helped the Staff get the expertise required to review Regulation AB compliant filings.
- Issuers should avoid using the filings of the participants in the Pilot Program as models for their own filings, as each issuer's program is different. However, it could be helpful to refer to those filings to see the different ways a particular item is disclosed.

Answers to Certain Interpretive Questions.

- Disclosure of FICO scores would satisfy the requirement in Item 1111(b)(11) of Regulation AB, which requires standardized credit scores of obligors. However, there is no consensus at the Staff regarding other credit score models, including credit scores used by non-U.S. originators.
- If FICO scores were not utilized in the origination of the asset, then disclosure of FICO scores would not be required. However, if some other proprietary credit scoring method was utilized, consider adding disclosure about this method that would provide investors with disclosure similar to what would have been disclosed if FICO scores were applicable.
- In response to a question on what an issuer would be required to do if it did not receive for inclusion in a Form 10-K filing from one or more parties the assessment and attestation reports required under Item 1122 of Regulation AB or compliance statements required under Item 1123 of Regulation AB due to the failure of such party or parties to abide by their requirements in the transaction documents, Mr. Webb indicated that disclosure of the reason for the failure would be required. In addition, Mr. Webb stated that similar to a dog owner where only the first bite by its dog is free, an issuer that contracts with third parties that make a habit of violating their contractual provisions to deliver these reports will assume responsibility for such failures.
- Mr. Webb declined to provide guidance on two questions regarding the definition of “significant obligor” that related to the method that should be used to determine if a lessee or group of affiliated lessees meets the 10% threshold in the definition and what considerations should be given to determine if a group of properties is “related” for purposes of the definition. He suggested that issuers may contact the SEC with concrete facts in connection with an actual transaction if they have an issue interpreting the significant obligor definition.
- Mr. Webb also declined to provide guidance on a question regarding how to interpret Item 1105(c) of Regulation AB, which asked if he would confirm that under the circumstances where static pool information of the sponsor is determined to be material and is in fact provided, that there is no mandatory requirement to also provide static pool information of a person other than the sponsor. Mr. Webb responded that this needs to be resolved by each issuer faced with this situation using a principles based determination.

More information on Regulation AB may be found in Cadwalader’s Clients & Friends memo “SEC Final Rules for Regulation of Asset-Backed Securities”, available on our website at http://www.cwt.com/assets/client_friend/010405SECFinalABS.pdf. If you have any questions regarding Regulation AB or any other matter addressed in this memo, please call any of the partners in the Capital Markets Department.

Capital Markets Contact List

New York Office**One World Financial Center, New York, NY 10281**

James Croke	212 504 6139	james.croke@cwt.com
Michael S. Gambro	212 504 6825	michael.gambro@cwt.com
Karen B. Gelernt	212 504 6911	karen.gelernt@cwt.com
Karsten P. Giesecke	212 504 6193	karsten.giesecke@cwt.com
Anna H. Glick	212 504 6309	anna.glick@cwt.com
Robert O. Link	212 504 6172	robert.link@cwt.com
Peter C. Manbeck	212 504 6626	peter.manbeck@cwt.com
David S. Mitchell	212 504 6285	david.mitchell@cwt.com
Frank Polverino	212 504 6820	frank.polverino@cwt.com
Patrick T. Quinn	212 504 6067	pat.quinn@cwt.com
Y. Jeffrey Rotblat	212 504 6401	jeffrey.rotblat@cwt.com
Richard M. Schetman	212 504 6906	richard.schetman@cwt.com
Jordan M. Schwartz	212 504 6136	jordan.schwartz@cwt.com
Ray I. Shirazi	212 504 6376	ray.shirazi@cwt.com
Lary Stromfeld	212 504 6291	lary.stromfeld@cwt.com

London Office**265 Strand, London, England WC2R 1BH**

Christian Parker	+44 (0) 20 7170 8648	christian.parker@cwt-uk.com
Charles G. Roberts	+44 (0) 20 7170 8727	charles.roberts@cwt-uk.com
Neil J. Weidner	+44 (0) 20 7170 8780	neil.weidner@cwt-uk.com

North Carolina Office**227 West Trade Street, Charlotte, NC 28202**

Stuart N. Goldstein	704 348 5258	stuart.goldstein@cwt.com
Henry A. LaBrun	704 348 5149	henry.labrun@cwt.com
Robert L. Ughetta	704 348 6125	robert.ughetta@cwt.com

Washington Office**1201 F Street N.W., Washington, DC 20004-1218**

Charles E. Bryan	202 862 2212	charlie.bryan@cwt.com
Gregg S. Jubin	202 862 2485	gregg.jubin@cwt.com