

**SEC Responses to MBA Questions on
ASSET-BACKED SECURITIES RULE
MBA/SEC Conference Call
March 1, 2005**

SUMMARY

I. Recent Developments

MBA Question 1: We understand the SEC is offering the public a pilot program to assist in complying with the ABS rule. Could you explain what the program is and how our members can participate? Is the program for issuers only?

SEC Response: Under the pilot program, registrants who want to voluntarily comply with the new rule this year can voluntarily submit registration statements on a confidential basis to SEC staff, rather than on EDGAR. The program is intended to help issuers get comfortable with the rule prior to the effective date, through confidential feedback from SEC staff on submissions.

The SEC believes the program will be beneficial to issuers and underwriters, as well as SEC staff. Servicers may also benefit indirectly from the program by working with issuers in submitting data. SEC is limiting the number of issuers who can participate – due to SEC staff size, although a specific limit has not been established.

More information on the program can be obtained by contacting Max Webb, assistant director of the Operations Group at (202) 942-1850.

MBA Question 2: Can you describe what the SEC is doing to update and upgrade the EDGAR reporting system and how the changes might be more helpful to our members?

SEC Response: The Commission is planning various changes to make the EDGAR system easier to use. For example, registrants will be able to get access codes prior to filing the registration statement. The current SIC code for ABS Issuance is 6189. If an issuer does not have a SIC of 6189, then they need to get one by contacting the EDGAR staff at (202) 942-2930.

The SEC will provide greater details on the EDGAR upgrades later this year.

II. Transition

MBA Question 1: The transition rules for compliance with Regulation AB have been a source of some confusion. Could you outline for our members the dates by which they must comply with the rule for new deal registration and for follow-up reporting for new deals or existing deals.

SEC Response: The current regulatory system still applies for ABS offerings made off of an existing registration statement until January 1, 2006. For example, an ABS offering that occurs in 2005 may follow the existing regulatory regime for ABS, including the annual report that would be filed in 2006.

Additionally:

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- All ABS offerings on or after January 1, 2006, must comply with the new rules for ABS.
- The question of when an issuer must update an existing shelf registration statement depends on when the issuer filed the registration statement with the Commission.
- For shelf registration statements filed after August 31, 2005, the registrant must amend those registration statements in advance of any ABS offerings commencing after December 31, 2005.
- For shelf registration statements filed on or before August 31, 2005, the registrant must amend those registration statements in advance of any ABS offerings commencing after March 31, 2006. However, for offerings that require any new undertakings (i.e., undertakings required for static pool information provided on an issuer's website), the registrant must amend Part II of the registration statement in advance of any ABS offerings, including such offerings that occur before April 1, 2006. The registrant must comply with all the new ABS rules in the prospectus supplement for offerings after December 31, 2005.

III. 10-K Reporting Responsibility and Liability

MBA Question 1: Is there a level of contribution of assets, involvement or participation whereby an originator unaffiliated with the Depositor or Issuing Entity could be construed as "organizing or initiating" the transaction to such an extent that it would be deemed a "Sponsor." If so, what level would be reasonable under the circumstances – 20%? Would the answer be the same if such originator is affiliated with one of the underwriters?

SEC Response: The specific facts and circumstances are important factors in determining which entity meets the definition of a sponsor under the rule. The definition indicates that the sponsor is the party that initiates the transaction. If more than one party initiates the transaction, then both parties would meet the definition. This could occur in "rent a shelf" situations where multiple originators are involved as sponsors.

MBA Question 2: What additional liabilities/penalties does a servicer assume in signing Form 10-D and Form 10-K? Is a servicer responsible if it correctly certifies that certain assessments of servicer compliance required to be filed with Form 10-K have not been filed?

SEC Response: The issuer is defined in Exchange Act Rule 3b-19 as the depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity. As such, the depositor must sign the Exchange Act reports. In the alternative, the servicer may sign the Exchange Act reports on behalf of the issuing entity. If there are multiple servicers and a master servicer involved in the securitization, then the master servicer may sign the Exchange Act reports on behalf of the issuing entity.

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ABS “issuers” always have liability for accurate and timely reporting of reports. This standard is not changed by the new rule. Issuers also have liability for fraud under Exchange Act 10B5, which requires that there be no misstatements of material fact and that none of the reported information be misleading.

The rule represents a “disclosure based regime” which mandates that the party signing the Exchange Act reports certify and disclose that all servicer attestation reports have been received and submitted as required except as disclosed in the annual report. The signing party (whether the depositor or master servicer) is not required to assert to the accuracy of the content of the reports, or compliance with the rule by third parties; however, the signing party cannot include information in a report that he or she knows is false or is reckless in not knowing that the information is false.

Certifications made by the signing party are based on the knowledge qualifier, which is included in the language of the certification.

IV. Disclosure

A. Static Pool Disclosure

MBA Question 1: Some members have questioned how static pool data should be presented; for example for pools of non-homogenous collateral. Can you provide any additional guidance in this area?

SEC Response: The rule is purposely “principles based” and, thus, does not provide “bright lines” for determining the information that should be disclosed. In so doing, the SEC effectively enforces a “facts and circumstances” approach to disclosure decision-making. The preamble of the rule, however, provides some guidance which should be helpful in making disclosure decisions, which will vary depending upon different transactions and asset types. In some instances, issuers may determine that disclosure of “static pool data” would not be material and, therefore, not necessary.

In all cases, however, decisions about disclosing “static pool data” must be based on considerations of the information a reasonable investor would consider “material” in making an investment decision.

B. Servicer Disclosure

MBA Question 1: MBA had requested that “servicing agreements” be removed from the list of disclosure items required prior to delivery of the prospectus because they are typically not completed prior to the finalized prospectus. Will the servicer be able to file an amendment to their disclosure information for documents or data that is not available when the prospectus is finished?

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SEC Response: All material information must be in the final prospectus. As far as attaching the agreements, the issuer could amend the registration statement by filing it with the 8K and incorporating it by reference. Alternatively, the registration statement could be amended by updating the exhibit list.

MBA Question 2: At what point are the 10% and 20% threshold tests required to be performed for determining required disclosures of unaffiliated servicers? At what point is the 10% threshold test performed again after the cut-off date? What if the entity falls below 10% but goes back over 10% at a subsequent date? Finally, at what point is the 5% threshold test required to be performed for determining which servicers must provide reports on compliance with the servicing criteria in the SEC attestation engagement?

SEC Response: The Commission is currently evaluating these questions/issues and will communicate a response when decisions are made. The Commission is not seeking any input at this time.

MBA Question 3: How are the thresholds calculated? In other words, are they based on the original principal balance of all pooled assets, or the number of properties, etc.

SEC Response: Threshold calculations are based on unpaid principal balance (UPB) at the time of closing of the transaction, rather than the original principal balance of the loan.

MBA Question 4: Servicers usually have voluminous, detailed operating procedures, which are proprietary and too verbose for appropriate disclosure. What type and level of detailed information does the Commission have in mind for disclosure of servicers' procedures? Would reference to a Rating Agency's readily available servicer evaluation report be effective disclosure in respect of the procedures? Can references to the servicing standards suffice?

SEC Response: The amount of disclosure required may be limited to information that a reasonable investor might find material. Consequently, "material information" does not include insignificant or technical information which would serve to blur the important information that investors need.

As for referencing rating agency servicer evaluations, it would not be appropriate to disclose reports that are not required for filing pursuant to SEC requirements. Therefore, rating agency reports would not meet the standard.

The final rule provides some examples of appropriate disclosures.

C. "Unaffiliated Servicer" Disclosure

MBA Question 1: To what extent are third parties and outsource companies subject to the unaffiliated servicer disclosure requirements of the proposed rule?

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SEC Response: The requirements for disclosure of servicer information are the same for all parties that meet the principles-based definition of “servicer.” With that said, not all unaffiliated servicers will be required to provide the same level and amount of information. The relevant measure of whether, and how much, disclosure is required about a servicer is based on the “materiality” of the function performed by the servicer. Different levels of disclosure would be required based on the relative importance of a servicer’s functions to the servicing as a whole. For example, fewer disclosures would be required of a bond administrator than an entity performing all servicing functions.

However, servicer disclosure is not a function of contractual privity to the transaction. In other words, parties who do not sign the transaction agreements would still have to meet the disclosure requirements if they meet the definition of a “servicer” in the rule. Also, servicer disclosure is not contingent on whether an unaffiliated party performs a servicing function on 100% of the loans underlying a security. Again, the pervading consideration in making determinations about disclosure is whether an investor’s purchase decision could be influenced by the information.

In terms of the performance of attestation engagements, an unaffiliated servicer performing a very limited set of servicing functions would still be subject to the requirement to engage a CPA to opine on their compliance with relevant servicing criteria listed in the rule. Consequently, any unaffiliated servicers and third party entities that perform selected functions and that meet the 5% threshold for reporting under the attestation engagement would be required to submit an attestation report. No opinion, however, would be required on servicers’ compliance with specific servicing criteria relating to servicing functions that they do not perform. The inapplicability of the specific servicing criteria will need to be disclosed both in the asserting party’s assertion and the related registered public accounting firm’s report.

MBA Question 2: Do the requirements for disclosure of relationships with unaffiliated servicers include sensitive pricing information or can it be excluded?

SEC Response: The SEC has a mechanism in place for issuers to request confidential treatment of information in agreements and contracts filed with the SEC. Issuers should refer to Staff Legal Bulletin 1 available on the SEC web site at www.SEC.gov for more information on the confidential treatment process. The SEC bulletin includes examples of items appropriate for confidential treatment

D. Trustee Question

MBA Question 1: What is the role of the Trustee? Is the Trustee considered a “servicer”?

SEC Response: No changes under the new rules to titles assigned in the transaction. However, disclosure requirements have changed relating to the types of information that trustees may need to provide. The SEC new disclosure requirements reflect economic realities that a trustee may be engaging in activities that the SEC considers: (1) Trustee

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functions; (2) Servicing functions; and (3) trustee and servicing functions. For example, a trustee may perform calculations of waterfall as well as make payments to investors. Therefore, SEC requires disclosure of information from trustees and servicers relating to their servicing functions. Depending on the trustee's functions, the trustee might also be required to furnish an attestation engagement report on their compliance with relevant servicing criteria.

The trustee, however, is precluded from signing the Exchange Act reports even if it performs certain servicing functions. Consequently, even if the transaction has multiple servicers, only the designated master servicer can sign the Exchange Act reports. If there is no master servicer, then the depositor must sign.

E. Additional Guidance

MBA Question 1: To what extent are members of the Corporate Finance Division available to answer questions about the transition rules or compliance issues as they arise for our members and for their lawyers and accountants?

SEC Response: SEC staff is available if there is any interpretive guidance needed on the new rule. Contact the Office of Chief Counsel at (202) 942-2900.

Questions about compliance with the registration statement: contact Max Webb, Assistant Director of the Operations Group at (202) 942-1850.

MBA Question 2: Have other ABS participants raised any particular issues that you think would be of interest to our members?

SEC Response: Companies have asked if they can start complying with the rule now, after the effective date of the rule on March 8. Yes, however, issuers can NOT choose to comply with only certain portions of the rule (i.e. "no cherry picking"). Each party must comply with all – or none - of the requirements of the rule. Any current deals started prior to January 1, 2006, should follow the old system, including Exchange Act reporting.