



U.S. Securities and Exchange Commission

[Home](#) / [Newsroom](#) / [Speeches and Statements](#) / [Statement on Concept Release
Relating to Asset-Backed Securities](#)

STATEMENT

Statement on Concept Release Relating to Asset-Backed Securities

Commissioner Caroline A. Crenshaw (</about/sec-commissioners/caroline-crenshaw>)

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Today the Commission poses the question of whether there are “regulatory impediments to issuer and investor access to the registered Asset-Backed Securities (ABS) market,”^[1] which are causing the market to be depressed. We further ask whether the “current framework for registration and reporting is serving the needs of the current ABS market.”^[2] Among those impediments, we consider: (i) whether asset-level disclosure requirements for Residential Mortgage-Backed Securities (RMBS) are too onerous;^[3] (ii) whether issuers are foregoing registered RMBS offerings because they cannot provide investors with sensitive asset-level information such as 5-digit zip codes or credit scores; and (iii) whether the definition of ABS for the purpose of registration is too narrow.

First, I encourage commenters to question the premise driving the release. We appear, for example, to presume that registered RMBS market levels are artificially depressed and that the cause is regulatory.^[4] It is possible, however,

that market levels reflect the degree of investor interest in these products. In other words, the supply may reflect demand.

For example, the Release notes that only one issuer has publicly issued private-label RMBS since 2009, and there have been no registered private-label RMBS offerings since June 2013. But, the Commission first adopted asset-level disclosure requirements in 2014, one year after the last registered private-label RMBS offering.^[5] It's hard to peg a problem on a regulatory burden that existed prior to the enactment of such regulation. It is worth looking at other market trends and risks related to private-label RMBS (including some exposed during the 2008 financial crisis) and not rush to adjudge that purportedly burdensome regulations are at the root of all problems.^[6] It may be that depressed interest is a symptom of continued investor wariness around the asset class (which might still be perceived as unsafe based on performance during the financial crisis). Or, there may continue to be concerns about the ratings of such products, or enforcement of representations and warranties, among other servicing problems.^[7] Likewise there may be an investor preference for Agency RMBS based on a perception about the availability of U.S. government guarantees, or based on yields and returns.^[8]

Second, it is worth asking if this a good use of our dwindling resources. In October 2019, Chairman Clayton posed many of the same questions that we ask today and sought public comment on the subject. The comment file received 9 letters. This is, by our standards, not a tremendous amount of public interest.^[9] This could be an indication that we are seeking a solution in search of a problem.

Finally, I urge commenters to think broadly in formulating their suggestions, and not simply acquiesce in the deregulatory zeitgeist. Be mindful of removing requirements that serve to provide transparency and consistency in aid of investor analysis and diligence or provide information that bolsters market integrity. I encourage investors to respond to the requests to provide insight on what information would be most helpful and necessary for investment in these products.^[10]

Thank you to those who worked on this release in the Division of Corporation Finance, the Division of Investment Management, the Office of Credit Ratings, the Office of the General Counsel and the Division of Economic and Risk Analysis.

[1] Concept Release on Residential Mortgage-Backed Securities Disclosures and Enhancements to Asset-Backed Securities Registration, Rel. Nos. 33-11391, 34-104102, at 6 (Concept Release or Release).

[2] *Id.* Query whether “serving the needs” of any particular market is consistent with our mission. Our role as regulator is to facilitate and balance capital formation with investor protection, and to ensure that markets operate with integrity — *not* to put our thumb on the scale of favoring certain products or markets, or to craft regulations to “serve the needs” of any favored group of industry participants.

[3] The requirements to include asset-level data for all assets underlying registered RMBS is statutory and was enacted following the financial crisis in 2008. See Section 942(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, § 942(b), 124 Stat. 1376, 1897 (“The Commission shall adopt regulations under this subsection requiring each issuer of asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.”). In 2014, pursuant to that statutory mandate, the Commission adopted rules implementing those asset-level disclosure requirements. *Asset-Backed Securities Disclosure and Registration*, Release No. 33-9638 (Sept. 4, 2014) [79 FR 57184] (Sept. 24, 2014).

[4] In particular, the Release refers to private-label registered RMBS (as opposed to RMBS issued or guaranteed by Freddie Mac, Fannie Mae, Ginnie Mae or other governmental entities or government sponsored entities (Agency RMBS)).

[5] *Asset-Backed Securities Disclosure and Registration*, Release No. 33-9638 (Sept. 4, 2014) [79 FR 57184] (Sept. 24, 2014).

[6] For example, the Concept Release notes that there has been a rebound in un-registered RMBS offerings, primarily through Rule 144A. See Release at pp. 10-11. But even those numbers remain low, compared to pre-2008 levels. In 2004, for example, registered private-label RMBS totaled \$746 billion (which represented most non-agency RMBS), as compared to the unregistered non-agency RMBS 2024 offerings, which totaled \$145.4 billion. See Chairman Jay Clayton, [Asset-Level Disclosure Requirements for Residential Mortgage-Backed](#)

Securities (<https://www.sec.gov/newsroom/speeches-statements/clayton-rmbs-asset-disclosure>), (Oct. 30, 2019) (citing 2014 Adopting Release at 57192).

[7] See Letter of Adam J. Levitin, Re: Request for comment on Asset-Level Disclosure Requirements for Residential Mortgage-Backed Securities (<https://www.sec.gov/comments/rmbs/cll8-6468527-199350.pdf>) (Nov. 23, 2019) (noting that the absence of registered private-label RMBS offerings should be viewed as part of a “larger phenomenon of the decline of private-label RMBS offerings of all sorts since the financial crisis,” and that “it will be critical for the SEC to sort out the impact of Reg AB II from general factors that have led to a decline in private-label RMBS issuance”); see also Laurie S. Goodman, The Rebirth of Securitization: Where is the Private Label Mortgage Market? (<https://mitsloan.mit.edu/sites/default/files/inline-files/GCFP-3rdConference-Goodman.pdf>) (“Investors would like to see much more disclosure and better monitoring on the servicing side[.]”).

[8] The Concept Release also references the “competitive advantage” that Agency RMBS have in the market. See Release at 12 (citing U.S. Department of the Treasury Housing Reform Plan Pursuant to the Presidential Memorandum Issued March 27, 2019 (Sept. 2019)). But the government has long held a role in the mortgage market, including prior to the financial crisis.

[9] See, e.g., Comments on Climate Change Disclosure, CLL-12 (reflecting over 6,500 comment letters).

[10] Certain questions seem aimed at conforming assets-level disclosure in registered offerings with disclosures in unregistered offerings. (See, e.g., RFC 5.) Eroding this difference, similar to other trends we’re seeing in public / private market discussions, seems to ignore the different investor bases in the two markets and perhaps the differing needs for information among those bases.

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