

04/29/2004

Securities and Exchange Commission Votes to Propose New Rules for Asset-Backed Securities

by [Tolbert Jr., William](#) 

[Knapp, Tobias](#) 

At an open meeting held April 28, 2004, the Securities and Exchange Commission voted to propose a new set of rules governing registration, reporting and disclosure requirements for asset-backed securities. The Commission intends this new regulatory regime to codify existing staff positions taken in no-action letters and other interpretive guidance. After the rules are published, a comment period of 60 days will be provided before the Commission takes final action on the rules.

The full text of the proposed new rules is not yet available, so the description provided in this Client Alert is based on the statements made by the Commissioners and SEC staff at the open meeting.

Securities Act Registration Requirements

The proposal would provide for asset-backed securities to be registered on Forms S-1 or S-3. Form S-3 would be available for shelf registration of asset-backed securities under certain conditions, including the requirement that the securities be investment grade.

The proposal would enhance foreign access to the U.S. asset-backed securities markets by alleviating impediments to shelf registration by foreign asset-backed security issuers. At the same time, increased disclosure would be required regarding the material effect of foreign laws and regulations on the securities.

Exchange-Act Reporting Requirements

The staff's statements emphasized that differences between asset-backed and other securities require tailored disclosure requirements that target information that is important to investors in asset-backed securities. The proposal codifies the many exemptive orders and over 200 no-action letters that have been issued to modify Exchange Act reporting requirements for asset-backed security issuers.

The proposed requirements, to be known as Regulation AB, would continue to allow asset-backed security issuers to file, in place of quarterly reports on Form 10-Q, distribution reports that detail the performance of pool assets and payments on the securities. The proposal further specifies which of the Commission's recently adopted Form 8-K events would be applicable to issuers of asset-backed securities and includes events that are specific to asset-backed securities, such as the failure to make a distribution. The regulation would also codify the form of certification under Section 302 of the Sarbanes-Oxley Act and would retain current requirements for an annual service or compliance statement and an assessment and report attested to by an accountant as to compliance with particular servicing criteria.

Principles-Based Disclosure Guidelines

Regulation AB would introduce a new subpart of Regulation S-K consisting of principles-based disclosure items that would form the basis of Securities Act and Exchange Act disclosure for asset-backed securities. The proposed disclosure items are based largely on current industry practice. They further enhance requirements regarding the sponsor, servicer and trustee of the securities and require disclosure of certain statistical information on a static pool basis if material to an offering.

Communications Surrounding Registered Offerings

The proposed rules would codify no-action letters issued in the mid-1990s permitting the use of certain written materials about asset-backed securities. These materials may contain information about the structure and asset pool and data regarding potential payouts of the assets under various pre-payment and other assumptions. The regulation would further clarify certain interpretive issues addressed by the staff over the past decade, such as the ability to include loan level information. The new rules would also require the filing of these materials.

When asked by Commissioner Campos whether this proposal was a foreshadowing of the Division of Corporation Finance's thoughts with respect to expected revisions to the registration process for conventional issuers under the Securities Act, Director Alan Beller indicated that this was not necessarily a preview, but that the Division of Corporation Finance was still considering the approach it would recommend to the Commission.

Foreign Asset Backed Securities

The proposed rules would also place foreign asset-backed offerings on a more comparable footing with domestic issuers. In the past, foreign issuers were required to use Form S-1 until the staff was comfortable with the issuer's disclosure of its home country's regulatory environment, particularly regarding bankruptcy, tax and the perfection of a security interest. The staff determined that it could be just as vigilant on these disclosure issues in the shelf context as in the non-shelf context, and that Form S-3 should therefore be more available to foreign issuers.

Additional Sources

SEC Press Release: *SEC Proposes Thrift Exception from Advisers Act, Comprehensive Disclosure Requirements for Asset Backed Securities; Adopts Supervision Programs for Broker-Dealers and Affiliates* (April 28, 2004), <http://www.sec.gov/news/press/2004-58.htm>.

[Web Version](#)

www.jenner.com

Please notify me by reply email if you would like to discontinue receiving our mailings.

©Copyright 2004 Jenner & Block, LLP, One IBM Plaza, Chicago, IL 60611. Jenner & Block is an Illinois Limited Liability Partnership including professional corporations. Under professional rules, this communication may be considered advertising material. The material contained in this document has been authored or gathered by Jenner & Block for informational purposes only. It is not intended to be and is not considered to be legal advice. Transmission is not intended to create and receipt does not establish an attorney-client relationship. Legal advice of any nature should be sought from legal counsel.