



November 29, 2010

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HOT TOPICS

ABA Issues White Paper on Trustee's Role in Asset-Backed Securities

Responding to recent, incorrect media accounts asserting that trustees are responsible for overseeing mortgage servicers, and mediating between them and investors in securitization deals, ABA issued a press release on November 9, 2010 publicly releasing a white paper that explains the role of trustees in asset-backed securities and, in particular, residential mortgage-backed securities. [Read the press release.](#) [Read the white paper.](#)

STRUCTURED FINANCE

ABA, ABASA Suggest Changes to Asset-Backed Securities Proposal

ABA and its ABA Securities Association affiliate generally support the need for appropriate disclosures of repurchase requests involving asset-backed securities, they said in a November 16, 2010 comment letter. But they suggested modifications to a Securities and Exchange Commission proposal on such disclosures, required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, that they believe would provide investors with more useful information about such requests.

The trade groups noted that the SEC proposal would require disclosing a five-year history of repurchase demands based on the agency's belief that the Dodd-Frank Act's Section 943(2) requires retroactive application. "ABA and ABASA strongly disagree with that interpretation," they said. "To the contrary, we believe that nothing in the statutory language requires retroactive application." The trade groups added that a retroactive application could mislead investors rather than provide transparency.

ABA and ABASA also pointed out that proposal also does not define a repurchase "demand." "We believe that the only demands that should be disclosed are those that comport with the procedures specified in the [asset-backed securities'] transaction documents," they said. The trade groups also urged the SEC to revise its proposal to require asset-back securities issuers to file repurchase information on a quarterly, rather than monthly basis. [Read the letter.](#) [Read the proposed rule.](#)

ABASA Weighs In on ABS Due-Diligence Proposal

In related news, in a November 16, 2010 comment letter the ABA Securities Association suggested changes to an SEC proposal — mandated by the Dodd-Frank Act's Section 945 — that would require issuers of asset-backed securities to perform a review of assets underlying the securities and publicly disclose information relating to the review. The proposal — under the Dodd-Frank Act's Section 932 — also would require an issuer or underwriter to make publicly available the findings and conclusions of any third-

party due diligence report.

ABASA, among other things, urged the SEC to clarify that an assets review will meet statutory requirements if it relates to the quality of the assets in the pool — and not to other types of reports and opinions that are routinely received as part of the securitization process. “We further request that the final rule specify that a review of a statistically significant random sample of pool assets is sufficient, as opposed to a review of every asset in a pool, which can number in the thousands,” ABASA said.

The association also strongly urged the SEC to limit the disclosure of third-party due-diligence report findings and conclusions under Section 932 to those provided to nationally recognized statistical rating organizations in connection with rating an asset-backed securities transaction. [Read the letter.](#) [Read the proposed rule.](#)

Fed Study: Tailor the Risk Retention Rules to Protect Credit Availability

Regulators should craft new risk-retention rules that are tailored for each class of securitized assets to avoid reducing the credit supply, the Federal Reserve said in a study released on October 19, 2010. The report — mandated by the Dodd-Frank Act — stressed that market practices and performance are significantly different among the nine asset categories it examined. The Act requires the banking regulators and the Securities and Exchange Commission to jointly implement risk retention requirements for securitizers or originators of assets-backed securities.

“[S]imple credit risk-retention rules, applied uniformly across assets of all types, are unlikely to achieve the stated objective of the act — namely to improve the asset-backed securitization process and protect investors from losses associated with poorly underwritten loans,” the study said. The report also included several factors regulators should consider when crafting risk-retention rules, including their potential effect on the capacity of smaller market participants to remain active in the securitization market. [Read more.](#) [Read the report.](#)

RESIDENTIAL MORTGAGE FORECLOSURE PROCEDURES

Agencies, States Reviewing Mortgage Servicers

In the wake of the temporary moratorium on mortgage foreclosures as a result of flaws in the foreclosure process, federal bank regulators and the Treasury Department are conducting an in-depth review of practices at the largest mortgage servicing operations to determine whether systemic weaknesses are leading to improper foreclosures. Michael Barr, the Treasury’s Department’s assistant secretary for financial institutions – who is leaving December 3 – said the agency’s foreclosure task force is currently reviewing large mortgage servicers, and it is focusing primarily on the “widespread and...inexcusable breakdowns” in documentation standards. The task force, established earlier this fall, will complete its review by the end of the year and publish its findings in late January, Barr said.

Separately, the “robo-signing” controversy has led to a joint investigation into the mortgage-servicing industry by the 50 state attorneys general as well as state bank and mortgage regulators. In a joint statement, the 50-state AG group stated that “[i]n order to handle this issue in the most efficient and consistent manner possible, the states have formed a bi-partisan multistate group to address issues common to a large number of states.” Through this process, the states will attempt to speak with one voice to the greatest extent possible, and will examine whether employees or other lender representatives routinely signed off on thousands of foreclosure affidavits without verifying the information they contained,

or failed to have the affidavits signed in the presence of a notary. [Read the statement.](#)

Fannie, Freddie Place Lenders on Notice in Foreclosure Debacle

In a letter to lenders, government-sponsored enterprises Fannie Mae and Freddie Mac have warned banks that they will be on the hook for any losses the two mortgage companies suffer as a result of flaws in the foreclosure process. The GSEs issued the statements to protect themselves from losses caused by alleged improper actions in banks' foreclosure processes — which could otherwise put taxpayers at risk in a worst case scenario. In their letter to lenders, Fannie and Freddie threatened to penalize thousands of lenders if they do not rapidly fix the way they seize the homes of borrowers who have missed payments. Freddie has stated that “the alleged practices in these reports are clearly not in compliance with Freddie Mac's guidelines and directives to its servicers.”

In the letters, Fannie and Freddie are directing all their servicers to immediately undertake a review of their policies and procedures relating to the execution of affidavits, verifications, and other legal documents in connection with the default process. If the servicer has any concerns with policies and procedures or their implementation, the servicer is advised to contact Fannie or Freddie in writing. [Read Fannie's letter.](#) [Read Freddie's letter.](#)

Bair Suggests Safe-Harbor for Foreclosures

Speaking at a housing finance symposium sponsored jointly by the Federal Reserve and the Federal Deposit Insurance Corporation on October 25, 2010, FDIC Chairman Sheila Bair said the “robo-signing” foreclosure controversy and threat of litigation could be addressed in part by all parties agreeing to a safe-harbor for certain foreclosures. “Ultimately, this problem will require some type of global solution,” Bair said in speech at the Federal Reserve-FDIC housing finance symposium. “I would suggest that all interested parties consider some type of “trriage” on foreclosures, perhaps providing safe-harbor relief if the property is vacant or if the servicer offered a meaningful payment reduction — say a minimum of 25 percent — and the borrower could still not perform on the loan.”

Bair also said overly complicated processes and insufficient servicing staff were impeding meaningful loan restructurings. “In a larger sense, the robo-signing controversy is just another indication of the need to improve institutional practices all along the chain of securitization — from origination, to securities underwriting, to servicing,” she said. “The misaligned incentives that have been built into the securitization process have left back-office operations far too weak to support a robust system of mortgage finance.”

[Read Bair's speech.](#)

Speaking at the same conference, Fed Chairman Ben Bernanke described ways the Fed is working to prevent foreclosures and stabilize neighborhoods. The central bank's efforts include training attorneys in foreclosure prevention and mitigation, convening experts to help develop policy responses and posting resources like a *Foreclosure Mitigation Toolkit* on each Federal Reserve Bank website. These efforts are cataloged in a new publication, [Addressing the Impact of the Foreclosure Crisis.](#)

MUNICIPAL SECURITIES

ABA and ABASA: Time Insufficient to Review SEC Municipal Advisers Rule

There hasn't been enough time before enactment to review the Securities and Exchange Commission's interim final temporary rule requiring municipal advisers to register with the agency, ABA and its ABA Securities Association affiliate said yesterday in a comment letter.

"[T]he hasty introduction of the rule without accompanying clarification or guidance has created unwelcome uncertainty," the trade groups said. "As a consequence, there remain a significant number of issues outstanding before an institution can determine whether or not they need to register, and what it will mean if a bank determines it does need to register."

ABA and ABASA emphasized that without the clarification of several key terms and an exemption for banks that offer fiduciary services to municipal entities, the rule is more far-reaching than Congress intended. The SEC therefore should use its authority to exempt regulated fiduciary banking services from its registration requirements, they said. [Read the letter](#).

MUTUAL FUNDS

ABA: Moody's Should Withdraw Proposed New Methodology for Rating MMFs

On November 11, 2010, ABA and its Corporate Trust Committee urged Moody's Investors Services in a comment letter to withdraw its proposals for a new methodology to rate money market funds, and for a new set of rating symbols and definitions for such funds. Moody's has said that it will not provide an equivalency chart that compares the existing and proposed symbology, and ABA emphasized that the lack of an equivalency tool would cause major disruptions in the fund market.

The association added that if Moody's moved forward with the proposed changes, issuers would face significant uncertainty and confusion about the changes' effect on their existing investments in money market funds. "We believe ... issuers, trustees and the broader market would be better served if Moody's holds in abeyance its proposal for a new ratings methodology until such time as the Securities and Exchange Commission develops rules on ratings symbologies to implement the Dodd-Frank Act," ABA said. [Read the letter](#).

Working Group Presents Options for Money Market Fund Reform

The President's Working Group on Financial Markets recently released a report that presents a number of options for further reforming money market funds. The options are intended to address fund vulnerabilities that contributed to the 2008 financial crisis. Some of the options include setting up a private emergency liquidity facility for the funds; requiring that large funds meet redemption requests in kind; and switching funds to a floating net asset value — or NAV. *Switching to a floating NAV "would have potential benefits, but those benefits would have to be weighed carefully against the risks that such a change would entail,"* the report said.

MMMF Comment Letter Working Group. The SEC is requesting comment on the options discussed in the report by **January 10, 2011**. [Read the comment request and the report](#). To provide input for ABA's comment letter, contact [Cris Naser](#).

ABA Seeks Clarifications in Proposed Mutual-Fund Fee Framework

ABA has asked the Securities and Exchange Commission in a comment letter for clarifications in its proposal to rescind Rule 12b-1 of the Investment Company Act, and replace it with Rule 12b-2, which would provide a new framework to govern the fees that mutual fund investors pay companies for sales and marketing.

Under the proposal, Rule 12b-2 would permit funds to deduct a "marketing and service fee" from fund assets to pay for "distribution activities." Rule 12b-2 also would cap the marketing and service fee at the

current FINRA Rule 2830 service-fee limit of 25 basis points annually.



“We are concerned about potential misunderstandings regarding the fees that would and would not fit within the new Rule 12b-2,” ABA said. “It is important that the [SEC] clearly delineate what types of activities are within the scope of the service-fee limit under FINRA Rule 2830, as well as those activities that are outside the scope of the service fee limit.” [Read the letter](#). [Read the proposal](#).

MISCELLANEOUS

IRS Issues Final Rules on New Basis Reporting Requirement

The Internal Revenue Service has issued final regulations requiring brokers — including corporate trustees — to report the adjusted cost basis of customer equity securities transactions on IRS Form 1099-B. Brokers also must transfer the adjusted cost basis and other pertinent information to other banks or brokers if the customer moves the account. The new reporting requirements apply to equity securities sold after Jan. 1, 2011. In an accompanying release, the IRS also provided penalty relief during 2011 for brokers who fail to properly furnish a transfer statement to a receiving broker. [Read more](#). [Read the final regulations](#). [Read the transitional relief notice](#).

ABA Dodd-Frank Resources for Bankers

- **ABA Launches Special Site to Track Dodd-Frank Implementation**
ABA on November 17, 2010, launched a new online resource — the *ABA Dodd-Frank Tracker* — to help bankers keep up with the wide range of Dodd-Frank Act implementation issues. The site, which uses blog technology, enables bankers to follow specific Dodd-Frank Act issues, provides an archive of ABA’s work during the implementation process, and highlights the expanding resources the association offers its members. Features of the tracker include news stories on Dodd-Frank Act proposals, comment letters and rules; a calendar of comment letter deadlines; and links to ABA resources. Visitors can sign up to receive updates — via e-mail or RSS — as new content is posted. [Visit the Dodd-Frank Tracker](#).
- **Dodd-Frank Act on ABA.com**
Looking for Dodd-Frank Act developments on [www.aba.com](#)? DFA-related items are now marked on [ABA's Center for Regulatory Compliance](#) website and on [ABA's 2010 Regulatory Chart](#) . ABA also recently created a [Final Rules Chart](#)  that lists all proposals on which the ABA has prepared comments and a final rule has been issued. DFA developments are included in the final rules chart, regardless of whether or not ABA filed comments on the proposal.
- **ABA Publishes Dodd-Frank Act Executive Overview**
ABA has published on [aba.com](#) a new executive overview of the Dodd-Frank Act’s key elements that will be implemented over the next several months. Since digesting all of the act’s 2,319 pages is a challenge for anyone, ABA has provided the executive overview to help bank leadership get an overall perspective on how the act is scheduled to unfold, with a focus on the elements that particularly apply to the banking industry.

The overview includes the names of the lead ABA experts, whom bankers can contact for more detailed information and also for their views and input. ABA will continue to develop information relevant to the Dodd-Frank Act implementation issues and post it at [www.aba.com/regreform](#).

[Read the executive overview.](#)

Continuing Education Reporting Due January 31, 2011

If you've earned any continuing education credits in 2010 you should report these credits by January 31, 2011 as part of your requirement for your three-year reporting period. You can report these credits online at www.icbmembers.org. If your three-year continuing education (CE) reporting period ends this year, please make sure you have submitted any credits earned between 2008 and 2010 by January 31, 2011. If you're not sure when your reporting period ends, log on to www.icbmembers.org and select "My Continuing Education Credits" for a record of CE reported to ICB that includes your reporting period. [Click here](#) for a 6-page document that summarizes how to submit your continuing education (CE) online. [Click here](#) for more information about how to maintain your credential. Contact ICB at icb@aba.com or 202-663-5092 if you forgot your member number or have additional questions.

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