



March 28, 2014

Via e-mail

Ms. Elizabeth M. Murphy

Secretary

Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549-1090

Re: Re-Opening of Comment Period for Asset-Backed Securities Release
Release Nos. 33-9552; 33-9244; File No. S7-08-10

Summary

Lewtan hereby submits comments on the proposed revisions to Regulation AB related to the dissemination of potentially sensitive asset-level data.

Lewtan is supportive of the SEC's desire to increase the transparency and disclosure around public securitizations and appreciates the offer to respond to the SEC's proposal. Lewtan will address several issues related to the disclosure of asset-level data on issuer or issuer-sponsored Web-sites that were raised in the SEC's memorandum of February 25th including offering an alternative approach to the guidelines already proposed.

From a legal standpoint, the 'elephant in the room' is the uncertainty surrounding FCRA liability for issuers, investors, and all deal parties and intermediaries who touch data that was originally obtained in the process of underwriting a loan to the consumer, thereby potentially creating a "consumer report." Lewtan believes that short of a clear exemption or clarity, there are additional steps that the SEC can take to reduce the risk of an unintended "consumer report" being formed either intentionally or inadvertently downstream from the loan origination.

As the re-opened comment period specifically invites discussion on issues related to asset-level disclosure, Lewtan would like to indicate that there are other aspects of the original Regulation AB II proposal that could potentially be impacted by the outcome of asset-level data disclosure. Specifically, whether asset-level data or "bands" of data will be permitted for certain asset-classes will have a very real effect on an ability to de-identify an issuer's data; Lewtan does not believe that "bands" would enhance the market's ability to develop sophisticated credit models, nor would "bands" address any potential FCRA liability issues. The integration of asset-level data with issuer-provided open-source cash flow models is another area where a seamless integration with asset-level data could offer significant efficiencies (independent of the issue of the liability associated with any potential model errors). Also, given the brief comment period and uncertainty about which



aspects of the original Regulation AB II proposal remain intact, we have not addressed any specific field requirements, except when an example is presented.

Lastly, Lewtan is responding to the proposed revisions with the premise that the dissemination of loan level data, including potentially sensitive data, is likely. As such, we address the questions of how to do so within the intersection of securities and privacy laws with the goal to optimize the outcome for robust US public and 144(a) markets.

About Lewtan

Lewtan is the founder and owner of a commercial securitization data portal called ABSNet. Having launched ABSNet as the first Web-site providing data in machine-readable format in 1998, Lewtan has been on the forefront of providing investor reporting data, inclusive of asset level data, to investors and other deal parties for the securitization industry globally. Before Regulation AB was initially adopted in 2006, Lewtan was hosting web-sites on the behalf of issuers to display loan level data. These web-sites facilitate issuer roadshows and add transparency for both the issuer's fixed income investors and for the equity holders of the stock of these public companies. When Regulation AB was adopted, Lewtan hosted nearly half of the issuer-sponsored Web-sites used to incorporate via reference the Static Pool Data required under Item 1105.

In addition to mortgage web-sites, Lewtan also provides the technology platform and data operations services for student loans, automobiles, and equipment asset classes.

In Europe, Lewtan provides issuer-sponsored Web-sites to help issuers be compliant with the Bank of England requirements; today, Lewtan hosts such Web-sites for the top 14 issuers in the UK market. Lewtan is also a founding member of the Prime Collateral Securitization initiatives by the Bank of England.

Further, Lewtan hosts a centralized portal for all European securitizations free of charge to investors (www.globalabsportal.com). The global ABS Portal platform which provides remittance data, deal cash flows, loan level data, transaction-related documents and liability waterfall models to any registered user who signs a click on agreement has become a central location for all European asset backed securities.

With respect to US non-agency mortgage data, Lewtan has built an infrastructure to collect, normalize and disseminate loan level details on well over 20 million individual assets, spanning over two decades of performance history. This data is made available through both a data feed as well as a restricted Web application.

Lewtan is also the first vendor to license loan level data from the European Data Warehouse (EDW). The EDW is a privately held central data repository initially sponsored by the European Central Bank whose mission is similar to the SEC proposal – to disclose more granular data about the underlying collateral backing securitizations to provide for better valuation and risk assessment in the market. Lewtan has augmented the EDW data for its ABSNet Loan Europe coverage with historical loan level performance on mortgages backing UK RMBS as well.

Lewtan is also currently engaged with the Reserve Bank of Australia to help it achieve what the SEC is trying to accomplish via Regulation AB II and along lines of what the Bank of England and the European Central Bank have already promulgated.



Lastly, Lewtan works with a significant number of issuers of securitizations of various asset classes globally, and Lewtan's systems are used to drive the workflow from pool selection and general ledger accounting to investor reporting and compliance. Lewtan has produced the investor report data for numerous issuers of public and private US securitizations since 1986. This same software is utilized globally by all constituents in the value chain: originators, issuers, servicers, investors, regulators and central banks. The bridge between the software, analytics, and securitization platforms that Lewtan provides issuers and the data and analytics Lewtan offers investors reflect the competing demands and incentives of all parties.

Given the breadth and depth of this experience, Lewtan is familiar with the legal, risk, and data environments globally and is available to discuss the protections necessary to produce and safeguard potentially sensitive information.

Current State of Asset-Level Data Disclosure

Given the advances made by the Bank of England, the European Central Bank, and the efforts underway by other central banks and even the GSEs, the US public securitization market now lags behind on the data disclosure axis. In the US, the availability of potentially sensitive data is not new to the market. Technology that matches the performance of securitized mortgages to specific properties and to specific consumers is already available, and has been in broad commercial use since at least 2009. The ability to reverse engineer a specific property address and individual borrower provides the market with a better understanding of the collateral for better credit risk assessment. It enables more accurate property valuations and in turn more accurate predictions of credit risk. Investors today can access anonymous consumer data reflecting the updated status of borrowers whose mortgages back these RMBS.

With respect to the issue of data security, Lewtan has also been one of the many providers who have been able to statistically match a securitized mortgage to a borrower and a specific property. In the non-agency RMBS market today, it is possible to identify more than 75% of the borrower addresses underlying the anonymous mortgage data supplied to the market. With just the loan origination date, original mortgage amount, and zip code, one can match the lien to the property and to the borrower. Please note this de-identification of "potentially sensitive data" is available to any individual who accesses data that is in the public record. Anyone can drive to his or her town hall and look up this information. As public records data has become digitized, software that can link disparate databases makes this technology possible within the structured finance industry.

Why then has the global securitization industry, including many countries with strict privacy laws, advanced on the front of loan level disclosure while the US public securitization market has not? The answer is twofold. First, the specter of potential FCRA exposure that provides an aggrieved consumer with \$1000 per instance punitive damages is unique to the United States. Second, the economic incentive to provide asset-level data has evolved as both a best practice (without the strong hand of regulation) in the sectors where asset-level data is truly required for an issuer to remain competitive with its peers, and via a direct tie-in to a bank's access to a central bank's repo window.

While Lewtan is fully supportive of additional transparency and disclosure in the structured finance market, there are a few hurdles which must be addressed before both issuers and investors embrace the new data. First an investor's willingness and ability to access the information should be considered. As currently proposed, all that is required with respect to issuer web-sites is to embargo sensitive information behind a login



and password-protected area. The data itself, totaling many hundreds of thousands or even millions of records, is not easily digestible to investors who invest across multiple instruments. An investor who invests in five different asset classes and has 100 bonds in their portfolio would be faced with dozens of legal approvals to simply access the data. Then they would be faced with ingesting, cleansing, normalizing, and cataloging data before even making any use of it. That investor also shares the same legal and reputational risks in handling the data as the issuers – namely data security and potential FCRA liability if a consumer report is re-constructed as a result of their actions.

Perhaps one of the reasons that issuers of US non-agency RMBS have gotten comfortable with the disclosure of loan level data to date is that the FCRA clearly identifies sharing this information with investors as a 'permitted purpose' under the FCRA. The risk which must be managed is that a credit report becomes re-constructed at some point downstream by matching anonymous data with data that is part of the credit header record (name, social security number, street address) and a "consumer report" is created.

A potentially costly issue for market participants is data security. Data security introduces headline risk for anyone who touches the data. The most recent case in the popular press is of course the breach of security at Target stores resulting in information gathered from consumer credit cards. For originators of consumer credit debt that later gets securitized, however, the originator's risk is multiplied as a number of parties touch and access the data. The key is not to re-combine the anonymous data with consumer information thereby inadvertently creating a "consumer report". The simple headline risk associated with the data leak is likely not quantifiable but one that each issuer and investor must weigh as a counterbalance to the benefits of securitization. Certainly the risks posed from data security leaks do not have the direct financial repercussions as those of a potential FCRA violation (\$1000 per instance, for even one pool of 100,000 loans, the penalty becomes disproportionate to the risk. If consumers were to succeed in an FCRA class action suit, the exposure to ALL parties would be \$100,000,000 in this example. That exposure is approximate for one large auto securitization).

Opinion on Capital Formation

In Lewtan's opinion, clarity around potential FCRA exposure is necessary for the market to continue to function and restore securitization. There are two potential market flight risks posed by the SEC proposal. The first is that issuers and investors simply cannot get comfortable with the risks associated with FCRA and leave the market as occurred with rating agencies when Rule 436(g) was initially adopted. A second possibility is that issuers abandon the public market for the 144(a) market. We feel the second course is less likely, because although the 144(a) market may provide for more customized data delivery where an issuer can directly control who they are giving the data to, the issues surrounding FCRA exposure are the same as if the securitization were public. Lewtan believes there are further steps that can be taken to address the overall costs of the proposed revisions as well as to make data more accessible to all market participants, which are addressed below.

Access to Data

The initial Regulation AB II proposal provided that public deal data is continuously filed throughout the life of the transaction through EDGAR. While doing so is largely a recognition of existing market practices and therefore unlikely to be a burden for market participants, the simple fact that Regulation AB II codified the



consistent and regular availability of loan level data, aggregate data, and (at the time) cash flow models that worked with that data is a significant step.

The asymmetry of data access to non-public deals is a current problem in the market today. This information disadvantage is felt by both prospective investors and other market participants alike, especially for prospective investors in a 144(a) deal like a CLO or a re-performing mortgage deal. Data should be uniformly accessible. This un-level playing field is exacerbated when some deal parties are written into the legal documents of transactions to receive ongoing and updated data and reports that is not available to all parties. These special access rights are not part of securities laws, but instead are customized when a deal is coming to market. In short, clauses that deny access rights on either public or 144(a) deals to non-private information should be removed, and clear guidance should be provided to ensure an equal playing field if “potentially sensitive” information is handled separately.

The majority of investors who purchase ABS and MBS transactions do not have robust infrastructure to handle this new data. Investors who hold less than \$500 million in ABS outnumber those who hold more than \$500 million in ABS. Thus, even if the data is freely available, there are costs that will be incurred beyond that of simply complying with the letter of the new rules. Those costs will be borne either by issuers themselves, by the subset of investors who can justify the additional expense because their ABS exposure is significant enough, or by vendors, as is the case today for the majority of the market participants.

Potential Costs

In the SEC’s letter, a very specific estimate range was provided for the set-up and maintenance of an issuer Web-site. Lewtan can confirm that these estimates are reasonably accurate with respect to the set-up and maintenance of Web-sites akin to a 17(g)-5 Web-site. For those Web-sites, an administrator grants permission, requires an authentication, maintains a user-license agreement, and regularly posts data and can preserve that data for 5 years as intended in the revised proposal.

It is important to note, however, that a Web-site which grants access simply to a file of data will satisfy the letter of the regulation but will not be useful solely in that form. Lewtan envisions that the spirit of disclosing the additional asset-level information is intended to increase the understanding of credit risk, enable more informed trading and investment decisions, and to assist in better securities valuations. To that end, we highlight some of the historical uses of asset-level data:

- To create credit, prepayment, and other models
- To analyze an individual asset pool to understand the characteristics of collateral
- To utilize the current asset-level data to project future performance in a cash flow model - either individually or as representative groups (rep-lines) of collateral
- To assess collateral for compliance with representations & warranties of the deal
- To augment the data with other micro- and macro-data (such as better regional property values or updated borrower characteristics, employment and unemployment data, etc.) to make more knowledgeable decisions.

One of the key roles that vendors play in the financial services industry is to bear the infrastructure costs for multiple parties when there is considerable work to be performed to convey the necessary information for markets to function.



Beyond the set-up and maintenance of an issuer Web-site as re-proposed, other potential costs (either to be borne by issuers, investors, or other deal intermediaries) include:

- Audit costs - for any party that interacts with the data
- Software, hardware, and staffing to utilize the data for the above listed functions
- Operating costs such as maintaining firewalls, updating employee procedures, maintaining audit logs
- Data validation and quality assurance
- Data augmentation
- Legal costs

Lewtan estimates this minimum infrastructure would cost approximately \$500,000 to database and make use of the available data in a secure environment. If the number of asset classes for which an investor receives asset-level data increases, those costs could be higher. One way for these costs to be shared is that vendors in the market will naturally absorb these high set-up and ongoing maintenance costs and share the cost of the infrastructure investment across all deal parties.

Alternative Approaches

While Lewtan believes that competitive market forces will naturally mitigate costs across the industry, we have proposed one modification to the existing proposed revisions related to the technical delivery of data: Utilize existing technologies to aggregate the data without displaying any loan ID information or credit header information. Issuers would still have data security concerns related to internal operations, but this approach would significantly reduce the risk of de-identification and data security breaches. Note, this type of solution is both in place in the industry today and does not limit the granularity of pre-defined aggregations. For example, someone could identify a loan as having an origination date of March 2005 (perhaps obfuscating the exact date), an original loan amount between \$100,000 and \$105,000 (could be issuer-defined), an original product type of 5/1 ARM, a current delinquency of 60 days plus, etc. without needing to provide the loan number or any field that could be deemed to be specific enough to reverse the data into a "consumer report" by identifying an individual consumer. Lewtan is happy to provide the technical details to the SEC upon request.

Again, we thank the SEC for the opportunity to comment on the proposed revisions. In conclusion, Lewtan supports the SEC's goal of increasing transparency and disclosure of asset-level information. With the appropriate provisions to ensure data security and confidentiality of the trade secrets of an issuer that provide investors with as much data as possible should help raise the level of understanding of financial risks in the structured finance markets. Please contact Ned Myers at [REDACTED] or [REDACTED] with any further questions.

Sincerely,

A handwritten signature in black ink that reads "Ned Myers".

Ned Myers

Senior Vice President