



December 9, 2021

The Honorable Gary Gensler
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Application of Rule 15c2-11 to Asset-Backed Securities

Dear Chair Gensler:

The Structured Finance Association (“SFA”)¹ is providing this letter in regard to the potential application of Rule 15c2-11 under the Securities Exchange Act (the “SEA”) to asset-backed securities (“ABS”).² As further described in this letter, our members have deep concern that unintended consequences of Rule 15c2-11, if applied to ABS, will have a material and likely immediate adverse impact on market liquidity, resulting in direct harm to the specific market participants the rule is intended to protect – investors.

This concern is significantly heightened by the fact the informational requirements of Rule 15c2-11 are not material to ABS, and in many instances it would not be possible for publications of broker-dealer quotations on ABS to comply with these information requirements. Accordingly, if the Securities and Exchange Commission (the “SEC”) were to take the historically unprecedented view that Rule 15c2-11 applies to ABS, the practical effect would be to prohibit the “publication” of quotes on many ABS on any “quotation medium” (as such terms may be interpreted by the SEC as to Rule 15c2-11) – and the essential transparency that these quotes provide.

Impeding quoting in this market will directly reduce liquidity and trading. Impairing the liquidity of ABS will likely immediately impair ABS market value and may leave the market with a limited ability to provide sufficient liquidity to help stabilize the market in times of stress.

¹ SFA is a member-based trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. Members of SFA represent all sectors of the securitization market including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers and trustees. Further information can be found at www.structuredfinance.org.

² For purposes of this letter, the term ABS is defined in Section 3(a)(79) of the SEA as a “fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset . . .”

Further, the lack of liquidity and reduced market value could lead to reconsiderations of the use of ABS by regulated institutions to meet regulatory standards and responsible risk management practices. This would have a significant negative impact on the direct participants in this market, including asset managers who invest funds for their retail and institutional clients, entities with regulated capital that hold ABS such as insurance companies, broker-dealers, and banks. Moreover, the seismic impact of an effective prohibition on the use of quotation mediums would extend beyond institutional ABS investors to the financial institutions and their customers that use the ABS market to finance consumer and business loans. For instance, home buyers in the mortgage market represent the largest indirect beneficiaries of the financing provided by ABS. Other consumer financial debt supported by ABS includes credit cards, auto loans, and student loans. A reduction in the value of the financial assets that fund these consumer credit products would necessarily raise the cost to the customer of obtaining financing.

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On August 26, 2021, the Securities Industry and Financial Markets Association (“SIFMA”) and the Bond Dealers of America addressed a letter to Ms. Vanessa Countryman, the Secretary of the SEC, titled “Request for Exemptive Order Pursuant to Rule 15c2-11(g)” and on September 23, 2021, the Asset Management Group of the SIFMA, the Investment Company Institute, the Investment Adviser Association, the Managed Funds Association, and the U.S. Chamber’s Center for Capital Markets Competitiveness addressed a letter to the Honorable Gary Gensler, titled, “Rule 15c2-11” (together, the “Exemptive Requests”). So as to avoid repetition of established background, SFA refers to the Exemptive Requests and expresses its support for the requests made in those letters.

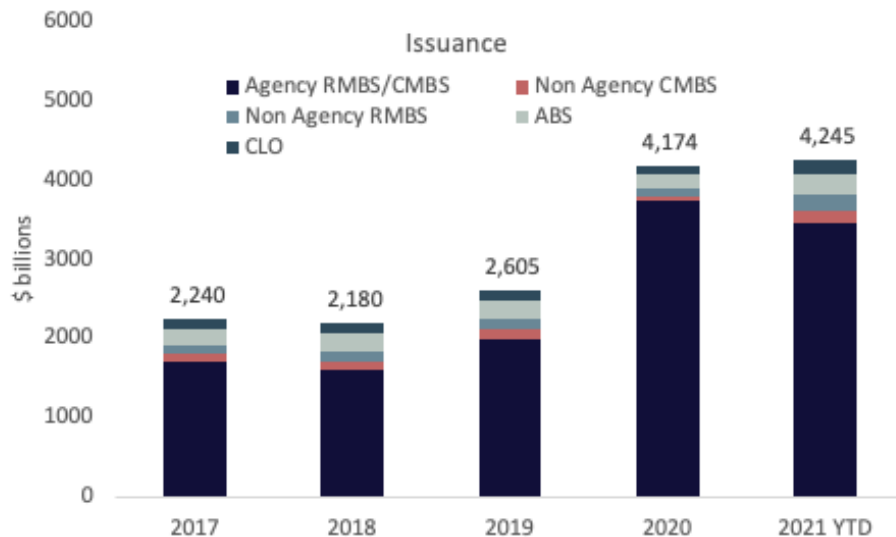
There are, however, a few points made in the Exemptive Requests that we wish to reiterate and **to amplify as they apply to the ABS market**. Specifically, in the next section of this letter we explain why Rule 15c2-11 information is not materially relevant to ABS and therefore such information is not available. In the final section of the letter, we detail the negative impact on liquidity that will inevitably result from imposing informational requirements that cannot be fulfilled as to most ABS.

I. Issuer Information has Limited Relevancy for Asset-backed Securities Investment Analysis

The ABS market, with nearly \$14 trillion dollars³ of securities outstanding, provides sizeable fixed income investment opportunities to institutional investors and funds trillions of dollars of capital to consumers and businesses in communities across the country. The following chart

³ As of 2Q 2021, ABS totaled approximately \$13.2 trillion in remaining balance outstanding, including approximately \$10.9 trillion of issuance from government-sponsored enterprises. We note that in the SEC’s letter dated September 24, 2021, the SEC stated that Rule 15c2-11 does not apply to “exempt securities” and therefore are excluded from Rule 15c2-11.

details the yearly issuance of ABS broken out by asset type.



Source: SFA Market Compilation

Unlike the equity markets which include substantial retail investment, the fixed income markets are largely institutional. The predominance of institutional investment within ABS securities is more pronounced than in debt securities generally, with the SEC stating: **“The predominant purchasers of asset-backed securities today are institutional investors, including financial institutions, pension funds, insurance companies and money managers. Generally, ABS are not marketed to retail investors.”**⁴

In an ABS offering, financial assets of a particular type (e.g., mortgages, credit card receivables, student loans) are typically pooled together, transferred from the asset seller⁵ to a special purpose entity (an “SPE”), the only activity of which is to hold the relevant financial assets and to allocate the associated cashflows thereon to the investors in the SPE. Commonly, the SPE is created specifically for a transaction and serves as the “issuer” of the ABS bonds. Because the assets are transferred to the SPE in a “true sale,” ABS performance is driven by the performance of the asset pool.

In many cases, the SPE is a trust and an independent entity will serve as the trustee, but such trustee will not have any financial obligations to the purchasers of the ABS issued by the SPE.

⁴ Asset-Backed Securities, 69 Fed. Reg. 26650, 26654 (May 13, 2004). The paragraph goes on to note one type of ABS that is marketed to retail investors, but states that such type is listed on a national securities exchange (in which case Rule 15c2-11 would not apply).

⁵ In a typical ABS transaction, the asset seller may have originated the assets itself or aggregated the assets in the secondary market.

Other entities, such as a calculation agent or an administrator, may provide services to the SPE while retaining no financial obligation to the investors.

The regulatory history of Rule 15c2-11 indicates that the information required was primarily relevant to equity securities; e.g., the questions related to the number of shares outstanding and to securities of corporate issuers. For example, even such basic information as the requirement to have information as to the business of the issuer or as to a list of all the company's insiders, which are significant for corporate issuers, is not meaningful information as to issuers of ABS.

The important financial information requirements of Rule 15c2-11; e.g., balance sheet and retained earnings, are not material to ABS investors. In fact, **the SEC has stated in this regard, "... financial information about the issuing entity generally does not provide useful information to investors."**⁶

Such distinctions underscore the fact that Rule 15c2-11 was adopted for the purpose of protecting retail investors in equity securities. There is no history of the Rule ever being applied to products other than equity securities, nor is there any history of the SEC considering the costs and benefits of the application of the Rule beyond equity securities.

In the case of ABS, at the time that Rule 15c2-11 was adopted in 1971, **ABS did not exist and therefore no consideration could have been given to the application of the Rule to the product.**⁷

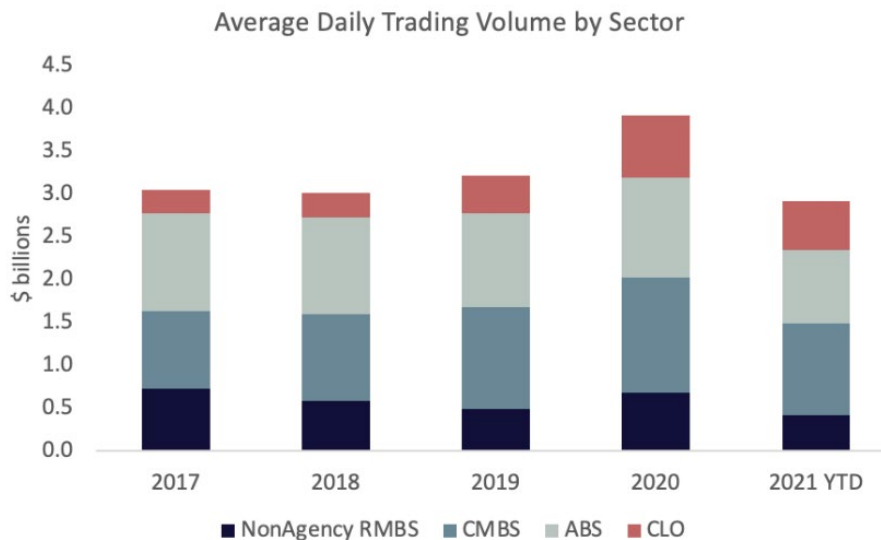
Most importantly, SFA investor members believe the key financial information that is required under Rule 15c2-11, the "balance sheet," the statement of "profit and loss," and the calculation of "retained earnings," of the issuer is not germane to ABS and therefore such information is not produced. Investor members believe they currently have access to collateral and deal information, including the limited issuer disclosure that they deem relevant, prior to transacting in the ABS market, and do not believe the information requirements of Rule 15c2-11 provide additional material transparency. In particular, trustee reports and remittance reports provide material information, on a monthly or quarterly basis timed with the distribution of transaction cashflows, relevant to the decision to participate in an ABS issuance; these reports present the performance of the pool of assets collateralizing the security – and the only source of repayment on the security.

⁶ *Id.* For further consideration of the non-relevance of financial statement disclosures on ABS, see Letter from Robert J. Kueppers, Chair, Center for Public Company Audit Firms, to Jonathan G. Katz, Secretary, SEC (July 29, 2004). We note that information that is relevant to ABS investors, such as trustee or remittance reports, is readily available to investors as to those securities.

⁷ The Government National Mortgage Association (Ginnie Mae) issued its first mortgage-backed participation certificates in 1971. This is generally considered the first modern ABS product, but the market did not grow to any significant size for another decade.

III. Implications of Prohibiting the Publishing of Quotes on ABS

ABS are priced relative to industry benchmarks and in comparison to other ABS with similar ratings, assets and maturities. This means that the more quotations that are available, the more transparent the market, the easier it is for investors to price securities accurately. In the following chart we show the historical average daily trading volume for the securitization market by sector.⁸



Source: FINRA Trace

Silencing or limiting quotations on ABS will diminish liquidity. The effect of diminishing liquidity in any security is that investors demand a higher return to hold the security, as the security cannot be readily turned into cash, and the market value of the security necessarily declines. In times of economic stress, liquidity is crucial to protect the safety and soundness of our nation's financial system. A decline in the market value of ABS will have a negative impact on ABS investors who are largely comprised of asset managers who invest retirement and pension funds for American households and highly regulated financial intermediaries, such as banks and insurance companies. These highly regulated financial intermediaries are subject to robust capital and liquidity regulatory standards and robust risk management practices, which utilize ABS to meet certain financial stability and solvency goals. Any reduced market value and limited liquidity may force regulators and companies to re-evaluate the use of ABS holdings generally, further reducing investor appetite for the market. We urge the SEC to consider the impact on the markets broadly of taking any action that would diminish the value of ABS holdings.

Further, any reduction in the market value of ABS will also spill over to the consumer and

⁸ As of H2 2021, the average daily trading volume for the private securitization market in 2021 year to date is \$2.9 billion. Of that amount, \$1.0 billion is in CMBS, \$0.8 billion in ABS, \$0.57 billion in CLOs, and \$0.42 billion in non-agency RMBS.

business loans financed via the ABS market; i.e., these assets will decline in value, which then means that borrowers on the assets must pay a higher interest rate to obtain funding going forwards. Consumers and businesses are the principal borrowers on most of these assets. This means that impairing the ABS market has the result that retail consumers will pay more on loans such as mortgages, credit cards, and student loans.

* * *

Unlike some trade associations, before SFA takes any advocacy position, our governance requires us to achieve consensus by agreement rather than majority vote, ensuring the perspectives represented in our diverse membership, including our investor, market intermediaries, and issuer members, are reflected. This diversity is the strength of our organization as it builds healthy tension in arriving at member-consensus positions on policy.

Under such governance structure, our full membership, including our investor members who include asset managers who invest funds for their retail and institutional clients, entities with regulated capital that hold ABS such as insurance companies, broker-dealers, and banks, are in strong agreement in expressing substantial concern that applying Rule 15c2-11 to ABS would significantly impair trading and reduce liquidity in the ABS market.

The Structured Finance Association respectfully requests that the SEC provide that Rule 15c2-11 does not apply to the publication of quotations on asset-backed securities. Application of Rule 15c2-11 on ABS will immediately result in market illiquidity. Given that the requirements of the Rule cannot be met as to most ABS, applying the Rule to ABS would effectively prohibit the use of any quotation medium to publish quotations on most ABS. The costs and negative impact of any such prohibition, and the damage done to market liquidity and to asset values, outweighs any benefit, as there would be significant direct effects on asset managers and their retail and institutional clients, banks, insurance companies and other investors that hold ABS and perhaps even more negative, even if indirect, consequences as to consumers whose loans to purchase homes, autos and other credit card goods makes up a significant share of the assets underlying ABS.

Sincerely,

Kristi Leo
President, Structured Finance Association