

June 17, 2022

Submitted electronically via SEC.gov

Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street NE,
Washington, D.C. 20549

Re: File No. S7-10-22
The Enhancement and Standardization of Climate-Related Disclosures for
Investors

Dear Ms. Countryman:

The Structured Finance Association¹ writes in response to the Securities and Exchange Commission’s Proposed Rule “The Enhancement and Standardization of Climate-Related Disclosures for Investors” (the “Proposed Rule”). Climate change is an important topic for the structured finance industry, and we welcome the opportunity to share our members’ views. As an association representing participants across the full spectrum of the securitization market – including securities issuers, institutional investors, and financial intermediaries – we and our members are committed to creating solutions that protect the environment and grow the economy responsibly. An important component of these efforts is our commitment to establishing market-wide transparent, reliable disclosure for investors and other stakeholders to evaluate climate risk impact to the wide-ranging structured finance investments.

I. Introduction and Background

We appreciate that the SEC has been responsive to SFA’s [request](#) to phase-in the application of climate-related disclosures to ABS.² We believe the sequencing of the SEC disclosure

¹ The Structured Finance Association is the leading securitization trade association representing over 370 member companies from all sectors of the securitization market. Our core mission is to support a robust and liquid securitization market and help its members and public policymakers grow credit availability and the real economy in a responsible manner. SFA provides an inclusive forum for securitization professionals to collaborate and, as industry leaders, drive necessary changes, advocate for the securitization community, share best practices and innovative ideas, and offers professional development for industry members through conferences and other programs. For more information, visit www.structuredfinance.org.

² See letter dated June 11, 2022 from Michael Bright, CEO of the SFA, submitted in response to Acting Chair Allison Herron Lee’s public statement on March 15, 2022 requesting public input on climate change disclosures.

requirements leading with corporate securities disclosures—which already have well-established and widely-used frameworks for voluntary climate-related financial disclosures and reporting of greenhouse gas (“GHG”) emissions like the Task Force on Climate-related Financial Disclosures (“TCFD”) and the Greenhouse Gas Protocols—is the proper order when seeking to establish a climate-related disclosure framework.

Our members across the securitization industry want a consistent, comparable, and reliable climate disclosure and reporting framework for the securitization market. However, substantial work remains in order to successfully create and implement such a framework. For this reason, SFA established an ESG reporting initiative to proactively work through our industry-wide membership and consensus-driven governance to develop an environmental (as well as social and governance) disclosure and reporting framework for the securitization market (“SFA ABS Climate Disclosure Framework”).

We expect that the SFA’s ABS Climate Disclosure Framework will have broad support in the securitization market and that we will be able to share that framework with the SEC by the end of Q1 2023. We believe that SFA’s ABS Climate Disclosure Framework will provide information and context for how to best approach any future climate-related disclosure rule for public ABS. We look forward to sharing SFA’s ABS Climate Disclosure Framework with the Commission and remain available to provide updates on market progress along the way.

Based upon the work already undertaken to date under our ESG reporting initiative, we would like to take this opportunity to (1) provide high-level recommendations on aspects of the Proposed Rule and (2) share our views on how differences between ABS and corporate securities make a separate climate-related disclosure framework for the securitization market necessary and appropriate. *This letter also responds specifically to the questions posed in Question 182 in the commentary accompanying the Proposed Rule.* As we noted above, our efforts to develop the SFA ABS Climate Disclosure Framework are ongoing, so these recommendations represent SFA’s initial thinking.

II. Summary of Recommendations

As we discuss in more detail below, any future SEC climate-related disclosure rule for public ABS issuers should factor in:

- Whether there is an existing and well-recognized voluntary climate-related disclosure and reporting framework for public ABS that can be adapted into such a rule;
- The degree to which the disclosures required by such rule relate to matters that have actual or likely material impacts on the performance of the impacted ABS;

- Whether and how required disclosure data is captured, stored, shared and regulated;
- The potential for such a rule to disrupt ABS markets;
- The need for safe harbors from liability to encourage continued use of public ABS markets;
- The contractually prescribed and limited permitted activities of SPV's that issue ABS;
- The time-limited weighted average life of the applicable ABS; and
- Consumer privacy concerns.

III. SFA Feedback on Proposed Rule

a. Concerns About Scope of Proposed Rule

A salient feature of ABS disclosures is that investors are most interested in factors that materially impact the underlying collateral which is the primary source of repayment of ABS – not the issuing sponsor.³ Thus, we believe that any climate disclosures regarding ABS should be tailored for the unique characteristics of securitization structures and the specific type of securitized assets.

Indeed, certain climate-related disclosures may not even be applicable to certain securitized asset types. For instance, the GHG emissions data for the automobiles which secure loans would likely be material information for investors in an auto ABS pool. However, GHG emissions would likely not be as relevant for unsecured personal loans. Similarly, the location of properties securing loans included in an RMBS pool and their geographic proximity to FEMA-identified flood zones could be material for RMBS investors, while such information would not be especially relevant for investors in student loan ABS.

An area of specific concern for SFA members is that the scope of the Proposed Rule could potentially require disclosure of non-material risks. With limited exceptions, the disclosure requirements in the Proposed Rule are not subject to a materiality standard. For instance, the obligation to disclose Scope 1 and Scope 2 GHG emissions are not limited by whether disclosure of that information would be a material factor in an investment decision. A requirement to disclose immaterial climate-related information creates an affirmative reporting obligation (and

³ See definition of “asset-backed security” in Regulation AB (17 C.F.R. §229.1101), which provide in pertinent part that an “Asset-backed security means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period...”.

incurs the associated reporting costs) for risks that do not materially impact the performance of the security, and thus provide limited to no benefit to investors.

Given the reality of climate change and its increasingly broad impact, a regulatory regime which focuses on those factors which impact ABS performance will necessarily include climate-related risks. Moreover, as climate change-related technology improves and scientific advances are made, there will be organic market developments that yield increasingly useful climate change data being disclosed by issuers to investors. SFA believes that allowing these organic market developments to occur is the best approach for both issuers and investors, that doing so is in line with current disclosure practice, and that such an approach will yield the kind of data – including data related to climate change – that investors seek.

b. Overly Prescriptive Reporting Requirements Could Impede Public Issuance

Securitization is a vital source of funding for our nation’s businesses and consumers, and any proposed rulemaking on climate-related disclosures within ABS should seek to avoid disruptions to this vital source of funding. A smooth implementation should allow ample time for the industry to understand and adopt any proposed changes. Our members believe that a principles-based approach to climate-related disclosures, combined with targeted asset-class specific metrics, is the appropriate approach to ABS climate-related disclosure. Therefore, as described above, we are working with our market-wide membership to recommend an asset-class by asset-class approach to identify specific disclosures.

We believe that Regulation AB (17 CFR Subpart 229.1100 - Asset-Backed Securities) (“Reg AB II”) could, subject to the caveats described in the following paragraph, be a useful example for the SEC for a climate-related disclosure rule for public ABS. In that regulation, the SEC took an overall principles-based approach to requiring disclosure of material information by ABS issuers. But Reg AB II also requires specific disclosures for ABS with securitized assets that include certain asset types. Such distinctions by asset type are most notable in Reg AB II’s loan level data disclosure requirements. We believe that such an approach, following adequate market experience with and refinements to a voluntary SFA ABS Climate Disclosure Framework, could be used to create a viable climate disclosure rule for public ABS that meets investor needs while avoiding undue burdens on issuers. Given the vastly different types of securitized assets, this approach will allow issuers to determine what information is material to their specific pool of securitized assets and structure while also requiring disclosure on their rationale for determination of immateriality where applicable.

While Reg AB II provides a useful framework, it also provides some cautionary lessons on how the SEC and industry stakeholders should approach climate-related disclosure standards for public ABS. Given our experience with Reg AB II, it is important that the material information that is required to be disclosed be available and reliable, and that a future request for comment on climate-related disclosures for ABS should seek stakeholder feedback on consistency, comparability, and reliability of material information in ABS disclosures. Moreover, required

disclosures should not expose issuers or investors to liability for impermissibly revealing personally identifiable information (“PII”). As we have seen in Reg AB II, prescriptive disclosure requirements that mandate data which is not available or reliable, or which invokes PII concerns, risks limiting or forestalling public ABS issuance, as has been the case for RMBS since Reg AB II became effective.

The Proposed Rule’s reliance on Rule 409 under the Securities Act of 1933, as amended (the “Securities Act”), or Rule 12b-21 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to provide relief from requirements to disclose historical metrics for climate-related financial impacts and GHG emissions, GHG emissions location data or Scope 3 emissions is troubling to securitization market participants. In the securitization market data regarding the securitized assets is often held by different transaction parties (i.e., the originator, the sponsor and/or the servicer) and is provided to other transaction parties pursuant to complex and interrelated contractual requirements that include obligations to provide such data. - Establishing that omission of prescribed data should be excused due to the “unreasonable effort or expense” of providing that data is even more difficult for ABS issuers than it is for corporate issuers in that data providers in the securitization market who may need to enhance their computer systems or have data from archived origination files manually entered into their computer systems to provide such data do not provide a la cart pricing for specific data fields and there is scant regulatory guidance for the securitization market on when the omission of disclosure should be excused under Rule 409 and Rule 12b-21.

We note as well that Rule 409 and Rule 12b-21 have provided no relief from the PII issue that has been a contributing factor to the lack of public RMBS issuance market since Reg AB II became effective. We therefore believe that it is critical that prescriptive data disclosure requirements in any proposed climate-related disclosure rule for public ABS reflect an understanding of whether and how such data is captured, stored, shared and regulated, as well as whether public disclosure of such data is consistent with consumer privacy expectations, to prevent potentially broad public ABS market disruption that could be caused by unfeasible disclosure requirements.

c. Well-Constructed Safe Harbors Needed

As the SEC is contemplating climate related disclosures for ABS, SFA recommends a well-constructed safe harbor for issuers and other transaction parties who rely on climate-related information disclosed by the issuer. A safe harbor recognizes the fact that issuers want to provide investors with material information, including information related to climate change. However, the ongoing development of this kind of information remains nascent. Offering a safe harbor would incentivize issuers to provide such information, thereby benefitting investors, underwriters, issuers, and other transaction parties who could avail themselves of such disclosures in their current state. Over time, that safe harbor may be revisited or revised as information related to climate disclosures becomes more widely available, or the consistency of that information becomes more reliable.

Firms acting as underwriters and other persons subject to disclosure liability under the Securities Act and the Exchange Act for public ABS will be exposed to significant legal liability if a GHG emission disclosure requirement is included in any new SEC rule mandating climate-related disclosure for public ABS. If such a rule is proposed by the SEC, SFA recommends that it contain a safe harbor that provides that underwriters and other persons who are not experts be subject to the same standard of liability for GHG emissions data as they would for expertised data under Section 11(b)(3)(C) of the Securities Act, and that such persons be deemed not to have “scienter” under Section 10(b) of the Exchange Act if they had no reasonable ground to believe and did not believe that the relevant statement was untrue or misleading. The lack of such a safe harbor in the Proposed Rule is a significant concern to issuers, underwriters, investors, and other relevant parties.

III. Considerations for Climate-Related Disclosures within ABS

Question 182 in the commentary accompanying the Proposed Rule states that the Proposed Rule will not apply to ABS issuers, and requests feedback on (i) whether some or all of the proposed disclosures under Subpart 500 of Regulation S-K should apply to ABS issuers and, if so, which of the proposed disclosures should apply to ABS issuers, (ii) are other types of climate disclosure better suited for ABS issuers, and (iii) how can climate disclosure best be tailored to various asset classes. We again appreciate that the current Proposed Rule does not directly apply to ABS, and anticipate providing additional feedback on a principle-based disclosure framework and asset-class specific reporting metrics to the SEC in Q1 2023. While we believe a harmonized approach for disclosures would make sense in areas where there is overlapping risks between both corporate securities and ABS, the structure of ABS is vastly different from corporate securities and there are no existing voluntary climate-related disclosure frameworks for ABS. In addition, as we discuss below, there are also key differences across ABS asset classes, such that the climate-related disclosures that may have a material impact on one asset class will not have a material impact on another.

a. Finite Life of Securitized Assets & ABS

One of the primary differences between ABS and corporate securities is the lifespan of the issuing entity and associated impact on the tenor of those securities. While a corporation usually exists in perpetuity, an ABS issuing entity—by design—is not intended to exist in perpetuity. Instead, an ABS issuing entity will typically exist no longer than the terms of the financial assets in its ABS pool, with most ABS pools having a weighted average life of between 2-5 years. While the Proposed Rule governs disclosures in annual reporting requirements, the time-bound duration of an ABS should factor into any requirements for climate-related disclosures – and its materiality to the ABS.

Broadly speaking, there are two categories of identified climate risks: physical risks (i.e., climate risks impacting the underlying physical collateral) and transition risks (i.e., regulatory or legal

public policy changes enacted as a result of climate change). The distinction between these two risks is useful in the context of the relatively short weighted average life of most ABS. For example, in ABS involving securitized assets with shorter average lives (i.e., automobile loans, unsecured personal loans) or tenors (i.e., most credit card ABS) physical climate risks will more likely be material to investors as the process by which transitional risks emerge may take longer than the life of the ABS. However, longer term ABS may find certain transitional risks to be material as well. Any future rulemaking should account for both physical and transition risks, while allowing the issuers to make determinations around the materiality of information they disclose given the specific ABS pool, the tenor of the offered ABS, and the credit enhancement provided for the offered ABS.

b. ABS Issuers are Limited to Prescribed Activities

Another difference between corporate and ABS registrants is in the governance of the issuing entity. Issuers of corporate securities have boards of directors and managers that actively manage the affairs of the business, changing and adapting as needs dictate and opportunities arise. The climate-related disclosures in the Proposed Rule apply to this model, where registrants are governed by leaders that exercise considerable discretion in determining how their businesses are operated and can make decisions that significantly change the value and performance of their businesses and the securities they issue over time, which in the case of equity securities can be an indefinite period of time typically measured in decades. On the other hand, an ABS issuing entity is not actively managed by a board of directors or management team. With some limited exceptions, ABS are issued by a special purpose vehicle (SPV) – typically a common law or statutory business trust – that is created pursuant to transaction documents that limit its permitted activities to collecting amounts owed on its pool of securitized assets and remitting those amounts to holders of its ABS during a prescribed and limited period of time. Accordingly, disclosure comparable to those set forth in the proposed Items 1501- 1503 of Regulation S-K are not applicable to ABS.

c. Any Climate-Related Disclosure and Reporting Requirements for Public ABS Should Focus on Securitized Assets

Because most structured finance transactions are for the purpose of financing for, and/or managing credit risk on, the securitized assets, we recommend that any climate-related disclosure rule for public ABS issuers focus on the climate-related risks to securitized assets and not on the issuing SPV, originator, sponsor, trustee or any other transaction party.

d. Any Climate-Related Disclosure Rule for Public ABS Must Protect Consumer Privacy

Concerns have been raised that a future climate-related disclosure rule applicable to ABS could require disclosure of PII that run afoul of existing laws and regulations. For instance, in discussions involving both CMBS and RMBS market participants, interest has been expressed in making utility billing disclosure available to investors to demonstrate the energy efficiency and

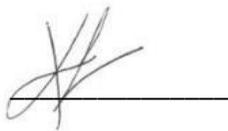
cost savings for loans used for “Green” building construction, or loans to retrofit existing homes to make them more energy efficient. However, concerns have been expressed in those discussions that providing such information at the loan and property level could reveal a data point that—when combined with other existing public data—could compromise the PII of individuals who are borrowers on those loans or tenants in those buildings. While such loan-level utility billing data could be a means to calculate and disclose GHG emissions data relating to securitized assets that finance real estate, there are legal considerations and public policy concerns related to consumer privacy and PII that may require finding an alternative approach to disclosing information related to those GHG emissions.

IV. Conclusion

On behalf of our members, we thank the SEC for the opportunity to provide this feedback on the Proposed Rule. We appreciate that the Proposed Rule exempts ABS as we need more time to work with our members to develop SFA’s ABS Climate Disclosure Framework. Our goal for that framework is to avoid both the risk of lax standards which may result in “greenwashing” and overly rigid standards which risk undermining the development of a nascent public market for Green ABS.

We look forward to continuing our discussion with the SEC on this topic. If you have further questions, please contact Kristi.Leo@StructuredFinance.org.

Best,

A handwritten signature in black ink, appearing to be 'K. Leo', is written over a horizontal line.

Kristi Leo, President