

From: Alberto Zonca [mailto:Alberto@iZonca.com]
Sent: Monday, February 22, 2010 3:00 PM
To: Comments
Subject: RIN # 3064-AD55

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th St, NW
Washington, DC 20429
comments@FDIC.gov
RIN # 3064-AD55

Re: Safe Harbor Protection for Securitizations

Dear Mr. Feldman:

I appreciate the opportunity provided by the FDIC to comment on the advance notice of proposed rulemaking (ANPR) related to the Safe Harbor Protection for Securitizations. I have outlined my response to the proposal by providing an executive summary of my significant concerns, followed by my detailed analysis and response to some of the questions you have posed in the proposal.

Executive Summary

As it has been asserted by many major players in the financial industry and by economic experts, a healthy securitization market is a fundamental support to the economic recovery we are all working to ignite this year. There is a need to improve the credit availability and securitization is the best vehicle to facilitate the process. There is no question regulations are needed to create more transparency at the issuers' level as well as for investors. Nevertheless, we need a balanced approach to be gradually introduced over a period of time.

In my opinion, the current ANPR may go too far in restricting the availability of credit through securitization.

With the 2009 GAAP Modifications, securitizations could be viewed as secured financing, limiting the application of your Safe Harbor provision.

As noted in your ANPR, this may have a major negative effect on the future of securitization.

I appreciate the fact that it is your intention not to attempt to reclaim or recover financial assets transferred in connection with a securitization, if the financial assets are subject to a legally enforceable and perfected security interest under applicable law, regardless of GAAP rules.

Detailed Response

I have focused my comments to a few of the questions relevant to my expertise.

General Questions

2. It is my opinion that the transition period is insufficient to implement the proposed changes.

To eliminate the impact on existing shelf registrations, the transition should allow, as much as possible, to complete all existing shelf registrations outstanding when the ANPR was published. I may suggest December 31, 2010 as the possible effective date.

Capital Structure

For some of the questions (specifically 3 through 6) the main improvements needed for the securitization industry are TRANSPARENCY and CLARITY.

Not only should deals be clearly explained in the issuing documents, but any financial information published by issuers, originators and servicers (such as annual and quarterly reports) should include clear and complete details about these deals. It would then be up to investors and other market participants to evaluate the risks and react accordingly.

The transparency concept should also be applied to ongoing information, such as performance data, which should be expanded and, in most cases, be made available to the public.

8. External credit support should be allowed with clear and comprehensive description for easy risk evaluations.

Disclosures

Greater and improved transparency is the key to the future of securitization.

The principal benefits are better risk evaluations and market pricings.

The American Securitization Forum (ASF) has been working on various projects related to disclosures issues and their results have been very helpful.

The ASF should be the starting point in implementing new disclosure requirements.

Most of the legal and financial information related to public transactions should be made available to the public, as securitizations affect many parties, not only investors in these type of securities, but also, indirectly, investors in securities issued by the originators and servicers.

For private placements, disclosures should be limited to information needed to evaluate the risk for the originators and servicers.

In relation to questions 11 through 17, the ASF should be the starting point in determining what needs to be disclosed, while, in some cases, I am for a broader approach.

Periodic reports should also be more comprehensive.

Based on my expertise in credit card receivables, I have always advocated for more information to include separate data about convenience users and revolvers, which can make a major difference in analyzing risk.

Documentation and Recordkeeping

For RMBS, contractual provisions should provide for the authority to modify loans and to take such other actions as necessary to maximize the value and minimize losses on the securitized financial assets. This should be done to benefit all investors, not limited to specific classes.

As expressed by other market participants, some type of centralized recordkeeping should be implemented for RMBS, facilitating access and transparency.

Origination and Retention Requirements

The sponsor/originator should retain a minimum economic interest in assets similar to the securitized pool.

This should be comparable to the seller interest used in credit card securitizations, avoiding adverse selections.

The size of such retention should be determined based on the asset class and it should be higher for long term assets, such as mortgages.

This retained portion should not be subordinated to the securitized pool and should not be available as additional security interest to investors.

Loans to be securitized should be randomly selected to insure the retained portion is similar in quality to the securitized pool.

In addition, I am in favor of minimum seasoning standards, meaning a minimum period of retention of newly originated loans before eligible for securitization.

Similar to the retention provision, minimum periods prior to any transfer for securitization should be longer for long term assets.

Reviewing specific representations and warranties after 180 days from closing may not be cost effective for servicer and trustee, in addition of creating uncertainty for investors.

I appreciate the opportunity to comment on the ANPR. Please contact me (212-781-1693 or Alberto@iZonca.com) if you have any questions or would like to discuss these issues in greater detail.

Sincerely,

Alberto Zonca

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