

# LOWENSTEIN SANDLER PC CLIENT ALERT MORTGAGE BANKING & FINANCE

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## SEC'S OVERHAUL OF ASSET-BACKED SECURITIES REGULATIONS PART I: HIGHLIGHTS

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**On April 7, 2010 the U.S. Securities and Exchange Commission (the "SEC") released proposed rules (the "Proposed Rules") to substantially revise the disclosure, reporting and offering process for both publicly issued and privately placed asset-backed securities ("ABS"). This Lowenstein Sandler Client Alert generally highlights the Proposed Rules. Subsequent Client Alerts containing practical analysis and implications of the Proposed Rules will be published from time to time.**

Importantly, the Proposed Rules are just a proposal, and one that has already generated significant commentary and controversy. The proposal will be subject to a ninety day comment period that will begin once the Proposed Rules are published in the Federal Register. After the comment period, the SEC is expected to take a significant amount of time to review all submitted comments and, quite possibly, materially change the

Proposed Rules when adopting final rules.

As released, the Proposed Rules would substantially overhaul the ABS markets in, among others, the following respects:

### **Enhanced Disclosure for ABS Issuances**

The revised disclosure regime, if enacted in its current form, would require each of the following in connection with an ABS issuance:

- Disclosing significantly more data specific to individual assets (other than credit card receivables), both at the time of securitization and during the life of the ABS issuance;
- Providing the SEC with computer program coding that, upon availability through the SEC, will allow ABS investors to run models mimicking the ABS issuance's waterfall provisions;
- Filing static pool information with the SEC rather than simply incorporating such information by reference to the sponsor's website;

- Issuing the offering document, without pricing information, at least five business days prior to the first sale of the ABS securities; and
- Issuing a single, integrated offering document rather than a base prospectus with a prospectus supplement.

### **Alignment of Interests by Revising the Requirements for Shelf Registration**

In lieu of the historical investment grade ratings requirement for ABS issued via shelf registration, the SEC has proposed that the following requirements must be satisfied:

- Retention by the sponsor of an unhedged 5% vertical slice of the ABS issuance;
- Certification by the ABS depositor's chief executive that the assets have characteristics providing a reasonable basis for the belief that

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the assets will produce, inclusive of internal credit enhancement, cash flow necessary to make distributions on the ABS;

- The rendering of an third party opinion from time to time that assets not repurchased after demand therefor arising from an alleged breach of representation or warranty do not violate the asset-related representations and warranties; and
- Ongoing periodic reporting during the life of the ABS issuance (in lieu of the previous ability to de-list after the first calendar year of issuance).

#### Overhauling Private Placement Disclosure Obligations

Under the Proposed Rules, ABS issuances privately placed pursuant to exemption from public registration pursuant to Rule 144A or

Regulation D would be required to satisfy the following:

- Filing a public notice to the SEC in connection with each such offering; and
- Making available to investors, upon request, any information that otherwise would have been required to be disclosed in connection with a public offering, both at the time of offering and on an ongoing basis.

In addition to the above, the Proposed Rules intend to change a number of other ABS issuance and reporting processes, including ABS-specific registration forms, significant limitation of the availability of pre-funding and elimination of shelf registration for master trust structures containing non-revolving assets.

Lowenstein Sandler's Mortgage Banking & Finance Group will

continue to monitor and report on developments regarding the issues affecting securitization and other secondary mortgage market participants, including pooled investment vehicles, investment managers, mortgage loan servicers and master servicers, and other matters of interest to our clients and friends.

**Please contact any of the following attorneys for further information on the matters discussed in this Client Alert:**

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