

MORTGAGE

R&U

Regulatory and Market Developments Update

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MAYER | BROWN



Part I: Regulatory & Finance Update

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I. The GSE Patch is Expiring: What Comes Next for QM, Non- QM and QRM

Expiration of the GSE Patch

- The Consumer Financial Protection Bureau ("CFPB") published a proposed rule on Qualified Mortgage ("QM") on July 10.
- Last year, the CFPB issued an Advance Notice of Proposed Rulemaking ("ANPR") regarding the definition of Qualified Mortgage.
 - CFPB indicated at that time that it had no present intention to extend the Government-Sponsored Enterprise ("GSE") Patch, which by regulation expires on January 10, 2021.
 - It kept its word under the new proposed rule.

Expiration of the GSE Patch (*cont'd*)

- The questions posed by the CFPB in the ANPR essentially reiterated the continuing policy debate of whether underwriting standards should:
 - be required at all for a Qualified Mortgage if the other elements of the definition are satisfied; and
 - if so, should such standards:
 - be limited to higher priced loans that may present a greater risk of consumer vulnerability;
 - consist of prescribed standards that are substantially similar to existing requirements or those that modify, supplement or replace the existing standards; and
 - provide a conclusive or rebuttable presumption of compliance.

Highlights of CFPB's QM Proposal

- Eliminate the material underwriting elements of a QM
 - GSE Patch
 - 43% D-T-I, computed in accordance with Appendix Q

Highlights of CFPB's QM Proposal (*cont'd*)

- Retain:

- 3% points and fees test
- Prohibition of non-traditional loan product types/features
- A lender would still be required to consider and verify the consumer's income or assets and debt obligations using reasonably reliable third party records, and would have to consider the consumer's DTI ratio or residual income
- Conclusive presumption converts to rebuttable presumption where average prime offer rate ("APOR") exceeds 150 bp over APOR
- At the time the rate is set for fixed rate loans the maximum interest rate that may apply during that five-year period for adjustable rate loans [essentially eliminates 3-yr ARMs]

Highlights of CFPB's QM Proposal (*cont'd*)

- Add:
 - Consider test
 - No requirement on how to consider
 - Merely have to document in loan file how underwritten

Highlights of CFPB's QM Proposal (*cont'd*)

- Add:
 - Verify test
 - Proposes to provide a safe harbor to lenders that use verification standards that the CFPB would specify
 - Encourages stakeholders to develop additional verification standards that the Bureau could incorporate into the safe harbor
 - No requirement on how to determine beyond use of third party records, but use of agency guidelines qualifies for safe harbor
 - Cap if the APR exceeds the APOR by two percentage points or more
 - Higher for smaller loans (i.e., those under \$109,898, for now) or subordinate-lien loans

Highlights of CFPB's QM Proposal (*cont'd*)

- Add:
 - Seasoning
 - On August 18th, the CFPB proposed to allow a loan that the lender has held in its portfolio to become a QM after 36 months of timely payment, if the loan:
 - is secured by a first lien;
 - has a fixed rate for the full loan term, with fully amortizing payments and no balloon payment;
 - term does not exceed 30 years; and
 - does not exceed the 3% points and fees test.

Highlights of CFPB's QM Proposal (*cont'd*)

- Add:
 - Seasoning (*cont'd*)
 - The requirement that a loan generally would be eligible as a seasoned QM only if the creditor holds it in portfolio until the end of the three-year seasoning period materially limits the benefit of this exception.
 - As to timely payments, the CFPB proposes that the loan must have no more than two delinquencies of PITI of 30 or more days, and no delinquencies of 60 or more days, at the end of the 36-month seasoning period.
 - Payment deficiencies resulting from a disaster or pandemic-related national emergency would not be considered either a delinquency or a current payment. Impede the loan's status as a seasoned QM, although time spent in such a temporary accommodation would not count towards the 36-month seasoning period.

Highlights of CFPB's QM Proposal (*cont'd*)

- Timing:
 - Extends the Patch, to expire upon the effective date of the final rule that amends the General QM loan definition (or if the GSEs exit conservatorship, whichever comes first.)
 - Effective date six months after publication of final rule
 - Relies on commencement date
 - Technical flaw for loans closed after effective date but for which originator took loan applications before effective date
 - Comment period has ended for the timing piece but otherwise is open until 9/28

Highlights of CFPB's QM Proposal (*cont'd*)

- Rationale:
 - The CFPB asserts that a loan's price, its rate spread, is strongly correlated with loan performance, and is a better indicator of a consumer's ability to repay than a Debt-to-Income ("DTI") test. While other metrics may also be correlated with ability to repay ("ATR"), the CFPB is proposing that APR spread is a reliably strong indicator of early payment distress, and has the benefit of being clear and objective. In reaching this conclusion, it rejected proposals from some trade associations and consumer advocacy group to keep a DTI test-although higher than 43%-and authorize reliance on compensating factors to go even farther up the DTI ladder. The proposal specifically asks for comment on its choice to reject this alternative approach.

Background

- Notwithstanding the Bureau's creation of the GSE patch and the 43% D-T-I/Appendix Q, the statutory definition of a Qualified Mortgage does not include an underwriting requirement.
 - It gives the applicable government regulator the authority to issue underwriting guidelines and/or regulations, but it does not mandate the issuance of any such requirements.
 - The CFPB used this delegation of authority to create the GSE patch and the 43% D-T-I/Appendix Q underwriting requirement.
 - This is in marked contrast to the other statutory requirements for a loan to be classified as a Qualified Mortgage, such as a requirement to verify income and assets based on third party records, a prohibition on certain types of loan products and features, and a limit on total points and fees.

Background (*cont'd*)

- A residential mortgage loan that meets these statutory requirements is “presumed” to satisfy ATR, but the statute does not characterize the presumption as either conclusive or rebuttable. The CFPB established that distinction in its final ATR regulations, although the concept first surfaced in some of the House bills leading up to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”).

Fair Lending Concerns

- DTI is highly correlated to race
 - LatinX borrowers 38% more likely to receive loan w/ DTI >43%
 - Asian American borrowers 34% more likely
 - Black borrowers 29% more likely
 - White borrowers 7% less likely

DTI is not the best predictor of risk

- Product features
- Residual income
- Cash-flow analysis
- Rental housing payment history
- Housing payment shock
- Credit score
- Loan to Value ratio
- Hard to measure accurately

Significant Number of Loans Originate Above 43% DTI

Agency Purchase Originations with DTI Ratios over 43 Percent

	Fannie Mae	Freddie Mac	FHA	VA
2013	13.3%	14.1%	42.4%	33.0%
2014	13.6%	15.1%	42.7%	35.1%
2015	13.2%	17.2%	41.8%	36.6%
2016	13.9%	18.6%	44.7%	38.0%
2017	19.3%	21.2%	51.5%	41.9%
2018 ^a	29.0%	24.9%	55.3%	45.9%

Source: Urban Institute calculations based on eMBS data.

Note: FHA = Federal Housing Administration; VA = US Department of Veterans Affairs.

^a2018 data are through May 2018.

Higher DTI Loans Have Good Performance

90-Day Delinquency Rate for GSE Purchase Originations by DTI Ratio, FICO Score, and LTV Ratio

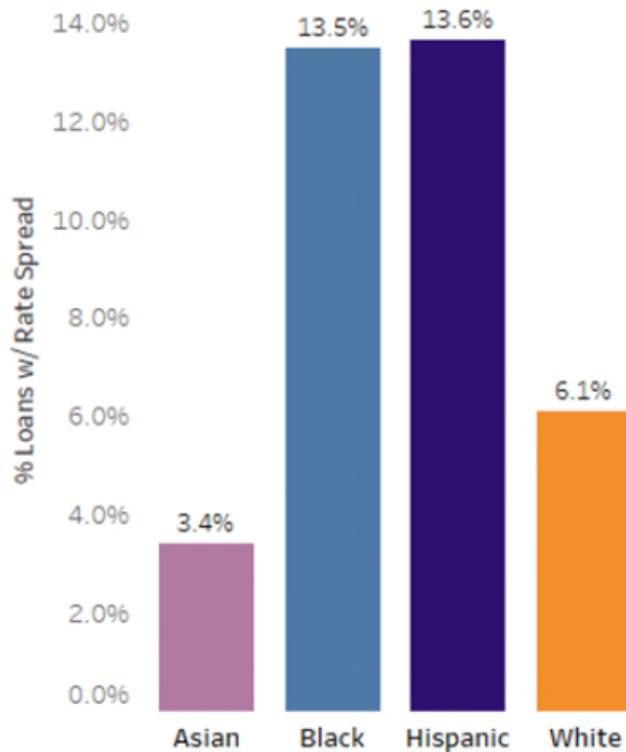
	DTI Ratio			FICO Score			LTV Ratio		
	<30%	30-45%	>45%	>750	700-750	<700	<80%	80-95%	>95%
1999	2.68%	3.81%	4.39%	0.77%	1.82%	6.63%	2.59%	5.08%	5.72%
2000	2.51%	3.34%	3.53%	0.63%	1.59%	6.38%	2.26%	4.46%	5.69%
2001	2.53%	3.59%	4.05%	0.78%	1.91%	6.54%	2.38%	5.52%	6.22%
2002	2.87%	4.26%	4.84%	1.07%	2.60%	7.59%	2.84%	7.00%	7.88%
2003	3.70%	6.14%	7.05%	1.76%	4.30%	10.17%	4.27%	9.32%	11.61%
2004	5.73%	8.81%	9.95%	2.78%	6.48%	14.03%	6.81%	12.85%	15.14%
2005	7.83%	13.14%	15.67%	4.73%	11.05%	20.97%	11.00%	18.13%	20.42%
2006	9.43%	15.55%	19.22%	5.78%	13.69%	25.25%	13.62%	21.05%	27.65%
2007	9.91%	16.99%	21.95%	6.27%	14.89%	28.18%	14.27%	23.98%	29.10%
2008	4.91%	9.73%	15.03%	3.84%	10.43%	22.05%	8.33%	15.12%	15.87%
2009	0.94%	2.40%	4.13%	0.95%	3.04%	8.06%	1.94%	3.17%	2.99%
2010	0.72%	1.76%	2.13%	0.60%	2.08%	5.71%	1.29%	1.89%	3.15%
2011	0.56%	1.38%	1.34%	0.43%	1.58%	4.61%	0.99%	1.42%	1.51%
2012	0.33%	0.85%	0.66%	0.26%	0.98%	3.08%	0.54%	0.94%	1.15%
2013	0.36%	0.87%	0.54%	0.24%	0.88%	2.65%	0.54%	0.96%	1.40%
2014	0.39%	0.88%	0.54%	0.22%	0.75%	2.33%	0.58%	0.96%	1.05%
2015	0.20%	0.47%	0.26%	0.11%	0.36%	1.29%	0.29%	0.50%	0.82%
2016	0.06%	0.14%	0.07%	0.04%	0.10%	0.38%	0.09%	0.15%	0.33%

Source: Urban Institute analysis based on Fannie Mae and Freddie Mac loan-level credit data.

Note: DTI = debt-to-income; GSE = government-sponsored enterprise; LTV = loan-to-value.

Black and LatinX Borrowers Disproportionately Receive Rate Spread At or Above 150 Over APOR

Percent of Loans in 2017 with Rate Spread



Source: Lending Patterns, 2017 Home Mortgage Disclosure Act data. ©2019 National Fair Housing Alliance. All rights reserved.

Fair Lending Concerns (*cont'd*)

- Elevated Pricing Discrimination Concerns
 - Risk-based pricing systems does not alleviate concern
 - Pricing Discrimination = Loss of Safe Harbor?
- Underserved groups must have full access to the whole market
 - Rule should not promote venue steering
- Rule must not stifle shopping for underserved groups
 - Reduction in shopping = pricing inflation
- FHA TOTAL Scorecard Exacerbates Concerns
- COVID-19 Impacts
 - Uneven protection in the market

Fair Lending Concerns (*cont'd*)

- Ability to Repay
 - CFPB cannot rely on pricing to address ATR issues
 - CFPB cannot rely on DTI cut-off to address ATR issues
 - QM Rule must provide clearer guidance on ATR
 - Creditors must comply with statute to make reasonable and good faith determination of ATR.
 - Consider & Verify
 - Retained documentation is critical

Major Questions

- Is price the right test?
 - Are the levels set properly?
- Should there be prescriptive requirement for “consider and verify”?
- What are the fair lending implications of this approach?
- What does the change mean for QRM and risk retention?
- What is the anticipated impact on the non-QM market?

Applicability of Risk Retention Rules to Residential Mortgage Lending

- The agencies responsible for the securitization credit risk retention regulations and qualified residential mortgages ("QRMs") (OCC, FDIC, SEC, FHFA, and HUD) previously asked for public input as part of their periodic review of those requirements.
- Comments on the review were due by February 3, 2020. Note that this endeavor is neither an Advanced Notice of Proposed Rule Making nor a proposed rule.
- The agencies subsequently announced that they would postpone until June 2021 its consideration of any changes to QRM

Applicability of Risk Retention Rules to Residential Mortgage Lending (*cont'd*)

- By way of background, five years ago, in response to Dodd-Frank, an interagency final rule provided that a securitizer of asset-backed securities ("ABS") must retain not less than five percent of the credit risk of the assets collateralizing the securities. Sponsors of securitizations that issue ABS interests must retain either an eligible horizontal residual interest, vertical interest, or a combination of both.
- The Act and the rule establish several exemptions from that requirement, including for ABS collateralized exclusively by residential mortgages that qualify as "qualified residential mortgages," as defined in the rule.

Applicability of Risk Retention Rules to Residential Mortgage Lending (*cont'd*)

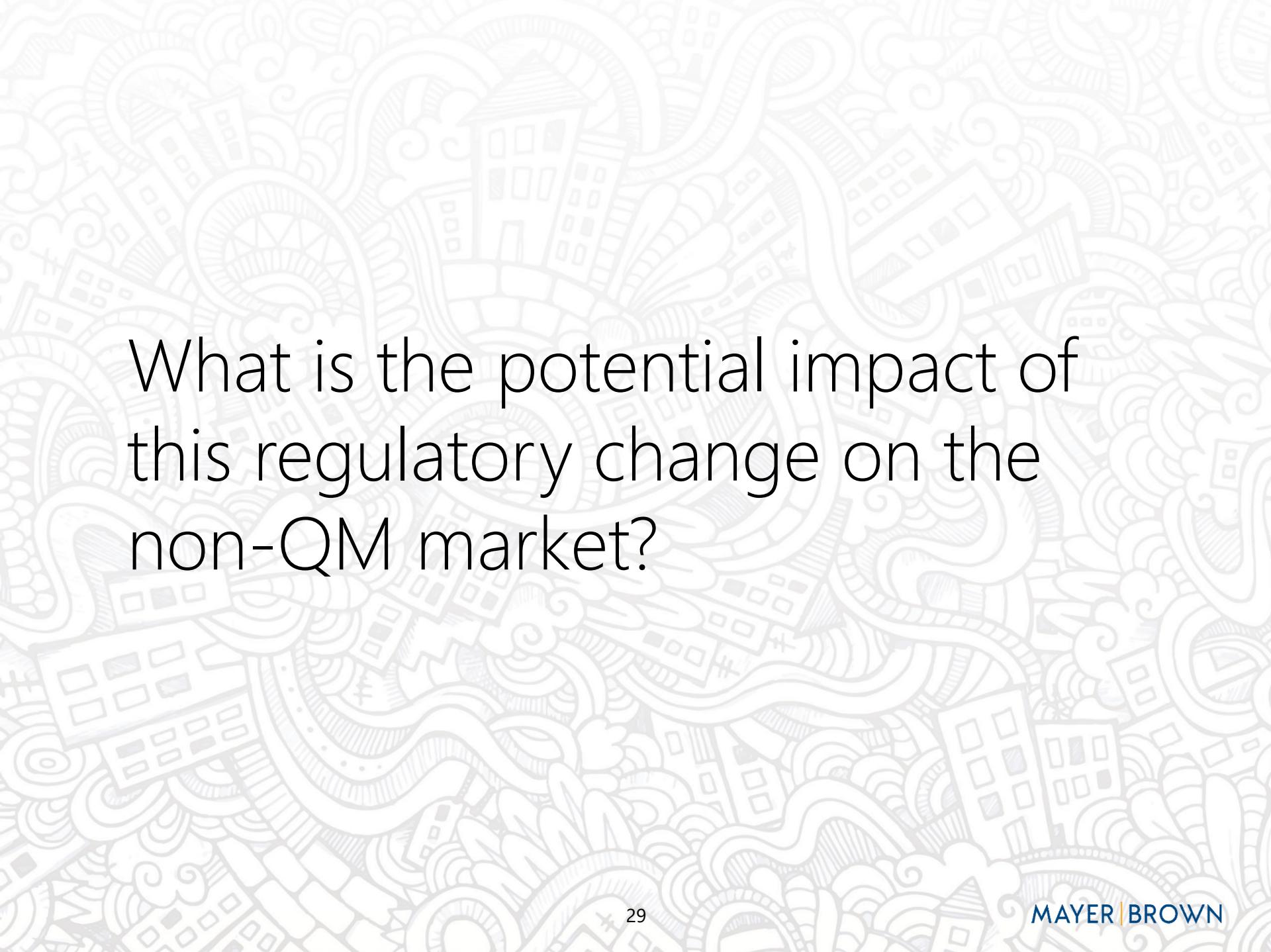
- The Act provides that the definition of QRM can be no broader than the definition of a qualified mortgage, as that term is defined under the Truth in Lending Act ("TILA") and applicable regulations. The relevant agencies decided to define a QRM in full alignment with the definition of a QM.
- The agencies concluded that alignment was necessary to protect investors, enhance financial stability, preserve access to affordable credit, and facilitate compliance. Their rule also includes an exemption from risk retention for certain types of community-focused residential mortgages that are not eligible for QRM status but that also are exempt from the TILA ability-to-pay rules under the TILA.

Applicability of Risk Retention Rules to Residential Mortgage Lending (*cont'd*)

- As part of their review of the risk retention/QRM rule, the agencies will consider changes in the mortgage and securitization market conditions and practices (which may include, for example, the structures of securitizations, the relationship between, and roles undertaken by, the various transaction parties, implications for investor protection and financial stability arising from the relationship between GSE and private label markets, and trends in mortgage products in various markets and structures), as well as how the QRM definition affects residential mortgage underwriting and securitization of residential mortgage loans under evolving market conditions.

Applicability of Risk Retention Rules to Residential Mortgage Lending (*cont'd*)

- The agencies also will review other regulatory changes affecting securitization, and any changes to the structure and framework of the GSEs and those markets. In addition, the agencies will consider any changes the CFPB makes to the QM definition, which would automatically modify the QRM definition. Specifically, the agencies are requesting public input on: (1) the definition of QRM; (2) the community-focused residential mortgage exemption; and (3) the exemption for qualifying three-to-four unit residential mortgage loans.
- If the agencies do nothing and the CFPB elects to eliminate the underwriting requirement in the definition of a QM, the risk retention rules will be limited to residential mortgage loans with total points and fees above 3 or those with non-traditional products types and features.



What is the potential impact of
this regulatory change on the
non-QM market?

II. Forbearance

Servicing

- Congress enacted the Coronavirus Aid, Relief, and Economic Security ("CARES") Act in March 2020, which, among other provisions related to COVID-19, grants forbearance to borrowers under "federally-backed mortgage loans" in two separate increments of "up to" 180 days.
- The borrower's right to elect forbearance lasts for the undefined "covered period," which at least is as long as the national emergency declared by President Trump remains in effect.

What are the terms of a forbearance?

- A “federally-backed mortgage loan” is a residential mortgage loan sold (not just eligible to be sold) to Fannie Mae or Freddie Mac or insured by Federal Housing Administration (“FHA”) or guaranteed by the United States Departments of Veterans Affairs (“VA”) or Agriculture Rural Housing Service (“RHS”).
- This means conventional, non-conforming loans are not subject to this provision of the CARES Act, but note that the House of Representatives passed the Health and Economic Recovery Omnibus Emergency Solutions (“HEROES”) Act, which would extend this right to forbearance to most all types of residential mortgage loans if the Senate adopts this same provision and it is signed into law.
- The “up to” language has raised issues of who gets to decide.
 - “Up to” 100 bottles of beer on the wall? Class action risk?
- Even delinquent borrowers at the time of the passage of the CARES Act are eligible for forbearance.
- In addition, the CARES Act delays the filing or finalization of foreclosure and eviction during a specified period, which the Agencies continue to extend.

What are the terms of a forbearance? (*cont'd*)

- The borrower does not have to submit an application for forbearance. All that is required is an attestation of financial hardship directly or indirectly due to COVID-19.
 - Lender may not request documentation to support the attestation.
 - Borrower does not have to demonstrate that financial hardship impairs ability to repay mortgage loan.
 - POLICY QUESTION: Does it make sense not to require documentation?
- No additional interest or fees may be imposed on borrowers based on electing forbearance.
- Servicers cannot report to credit reporting agencies an account as delinquent merely because of a forbearance provided in connection with a COVID-19-related hardship.
- Depending on the type of loan, approximately 30% of the borrowers who have obtained forbearance have continued to make their regularly scheduled monthly payments.
 - REAL LIFE QUESTION: Why would borrowers request forbearance but continue to make their payments?

What is missing from the CARES Act relating to forbearance?

- Of course, doesn't apply to non-federally-backed mortgage loans.
- There is no private right of action.
- There is no obligation imposed on servicers to reach out to borrowers to let them know of their rights.
- There are no requirements related to borrowers with limited English proficiency.
- There are no provisions for what happens when the forbearance period ends.

Is forbearance constitutional?

A. Taking

- There are two types of takings: per se takings and regulatory takings. A per se taking occurs when the government physically and permanently takes real or personal property. See, e.g., *Horne v. Dep't of Agriculture*, 135 S. Ct. 2419, 2428 (2015) (government program that confiscates excess raisins and destroys them is a "clear physical taking"); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426-27 (1982) (installation of cables on an apartment building roof over the objection of the owner was a "permanent physical occupation" of property); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1016 (1992) (banning all land development deprives the owner of "all economically beneficial or productive use of land"); see also *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 321 (2002) (three-year government moratorium on land development was not a per se taking).
- The mortgage forbearance requirement would not be a per se taking.

Is forbearance constitutional? (*cont'd*)

A. Taking

- Instead, forbearance potentially would be a regulatory taking. These takings are analyzed according to three factors outlined in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978): (1) the “economic impact of the regulation on the claimant”; (2) “the extent to which the regulation has interfered with distinct investment-backed expectations”; and (3) “the character of the governmental action.” *Id.* at 124. Notably, unlike per se takings, courts presented with regulatory takings take account of the public interest asserted to justify the taking. The *Penn Central* analysis is “flexible and forgiving” of government regulation. Horne, 135 S. Ct. at 2425.

Is forbearance constitutional? (cont'd)

B. Commerce Clause

- Governmental interference with private contract rights is governed by what is in essence rational basis review – by which the government would only need to show that it had some reasonable basis to take the action that it did. A court would analyze three factors: (1) whether the regulation substantially impairs a contractual relationship; (2) whether the government had “a significant and legitimate purpose behind the regulation, such as the remedying of a broad and general social or economic problem”; and (3) whether the law is reasonable and appropriate for its intended purpose. *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411-13 (1983).

What happens to loans that are not “federally backed mortgage loans”?

- Most banks have announced policies providing comparable forbearance to borrowers whose residential mortgage loans they hold for investment.
- Many private whole loan agreements and private mortgage securitization documents contain an inherent conflict-specific limitation on changing loan terms with general requirement to service in accordance with accepted servicing practices.
 - Most permit forbearance but (i) require documentation evidencing financial hardship due to COVID-19 that directly impairs the borrower’s ability to repay the mortgage and (ii) for a shorter duration.
- States have gotten into the fray.
 - Only a handful of states have actually enacted laws requiring the granting of forbearance (e.g., NY, Mass, Delaware, DC, Oregon, and California). New Jersey is likely to enact laws.
 - Most have issued guidance strongly recommending the grant of forbearance.

Does a servicer earn a servicing fee during forbearance?

- Servicing fees are paid out of actual collections on the mortgage loans. If there is no payment by a borrower, there is no servicing fee payable.
- No, but accrued but unpaid servicing fee fees, guaranty fees, and excess servicing fees (if applicable) will be reimbursed for mortgage loans that receive a payment deferral at the time the mortgage loan matures or is paid-in-full through a credit to the servicer's custodial account. It is not clear if these fees are paid if instead of a payment deferral there is a loan modification.
 - QUESTION: Is it fair that servicers have to do this work for free?
- GSEs provide for \$500 incentive fee payable upon the reinstatement of the borrower's loan through a payment deferral and \$1,000 for a "flex modification." FHA has not followed suit.

When and how does a borrower repay forbearne payments?

- For “federally backed mortgage loans” the servicer does not have discretion to determine when forbearance ends, which occurs either at the earlier of borrower request or end of the statutory period.
- One significant question is whether the servicer must or may counsel the borrower on the potential adverse consequences of forbearance, such as eligibility for refinancing.
- The CARES Act does not prescribe what happens to a borrower after forbearance ends, regardless of whether the borrower is able to repay forborene payments and/or resume regularly scheduled monthly payments.
- When it does end, the question is whether the borrower has the ability to resume regularly scheduled monthly payments without regard to the forborene amount. If so, one path may be followed; if not, another path is followed.
 - Contrast this with some state laws that are prescribing when and how a forborene payment may be made.

When and how does a borrower repay forbearne payments? (cont'd)

- Determining how to establish loss mitigation options available to borrowers at the end of the forbearance period, which could last up to 360 days, is one of the key unanswered questions raised under the CARES Act.
- In response, the federal housing agencies and the GSEs have introduced specific loss mitigation options and waterfall requirements for borrowers impacted by COVID-19 and receiving mortgage payment forbearance.
- For regulators and legislators that want servicers to provide borrowers at the time they seek forbearance with up-front disclosures of subsequently available loss mitigation options, the complexity of evaluating the borrower for available loss mitigation options makes this a difficult task.
- The first question is whether the borrower can repay the forborene payments?
 - None of the agencies require a borrower to repay the forborene amounts in one lump sum.

When and how does a borrower repay forborne payments? (cont'd)

- The agencies have specific special repayment options of forborne payments for borrowers who can resume regularly scheduled monthly payments.
 - Can the borrower repay in one lump sum, even if not required to do so?
 - Can the borrower repay the forborne payments of taxes and insurance over sixty months in addition to regularly scheduled payments?
- Before looking at loss mitigation options that require modification of a loan coming off of forbearance, the agencies have special repayment options in the context of COVID-19 forbearance.
- The *COVID-19 Payment Deferral* is a retention workout option offered by the GSEs that is designed to assist borrowers who missed up to twelve months of forborne payments due to COVID-19 hardships that have been resolved and return their mortgage to a current status.

When and how does a borrower repay forbearne payments? (cont'd)

- To accomplish this workout option, the servicer defers the following amounts as a non-interest bearing balance on the loan: (i) up to twelve months of past-due principal and interest payments, (ii) out-of-pocket escrow advances paid to third parties, and (iii) servicing advances paid to third parties in the ordinary course of business and not retained by the servicer.
- The deferral balance is due and payable at maturity of the mortgage loan, or earlier upon the sale or transfer of the property, refinance of the mortgage loan, or payoff of the interest-bearing unpaid principal balance.
 - All other terms of the mortgage loan must remain unchanged.
- Servicers must evaluate a borrower's eligibility for a COVID-19 Payment Deferral by achieving Quality Right Party Contact ("QRPC") (for Fannie Mae loans) or Limited QRPC as specified in (for Freddie Mac loans). QRPC is a defined term that generally means creating a uniform standard for communicating with the borrower or his or her representative to determine the reason for delinquency, the occupancy status of the property, whether the borrower has the willingness and ability to repay, and to discuss available workout options.

When and how does a borrower repay forbearne payments? (cont'd)

- HUD, on the other hand, requires a mortgagee who has extended COVID-19 Forbearance to a borrower to evaluate such borrower for a *COVID-19 National Emergency Standalone Partial Claim* no later than the end of the forbearance period(s).
- The COVID-19 Standalone Partial Claim requires that: (i) the mortgage is current or less than 30 days past due as of March 1, 2020 and (ii) the borrower "indicates" he/she has the ability to resume making on-time mortgage payments.
 - The COVID-19 Standalone Partial Claim amount includes only arrearages consisting of principal, interest, taxes and insurance.
 - The borrower receives only one COVID-19 Standalone Partial Claim.
 - Is effected, through a loan from HUD to the borrower secured with a second lien on the mortgage, so that the original mortgage is not modified.

When and how does a borrower repay forbearne payments? (cont'd)

- If the borrower is not able to resume regularly scheduled monthly payments at the end of the forbearance period, then the agencies require the servicer to review the borrower for a waterfall of loss mitigation options.
- The order of evaluation of available options depends on several factors, such as whether the borrower is an owner-occupant, whether the servicer can achieve QRPC with the borrower, whether the loan was delinquent as of 3/20/20, and the amount of the payment that the borrower can afford.
- The differences in the options are based on tools such as capitalizing arrearages, reducing interest rate, extending the term, and reducing the monthly payment.
- If the borrower does not qualify for any of the available loss mitigation options, then the servicer must evaluate the borrower for non-home retention options involving short sales, deeds in lieu of foreclosure and ultimately foreclosure, subject to federal and state law limitations.

In what ways has the government criticized servicers for their forbearance work? (*see Appendix B*)

- September 2 Letter: <https://bit.ly/3mNf5V7>
- Subpoenas issued by NY Attorney General
- Information request from House Financial Services Committee
- Information request from Senator Warren and other Democratic senators
- Civil investigative demands by the Consumer Financial Protection Bureau
- State licensing authorities
- Federal banking agencies

What consumer litigation has been initiated based on COVID-19 forbearance?

- What we've seen
 - Class action litigation alleging that mortgage servicer failed to adhere to CARES Act requirements: (i) to provide a 180-day forbearance plan and instead offered only a 90-day forbearance plan option; and (ii) to refrain from requiring borrowers to make particular certifications about their need for a forbearance plan, e.g., about whether borrower was in "imminent danger of not making the next monthly payment".
 - Class action litigation concerning purportedly forced forbearance plans (Wells Fargo)
 - Including claim for unfair credit reporting

What consumer litigation has been initiated based on COVID-19 forbearance? (*cont'd*)

- What we've seen (*cont'd*)
 - Litigation challenging state and local forbearance requirements;
 - Fraud and unfair business practices litigation related to alleged misrepresentations about forbearance time;
 - Individual wrongful foreclosure claims related to purported promise to put borrowers into forbearance plan and then wrongful refusal to approve loan modification;
 - Credit reporting claims related to report of "forbearance" instead of "current" on the loan.

What consumer litigation has been initiated based on COVID-19 forbearance? *(cont'd)*

- What we expect to see

- Breach of contract actions –different expectations of borrowers and lenders regarding the length, effect, and nature of the forbearance plan
- Consumer protection/unfair & deceptive practices claims – unclear documentation, unfair terms or expectations in forbearance plans, inadequate disclosures, imposition of late fees, etc.
- Fraud or negligent misrepresentation claims
- Wrongful foreclosure claims
- Alleged violations of state laws protecting homeowners in danger of foreclosure, e.g., state “bill of rights” laws

What consumer litigation has been initiated based on COVID-19 forbearance? *(cont'd)*

- What we expect to see *(cont'd)*
 - RESPA inquiries and related litigation
 - Fair Debt Collection Practices Act and state equivalent claims related to collection efforts during and following forbearance plans
 - Issues with loan modifications following forbearance plans
 - Government investigations, inquiries, and related penalties relating to purported violations
 - Fair Credit Reporting Act and other similar state law claims based on status of borrower before, during, and after forbearance plan; lack of clarity surrounding how forbearance plans affect credit score

What consumer litigation has been initiated based on COVID-19 forbearance? *(cont'd)*

- What we expect to see *(cont'd)*
 - Expect issues similar to those that arose during the HAMP program – e.g., borrowers should be reported as current if that's how they entered forbearance plan, etc.
 - For example, class action related to report of "forbearance" instead of "current" on loan.
 - Already, we are hearing reports of servicers incorrectly reporting on loans and consumers taking a "hit" on their credit scores, e.g., Great Lakes (student loan servicer).

What is next?

- Will the CARES Act be extended to conventional, non-conforming loans?
- Will the CARES Act be amended to prescribe loss mitigation options or require automatic forbearance?
- Will states continue to enact laws that create inconsistent requirements?
- Will servicers get relief from providing forbearance and advances for free?
- What happens if the surge in COVID-19 cases further impairs employment and exacerbates financial hardship?
 - Will there be further public policy efforts to prohibit foreclosure or tenant evictions? (e.g., CDC stay on evictions)
- If there is change in administrations and change in Senate control, what to expect? (e.g., extended stays; principal write-downs; bankruptcy reform/"cram downs")

III. Financing Options

Advance Financing Options

- Private Label Mortgage Loans
 - Warehouse lines – business as usual.
- Government Mortgage Loans
 - Fannie/Freddie provide Consent Agreements separate from Acknowledgement Agreements.
 - Ginnie unable/unwilling to bifurcate funding of advances and Mortgage Servicing Rights ("MSR").
 - Some lenders will fund Ginnie MSR/advances and take the extinguishment risk.
 - Early Buyout ("EBO") options
 - Pass-Through Assistance Program ("PTAP")

MSR Financing Options

- Warehouse Funding
- Securitization
- Excess Spread Sales
- MSR Funds

IV. Housing Finance Reform

Where We Are; What to Watch

- Current Roadmap for GSE Reform by Treasury/FHFA
- FHFA Capital Rule - Its Role in the Reform Process
- The Potential Impact of the Collins Case - Seila Part II?
- 2020 Presidential Election & (Don't Forget) Senate Elections

Appendix A

HR748 (Signed into law on 3/27/2020)

- SECTION 1. SHORT TITLE.
- This Act may be cited as the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act”.

Appendix B*

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
I. COMMUNICATIONS WITH BORROWERS		
A. Outreach to Borrowers	<p>Has or will your company take immediate action to proactively notify all homeowners whose mortgages you service about the availability of mortgage forbearance and foreclosure relief for borrowers who are facing a financial hardship under the CARES Act?</p> <p>a. Please respond with a list of all actions your company has already taken or plans to take to provide such notification to homeowners.</p> <p>b. Please provide copies of notices and information regarding CARES Act foreclosure and forbearance relief that you have provided to borrowers.</p> <p>c. If your company does not plan to take such proactive steps, please explain why. (Q1)</p>	<p>All form letters, templates, and other standardized Communications sent to individuals whose mortgage you service, including but not limited to, emails, texts, letters, or through any form of social media effective as of or since March 27, 2020 related to:</p> <p>a. assistance available for borrowers experiencing financial hardship; and</p> <p>b. initiating and continuing foreclosure proceedings.</p> <p>(Q6)</p>
*Chart prepared by MBA		

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
I. COMMUNICATIONS WITH BORROWERS		
B. Information on Forbearance and Post-Forbearance Options	<p>On the next statement or other notice sent via mail to homeowners, will your company include information describing the options available for struggling homeowners, including the necessary information for a borrower to understand both forbearance and the options available after forbearance, and allow homeowners to contact you to notify you that they are experiencing a hardship and request forbearance or other assistance via a pre-paid return envelope, and via email, your company's website, or through your company's phone application? (Q2)</p>	<p>Screenshots of all information provided on your website, including your online platform for making electronic mortgage payments, since March 27, 2020 related to mortgage assistance and foreclosure proceedings. (Q7)</p>

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
I. COMMUNICATIONS WITH BORROWERS		
C. Contact with Delinquent Borrowers	If an eligible homeowner misses or is late on their payments during the period in which they may be eligible for forbearance, will your company contact them with information regarding their availability for forbearance and instructions on how to request relief? How soon after a missed or late payment will you contact the borrower? Will you do this before assessing any fees, interest, or penalties, which are prohibited for borrowers requesting forbearance under the CARES Act? (Q6)	

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
I. COMMUNICATIONS WITH BORROWERS		
D. LEP Borrowers	To what extent are the communications above, including written and oral communication, available in languages other than English? Please provide a list of all languages in which you are able to communicate with borrowers and ways that borrowers can request language assistance. (Q7)	
E. Information on Housing Counseling	Do you inform borrowers of the availability of housing counseling through HUD-approved housing counseling agencies, including counselors' ability to facilitate borrower communication in languages other than English? How is such information provided to borrowers? (Q8)	

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
II. FORBEARANCE		
A. Forbearance Enrollment		
B. Written Notice after Forbearance Granted	When your company grants initial forbearances under the CARES Act, will your company provide written information to the homeowner containing specific details on the length and other terms of the forbearance, as well as instructions on how to extend the forbearance if needed, or, when applicable, apply for other loss mitigation options? (Q3)	

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
II. FORBEARANCE		
C. Non-CARES Act Forbearance	<p>What actions have you taken to extend the CARES Act protections to homeowners who do not have federally backed mortgage loans? Please indicate whether forbearance is available for these borrowers, and on what terms. . In addition to the terms of the forbearance, please advise as to whether these homeowners are required to complete additional documentation in order to receive a forbearance. If you believe you are unable to extend CARES Act forbearances to homeowners who do not have federally backed mortgages due to restrictions in PSAs or other investor agreements, what efforts have you made to obtain waivers of those restrictions to ensure that borrowers can remain in their homes? Have you made any special requests to trustees or other appropriate parties to ensure that borrowers can remain in their homes? Please also include whether such requests, if any, were granted. (Q13)</p>	

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
II. FORBEARANCE		
D. Outreach to Borrowers in Advance of End of Forbearance Period	Will your company contact homeowners with active forbearances in advance of the end of the forbearance period with sufficient time for the homeowner to apply for loss mitigation or other additional assistance before the end of the forbearance period? If so, what policies do you have in place to assure this will occur? (Q4)	
E. Post-Forbearance / Loss Mitigation Options	What loss mitigation options will you offer homeowners in forbearance? What loss mitigation options have you informed borrowers already in forbearance of, and how has that information been communicated? (Q5)	

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
III. DATA		
A. Data on Borrowers	Please provide information regarding how many borrowers whose loans you service have, since March 18, 2020: a. Made late payments b. Not made full payments c. Received forbearance d. Been foreclosed on. (Q12)	Records sufficient to show: a. the number of forbearance requests received since March 27, 2020; b. the number of forbearance requests approved since March 27, 2020; and c. the average length of the forbearance period communicated to borrowers since March 27, 2020. (Q2)
B. Call Volume Data		Records sufficient to show the weekly volume of calls from borrowers and average wait time since February 1, 2020. The percentage change in weekly call volume since February 1, 2020. The percentage change in average call wait time since February 1, 2020. The percentage change in the number of calls dropped since February 1, 2020. (Q8-11)

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
III. DATA		
C. Complaint Data		Records sufficient to show the number of complaints received from borrowers, broken down by the subject matter of the complaints since February 1, 2020. (Q12)

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
IV. OPERATIONS		
A. Training Materials and Scripts		<p>All training materials, instructions, and call scripts provided to customer service employees since March 27, 2020 related to responding to requests or inquiries from borrowers seeking assistance in making their mortgage payments.</p> <p>All training materials, instructions, and call scripts provided to customer service employees since March 27, 2020 related to responding to inquiries from borrowers regarding foreclosure. (Q3-4)</p>
B. Customer Service Employee Compensation		<p>Records sufficient to show how customer service employees are evaluated and compensated since February 1, 2020, including any incentive pay or bonuses paid related to the handling of, responding, receiving, and processing borrower requests for assistance. (Q5)</p>

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
IV. OPERATIONS		
C. Operations/ Staffing		<p>A description of any operational challenges you may have experienced since February 1, 2020 related to responding to borrower inquiries and a summary of the actions you have taken to address those challenges, including but not limited to:</p> <ul style="list-style-type: none">a. any actions taken to respond to increased staffing needs, including hiring new employees or contractors; andb. any actions taken related to maintaining the operations of your customer service centers. (Q 13)

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
V. COMPLIANCE		
A. Disparate Impact Monitoring	What steps have you taken to ensure borrower relief reaches all eligible borrowers experiencing hardship equally, regardless of the language they speak or any protected class under the Fair Housing Act? Do you regularly monitor overall data to ensure that servicing practices do not result in a disparate impact on borrowers? (Q9)	

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
V. COMPLIANCE		
B. Compliance with CARES Act Foreclosure Moratorium	<p>What steps has your company taken to ensure compliance with the foreclosure moratorium put in place under the CARES Act?</p> <p>a. Please confirm that your company has not initiated “any judicial or non-judicial foreclosure process, move[d] for a foreclosure judgement or order of sale, or execute[d] a foreclosure-related eviction or foreclosure sale for” any eligible borrower.</p> <p>b. What is your company doing to terminate any foreclosure activities that were initiated between March 18, 2020, when the moratorium period begins, and March 27, 2020, when this bill became law, to the extent the relevant agency had not already prohibited foreclosure proceedings and foreclosures prior to the passage of the CARES Act? (Q10)</p>	

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
V. COMPLIANCE		
C. Compliance with CARES Act Forbearance Provisions	<p>What steps has your company taken to ensure compliance with the forbearance provisions in the CARES Act?</p> <p>a. How is your company ensuring no borrower who enters forbearance will be charged interest, fees, or penalties?</p> <p>b. What scripts are customer call line operators using to discuss forbearance with borrowers, including how to request forbearance and what will happen to mortgages after the forbearance period concludes? What scripts are customer call line operators using to address the question of whether someone has a federally backed loan covered by the CARES Act forbearance rules? Please provide a copy of any scripts.</p>	

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
V. COMPLIANCE		
C. Compliance with CARES Act Forbearance Provisions	<p>(cont.)</p> <p>c. What information is available on your website, including portions of your website available only to mortgage customers, regarding the options available for customers who are facing financial hardship, including information about forbearance and options after forbearance? Please provide a copy of the information available to borrowers.</p> <p>d. Is your company ensuring that borrowers requesting forbearance are asked whether their financial hardship is due to COVID-19? If not, we request you change this practice to ensure no borrower is denied protection unnecessarily. (Q11)</p>	

Issues in Letters to Servicers from House Financial Services Democrats and Senate Banking Democrats

Issue	Senate Banking Dems	House Financial Services Dems
V. COMPLIANCE		
A. Policies and Procedures		All policies and procedures effective as of or since March 27, 2020 related to: a. accepting and processing requests for forbearance; b. applicable standards and requirements for approving forbearance requests; and c. initiating and continuing foreclosure proceedings. (Q1)
VI. OTHER ISSUES		
A. Other Actions Taken	What other actions have you taken to ease the unprecedented financial hardships facing homeowners during this crisis? (Q14)	

The final countdown to the LIBOR cessation date has begun. Our IBOR Transition Task Force, composed of nearly 100 partners globally, is perhaps the best reflection of our strength and depth. Below we provide a sampling of our resources:

IBOR Transition Digest: A compendium of global regulatory and market news as well as insights on the complex issues confronting financial market participants as they transition from LIBOR and its variants to replacement benchmark interest rates.

Recent publications, include:



[FINRA LIBOR Phase-Out Preparedness Survey](#)
(August 2020)



["Comparable" Alternative Reference Rates to LIBOR: The Low Bar for Official Designation, the Much Higher Hurdle of "Fit for Use" and Implementation for Market Participants](#) (August 2020)



[IBOR Transition: It's Later Than You Think!](#) (August 2020)

IBOR Transition Webinar Series: Detailed discussions and insights—in 30 minutes or less—on a range of topics from setting and executing an effective IBOR Transition strategy to assessing the impact of IBOR issues on specific financial products.

Subscribe on:



Recent webinars, include:



Part 5.1 Part 5.2

[LIBOR Transition: Issues impacting Floating Rate Notes, Preferred Stock, Depository Shares, and Capital Securities \(Part 5.1 & Part 5.2\)](#) (August / September 2020)



[Issues impacting Floating Rate Notes, Preferred Stock, Depository Shares, and Capital Securities: Part 1](#) (August 2020)



[It's later than you think! \(Part 1 & Part 2\)](#) (August 2020)

We are collaborating with Morae Global Corporation, a leading provider of legal and compliance technology solutions, to assist clients in the transition from the IBORs to alternative risk-free reference rates. To more effectively serve our client, Mayer Brown has teamed up with Morae, to offer clients data analytics and remediation, technology enablement, repapering and program management capabilities.

We'll be back shortly...:::

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Chambers Global ranks our firm and individual partners in 88 practice areas and 17 jurisdictions, including Global-wide rankings for Banking & Finance; Capital Markets: Structured Finance, Securitisation & Derivatives; Tax and for Finance & Capital Markets (International & Cross-Border) for both UK and US.



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GlobalCapital has named Mayer Brown **US Law Firm of the Year—Transactions** (2020) and **European Law Firm of the Year—Transactions** (2020); and **US Securitization Law Firm of the Year** (2020)

"The 'experienced and responsive' team at Mayer Brown provides a 'committed and client-oriented service.'"
The Legal 500 US

"...exceptional reputation in the consumer finance space, notably excelling in its provision of compliance advice to clients in the mortgage industry."

Chambers USA

IFLR1000 US notes that Mayer Brown exhibits **"...constant firm growth ... and consistent work on large and creative transactions."**

Part II: Market Update

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Agenda

Agenda

- During the second part of our session, we will cover the following:
 - Mortgage and mortgage REIT market update;
 - Financings and other strategic transactions undertaken in 2020 to date;
 - Transition away from LIBOR, FRNs, fixed-to-floating rate preferred stock, repo, and the ISDA protocol;
 - SEC disclosure considerations for mortgage REITs; and
 - Other market developments, including mergers into SPACs.

Market Update and Recent Transactions



Mortgage REITs

INDUSTRY UPDATE – MAYER BROWN MORTGAGE REIT WEBCAST

SEPTEMBER 24, 2020 | CONFIDENTIAL

Introduction

Industry Update

- The first half of 2020 was a difficult period for the mortgage REIT industry
 - Driven by a vicious cycle of falling asset prices and margin calls
 - Credit sensitive securities were the hardest hit
 - Monetary and fiscal stimulus critical to recovery from low points in March and April
- Total assets held by publicly-traded residential mortgage REITs declined by \$163 billion or 32% in the first quarter of 2020
- Transaction activity during the crisis focused on bolstering liquidity and reducing mark-to-market exposure
- Valuation metrics have rebounded from 52-week lows, but remain below historical averages

Assets Under Management – Public Mortgage REITs

Residential mREITs Shrank Dramatically in 1H20

Total Mortgage REIT Industry Assets



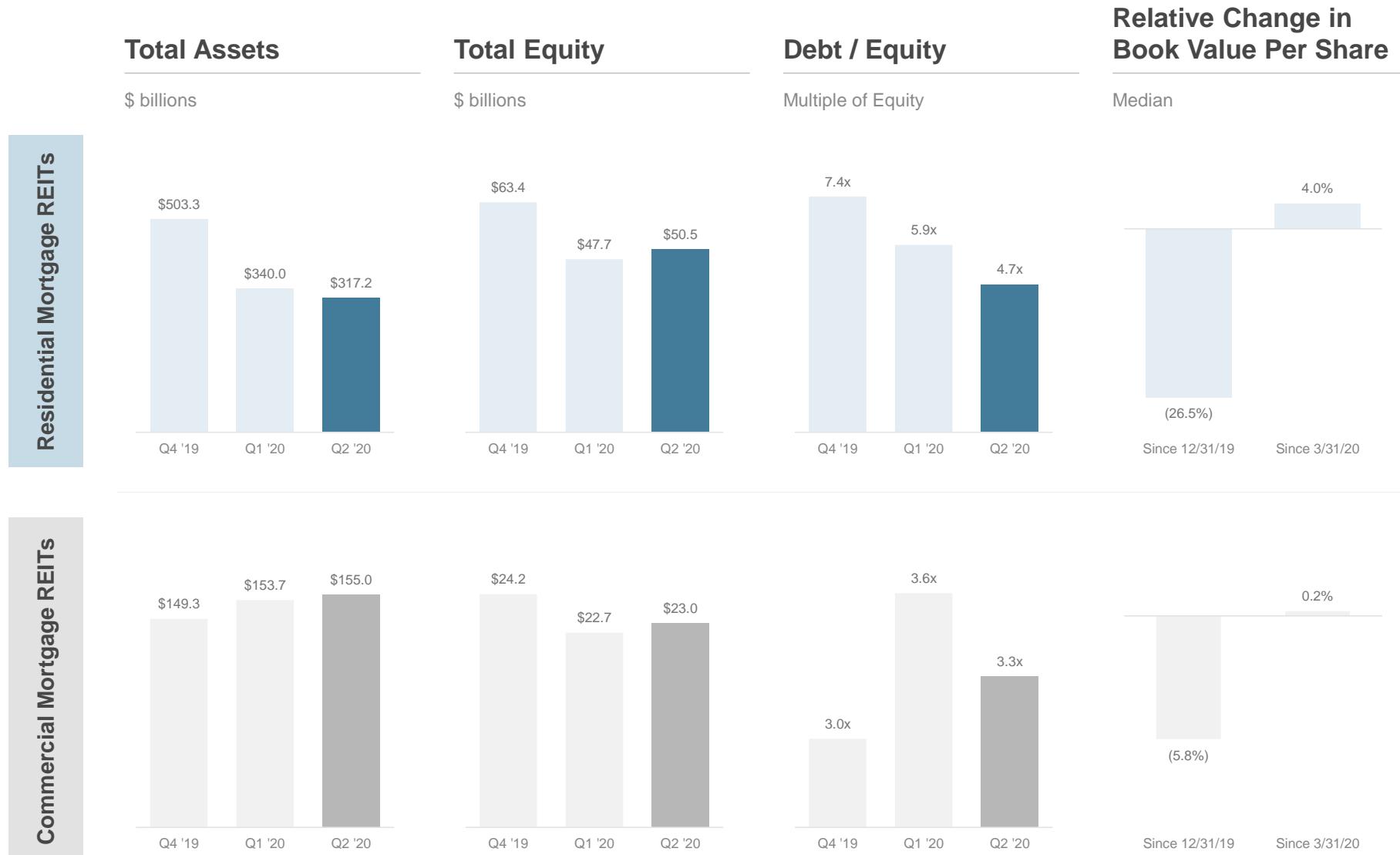
Source: Public filings, SNL Financial, Capital IQ

Note: Financial data as of June 30, 2020

Note: Residential Mortgage REITs include: AGNC, AI, AJX, ANH, ARR, CHMI, CIM, CMO, DX, EARN, EFC, IVR, MFA, MITT, NLY, NRZ, NYMT, ORC, PMT, RWT, TWO, WMC

Note: Commercial Mortgage REITs include: ABR, ACRE, ARI, BRMK, BXMT, CLNC, GPMT, HCFT, JCAP, KREF, LADR, NREF, RC, SACH, STWD, TRTX, XAN

Recent Changes in Key Metrics – Residential & Commercial



Source: Public filings, SNL Financial, Capital IQ

Note: Financial data as of June 30, 2020

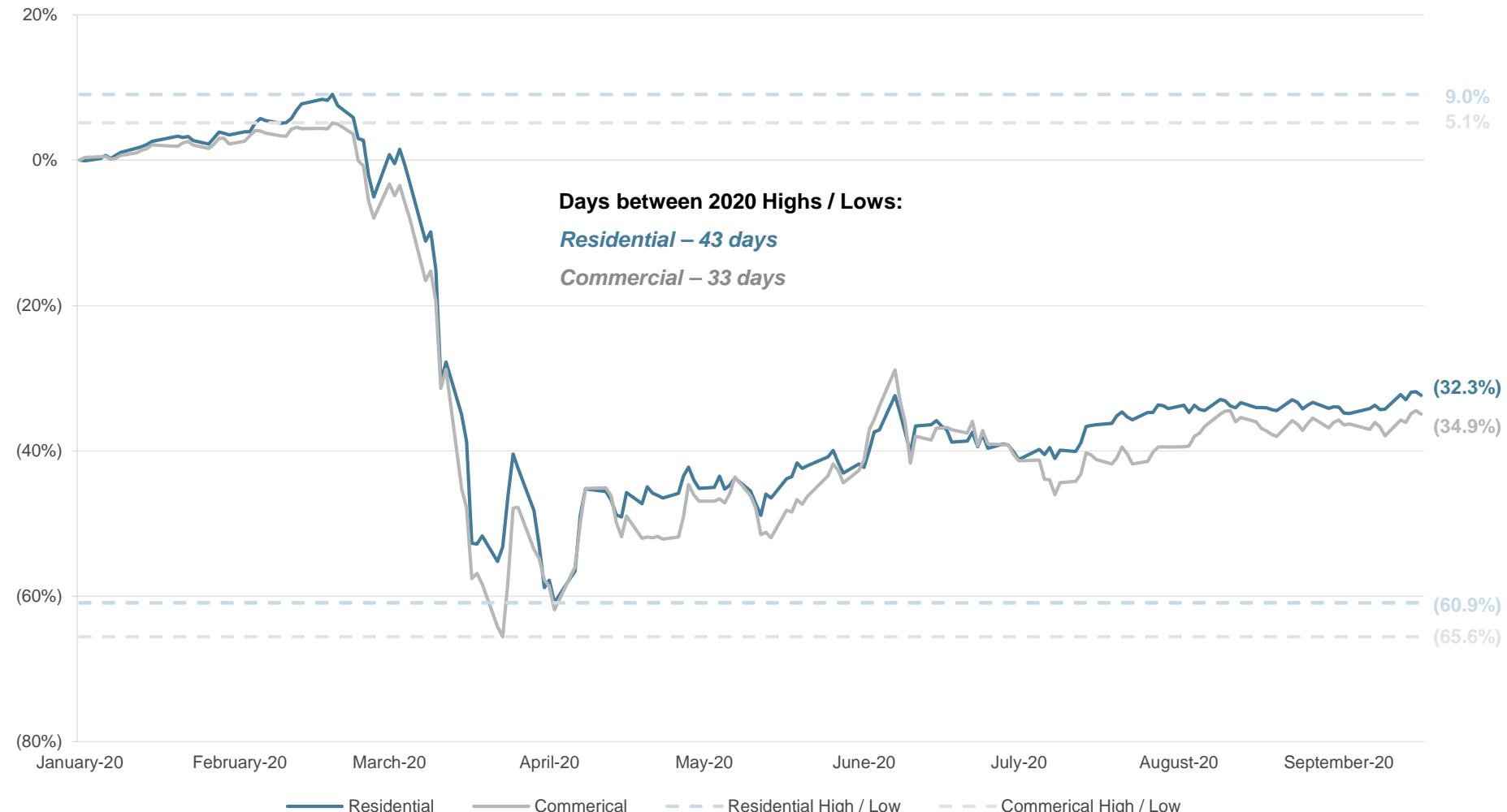
Note: Residential Mortgage REITs include: AGNC, A1, AJX, ANH, ARR, CHMI, CIM, CMO, DX, EARN, EFC, IVR, MFA, MITT, NLY, NRZ, NYMT, ORC, PMT, RWT, TWO, WMC

Note: Commercial Mortgage REITs include: ABR, ACRE, ARI, BRMK, BXMT, CLNC, GPMT, HCFT, JCAP, KREF, LADR, NREF, RC, SACH, STWD, TRTX, XAN

2020 Stock Price Performance

Stock Price Return

Indexed daily stock price return, year-to-date 2020



Source: Public filings, SNL Financial, Capital IQ. Note: Financial data as of June 30, 2020. Indices are weighted by market capitalization

Note: Residential Mortgage REITs include: AGNC, A1, AJX, ANH, ARR, CHMI, CIM, CMO, DX, EARN, EFC, IVR, MFA, MITT, NLY, NRZ, NYMT, ORC, PMT, RWT, TWO, WMC

Note: Commercial Mortgage REITs include: ABR, ACRE, ARI, BRMK, BXMT, CLNC, GPMT, HCFT, KREF, LADR, NREF, RC, SACH, STWD, TRTX, XAN. Excludes JCAP due to pending merger

Valuation Trends – Price to Book Multiple

Price to Book

Stock price to most recent book value per share



Source: Public filings, SNL Financial, Capital IQ. Note: Financial data as of June 30, 2020. Indices are weighted by market capitalization

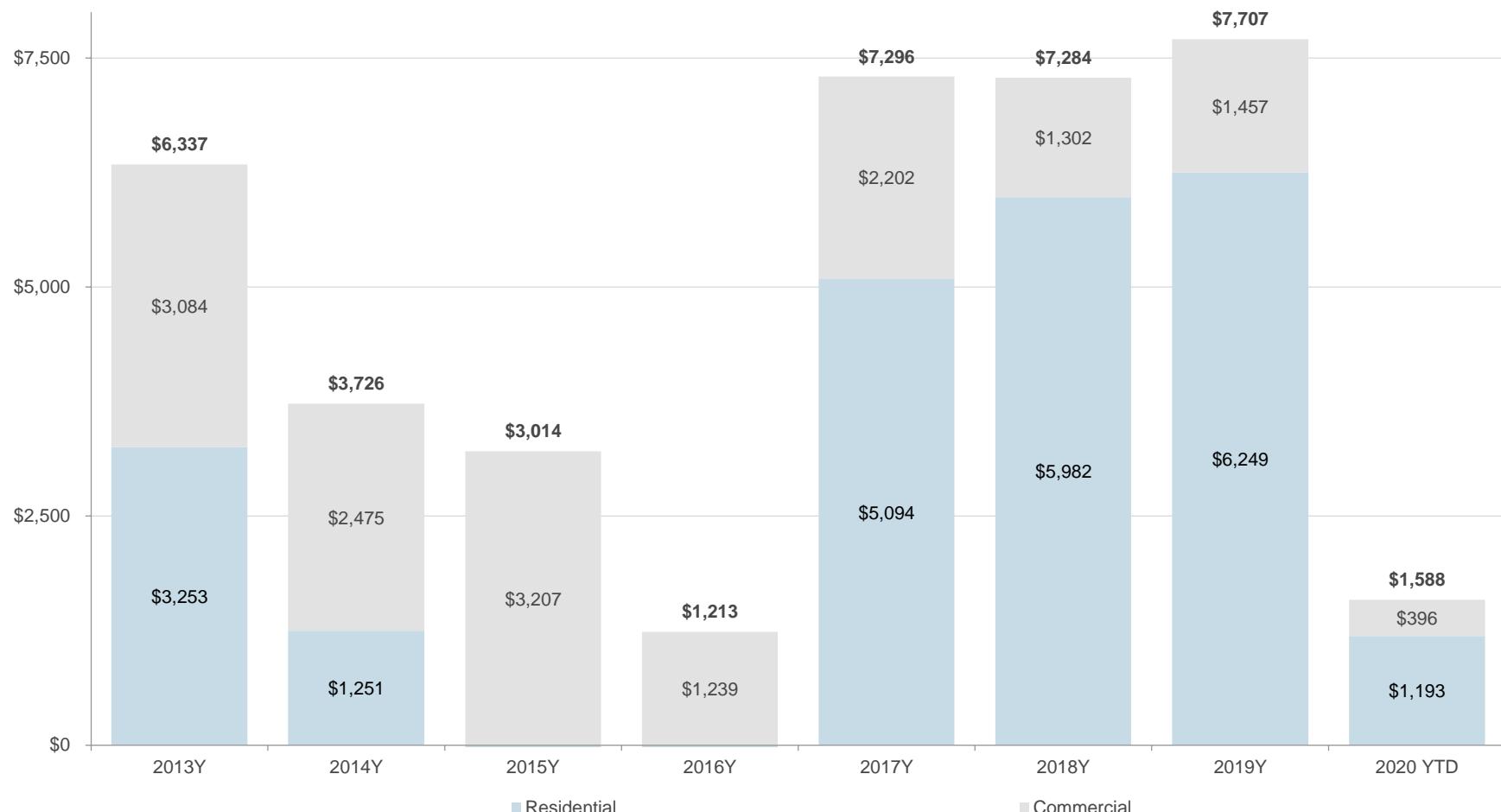
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Note: Commercial Mortgage REITs include: ABR, ACRE, ARI, BRMK, BXMT, CLNC, GPMT, HCFT, KREF, LADR, NREF, RC, SACH, STWD, TRTX, XAN. Excludes JCAP due to pending merger

Equity Capital Raising Activity

Total Mortgage REIT Net Equity Capital Raised Annually

\$ millions



Source: Public filings, SNL Financial, Capital IQ

Note: Financial data as of June 30, 2020

Note: Segments may not equal total due to decrease in net equity from share repurchases across select segments

Note: Residential Mortgage REITs include: AGNC, AI, AJX, ANH, ARR, CHMI, CIM, CMO, DX, EARN, EFC, IVR, MFA, MITT, NLY, NRZ, NYMT, ORC, PMT, RWT, TWO, WMC

Note: Commercial Mortgage REITs include: ABR, ACRE, ARI, BRMK, BXMT, CLNC, GPMT, HCFT, JCAP, KREF, LADR, NREF, RC, SACH, STWD, TRTX, XAN

MFA Raises \$2.15 Billion in Capital Led by Apollo

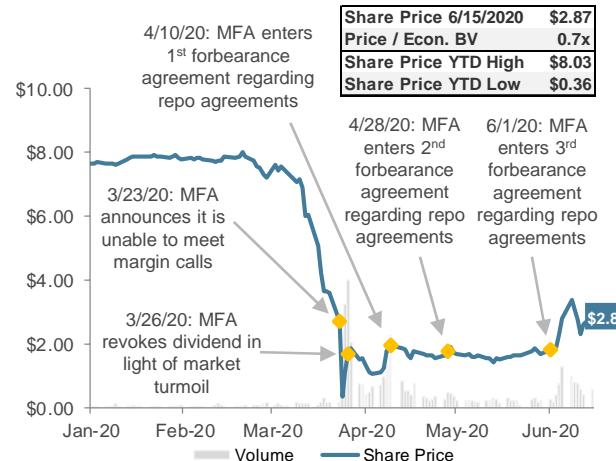
Closed June 30, 2020

MFA
FINANCIAL APOLLO

MFA Financial (“MFA”) has reached an agreement on a \$2.15 billion capital raise consisting of a \$500 million private senior secured loan committed from Apollo Management Holdings, L.P. (“Apollo”) and \$1.65 billion in a new asset-level term facility

Background Summary

- COVID-19 Disruption:** In mid-March 2020, unprecedented disruption in residential mortgage markets, due to COVID-19 concerns, drove a lack of liquidity and subsequent forced selling in MBS and other securities across the industry
- This severe and abrupt macro shock drove forced selling in MBS and other securities, significantly impacting pricing and causing margin calls to balloon
- Entrance into Forbearance:** Despite significant asset disposals to generate liquidity, MFA was unable to meet the avalanche of margin calls and entered into forbearance discussions with lenders, ultimately reaching an agreement in April that has been extended to the end of June



(1) Senior to the MFA’s unsecured debt but junior to MFA’s senior, asset-backed debt.

(2) Subject to a maximum investment obligation of \$50 million.

MFA Overview

- Founded in 1997, MFA Financial (NYSE: MFA) is an internally managed residential mortgage REIT with approximately \$7 billion of assets

Houlihan Lokey Served as Exclusive Placement Agent and Financial Advisor to MFA Financial

Transaction Highlights

1 Apollo Investment of \$500 million in Corporate Term Loan⁽¹⁾

- Capital used to (i) fund lower advance rates on term financing and new repo agreements and (ii) increase liquidity & dry powder

2 Athene Investment in New \$1.65 Billion Asset-Level Term Facility

- Capital used to refinance existing repo agreements with more durable non-mark-to-market financing

3 Securitization Purchase Commitment

- Athene commitment to purchase, subject to certain pricing conditions, a portion of the bonds in MFA’s inaugural non-QM securitization

4 Equity Purchase Commitment

- Apollo and Athene Commitment to Purchase 4.9% of MFA’s common stock in the open market⁽²⁾
- Warrants to purchase 7.5% of MFA’s Common Stock at Various Prices

Apollo Overview

- Founded in 1990, Apollo (NYSE: APO) is a leading global alternative investment manager (approximately \$316 billion in assets under management) focused on credit, private equity and real asset investments

Strategic Rationale

A Strategic Partnership with Apollo

- Synergies from Apollo’s deep institutional relationships and affiliate network

B Bolsters Balance Sheet

- \$2+ billion in total capital commitments between Apollo and Athene facilitates a more durable financing structure
- Pro forma mark-to-market repo exposure reduced to less than half of the Company’s financing obligations
- Anchor order for MFA’s Inaugural Non-QM Securitization

C Strong Alignment of Interest

- Apollo & Athene common stock purchases in the open market and via warrant package

D Exit Forbearance

- Closing of the transactions will facilitate (i) an exit from forbearance and (ii) catch up payments on preferred dividends

Mortgage REIT Industry Outlook

- While debt and equity markets are strong, the environment remains highly uncertain
- Expect conservative approach to leverage and liquidity management in the near-term
- Continued preference for more durable financing structures
 - Securitization
 - Term facilities with limited or no mark-to-market
 - Delayed draw capacity
 - Refinance crisis related capital raise transactions
- Potential additional credit performance challenges more concentrated in hardest hit industry subsectors (retail, hospitality, travel, energy etc.) and geographies
 - Recent surge in Retail and Lodging special servicing relative to other subsectors
- Explore strategies to improve returns / returns on equity, other than through higher leverage
 - Proprietary origination
 - Operating company subsidiaries
 - Industry consolidation

Appendix

Houlihan Lokey

Leading Advisor to the U.S. Mortgage REIT Industry

Houlihan Lokey is a uniquely qualified advisor given our extensive expertise and experience spanning both the mortgage and asset management sectors

Mortgage and Mortgage REIT

- Houlihan Lokey is the #1 strategic advisor to the U.S. mortgage industry
 - Completed 40 transactions since 2009 – more than double the amount of the next closest advisor
- Unparalleled domain expertise
 - Industry subsectors – residential, commercial, reverse mortgage
 - Company type – originators, servicers, REITs
 - Asset type – whole loans, securities, MSRs
 - Transaction type – M&A, asset sale, restructuring, board advisory

Asset Management

- Houlihan Lokey is a leading advisor to the asset management industry
 - Over \$80 billion of AUM transacted since 2015
 - 12 transactions of asset managers or external management agreements
 - 7 transactions related to the sale of managed assets
 - Deep domain expertise
 - Strategy – Alternative or Traditional
 - Fund type – REITs, BDCs, private equity, hedge fund
 - Transaction type – M&A, asset sale, contract negotiation, restructuring, etc.



HOULIHAN LOKEY

Recent Representative Clients and Transactions



Mr. Cooper Group[®]



Recent Representative Clients and Transactions



Houlihan Lokey

Recent Mortgage and Mortgage REIT Transactions

Houlihan Lokey is the No. 1 strategic advisor to the U.S. mortgage industry

HL Role	Buyer	Seller / Managed Co.	Size	Investment Assets / Equity	Announced	Selected Highlights
Placement Agent	APOLLO	MFA FINANCIAL	\$2.2 billion	~\$7 billion in total assets	June 16, 2020	<ul style="list-style-type: none"> MFA Financial has reached an agreement on a \$2.15 billion capital raise consisting of private senior secured debt committed from Apollo Management Holdings, L.P. and a new asset-level term facility
Placement Agent		TPG REAL ESTATE FINANCE TRUST	\$325 million	~\$6 billion in total assets	May 28, 2020	<ul style="list-style-type: none"> TPG RE Finance Trust has received a \$325 million investment from an affiliate of Starwood Capital Group in exchange for shares of Redeemable Preferred Stock and equity warrants
Buyside Advisor	GREYSTONE	ATAX AMERICA FIRST MULTIFAMILY INVESTORS, L.P.	\$80 million	~\$1 billion in total assets	September 30, 2019	<ul style="list-style-type: none"> Greystone acquired the external manager of America First Multifamily Investors (NASDAQ:ATAX), a publicly-traded permanent capital vehicle with \$1 billion of assets focused on investments in affordable housing
Restructuring / Sellside Advisor	NEW RESIDENTIAL INVESTMENT CORP. WATERFALL ASSET MANAGEMENT	DITECH HOLDING CORPORATION	~\$1.2 billion asset purchase	\$62 billion MSR and other assets	June 18, 2019	<ul style="list-style-type: none"> 363 sale of Ditech's (i) core mortgage business including \$62bn of MSRs and its origination and servicing platform to New Residential for approximately \$1.2 billion of cash and (ii) reverse mortgage business to Mortgage Assets Management, an affiliate of Waterfall Asset Management for \$600 million
Sellside Advisor to Nationstar	WMH Corp.	Mr. Cooper Group Nationstar Mortgage	\$1.9 billion	~\$18 billion in annual production	February 13, 2018	<ul style="list-style-type: none"> Merger of Nationstar / Mr. Cooper with KKR controlled NOL shell (WMH Corp.) – providing shareholders with partial liquidity and stock in a more tax efficient corporate entity
Sellside Advisor	NEW RESIDENTIAL INVESTMENT CORP.	Shellpoint Partners	\$272 million	~\$6 billion in annual production	November 29, 2017	<ul style="list-style-type: none"> Acquisition of Shellpoint's platform by New Residential Mortgage
Buyside Advisor	ORIX	LANCASTER POLLARD	Undisclosed	>\$6 billion MSR portfolio	September 12, 2017	<ul style="list-style-type: none"> ORIX acquired Lancaster Pollard which will operate as a new separate subsidiary within ORIX alongside other ORIX-owned commercial mortgage businesses
Sellside Advisor	WELLS FARGO	seneca MORTGAGE SERVICING	Undisclosed	~\$51 billion in MSRs	September 7, 2017	<ul style="list-style-type: none"> Sale of a GSE-oriented MSR portfolio on behalf of Seneca Mortgage to Wells Fargo
Buyside Advisor	BENEFIT STREET PARTNERS	RFT Realty Finance Trust	Undisclosed	~\$1.3 billion total assets	September 29, 2016	<ul style="list-style-type: none"> Benefit Street Partners acquired the external manager of Realty Finance Trust, a publicly registered, non-listed commercial mortgage REIT with \$1.3 billion of assets
Buyside Advisor	APOLLO COMMERCIAL REAL ESTATE FUNDING	APOLLO RESIDENTIAL MORTGAGE	\$641 million	~\$3 billion in total assets	July 24, 2016	<ul style="list-style-type: none"> The acquisition allowed Apollo Commercial Mortgage to expand its capital base by almost \$400 million on a cost effective and accretive basis
Sellside Advisor	SUTHERLAND Asset Management	ZFC ZAIS FINANCIAL CORP.	-	\$120 million market cap	May 7, 2016	<ul style="list-style-type: none"> ZFC merger with Sutherland provided shareholders with partial liquidity, enhanced market capitalization and liquidity, and a new strategic focus on commercial mortgage opportunities

Houlihan Lokey

Recent Asset Management Transactions

Leading advisor to the asset management industry, having transacted on over \$80 billion of AUM since 2015, including 12 transactions of asset managers or external management agreements, and 7 transactions related to the sale of managed assets

HL Role	Buyer	Seller / Managed Co.	Size	Investment Assets	Announced	Selected Highlights
Sellside Advisor	 AZIMUT AZIMUT ALTERNATIVE CAPITAL PARTNERS	 KENNEDY LEWIS INVESTMENT MANAGEMENT	Undisclosed	\$2 billion	July 29, 2020	<ul style="list-style-type: none"> ■ Sale of a non-controlling minority GP equity interest to Azimut Alternative Capital Partners, an affiliate of Azimut Group
Sellside Advisor	 CRESCENT Crescent Capital BDC, Inc.	 Alcentra Capital Corporation	\$142 million	\$219 million	August 13, 2019	<ul style="list-style-type: none"> ■ Sale of Alcentra Capital Corp. through a merger with a subsidiary of Crescent Capital BDC for \$40.9 million in cash consideration and 5.2 million shares of Crescent BDC common stock ■ Combined company estimated to have over \$500 million of net assets and a portfolio in excess of \$900 million at close
Conflicts Committee Advisor		n.a.	-	\$33 billion	December 6, 2018	<ul style="list-style-type: none"> ■ Announced strategic plan to reposition the company through an equity realignment, C-Corp conversion, change in corporate governance, and restructuring of \$400 million existing preferred securities ■ Changes facilitating reduction in debt and reallocation of equity to current employees
Sellside Advisor	DYAL CAPITAL PARTNERS 	 HALCYON	Undisclosed	\$10 billion	October 10, 2018	<ul style="list-style-type: none"> ■ New minority stake sold to TPG Sixth Street Partners ■ Dyal Capital Partners increased stake resulting in its ownership approaching its initial investment
Buyside Advisor		 NXT CAPITAL	Undisclosed	\$12 billion	July 1, 2018	<ul style="list-style-type: none"> ■ ORIX USA acquisition of NXT Capital, an originator and asset manager of structured finance solutions to middle market companies in the US
Sellside Advisor		 TCAP TRIANGLE CAPITAL CORPORATION	\$235 million	\$1 billion	April 4, 2018	<ul style="list-style-type: none"> ■ Stock purchase agreement, and an investment advisory and administration services agreement with Barings for \$85 million in direct consideration to shareholders ■ \$100 million primary capital with \$50 million secondary market support below NAV
Sellside Special Committee Advisor	Management	 ZAISGroup ZAIS GROUP HOLDINGS, INC.	\$90 million	\$4.8 billion	January 11, 2018	<ul style="list-style-type: none"> ■ Related party take-private transaction of asset manager's publicly traded shares (67% of total unit shares) by founder / management
Sellside Advisor		 NEWSTAR FINANCIAL	\$513 million	\$7.3 billion	October 17, 2017	<ul style="list-style-type: none"> ■ Acquisition of NewStar Financial, with contingent value related to certain tax benefits (10% - 11% premium to market)
Sellside Special Committee Advisor		 FIFTH STREET	\$320 million	\$3.7 billion	July 14, 2017	<ul style="list-style-type: none"> ■ Oaktree Capital Management assumed management contracts from Fifth Street Asset Management for Fifth Street Finance (\$2.8 billion AUM) and Fifth Street Senior Floating Rate (\$1.0 billion AUM) ■ Management fee and incentive fee reductions for BDC shareholders
Buyside Advisor		 BDCA Business Development Corporation of America	-	\$2.3 billion	July 25, 2016	<ul style="list-style-type: none"> ■ Acquisition of external manager of Business Development Corp. of America, a \$2.6 billion publicly registered, non-listed business development company; included upsized share repurchase program

TPG RE Finance Trust, Inc. (TRTX) Receives \$325 Million Preferred Investment

Closed May 28, 2020

TRTX has received a \$325 million investment from an affiliate of Starwood Capital Group ("Starwood") in exchange for 13,000,000 shares of 11% Series B Cumulative Redeemable Preferred Stock and 15,000,000 equity warrants with an initial strike price of \$7.50

Houlihan Lokey served as TRTX's financial advisor and exclusive placement agent in connection with this transaction

Transaction Overview

TRANSACTION DETAIL

- On May 28, 2020, TRTX issued 9,000,000 of the preferred shares and warrants to purchase 12,000,000 shares of the common stock for an aggregate purchase price of \$225,000,000
- The preferred stock is non-callable for the first two years and callable at 105% in year 3, 102.5% in year 4, and 100% thereafter
- TRTX must not exceed a 3.5x debt / equity ratio and must maintain a minimum interest coverage ratio (EBITDA to interest expense) of 1.5x
- TRTX may elect to sell to Starwood an additional two tranches of securities, each of which consists of 2,000,000 preferred shares and warrants to purchase 1,500,000 shares of common stock, and each for a purchase price of \$50,000,000 at any time prior to December 11, 2020
- Warrants are exercisable on a net settlement basis and expire in 5 years
- Starwood will be granted one board seat

BACKGROUND

- During a global market decline due to volatility around COVID-19, TRTX stock price declined 370% in the two weeks between March 4, 2020 and March 18, 2020
- A decline in asset values and subsequent reductions in advance rates from repo lenders necessitated the need for incremental capital to improve liquidity and meet potential margin calls

LENDER DISCUSSIONS

- Concurrent with the capital raise, TRTX engaged in covenant holiday discussions with its repo lenders and successfully deleveraged all 7 secured credit facilities
- The agreements were executed in lieu of potential margin calls and served to shield TRTX from credit-based marks for defined periods

TPG RE Finance Trust, Inc. ("TRTX")

TRTX Rationale

- Strengthens Company's overall capital position
- Provides liquidity required to meet upcoming margin calls from repo lenders
- Further enhances shareholder base by adding a leading global investment firm focused on real estate

- Externally managed, publicly-traded real estate investment trust ("REIT") with \$5.8 billion in total assets
- Managed by TPG RE Finance Trust Management, L.P., an affiliate of TPG
- Primarily invest in and acquire commercial mortgage loans and other commercial real estate-related debt instruments
- Investments are typically secured by a first mortgage lien and predominantly bear interest at a floating rate

Starwood Capital Group ("Starwood")

Starwood Rationale

- Investment represents an attractive and unique opportunity for Starwood and its investors at a time where asset prices are deflated
- Opportunity to generate impressive returns in a strong market environment
- Further diversifies real estate holdings and generates value for investors

- Private investment firm with over \$60bn of AUM, focusing primarily on real estate, along with energy infrastructure and oil & gas
- Manages STWD, a public REIT, among other public and private real estate platforms
- Acquired over \$110bn of assets across real estate alone, guiding IPOs for 8 companies
- Focuses on building enterprises in both private and public markets, having raised over \$45bn of equity capital since inception



James F. Page III

Managing Director

New York

Mr. Page is a Managing Director in Houlihan Lokey's Financial Institutions Group. He has over a decade of experience advising financial institutions and the U.S. government on major strategic and financial transactions related to mergers and acquisitions, public and private debt and equity financings, fairness opinions, and financial restructurings.

Mr. Page has extensive experience in the U.S. mortgage industry, notably: (i) M&A and asset sale transactions related to Ditech Holdings, Greystone, Nationstar Mortgage, Seneca Mortgage Servicing, Lancaster Pollard, Realty Finance Trust, Apollo Commercial Mortgage, and New Residential; (ii) equity and debt financing transactions related to Greystone, Roosevelt Management Company, Newcastle Investment, Annaly Capital Management, MFA Financial, and NewStar Financial; and (iii) financial restructuring transactions related to Ditech Holdings, Walter Investment Management, and ResCap.

Mr. Page has also advised the U.S. Department of the Treasury on two occasions related to (i) the management and disposition of its CPP bank investments under TARP and (ii) the conservatorships of Fannie Mae and Freddie Mac.

Before joining Houlihan Lokey in 2009, Mr. Page was a Vice President of Morgan Stanley's Financial Institutions Group in New York. Mr. Page began his career as an equity research analyst covering financial institutions at Raymond James & Associates.

Mr. Page earned a B.S. from the University of Florida, a MBA from Duke University, and is a Chartered Financial Analyst. Mr. Page has Series 7 and 63 security licenses. He serves on the Executive Advisory Board of Cents Ability, a New York based non-profit focused on educating young adults on personal finance.

Qualifications

B.S.	University of Florida
MBA	Duke University
OTHER	Chartered Financial Analyst
HL TENURE	10 Years
PAST	Morgan Stanley Raymond James & Associates

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Transitioning away from LIBOR

The problem with LIBOR

- No longer a robust, transactions-based interest rate
 - It is expected that LIBOR will cease permanently at the end of 2021
- What does this mean for existing (legacy) LIBOR floating rate notes and preferred stock?
 - Lots of LIBOR securities with their fallbacks based on the 2006 ISDA Definitions;
 - These fallbacks were not intended to deal with a permanent LIBOR cessation;
 - Designed to cover a brief, perhaps even one day, unavailability of LIBOR;
 - Result: floating rate security will become a fixed rate security after LIBOR ceases.
- Issuer responses:
 - “Discretionary replacement” option
 - ARRC recommended hardwired fallbacks when LIBOR ceases to the secured overnight financing rate (“SOFR”)
- But: You really shouldn't be issuing USD LIBOR-linked securities at this point.

SOFR alternatives

- If you want to issue floating rate notes, the Alternative Reference Rates Committee ("ARRC") published four model term sheets using SOFR:
 - The problem these term sheets are addressing is inherent to SOFR being a backward looking daily rate, as opposed to a forward looking term rate;
 - For USD LIBOR securities, issuers and note holders knew the interest rate at the beginning of the interest period;
 - With SOFR compounded over a period, the final rate and payment will not be known until the day prior to the interest payment date;
 - How to solve for that?
- The ARRC published an additional model term sheet for SOFR floating rate notes, this time using the SOFR Index.
 - All of these models can be adapted for preferred stock.
- The ARRC published its Recommended Best Practices timeline in May 2020.
 - Hard stop for using USD LIBOR by December 31, 2020.

Forthcoming ISDA Publications

- ISDA is soon expected to publish —
 - an IBOR Fallbacks Supplement to the 2006 ISDA Definitions to incorporate adjusted RFRs as fallbacks for IBOR rates in new contracts; and
 - an IBOR Fallbacks Protocol to enable market participants to incorporate the supplement's fallbacks into legacy documents covered by the Protocol, including certain non-ISDA documents.
- Bloomberg is currently calculating (and publishing) running indicative spread adjustments, showing what the adjustment would be if the calculation date were the date on which the static spread becomes fixed

ISDA IBOR Fallbacks Protocol

- How does the Protocol work?
 - Adherence Process
 - Offer/Acceptance mechanism
 - “Implementation Date” between a pair of adhering parties is the date ISDA accepts the later party’s adherence letter
 - Launch Date and later Protocol Effective Date
 - Revocation of Adherence
- Amendments to take effect on the later of (i) Protocol Effective Date and (ii) Implementation Date between the pair of adhering parties

Timing Expectations

- ISDA Letter to Bank of England and Federal Reserve, September 21, 2020
 - Last remaining contingency is receipt of a positive business review letter from the US Department of Justice, disclosure of the letter to foreign competition authorities and positive feedback from counsel in the non-US jurisdictions
 - Two-week's notice to the market of the launch date and the later effective date
 - Three month interval between launch and effectiveness is desirable to allow for counterparty outreach and uptake, so as to try to achieve a uniform 'big bang' effect
 - Undesirable to have effectiveness in December ('code freeze' month) or first week of January 2021

SEC Developments

Change in definition of accredited investor and QIB

- In August, the US Securities and Exchange Commission ("SEC") adopted amendments to the definition of "accredited investor" and the definition of "qualified institutional buyer" ("QIB")
- Amendments expand the types of individuals and entities that will qualify as such
- Accredited investor changes include:
 - New categories of natural persons: certain licensed persons (Series 7, 62, 82) regardless of income/net worth; knowledgeable employees of funds for private placements by such funds; and spousal equivalents counted for purposes of income/net worth tests and knowledgeable employee test (for joint purchases)

Change in definition of accredited investor and QIB (*cont'd*)

- New entities including, among others:
 - SEC- and state-registered investment advisers
 - LLCs or similar entity types that have total assets in excess of \$5 million and were not formed with the express purpose of acquiring the offered securities
 - An entity that does not otherwise qualify as an accredited investor and that meets the \$5 million investments owned test under the Investment Company Act of 1940 rules
 - A family office with at least \$5 million in AUM and its family clients
- QIB definition was amended largely to add the new entity types that were added as institutional accredited investors to the extent that these meet the \$100 million in securities owned and invested threshold test in Rule 144A

Amendments to Regulation S-K

- Also in August, the SEC amended the Regulation S-K disclosure requirements relating to Business, Legal Proceedings, and Risk Factors
- The amendments to the Business section:
 - Take a more principles-based approach
 - Previously prescribed five-year time frame no longer applicable
 - A discussion of the general development of the business can be omitted if the information is otherwise available (incorporation by reference to the full discussion with a hyperlink is required) and the issuer provide material recent developments
 - Item 101(c) amended to provide a non-exclusive list of topics to be discussed in the context of an issuer's business to the extent material

Amendments to Regulation S-K (*cont'd*)

- Among these topics for consideration is “a description of human capital resources” that would include, among other things, to the extent material to an understanding of the company’s business: number of employees, human capital measures employed by the company, objectives used in managing the business and that relate to recruitment and retention of personnel
- Legal proceedings: amendments now allow for cross referencing to legal proceedings disclosure elsewhere in the filing, including in MD&A, risk factors, or notes to the financial statements. Amendments also raise the dollar threshold for disclosures in connection with environmental proceedings
- Risk factors: if the issuer’s risk factor section exceeds 15 pages in length, a new two-page summary is required that summarizes concisely in bulleted or numbered form the principal factors that make an investment speculative

COVID-19 related disclosure focus

- The SEC staff remains focused on reviewing the quality of COVID-19 disclosures
- In connection with the preparation of Forms 10-Q and 10-K and proxy statements, consideration should be given to:
 - CF Disclosure Guidance Topic No. 9 and Topic No. 9A
 - Risk factors and Business may require updating as a result of the passage of time
 - MD&A trend disclosure and liquidity may be areas requiring close attention
 - Litigation and loss contingency
 - Compensation disclosures—changes that may have come about as a result of the pandemic

COVID-19 related disclosure focus (*cont'd*)

- Disclosure controls and procedures concerns
- Any concerns regarding internal control over financial reporting
- Financial statement concerns
- Revisit your CAMs with auditors

Other areas of disclosure focus for the SEC staff

- While COVID-19 likely is top of mind in the context of updating disclosures, it's important to keep in mind the other areas identified by the SEC as areas for staff review:
 - LIBOR transition
 - Brexit impact
 - Cybersecurity incidents
- This annual report and proxy season, we expect to see significant focus on disclosures relating to human capital matters: workplace safety, return to work policies/remote working, culture, diversity, recruitment and retention initiatives, compensation policies

The Proliferation of SPACs

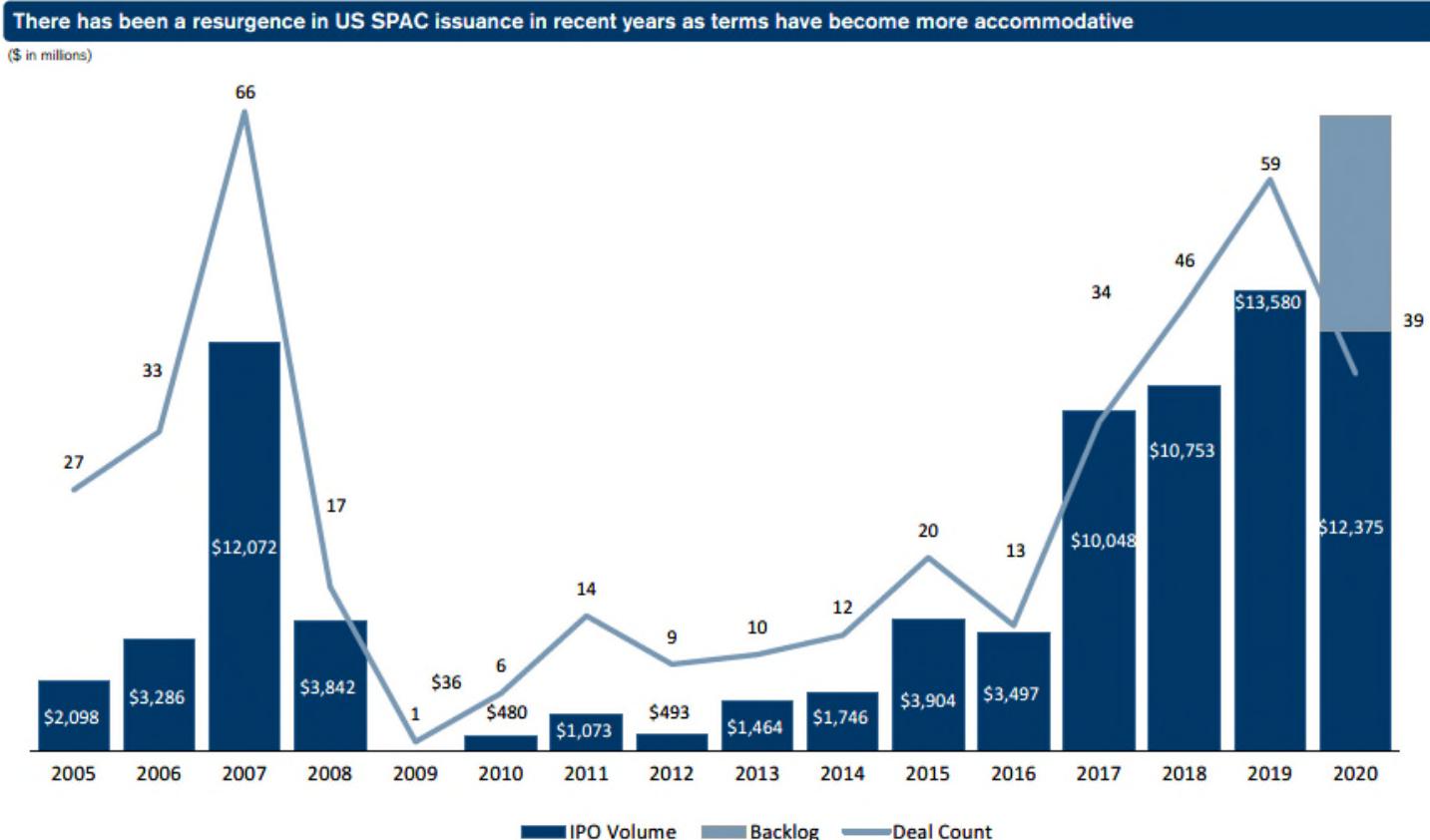
SPAC introduction

- What is a SPAC?
 - Newly formed company with no assets or operations
 - Registers with the SEC the offer and sale of stock and warrants
 - Business plan: find an operating company to buy using SPAC IPO proceeds
 - May or may not specify industry or geographic focus
 - Must identify a target company to acquire within a specified time frame, usually 18 to 24 months
- For an operating company, merging with and into a SPAC is an alternative to a traditional IPO
- SPACs have existed for many years, but there has been a recent surge in popularity—this may be explained by several changes:

SPAC introduction (*cont'd*)

- Higher quality sponsors
- More blue-chip investors
- Bulge bracket underwriters
- Better sponsor-investors alignment structures

SPAC issuance increasing



Source: Dealogic as of 7/10/20.

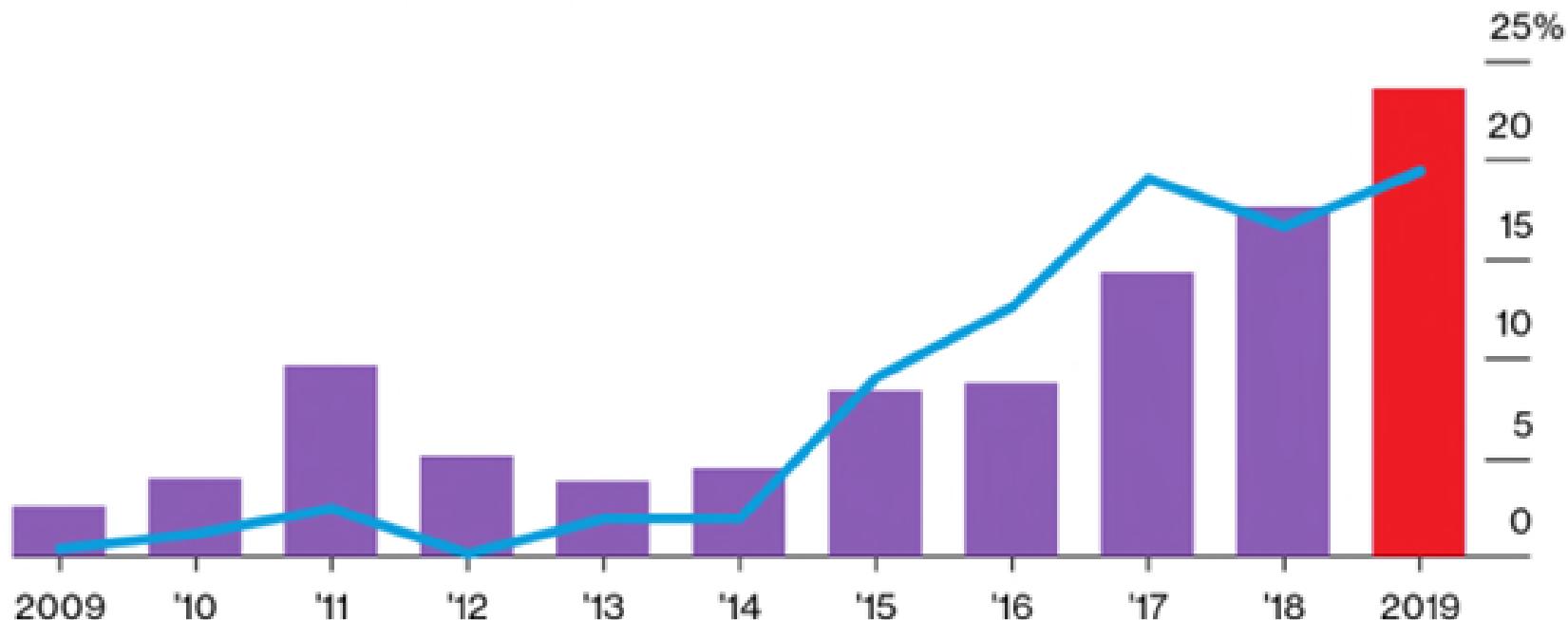
Note: IPO backlog includes BCC/SPAC IPOs filed since January 1, 2019 where expected size >\$25 million.

SPACs as percentage of all IPOs: 2009-2019

SPAC IPOs as a Percentage of All IPOs - US Exchanges

Annually from 2009 to 2019

■ SPAC Count as % of all IPOs ↗ SPAC Value as % of All IPOs



Source: Bloomberg Law as of February 9, 2020. Priced SPAC and traditional initial public offerings of at least \$1 million, listed on a U.S. stock exchange during the time period indicated.

Bloomberg Law

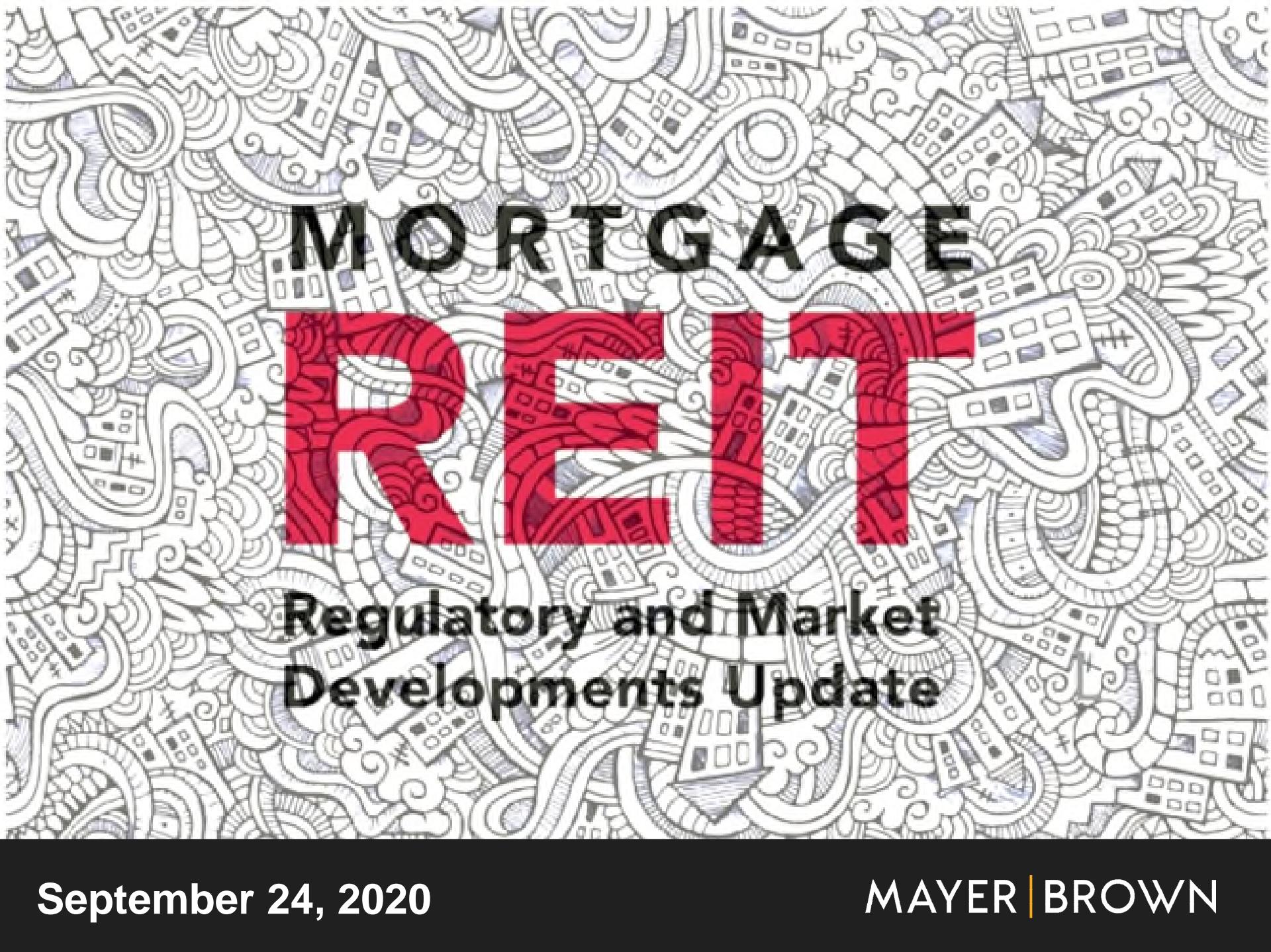
SPAC IPO activity in 2020

- SPAC IPO activity in 2020 has reached record numbers
- Since January 2020 to August 2020, over \$40 billion raised in SPAC IPOs, which will be deployed in acquisitions
- SPAC IPOs this year account for 44% of overall IPO volume to date

Mortgage industry transactions

- A significant percentage of the SPACs that have completed their IPOs have identified their objective as completing acquisitions in the financial services and fintech sectors
- This is a trend that is already affecting the mortgage market
- SPAC Social Capital Hedosophia II has agreed to acquire **Opendoor**, valuing the mortgage company at approximately \$4.8 billion
- SPAC Gores Holdings IV Inc. has agreed to acquire United Wholesale Mortgage, valuing the mortgage company at approximately \$16.1 billion
- There will be more to come....





MORTGAGE

R&U

Regulatory and Market Developments Update

September 24, 2020

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