2022 MORTGAGE & HOUSING SUMMIT

THE OUTLOOK FOR ISSUERS AND INVESTORS

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MORTGAGE BANKERS ASSOCIATION

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2022 MORTGAGE & HOUSING SUMMIT

THE OUTLOOK FOR ISSUERS AND INVESTORS

AGENDA | Thursday, March 17, 2022

Location: Mayer Brown LLP New York
1221 Avenue of the Americas, New York, NY 10020

Live seminar (circumstances permitting) with alternate arrangement to be made as needed.

12:00 – 12:30pm	**Registration/check-in**
12:30 – 12:35pm	**Welcome and opening remarks**
12:35 – 1:35pm	**Market/Macroeconomic Overview** *Steven Abrahams (Amherst Pierpont Securities), Michael Fratantoni (Mortgage Bankers Association), Jennifer Fuller (Keefe, Bruyette & Woods, Inc.), Lauren Pryor (Mayer Brown LLP)* • Macroeconomic outlook and the housing market • Expectations for the Federal Reserve/FOMC • State of the capital markets • Mortgage REIT financings in 2021 and outlook for 2022 • Industry profitability metrics • M&A environment for mortgage REITs and the real estate sector
1:35 – 2:35pm	**Capital Markets Regulation: SEC Areas of Focus, Corporate Governance, ESG Matters, and Tax Developments** *David Freed (Mayer Brown LLP), Brian Hirshberg (Mayer Brown LLP), Remmelt Reigersman (Mayer Brown LLP)* • Change in tone at the SEC and SEC regulatory agenda • SEC proposals relating to Treasury markets, money market reform, and stock lending transparency • 10b5-1 plans, share repurchases, 13D/G • Human capital disclosures, diversity, cybersecurity, and other board and governance focus areas • Non-GAAP disclosures • Proxy-related updates: universal proxy rules, pay versus performance, shareholder proposals • Final tax regulations on IBOR Transition • Rev. Proc. 2021-53 Extends Temporary Relief for Public REIT and RIC Stock Dividends

2022 MORTGAGE & HOUSING SUMMIT

THE OUTLOOK FOR ISSUERS AND INVESTORS

2:35 – 2:50pm	**Coffee break**
2:50 – 3:40pm	**Housing Market and Public Policy Trends** *Sasha Hewlett (Mortgage Bankers Association), Chrissi Johnson (Alinement Advisors), Andrew Olmem (Mayer Brown LLP), Tanya Rakpraja (Annaly Capital Management, Inc.), Holly Spencer Bunting (Mayer Brown LLP)* • FHFA, CFPB, and Ginnie Mae agency leadership changes and key priorities • Government vs. GSE vs. PLS pricing/credit boxes/executions • Focus on racial equity in housing • Disparate impact, fair lending, and CRA reform • Servicing and loss mitigation trends • Emphasis on strategic alliances with builders, realtors, and others to access prospective purchase loans
3:40 – 3:55pm	**Coffee break**
3:55 – 4:45pm	**Securitization Developments** *Haukur Gudmundsson (Mayer Brown LLP), Paul Jorissen (Mayer Brown LLP), Kris Kully (Mayer Brown LLP), Cara Newman (Redwood Trust), Susannah Schmid (Mayer Brown LLP)* • Developments in asset finance and securitization • Home Equity Contracts • Warehouse Securitization • SFR Securitization • Non-QM • ESG • Fix and Flip
4:45 – 5:00pm	**Closing remarks**

Times in local time zone.
Last updated: 3/8/2022

Market & Macroeconomic Overview

Panelists

Steven Abrahams

Senior Managing Director, Head of Strategy

Amherst Pierpont Securities LLC

Jennifer Fuller

Managing Director, Investment Banking

Keefe, Bruyette & Woods, Inc.

Michael Fratantoni

Chief Economist and Senior Vice President of Research and Industry Technology

Mortgage Bankers Association

Lauren Pryor

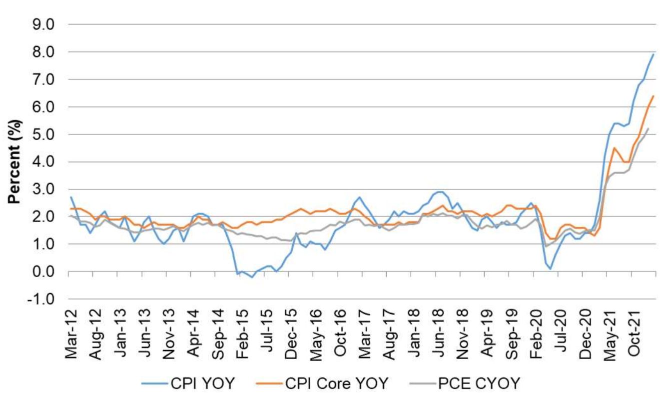
Partner

Mayer Brown LLP

Update on Federal Reserve and Federal Open Market Committee (FOMC)

The Fed has grabbed an inflation tiger by the tail

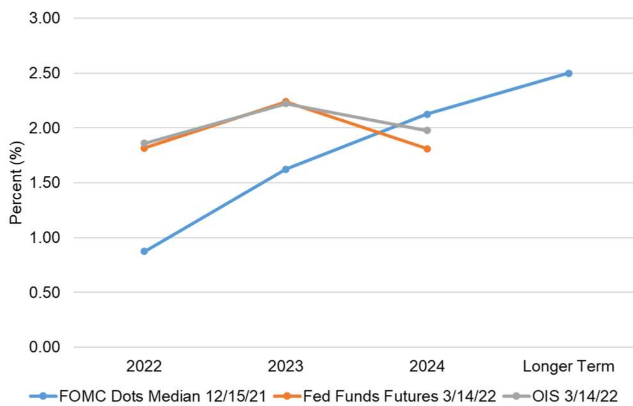
After 10Y+ of low inflation, the Fed launched flexible average inflation targeting in 2020, just in time for pandemic and fiscal stimulus



Source: Bloomberg, Amherst Pierpont Securities

Policy rates should hit 2.5%+ in the next few years

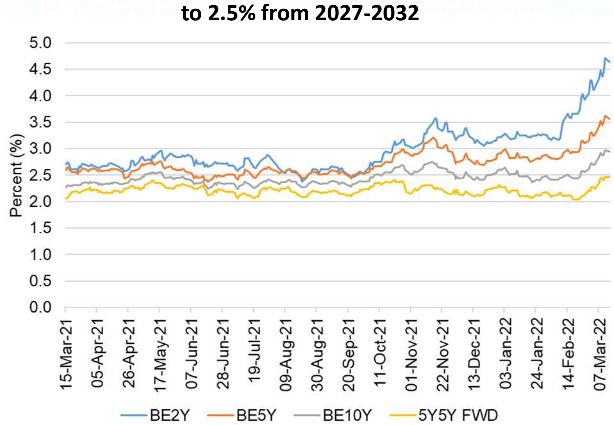
The market in the long run still underestimates the Fed



Source: Bloomberg, Amherst Pierpont Securities

The market believes the Fed ultimately tames the inflation tiger

Implied inflation drops from an average of 4.6% 2022-2023 to 2.5% from 2027-2032



Source: Bloomberg, Amherst Pierpont Securities

Long rates stay historically low

Rate = inflation compensation + real rate that clears the supply and demand for money

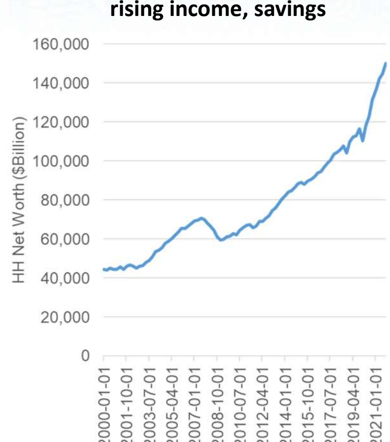
Challenges to higher real rates
• Historic global central bank liquidity • Post-GFC bank liquidity requirements • Headwinds to economic growth – Slowing labor-force participation – Limits to immigration – Limits to trade

Corporations and the consumer are well-fortified

Corporations show record profits, margins, good liquidity

Source: FRB St. Louis, Amherst Pierpont Securities

Households show record net worth, rising income, savings



Source: FRB St. Louis, Amherst Pierpont Securities

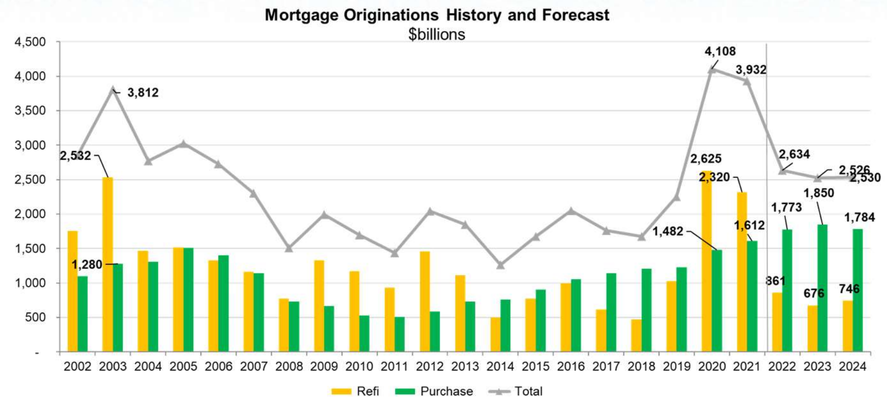
Mortgage Market Outlook

Economic Forecast Summary

	2020	2021	2022	2023	2024
GDP Growth	-2.3%	5.5%	3.6%	2.7%	2.0%
Inflation	1.2%	6.7%	3.5%	2.7%	2.2%
Unemployment	8.1%	5.4%	3.6%	3.4%	3.6%
Fed Funds	0.125%	0.125%	1.125%	2.125%	2.613%
10-year Treasury	0.9%	1.5%	2.5%	2.7%	2.7%
30-year Mortgage	2.9%	3.1%	4.3%	4.5%	4.5%

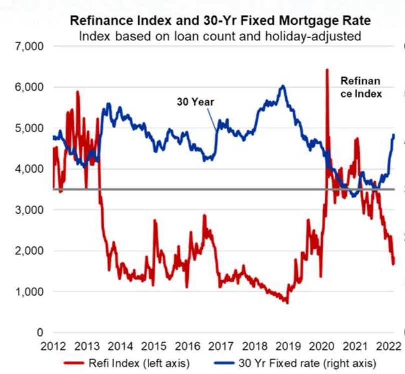
Source: Mortgage Bankers Association – February 2022 Forecast: www.mba.org/forecasts

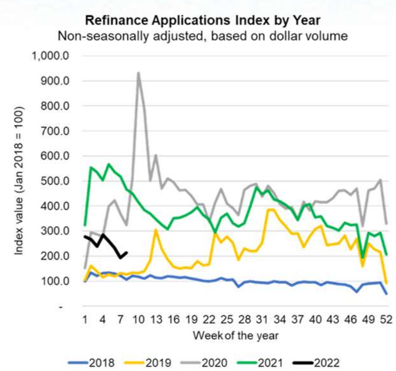
Purchase Originations to Increase in 2022 & 2023



Source: MBA Forecast

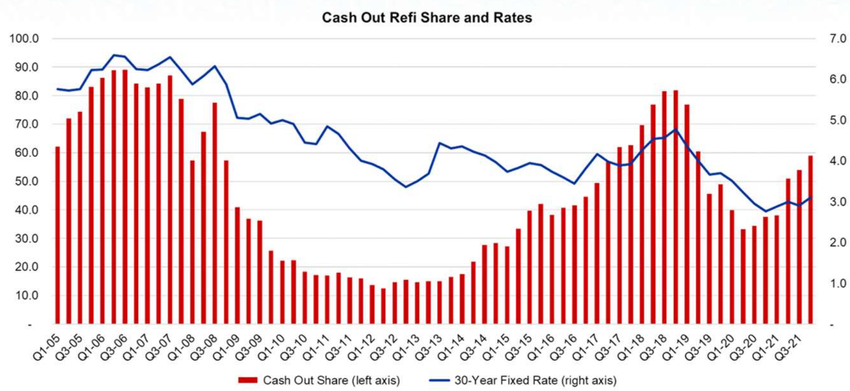
Refinance Applications Declining





Source: MBA's Weekly Application Survey: www.mba.org/weeklyapps

Cashout Share Increasing



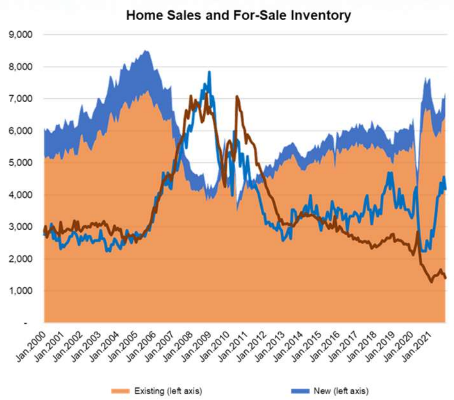
Source: Freddie Mac, Urban Institute

Housing and Mortgage Market Forecast Summary

	2020	2021	2022	2023	2024
Total housing starts (000s)	1,397	1,598	1,713	1,791	1,686
Single-family housing starts (000s)	1,004	1,127	1,232	1,350	1,280
New home sales (000s)	828	775	906	992	991
Existing home sales (000s)	5,678	6,099	6,407	6,525	6,289
Home price growth (YOY pct chg)	10.9	17.5	5.1	4.1	5.4
Purchase originations ($billions)	1,482	1,646	1,773	1,850	1,784
Refinance originations ($billions)	2,625	2,345	861	676	746
Total originations ($billions)	4,108	3,991	2,634	2,526	2,530
Purchase originations (000s of loans)	4,917	4,876	4,817	4,955	4,600
Refinance originations (000s of loans)	8,780	6,407	2,334	1,824	1,966
Total originations (000s of loans)	13,696	11,284	7,151	6,779	6,566

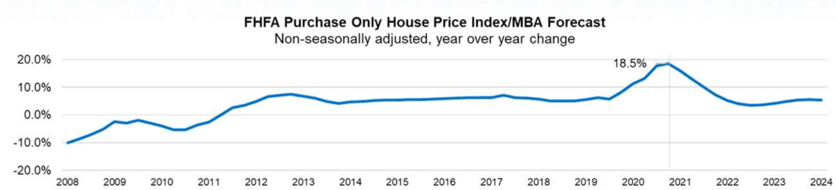
Source: MBA – February 2022 Forecast: www.mba.org/forecasts

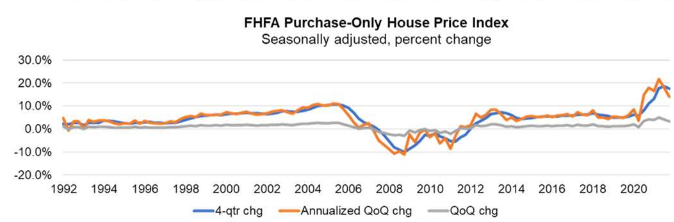
Home Sales Slower, Housing Inventory Still Low



Source: Census Bureau, MBA, National Association of Realtors

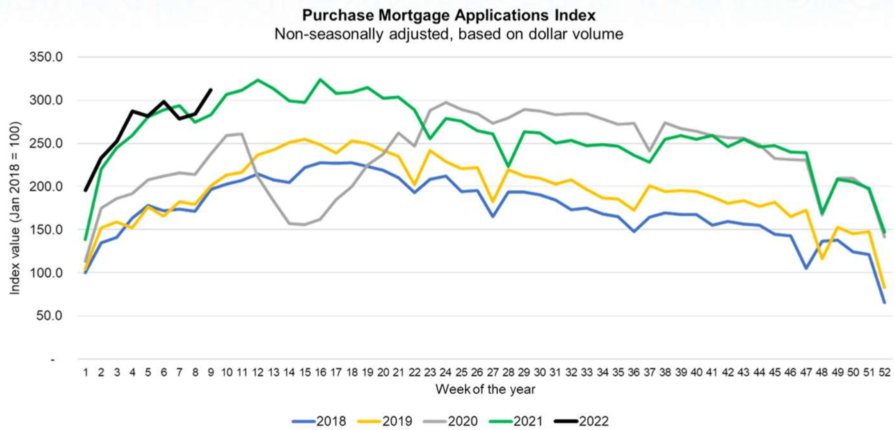
Home Price Appreciation Elevated, Expected to Moderate





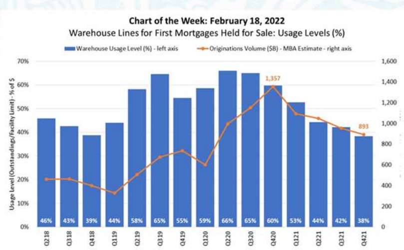
Source: Federal Housing Finance Agency, MBA forecast

Purchase Apps Up in 2022



Source: MBA's Weekly Applications Survey

Additional Trends to Watch



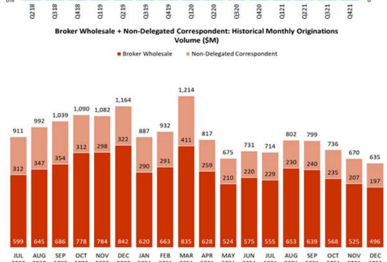
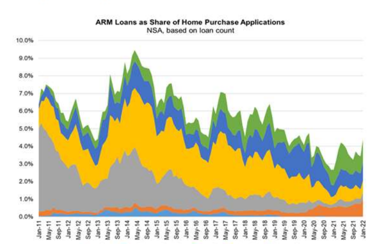


Exhibit 2: RMBS Credit issuance to date ($mn)

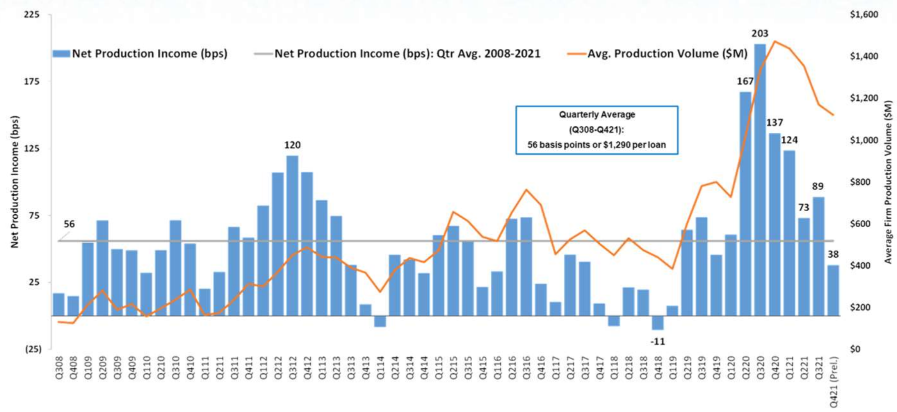
Issuance $mn	2019 FY	2020 FY	2021 FY	2022 YTD
Jumbo 2.0	15,085	16,239	52,203	-
Agency Investor	3,315	2,267	27,060	393
CRT	20,643	19,349	21,588	-
Rental	4,367	9,943	19,755	-
RPL	49,069	26,885	31,210	-
NPL	16,210	9,853	20,031	-
Non-QM	28,540	21,241	31,198	-
Seasoned CRT	6,753	5,176	2,792	-
Other	7,603	10,727	30,614	-
Total	151,585	121,681	236,450	393

Source: J.P. Morgan, Bloomberg Finance L.P.



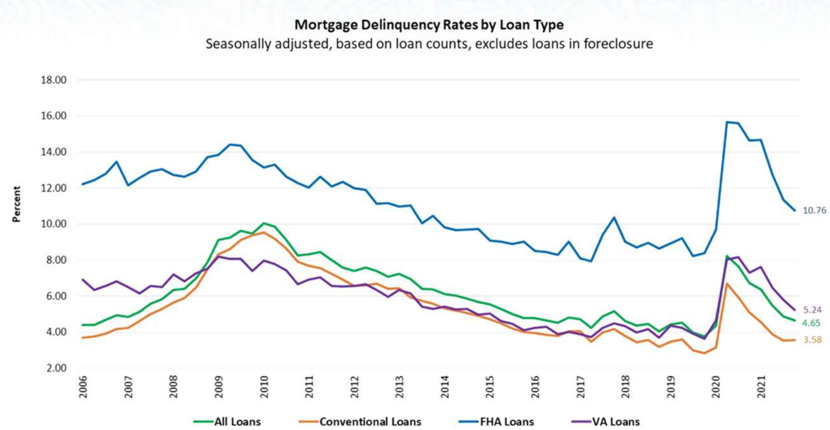
Sources: MBA's Warehouse Lending Survey, Weekly Applications Survey, and Wholesale Lenders Survey. JP Morgan's RMBS Credit Commentary

IMB Production Profitability: Falling Below Average After Record Run



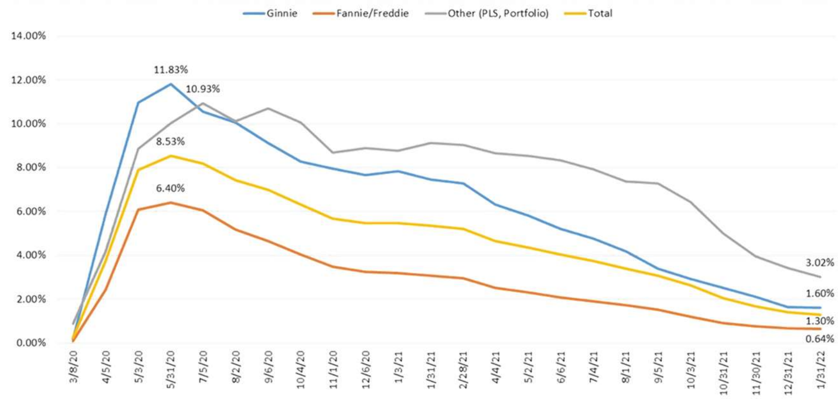
Source: MBA's Quarterly Mortgage Bankers Performance Report for IMBs: www.mba.org/performancereport

Mortgage Delinquency Rates



Source: MBA's National Delinquency Survey

% of Servicing Portfolio in Forbearance by Investor Type Over Time (Full Sample)



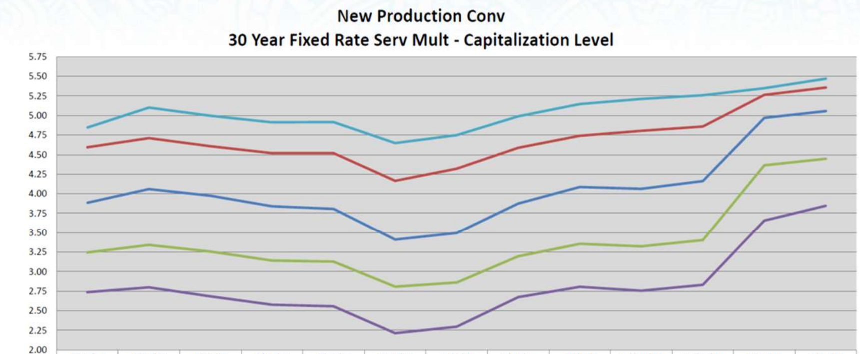
Source: MBA's Monthly Loan Monitoring Survey, as of 1/31/22

IMBs: Servicing Profitability ($ per loan) Rebounded in 2021

Simple Average:
($176) per loan in 2020
vs.
$253 per loan in 2021 YTD

Source: MBA's Quarterly Mortgage Bankers Performance Report for IMBs: www.mba.org/performancereport

MSR Values Have Increased Substantially



	2/28/21	3/31/21	4/30/21	5/31/21	6/30/21	7/31/21	8/31/21	9/30/21	10/310	11/30/21	12/31/21	1/31/22	2/28/22
3.000	4.85	5.10	5.00	4.91	4.92	4.65	4.75	4.99	5.15	5.21	5.26	5.35	5.47
3.250	4.59	4.71	4.61	4.52	4.52	4.16	4.32	4.59	4.74	4.80	4.86	5.26	5.36
3.500	3.88	4.06	3.97	3.84	3.81	3.41	3.50	3.87	4.09	4.06	4.16	4.97	5.06
3.750	3.24	3.34	3.26	3.14	3.13	2.81	2.86	3.20	3.36	3.32	3.40	4.36	4.45
4.000	2.74	2.80	2.68	2.58	2.56	2.21	2.30	2.67	2.81	2.76	2.83	3.66	3.84

Source: SitusAMC

Industry Trends

Industry Trends

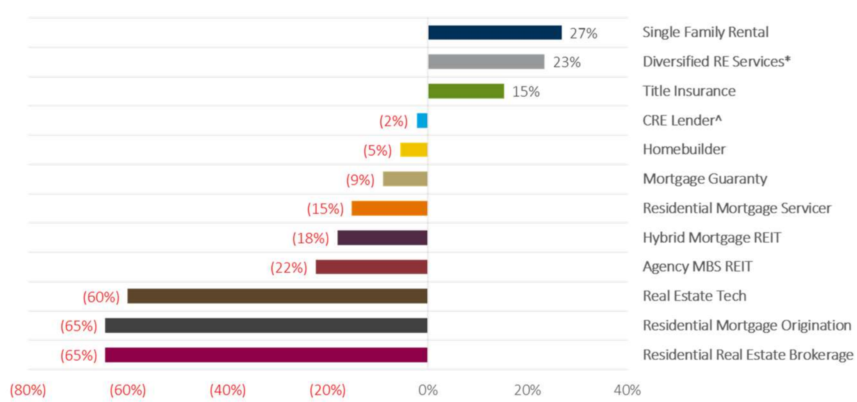
What broad trends will drive M&A, capital raising and valuation in 2022?

Trend	Expected Results
Rising Rates	• Greater focus on non-GSE products like non-QM and mortgages on investor owned homes to drive continued volumes • Greater stress on traditional mortgage originators and brokers, driving M&A and distressed financing
Higher GSE Fees for Jumbo, Investor Mortgages	• Non-GSE market expected to increase, providing opportunity to private capital • Private capital is a natural acquirer for non-traditional lenders
Home Prices Remain Elevated	• Proliferation of "alternative" equity products that alleviate closing cash needs or that facilitate investor participation in the single family housing market
Lower Mortgage Volumes and Increased Price Competition	• Greater competition for customers, driving companies to position themselves higher up in the customer acquisition "funnel" through M&A, JVs or organic means • Drive to increase total addressable market and revenue per customer through attachment of multiple products • Asking, "How can we use data and technology to better drive revenue and reduce costs?"
Increased Adoption of Technology in the Real Estate Ecosystem	• Minority investments by traditional industry participants in technology companies that may be relevant to or synergistic with their core businesses • M&A to accelerate technology initiatives
Growing Popularity of Blockchain	• Increase in use of, and in use cases for, blockchain for property ownership and throughout the loan life cycle

Winners & Losers – Public Sector Valuations

One Year Total Return – Selected Housing & Real Estate Credit Sectors

Represents Median of Publicly Traded Companies in Each Sector



Source: Factset as of 3/11/22

* Includes Jones Lang LaSalle, CBRE, Cushman & Wakefield, Newmark, Marcus & Millichap, and Colliers

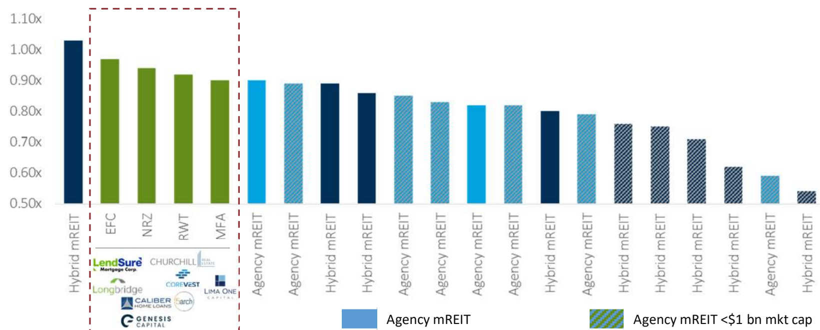
^ Includes commercial mortgage REITs

Residential mREIT Valuations

- Greater rewards for asset manufacturing capabilities and operations, particularly those driven by "expanded" mortgage products
- Greater discounts for lack of liquidity, exposure to credit MBS

Price / Book Value

Residential Mortgage REITs



Agency mREIT
Operationally-Intensive mREIT
Hybrid mREIT
Agency mREIT <$1 bn mkt cap
Hybrid mREIT <$1 bn mkt cap

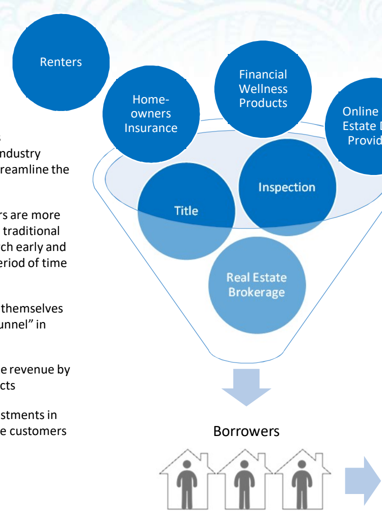
Source: Factset and S&P Global Market Intelligence as of 3/11/22

Who Owns the Customer?

Race To Get to the "Top of the Funnel," Retain Customers, and to Monetize Data

Drivers

- The homebuying process is fragmented, and multiple industry participants endeavor to streamline the process
- Some report that customers are more difficult to acquire through traditional internet leads, as they search early and actively online for a long period of time before choosing a lender
- Companies are positioning themselves higher and higher in the "funnel" in competition for customers
- Companies aim to maximize revenue by "attaching" multiple products
- Companies use robust investments in data and analytics to ensure customers are retained post-closing



Means to Accomplish

- Organic initiatives
- Talent acquisition
- M&A
- Joint ventures

Post-Closing Initiatives

- Capture refis & new home purchases
- Attach other consumer lending products
- Attach home services (cable, security, etc.)

Embedded Finance, Integration and Technology

Key Driver of M&A and Joint Ventures

- A significant amount of recent M&A and joint venture activity has been driven by the desire to:
  - Attach additional products before, during and after the homebuying process
  - Acquire customers earlier in the homebuying process
  - Use data to better enable salespeople, acquire more customers, increase efficiency, create a better experience for customers

Selected Recent M&A and Joint Ventures

Real Estate Brokerages	REALOGY	first; guaranteed Rate Companies Joint Venture; wemlo
	RE/MAX	guaranteed Rate Companies Joint Venture
	COMPASS	glide; modus; First Alliance Title; CommonGround Abstract; Contactually
	REDFIN	bay equity; RentPath
Lenders	ROCKET Companies, Inc.	Truebill; LENDESK; LowerMyBills
	WALKER & DUNLOP	enodo score; ZELMAN & Associates; GEOPHY; TapCap
RE Services & Software	Opendoor	Skylight; PRO; RedDoor
	Porch	Floify; American Home Protect; iRoofing; CSE Insurance Group; Homeowners of America; V12
	blend	TITLE365
Banking/ Wealth Mgmt	charles SCHWAB	ROCKET Companies Joint Venture

Walker & Dunlop is a multifamily lender and does not serve consumers, but is included for its unique approach to tech acquisitions

Small Steps Into Disruptive Business Models

Early to Mid-Stage Tech Investments From Selected Traditional Industry Participants

Motivators

- Superior insights
- Synergies
- "Hedge" to existing business model
- Value to shareholders
- Desire to build out an asset management business

American Homes 4 Rent: vesta, Vesta Ventures Fund I

Angel Oak Companies: Covience, asset class

First American: Lev, Pacaso, Orchard, ribbon, Sundae, side, Offerpad

LENNAR: veev, Sonder, ramp, hippo, Blue Print Power, withco, SmartRent, MODSY, Opendoor, Notarize, ICON, cover, BILT, blend, Divvy, level, doma, Culdesac

Redwood Trust: RentButter, Frontier, Rentroom, Liquid Mortgage, EasyKnock

Brookfield: Latch, convene, facilio, built, Lane, PassiveLogic, goodleap, VTS, Building Connected, Envoy

CBRE: Industrious, Matterport, Redaptive, Realync, LiquidSpace, Comfy

JLL: OpenSpace, livly, Lev, appear [here], LandTech, HqO, ZipGrid, Swivel, Infogrid, roofstock, Orbital Witness, life house, Foyr, eden, atmos, MeetElise, Hubble, Building Engines, Casaone, Dealpath, Jones

RXR: Lyric, The Build, Guild, Plentific, convene, metropolis, eden, kitchen united, workplace

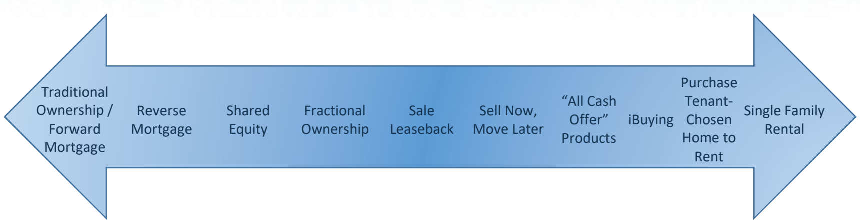
Tishman Speyer: Lyric, ageia, VTS, OpenSpace

Drivers of M&A - Predictions

1. mREIT valuation premiums for "asset manufacturing" businesses
   - Obtaining "asset manufacturing" capabilities
   - *Will these companies opt to remain REITs in the future?*
2. Greater market discounts for lack of scale, liquidity
3. Embedded finance
   - Getting to the "top of the funnel" – customer acquisition and revenue capture abilities
   - Joint ventures are an alternative to M&A
4. Evolution of technology's role in traditional mortgage & real estate
   - Competitive advantages driven by superior technology
   - Minority investments are an alternative to M&A
5. Headwinds for traditional residential mortgage
   - Building scale, adding to product set, making cost structure more efficient, and/or capitalizing on comparative weakness of smaller, poorly-situated competitors
   - Expect headwinds to drive M&A with both mortgage originators and vendors

What does "homeownership" mean?

With the proliferation of alternative ownership products, consumers and real estate investors have many options



Blockchain Ecosystem for Real Estate & Mortgage

Will blockchain technology revolutionize real estate and mortgage?

Benefits

- More efficient market
- Transparency and confidence in data through immutable, verified and centralized records
- Reduced risk through increased diversification and liquidity afforded by fractionalized assets
- Ability to share data in real time, allowing better investor evaluation of credit, and remit “one-to-many” payments
- Enhanced risk pricing, potentially lower rates to borrowers

Challenges

- Practical applications to date have been limited

Companies at the Forefront

CROWDSTREET, radian, FIGURE, roofstock, REDWOOD TRUST, Liquid Mortgage

Use Cases

- Tokenization of real estate for rentals and other purposes
- Liquid secondary market for investment property
- Loan origination
- Loan due diligence and data verification
- Secondary loan trading
- Loan servicing (transfers, real time sharing of payment information with investors, “one-to-many” payments)
- Real time document validation via “smart contracts”
- Loan participations
- Distributed or senior / sub warehouse lines through fractionalized assets
- Investors / tenant identification
- Property searches
- Land and title registries
- Title assignment / insurance
- Leasing

Benefits and use cases related to mortgage loans are derived from “Building a Blockchain Ecosystem,” Redwood Trust, April 2021

KBW, a Leading Advisor to the Mortgage Sector

Mortgage Sector Coverage

- **Depth of Sector Knowledge.** Superior understanding of underlying sector dynamics helps us to truly understand all aspects of our clients' businesses
- **Breadth of Platform Coverage.** “Reach” into relevant contiguous sectors and financial sponsors unparalleled for a boutique (technology, commercial real estate, insurance, business process outsourcing, building materials, etc.)
- **Comprehensive, Trusted Advisor.** As a full-service, product-agnostic platform, we can serve our clients at every stage of their life cycles
- **Experience.** Our team's three Managing Directors have over 50 years of combined Investment Banking experience, and since 2019, have completed over 50[4] advisory and capital raising transactions for companies across all areas of the housing & mortgage finance sector

Services

- Strategic / special committee advisory
- Sellside advisory
- Buyside advisory
- Debt financing placement / advisory
- Restructuring & balance sheet strategies
- SPAC advisory
- Public & private debt capital markets
- Equity capital markets
- Distributed private placements (144A/Reg D)
- Convertible capital markets
- Whole loan sales & trading
- Structured finance

About KBW

- Full service investment bank serving the financial services sector
- #1 financial services M&A advisory practice by number of completed deals since 2000[1]
- #1 financial services underwriter by number of IPOs and follow-ons since 2000[2]
- Largest and top-ranked financial services specialist sales force globally and top platform for financials stock trading[3]
- 6th largest retail sales force with over 2,000 Private Client Group financial advisors[3]

Selected Transaction Experience

$210,000,000 Credit Plus Inc Has Merged with UniversalCIS a portfolio company of LMP Lovell Minnick Partners Advisor to Seller *October 2021*	$135,000,000 REDFIN Has Agreed to Acquire bay equity Advisor to Buyer *Pending*	eMBS Has Been Acquired by BLACK KNIGHT Advisor to Seller *May 2021*	$108,850,000 READY CAPITAL Follow-on Offering Joint Bookrunning Manager *January 2022*
Mortgage Services	Realtors / Mortgage Lending	Real Estate Software	Mortgage REITs
CITADEL Has Been Acquired by HPS Advisor to Seller *February 2020*	$200,000,000 NuBridge Commercial Lending a portfolio company of TRIVE CAPITAL Senior Secured Credit Facility Sole Placement Agent *July 2021*	$503,000,000 TRICON RESIDENTIAL Initial Public Offering Joint Bookrunning Manager *October 2021*	$1,902,000,000 WMIH Corp. Has Acquired Nationstar Advisor to Buyer *July 2018*
Non-QM Mortgage	CRE Lenders	Single Family Rental	Mortgage Servicing

(1) Source: S&P Global
(2) Source: Dealogic
(3) Greenwich Associates Buy-Side Survey and company filings
(4) Includes transactions completed by KBW's MDs at a prior firm

Thought Leader in Mortgage & PropTech

- 60 companies under coverage in the Housing & Real Estate Finance sectors
- Three senior publishing research analysts
- Host industry events throughout the year including KBW's widely attended Annual Real Estate Finance & Technology Conference
- Equity research includes individual company notes, thought pieces, industry research, and Washington policy & regulatory notes
- Thought leader in new and emerging sectors, having initiated early coverage of the PropTech (2019) and Single Family Rental (2012) sectors, researching emerging trends outside of the public markets in anticipation of future IPOs and public investor interest

Selected Recent KBW Industry Events

Date	Event
April 6-7, 2021	Real Estate Finance Marketing Trip
May 27, 2021	KBW Annual Real Estate Finance & Technology Conference
September 21, 2021	KBW Title Insurance Day
September 22-23, 2021	West Coast Marketing Trip – Mortgage & PropTech
September 29, 2021	KBW CRE Day
December 6-7, 2021	KBW Innovation in Finance Conference
December 10, 2021	Virtual Fireside Chat with Offerpad
March 1-3, 2022	KBW Fintech Symposium

Trends in M&A

Strong M&A Activity in 2021 is Expected to Continue

- Overall assessment: Seller's market
- More consolidation in the mortgage space
- Macro-economic factures
- Overall housing shortage
- Lingering impact of Covid-19
- Enhanced interest in originators of alternative products
  - Residential transition loans ("fix and flip" lenders)
  - Single/multi-family rental platforms
  - Bridge loans
  - Consumer lenders

Deal Structures

- Whole company acquisitions
  - Originators
  - Servicers
  - Ancillary services
- Majority/minority investments
- JV investments
- Captive loan flow goals
- MSR transactions
- MSR funds/investments

What can we anticipate?

- **Trends to consider:**
  - Impact of public company comps on pricing
  - Earnouts or rollover stock consideration are common
- **Representations and warranties insurance:**
  - Increasingly more useful in mortgage M&A deals
  - Coverage for regulatory compliance risk
  - More insurers entering the space
- **Forward-market trends:**
  - Deal activity and public company buyers
  - Interest rate movement
  - M&A gaining momentum as IPO and SPAC window closes
  - Consolidation expected to increase as origination volumes soften and margins compress
  - Potential for valuation bid-ask spread to widen

2022 MORTGAGE & HOUSING SUMMIT

THE OUTLOOK FOR ISSUERS AND INVESTORS

Capital Markets Regulation: SEC Areas of Focus, Corporate Governance, ESG Matters, and Tax Developments

2022 MORTGAGE & HOUSING SUMMIT
THE OUTLOOK FOR ISSUERS AND INVESTORS

Panelists

David Freed
Partner
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Agenda

- Change in Tone at the SEC and SEC Regulatory Agenda
- SEC Proposals Relating to Treasury Markets and Money Market Reform
- Rule 10b5-1 Plans, Share Repurchases and Schedules 13D/G
- Human Capital Management, Board Diversity, Climate Change and Cybersecurity Disclosures
- Proxy-Related Updates: Universal Proxy, Pay Versus Performance and Shareholder Proposals
- Non-GAAP Financial Measures
- Final Tax Regulations on IBOR Transition
- Rev. Proc. 2021-53 Extends Temporary Relief for Public REIT and RIC Stock Dividends

Change in Tone at the SEC and the SEC Regulatory Agenda

Change in Tone

- Focus under leadership of former Chair Jay Clayton:
  - Retail investors
  - Easing regulatory burdens while maintaining or enhancing investor protections
  - Principles-based rules that facilitated tailored, company-specific disclosure
- Focus under leadership of current Chair Gary Gensler:
  - Investor protection, transparency and accountability
  - Climate and other ESG disclosure rules signal a clear shift in regulatory approach
  - Prescriptive requirements that facilitate consistent, comparable disclosure
  - Willingness to reconsider and rescind rules that were finalized late in Clayton's term at the SEC

SEC Regulatory Agenda

- New disclosure rules
- Rulemaking required by the Dodd-Frank Wall Street Reform Act of 2010
- Proxy process
- Rulemakings relating to market structure, money market funds and private funds

Expected Actions – Disclosure Rules

- Rule proposal on climate-related disclosures and monitoring
- Rule proposal on human capital disclosure
- Rule proposal on corporate board diversity
- Rule proposal on disclosure by SPACs
- Consideration of comments on recently proposed cybersecurity risk governance and monitoring disclosure rules
- Consideration of recently proposed amendments to Rule 10b5-1 insider trading plans
- Consideration of recently proposed amendments to rules governing share repurchases

Rulemakings on the SEC's Regulatory Agenda

"Today's investors are looking for consistent, comparable, and decision-useful disclosures around climate risk, human capital, and cybersecurity."
SEC Chair Gensler, Testimony Before the United States Senate Committee on Banking, Housing, and Urban Affairs, Sep. 24, 2021.

- New Climate Disclosure Rules
  - "Today, investors increasingly want to understand the climate risks of the companies whose stock they own or might buy. Large and small investors, representing literally tens of trillions of dollars, are looking for this information to determine whether to invest, sell, or make a voting decision one way or another." SEC Chair Gensler, "Prepared Remarks Before the Principles for Responsible Investment 'Climate and Global Financial Markets' Webinar," Jul. 28, 2021

- Board Diversity Disclosure Rules
  - "Because enhanced diversity is critically important for investors, the markets, and our economy, we hope this is a starting point for initiatives related to diversity, not the finish line." SEC Commissioners Lee and Crenshaw, "Statement on Nasdaq's Diversity Proposals – A Positive First Step for Investors," Aug. 6, 2021

Rulemakings on the SEC's Regulatory Agenda

- Expanded Human Capital Management Disclosure Rules
  - "[I]nvestors have said that they want to better understand one of the most critical assets of a company: its people. To that end, I've asked staff to propose recommendations for the Commission's consideration on human capital disclosure. This builds on past agency work and could include a number of metrics, such as workforce turnover, skills and development training, compensation, benefits, workforce demographics including diversity, and health and safety." SEC Chair Gensler, "Prepared Remarks at London City Week," June 23, 2021

Expected Actions

DFA Implementation

- Consideration of comments on re-proposed rule requiring disclosure of proxy votes by funds
- Consideration of comments on reopened compensation clawback rule
- Consideration of comments on reopened pay-versus-performance disclosure

Proxy Process

- Consideration of comments on proposal to change proxy advice rules
- Proposal regarding the Rule 14a-8 shareholder proposal process

SEC Proposals Relating to Treasury Markets and Money Market Reform

SEC Proposal: Treasury Markets

- On January 26, 2022, the SEC proposed amendments to Regulation ATS under the Exchange Act, which applies to alternative trading systems ("ATSs")
- The proposal significantly expands the scope of Regulation ATS and, if adopted, would:
  - Eliminate the exemption from compliance with Regulation ATS for an ATS that (a) limits its securities activities to government securities or repos and reverse repos on government securities and (b) registers as a broker-dealer or is a bank (a "Government Securities ATS")
  - Require a Government Securities ATS to file a Form ATS-N, which would be subject to SEC review and effectiveness procedures, and would require the Government Securities ATS to disclose information about its operations and the ATS-related activities of the registered broker-dealer or government securities broker or government securities dealer that operates the ATS and its affiliates
  - Apply the fair access rule to Government Securities ATSs that meet certain volume thresholds in U.S. Treasury securities or agency securities
  - Comments on the proposal are due 30 days after publication in the Federal Register
  - The increased compliance costs for broker-dealers that become subject to Regulation ATS may be expected to result in increased repo funding costs.

SEC Proposal: Money Market Reform

- On December 15, 2021, the SEC proposed amendments to Rule 2a-7 under the Investment Company Act, which governs the structure and operation of money market funds
- According to the SEC's proposal release, the proposed amendments are "designed to improve the resiliency and transparency of money market funds" following the liquidity stresses experienced in March 2020 in connection with the COVID-19 coronavirus pandemic and the associated stresses in the short-term credit markets
  - In March 2020, growing economic concerns about the impact of COVID-19 caused investors to reallocate assets into cash/short-term government securities
  - Prime and tax-exempt money market funds experienced substantial outflows
  - Outflows contributed to stress on short-term credit markets
  - Outflows slowed following intervention from the Federal Reserve (established Money Market Mutual Fund Liquidity Facility and other programs to support short-term funding markets)

SEC Proposal: Money Market Reform

- The proposed amendments would:
  - Increase minimum daily liquidity requirements from 10% to 25% and weekly liquidity requirements from 30% to 50% and require a notice filing with the SEC following a liquidity threshold event (daily liquid assets fall below 12.5% or weekly liquid assets fall below 25%);
  - Remove the ability of money market funds to impose liquidity fees and redemption gates when they fall below certain liquidity thresholds, which would eliminate an incentive for preemptive redemptions;
  - Require institutional prime and institutional tax-exempt money market funds to implement swing pricing so that redeeming investors bear the liquidity costs of their redemptions; and
  - Enhance certain reporting requirements to improve the SEC's ability to monitor and analyze money market fund data
- The deadline for comments is April 11, 2022

SEC Proposal: Money Market Reform

- These changes may be expected to seriously affect money market fund acquisition of assets – 2.5 times as much daily liquid assets required
  - Funds will have less capacity for assets not qualifying as daily liquid assets or weekly liquid assets
  - Commercial paper, e.g., will not qualify unless it has a one-day or five-day maturity
  - Repos of agency mortgage-backed securities must be one-day or five-day maturity to qualify
  - Repos of US treasury securities must also be one-day or five-day maturity to qualify
  - Note that a one-day demand feature on a longer maturity repo will qualify the repo as a daily liquid asset
  - Similarly for five-day demand features

10b5-1 Plans, Share Repurchases and Schedules 13D/G

Rule 10b5-1 Plans

RULE 10b5-1 PLANS allow "insiders" of public companies (or others) to establish a trading plan to purchase or sell predetermined amounts of securities at predetermined times

Elements of a Rule 10b5-1 Plan

- To benefit from the protections of the affirmative defense, a 10b5-1 plan must:
  - Specify amount, price, and date of the purchases or sales;
  - Include a written formula for determining amount, price, and date of the purchases or sales; or
  - Not permit the person to exercise any subsequent influence over how, when, or whether to effect the purchases or sales
- Alteration or deviation from the plan disqualifies the plan from the protection of the Rule
- Must be entered into ***in good faith***, not as part of a strategy or scheme to evade the prohibitions on insider trading
- Anyone other than the person adopting the 10b5-1 plan may execute trades
  - A 10b5-1 plan is typically an arrangement between a company insider and that person's broker, wherein the broker executes trades according to the plan's specifications

Benefits of a Rule 10b5-1 Plan *(aside from the affirmative defense)*

- A higher level of certainty for insiders planning securities transactions
- More opportunities for insiders to sell their securities, especially if an issuer's trading policy allows for trading during a blackout period under the plan
- Less negative publicity associated with insiders' sales
- Decreased burden on counsel/compliance officers who otherwise would need to make individual determinations about the availability of possession of material non-public information ("MNPI") every time an insider seeks to proceed with securities transaction

Concerns

Former SEC Chair Clayton's views

- In a letter to Congressman Brad Sherman, former SEC Chair Jay Clayton noted the importance of a strong control environment, especially in times of heightened market volatility and uncertainty, such as during the COVID-19 pandemic
- Former Chair Clayton outlined specific issues that could be revisited in order to promote market integrity and investor confidence, and also demonstrate a commitment to "good corporate hygiene," including:
  - Insider trading policies for senior executives and board members
  - Terms and administration of Rule 10b5-1 plans
  - Issuing and pricing stock options

Observed suspicious behavior

- Courts, legislators and academics have expressed concern that Rule 10b5-1 has allowed traders to opportunistically trade with MNPI and avoid liability
  - Overlapping plans for the same security
  - Commencing trades soon after adoption of a new plan
  - Modification of an existing plan
  - Companies using share repurchase 10b5-1 plans to boost share prices ahead of sales by corporate insiders
  - Grants of equity award options in coordination with release of MNPI
  - Opportunistically gifting securities while aware of MNPI

Proposed Amendments to Rule 10b5-1

- <u>Minimum cooling-off periods</u> between adoption of 10b5-1 plan and first purchase: (a) officers & directors: 120 days; and (b) issuers: 30 days
  - Cancelling one or more trades would constitute a "modification" and restart the applicable cooling-off period; no *de minimis* exception
- <u>Certifications</u> from officers and directors that they (i) lacked MNPI when the plan was adopted (or modified) and (ii) adopted (or modified) the plan in good faith and not part of a scheme to avoid insider trading prohibitions
  - Insiders would be required to furnish their certifications to the issuer and retain them personally for 10 years
  - But, no public filing requirement
- <u>Prohibitions</u> for *all traders* (*i.e.,* not just officers and directors) on:
  - Overlapping plans for open market trades of the same class of securities (transactions with the issuer exempted); and
  - Having more than one "single-trade" 10b5-1 plan during any 12-month period
- <u>Good faith</u> *operation* of 10b5-1 plans (as opposed to good faith *entry)*

Proposed New Disclosure for Public Companies

- Quarterly disclosure of adoption or termination of 10b5-1 plans and other trading arrangements by public companies and their officers and directors
  - Would apply to public companies using domestic forms (*e.g.,* Form 10-Q and Form 10-K) (*i.e.*, not applicable to foreign private issuers ("FPIs"))
  - Disclosures would be required to include material terms of the 10b5-1 plan or arrangement, such as:
    - Date of adoption or termination;
    - Duration; and
    - Number of securities to be sold or purchased
- Yearly disclosure of internal insider trading policies and procedures designed to promote compliance with insider trading laws
  - Disclosure should provide "meaningful information from which investors can assess the sufficiency of [such] insider trading policies and procedures" for example:
    - The issuer's process for analyzing whether insiders, or the issuer itself when conducting an open-market share repurchase, have MNPI;
    - Issuer's process for documenting and approving requests to trade in its securities; or
    - How the issuer enforces compliance with any such policies
  - If an issuer has not adopted such policies, it would have to disclose why it has not done so
  - FPIs to make similar annual disclosures in Form 20-F

Proposed New Disclosure for Public Companies

New Executive Compensation Disclosure

- Tabular disclosure of option awards granted to NEOs within 14 calendar days before or after the filing of a periodic report (10-Q or 10-K), issuer share repurchase or current report on Form 8-K that contains MNPI
  - Date of grant, fair value at grant date and option's exercise price
  - Market prices of underlying securities on trading days before and after disclosure of MNPI
- Narrative disclosure of policies regarding the timing of option grants and release of MNPI, including how the board determines when to grant options and how the board takes MNPI into account when determining the timing and terms of an award
- Information could be incorporated by reference from annual proxy statement. No exemption for smaller reporting companies ("SRCs") or emerging growth companies ("EGCs"); FPIs not required to disclose this information

Proposed Amendments to Forms 4 and 5

- Section 16 filers would be required to indicate whether a reported transaction was executed pursuant to a 10b5-1 plan
  - May voluntarily indicate whether transaction was part of a pre-planned contract not intended to satisfy Rule 10b5-1
- *Bona fide* gifts of securities (whether part of a 10b5-1 plan or not) would be required to be reported on a Form 4 (as opposed to a Form 5)

Notable Requests for Comment

- Cooling-off period:
  - Should a mandatory cooling-off period be limited to insiders only? Or should there be one for all traders?
  - Should "modification" be defined and should the cooling off-period not reset for *de minimis* changes?
- Prohibitions:
  - Are there any legitimate uses of overlapping 10b5-1 plans?
- Executive Compensation Disclosures:
  - Is the 14-day time period appropriate or should it be shorter or longer?
  - Is a one-day period after an issuer's disclosure of MNPI sufficient for the MNPI to be reflected in the price of that issuer's securities?

Share Repurchase Background

Share repurchase disclosure "modernization" must be understood in context

The proposing release reports $700 billion of share repurchases in 2020

- Among the ways companies may repurchase their shares are open market purchases (including pursuant to Rule 10b-18), tender offers, private negotiated transactions and accelerated share repurchases ("ASRs")
- The level of share repurchase activity in recent years has attracted legislative, regulatory, academic and media attention
  - Increase in repurchase activity resulted in part from tax reform, but in addition, strategic transactions have often been accompanied by share repurchases
- There have been various legislative proposals to limit share repurchases over the past few years

Share Repurchase Existing Disclosure

- Currently, Item 703 share repurchase disclosure is required quarterly for domestic issuers in Form 10-Q and Form 10-K
  - FPIs provide comparable disclosure annually on Form 20-F
- Existing filings are not required to, and typically do not, disclose the specific dates on which buybacks will be executed
- Timeliness of information issues
  - Details of a January share repurchase by a calendar-year domestic issuer is not currently required to be disclosed until the first quarter Form 10-Q is filed in May
  - The SEC believes asymmetries may exist between issuers and affiliated purchasers and investors with regard to information about the issuer and its future prospects

Proposed New Form SR

One-day business disclosure

- To be filed within one business day after buyback of equity securities registered pursuant to Section 12 of the Exchange Act
- SEC requests for comment *on timing:*

Would less frequent disclosure of daily share repurchases, such as weekly, monthly, or quarterly disclosure, provide sufficiently timely information?

Should Form SR be required within one business day after the order clears and settles and the issuer receives trade confirmation, as opposed to one business day after execution?

Issuers required to submit Form SR

- The Form SR requirement applies to issuers of equity securities registered pursuant to Section 12 of Exchange Act
  - Includes FPIs and certain registered closed-end funds
- SEC requests for comment *on issuers subject to Form SR*:

Should the SEC exempt FPIs and/or registered closed-end funds from the requirement to file a Form SR or provide different requirements?

Should the SEC exempt non-accelerated filers, SRCs, or EGCs from the proposed Form SR reporting requirement?

Schedules 13D and 13G of the Exchange Act

- Section 13D requires disclosure by investors of the accumulation of significant positions, or of certain increases in such positions, in the voting stock of public companies
  - These disclosures are intended to provide transparency to the market generally, and to stockholders and the company, and to function as an early warning to the company regarding a potential change of control transaction
- Section 13G permits short-form disclosure by certain passive or early investors that hold or obtain significant positions in the voting stock of public companies

February 10, 2022: SEC proposed amendments to Schedules 13D and 13G of the Exchange Act relating to beneficial ownership reports

Proposed Amendments to Schedules 13D and 13G

The impact on filing

- Would shorten multiple filing deadlines for institutional investors and passive investors
- Would extend "cut-off" time for filing Schedules 13D and 13G, and any amendments thereto, from 5:30 pm ET to 10:00 pm ET on a business day
- Would require Schedules 13D and 13G be filed using a structured, machine-readable data language
  - All disclosures would need to filed with XML-based language for ease of investor access

The impact on derivatives

- Would change beneficial ownership status of holders of certain cash-settled derivatives, other than security-based swaps
- Would alter the calculation of underlying reference securities for reporting purposes
  - Would clarify disclosure requirements with respect to derivative securities held by a person reporting on that schedule
- Would expressly state that the use of derivative instruments, including cash-settled, security-based swaps and other derivatives settled exclusively in cash, which use issuer's securities as a reference security are included among the types of contracts, arrangements, understandings and relationships that must be disclosed
- Would require public reporting on Schedule 10B of, among other things: (1) certain large positions in security-based swaps; (2) positions in any security or loan underlying the security-based swap position; and (3) any other instrument relating to the underlying security or loan or group or index of securities or loans

Human Capital Management, Board Diversity, Climate Change and Cybersecurity Disclosures

Human Capital Management

- New Regulation S-K Disclosure Requirement
  - Principles-based (specifies the types of information that may be material to certain companies)
  - Qualified by materiality
- Disclosure Trends
  - Number of employees (part-time vs. full-time) and turnover
  - Human capital measures or objectives
  - Workers' health and safety, diversity and inclusion, recruitment, training, number of employees
- The impact of the COVID-19 pandemic was a common theme for human capital disclosures made during 2021, covering matters such as workers' health and safety and remote working.

Board Diversity

The EY Center for Board Governance found that 86% of Fortune 100 companies voluntarily disclosed the board's racial/ethnic diversity in 2021.

Nasdaq Board Diversity Standards

- New rules require Nasdaq-listed companies to have, or to explain why they do not have, at least two diverse directors, including:
    1. At least one director who self-identifies as female (regardless of designation at birth) and
    2. At least one director who self-identifies as either an underrepresented minority or as LGBTQ+
- The new rules also require Nasdaq-listed companies to annually disclose diversity information in a standardized board diversity matrix

SEC Rulemaking on the Horizon

- Disclosure relating to workforce diversity
- Disclosure relating to board diversity

Climate Change Disclosure

- According to a 2018 study (*GeoPhy*), approximately 35% of REIT properties are exposed to climate hazards such as inland flood risk, coastal floods and sea-level rise, and hurricanes and typhoons.
- According to a BlackRock study, approximately 3% of the CMBS loan market was impacted by Hurricanes Harvey/Irma in 2017 with approximately 80% of impacted commercial properties outside of official flood zone maps.
- REITs that do mention climate risk in their annual 10-K filings typically discuss how it could affect their financial results in the Risk Factors section (example below).

    To the extent that climate change impacts changes in weather patterns, assets in which we hold a direct or indirect interest could experience severe weather, including hurricanes, severe winter storms, and flooding due to increases in storm intensity and rising sea levels, among other effects that could impact house prices and housing-related costs and/or disrupt borrowers' ability to pay their mortgage and or loan. Moreover, long term climate change could trigger extreme weather conditions that result in macroeconomic and demographic shifts. Over time, these conditions could result in repricing of the assets (land, property, securities) that we hold. There can be no assurance that climate change and severe weather will not have a material adverse effect on our financial performance.

- SEC plans to propose climate change disclosure rules on March 21, 2022.

Cybersecurity Disclosure

- The SEC Enforcement Division's Cyber Unit was established in 2017 to increase the agency's focus on cyber-related misconduct.
  - 2018 Commission Statement and Guidance on Public Company Cybersecurity Disclosures
    - Provides a list of issues to consider when drafting cybersecurity risk factor disclosure
    - "In meeting their disclosure obligations, companies may need to disclose previous or ongoing cybersecurity incidents or other past events in order to place discussions of these risks in the appropriate context."
  - This past summer's string of cyber enforcement actions signals that cybersecurity has become a top priority for the SEC Staff.
- Mitigate risks by monitoring key risk indicators, reviewing cybersecurity training procedures, engaging third parties to conduct periodic penetration testing, evaluating cyber risk related to sensitive data held by third parties and maintaining sufficient and tailored cybersecurity insurance from a reputable firm.
  - Include mitigation efforts in public disclosures.
- On March 9, 2022, the SEC proposed amendments regarding cybersecurity risk management, strategy, governance and incident disclosure.

Proxy-related Updates: Universal Proxy Rules, Pay versus Performance and Shareholder Proposals

Universal Proxy Rules

- On November 17, 2021, the SEC adopted mandatory universal proxy rules that will apply for all contested director elections.
- Each universal proxy card must list all management and dissident nominees for director, enabling shareholders voting by proxy to pick and choose among the different slates of candidates, similar to the manner in which they would be able to vote for directors in person at a contested shareholders meeting.
- The SEC also made changes to proxy cards and proxy statement disclosure requirements regarding voting standards and certain voting options applicable to all director elections.
- The amendments will apply to shareholders meetings held after August 31, 2022.

Pay versus Performance

- On January 27, 2022, the SEC voted to reopen the comment period on the pay versus performance rule that it proposed in 2015.
- The proposed rule being contemplated would require SEC reporting companies to make expanded disclosure of the relationship between executive pay and a company's financial performance.
- The 2015 proposal required a new compensation table to show the relationship between compensation actually paid to named executive officers and a company's performance, with performance measured both by the company's total shareholder return ("TSR") and peer group TSR.
- The SEC is considering expanding the proposed 2015 table to include additional performance measures (pre-tax net income, net income and a measure specific to, and chosen by, the particular company).
- Additional requirement would include a list of the five most important performance measures that the company uses to link executive compensation actually paid during the fiscal year to company performance for the time horizon of the disclosure.

Shareholder Proposals

- On September 23, 2020, the SEC adopted amendments to Rule 14a-8 permitting a shareholder proposal to be excluded from a company's proxy statement when it involves ordinary business operations.
- On November 3, 2021, the SEC Staff issued Staff Legal Bulletin No. 14L (SLB 14L). SLB 14L reverses course on Staff positions taken since 2017 with respect to the ordinary business grounds for exclusion of shareholder proposals from company proxy statements and the economic relevance grounds for exclusion.
- SLB 14L also addresses the use of emails in the shareholder proposal process.
- Will be more difficult for public companies to leave out certain shareholder proposals relating to ESG matters from proxy statements to be voted on during annual meetings.
- Not likely to result in a significant increase in the number of shareholder proposals as there have not been very many ESG-related shareholder proposals excluded through the no-action process in recent years.

Non-GAAP Disclosures

Understanding Non-GAAP Financial Measures

- Regulation G and Item 10(e) of Regulation S-K apply to the disclosure of non-GAAP financial measures
- Defined as a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:
  - Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of comprehensive income, balance sheet, or statement of cash flows (or equivalent statements) of the registrant; or
  - Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable GAAP measure
- If a registrant takes a GAAP measure and excludes items that are part of that GAAP measure, or includes items that are not a part of that GAAP measure, then the resulting measure is a non-GAAP financial measure

Frequent Non-GAAP Staff Comments

- Reasons for non-GAAP measures
  - Additional details about usefulness and uses of non-GAAP measures
  - No boilerplate
- Non-GAAP financial measure titles
  - Titles may not accurately reflect amounts reported
  - Confusingly similar (or the same as) GAAP measures or common accepted non-GAAP measures (e.g., free cash flow, EBIT, EBITDA)
- Reconciliation to most directly comparable GAAP measure
  - Reconciling to wrong GAAP measure
- Characterization of adjustments
  - Whether characterization of adjustments as "nonrecurring," "unusual" or "infrequent" is consistent with Item 10(e)(1)(ii)(B)
- How is an adjustment calculated?
- Why is an adjustment appropriate?
- Explain nature of a COVID-19 adjustment
- Individually tailored recognition and measurement methods may run afoul of C&DI 100.04
- SEC may require a revised presentation to omit an adjustment

Non-GAAP Staff Comments Issued to MREITs

- Recent comments in the past 12 months have focused on the use of the term "core earnings"
  - "We note your disclosure of core earnings attributable to common stockholders. This non-GAAP measure includes adjustments for various realized and unrealized gains (losses) and provision for credit losses. Further, our understanding is that this measure is commonly used by mortgage REITs as an indicator of dividend paying ability. Please tell us if this measure is used by the registrant's management as an indicator of the registrant's dividend paying ability. If so, please revise your filing to disclose that purpose."
- As a result, most mREITs have revised their non-GAAP financial disclosure:
  - Commercial mREITs now refer to "distributable earnings"
  - Residential mREITs now refer to "earnings available for distribution"
  - Useful to investors in evaluating performance and ability to pay dividends

Non-GAAP Financial Measures Used by MREITs

Distributable Earnings (Commercial Mortgage REITs)

- In general, defined as GAAP net income (loss), including realized gains and losses not otherwise recognized in current period GAAP net income (loss), and excluding:
  - non-cash equity compensation expense,
  - depreciation and amortization,
  - unrealized gains (losses), including the impact of the unrealized current provision for credit losses, and
  - certain non-cash items
- May be adjusted from time to time to exclude one-time events pursuant to changes in GAAP
- Loan losses are charged off and realized through Distributable Earnings when a loan is considered non-recoverable

Non-GAAP Financial Measures Used by MREITs

Earning Available for Distribution (Residential Mortgage REITs)

- Definition of EAD varies from residential mREIT to residential mREIT, but generally defined as GAAP net income (loss) attributable to common stockholders adjusted for:
  - Realized and unrealized gains and losses
  - Non-cash compensation expense related to restricted common stock
  - Other nonrecurring expenses
- As defined, EAD includes:
  - Net interest income
  - Accrual and settlement of interest on derivatives
  - Dollar roll income on TBAs
  - U.S. Treasury futures income
  - Servicing income, net of estimated amortization on MSRs and recurring cash related operating expenses

Final Tax Regulations on the IBOR Transition

Final Tax Regulations on the IBOR Transition

- In October 2019, the IRS released proposed regulations addressing IBOR replacement
- On December 30, 2021, the IRS released **final regulations** making some helpful changes
- The question is whether the change to an instrument's floating interest rate results in a "significant modification" under Treas. Reg. § 1.1001-3 causing a deemed exchange?
  - Possible for both adding IBOR fallbacks and IBOR replacement

Final Tax Regulations on the IBOR Transition
(cont'd)

- The final regulations are laced with defined terms, but at a high level, the following are not deemed exchanges:
  - Replacing a "discontinued IBOR" rate with a "qualified rate" and a "qualified one-time payment" made in connection with the replacement
  - Providing for a fallback for a "discontinued IBOR" rate with a "qualified rate"
  - Substituting a "qualified rate" in place of a rate referencing a "discontinued IBOR" rate in an existing fallback
    - A "discontinued IBOR" is generally an interbank offered rate that has had the applicable administrator announce a plan to cease its publication (with no successor administrator taking over), and is not more than one-year after the actual cessation of publication
    - A "qualified rate" is basically any rate that measures contemporaneous variations in the cost of newly borrowed funds as long as it is based in the same currency as the rate in the existing contract (including adding or subtracting a specified number of basis points to or from any such rate, or by multiplying any such rate by a specified number).
    - "Qualified one-time payment" is a single cash payment that is intended to compensate the other party or parties for all or part of the basis difference between the discontinued IBOR and the interest rate benchmark to which the qualified rate refers

Final Tax Regulations on the IBOR Transition
(cont'd)

- Excluded from the deemed exchange relief are "noncovered modifications," which are changes to the amount or timing of contractual cash flows where that change is:
  - Intended to induce one or more parties to perform any act necessary to consent to the modification to the contract,
  - Intended to compensate one or more parties for a modification to the contract not related to IBOR replacement,
  - Either a concession granted to a party to the contract because that party is experiencing financial difficulty or a concession secured by a party to the contract to account for the credit deterioration of another party to the contract, or
  - Intended to compensate one or more parties for a change in rights or obligations that are not derived from the contract being modified

Rev. Proc. 2021-53 Extends Temporary Relief for Public REIT and RIC Stock Dividends

Rev. Proc. 2021-53 Extends Temporary Relief for Public REIT and RIC Stock Dividends

- REITs need to distribute at least 90% of REIT taxable income
- Rev. Proc. 2017-45 provides a general safe harbor for public REITs (and RICs) to satisfy the distribution requirement with cash and stock, as long as
  - Shareholders can elect; and
  - The cash component is at least 20%
- Early pandemic, Rev. Proc. 2020-19 allowed only 10% cash for distributions declared by a publicly offered REIT on or after April 1, 2020, and on or before December 31, 2020
- Rev. Proc. 2021-53 (late pandemic?) allows only 10% cash for distributions declared by a publicly offered REIT or RIC on or after November 1, 2021, and on or before June 30, 2022

Capital Markets Regulation: SEC Areas of Focus, Corporate Governance, ESG Matters, and Tax Developments

Supplemental Materials

- SEC Proposes New Rules on Public Company Cybersecurity Disclosures
- SEC Proposes Amendments to Rule 10b5-1's Affirmative Defense to Insider Trading Liability
- SEC Proposed Amendments to Schedules 13D and 13G
- SEC Reopens Pay Versus Performance Comment Period
- SEC Proposes New Rules on Share Repurchase Disclosure
- SEC Adopts Universal Proxy Rules

2022 MORTGAGE & HOUSING SUMMIT

THE OUTLOOK FOR ISSUERS AND INVESTORS

Housing Market & Public Policy Trends

2022 MORTGAGE & HOUSING SUMMIT

THE OUTLOOK FOR ISSUERS AND INVESTORS

Panelists

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Chief Executive Office

Alinement Advisors

Tankya Rakpraja

Head of Corporate Responsibility and Government Relations

Annaly Capital Management, Inc.

Purchase Money Market and Strategic Alliances under RESPA

Strategic Alliances under RESPA

- Higher interest rates = competitive purchase market
- RESPA Refresher
  - Section 8(a) - No person shall give or receive anything of value in return for the referral of "settlement service" business in connection with a federally-related mortgage loan.
- Permitted Payments
  - Fair market value payments for actual goods provided or services performed
    - Advertising services agreements
    - Office rentals
    - Lead generation
  - Normal promotional and educational expenses
  - Affiliated business arrangements

Affiliated Business Arrangements

- Three statutory requirements:
  - Consumer disclosure
  - No required use
  - Profit distributions strictly based on ownership interest
- Guidance from regulators:
  - Factors for a bona fide, stand-alone business
    - Capitalization, dedicated employees, core services, separate office space, attempt to receive outside business, etc.
- Other considerations:
  - Stock and opportunity to participate in a money-making venture are defined as “things of value”
  - Shuffling of shares among existing or new owners
  - Redistribution of profits based on referrals

2022 MORTGAGE & HOUSING SUMMIT

THE OUTLOOK FOR ISSUERS AND INVESTORS

Developments in Asset Finance and Securitization

2022 MORTGAGE & HOUSING SUMMIT

THE OUTLOOK FOR ISSUERS AND INVESTORS

Panelists

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Paul Jorissen

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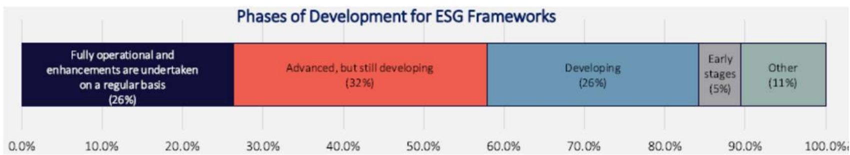
Managing Director & Head of Structured Finance

Redwood Trust Inc.

Emerging Trends in Structured Finance and Securitization

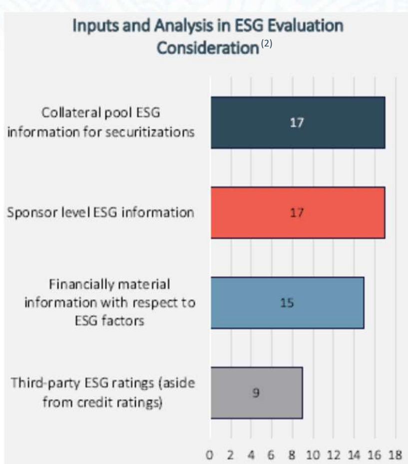
ESG Disclosure in Structured Finance Transactions

- The Structured Finance Association ("SFA") found in its 2020 survey [1] that:
  - only 6% of issuers included ESG-related data in their disclosure documents
  - 95% of institutional investor respondents applied an ESG framework to all or some of their investment decisions
    - 60% of investors apply their proprietary ESG framework to all investments
    - 35% of investors apply that framework to certain managed funds, portfolios or client-directed funds



[1] Structured Finance Association ESG Industry Engagement Survey November 19, 2020

ESG Disclosure in Structured Finance Transactions



ESG Disclosure Models

- ESG Impact Measurement: provide data and narrative disclosure responsive to referenced frameworks
- Second Party Opinion: external reviewer evaluates issuer's ESG framework for compliance with reference framework

[2] Structured Finance Association ESG Industry Engagement Survey November 19, 2020

ESG Disclosure in Structured Finance Transactions

Operating Principles for Impact Management

SUSTAINABLE DEVELOPMENT GOALS

EUROSIF

PCAF Partnership for Carbon Accounting Financials

PRI Principles for Responsible Investment

ICMA International Capital Market Association

SCIENCE BASED TARGETS DRIVING AMBITIOUS CORPORATE CLIMATE ACTION

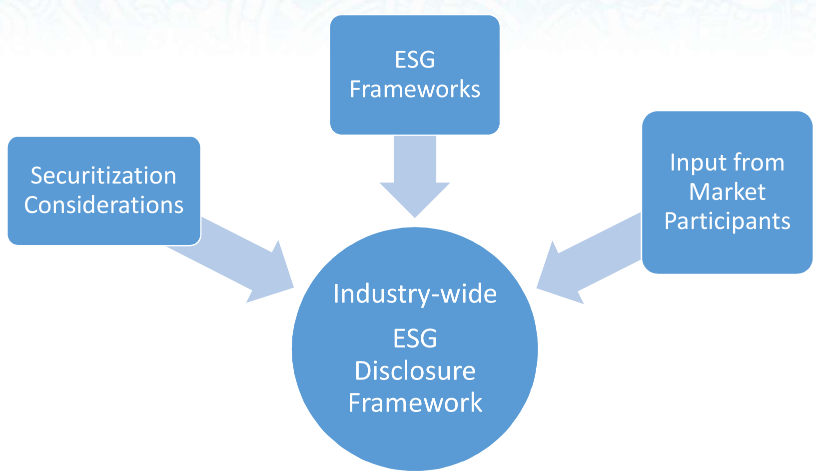
GRI Empowering Sustainable Decisions

TCFD TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES

CDP DISCLOSURE INSIGHT ACTION

SASB SUSTAINABILITY ACCOUNTING STANDARDS BOARD

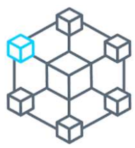
ESG Disclosure in Structured Finance Transactions



Technology and Innovation in Asset Finance

Digital Assets

Digital Currency



Distributed Ledger Technology

Technology and Innovation in Asset Finance

REDWOOD TRUST

Liquid Mortgage

- **5** SEMT transactions using blockchain technology
- **2,736** digital assets (#)
- **10,176** payments posted (#)
- **$92.5** payments posted (mm)
- **30** average minutes to post payment files

Developments in Asset Finance and Securitization

Warehouse Securitization Hybrid

- Originator/owner sells mortgage loans to an issuer trust pursuant to a repurchase agreement. Issuer issues notes to investors that are secured by the issuer's interest in the mortgage loans and the repo
- Hybrid structures allow capital markets investors to invest in mortgage warehouse exposures. Usually the bonds issued are rated
- Facility is revolving through the term of the facility but through substitutions of assets. Early redemption rights are negotiated
- Full recourse to originator/owner/guarantor. Usually subject to an objective mark-to-market mechanic
- Repurchase Agreement is typically based on SIFMA form and not subject to cross-default risk

SFR/I-Buyer/Fractional Interests/Option Contracts

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SFR/I-Buyer/Fractional Interests/ Option Contracts

- SFR Developments include upcoming capital markets revolving warehouse deal secured directly by SFR rather than an accommodation loan
- New sourcing models for new construction and leveraging of I-buyer platforms
- Strong capital flow and new entrants
- I-Buyer securitizations over horizon perhaps rated without mortgages
- Exit of Zillow Homes following couple capital markets warehouse securizations
- Fractional interests in homes as new ownership construction raise interesting structural and financing issues
- Home equity option contacts
  - Two securitized deals (Point and Unison/Odin)
  - Market is digesting regulatory topics and product analysis
  - More bank/insurance company/securitization financings

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Non-QMs

Non-QMs

- New QM (APR - APOR + 2.25) – Effective 3/1/2021
- Old QM (43% DTI, App. Q) – Available until 10/1/2022
- Fannie/Freddie QMs – Essentially expired 7/1/2021
- QRM = QM

Residential Transition Loans (Fix and Flip)

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Residential Transition Loans (Fix and Flip)

- Strong demand for product continues
- Proliferation of originators
- Single-seller vs. Aggregator Securitizations
- Revolving pools
  - Excess Collections
  - Pre-funded Acquisition Accounts
  - VFNs
  - Post-closing upsize
- Eligibility Criteria, Concentration Limits
- Servicing and Asset Management
- Tax structures

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Developments in Asset Finance and Securitization

Supplemental Materials

- SFA's ESG Disclosure and Framework Reporting Initiative