RECENT REGULATORY AND MARKET DEVELOPMENTS IN THE US THAT MAY AFFECT THE AUSTRALIAN RMBS MARKET

Regulatory and market developments in the US residential mortgage-backed securities space often make their way into the Australian market. US regulators have recently put forward two forms of regulatory guidance – one concept release and one final rule – to address some market developments and to implement a control standard mandated by the Dodd-Frank Act. *Mayer Brown shares insights on the content of the guidance.*

Following the global financial crisis of 2008 and the enactment of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (*Dodd-Frank Act*) in the US in response to that crisis, the local residential mortgage-backed securities (RMBS) market has seen many changes – in the regulatory environment as well as market preferences.

This article will address the Securities and Exchange Commission (SEC)'s concept release on RMBS disclosures and enhancements, and multiregulator adoption of the requirements imposed in connection with the automated valuation models (AVMs) used in certain RMBS transactions.

CONCEPT RELEASE

On 26 September 2025, the SEC published a concept release[1] inviting public comment on potential reforms to disclosure requirements for RMBS in the registered asset-backed securities (ABS) market.

The initiative aims to address longstanding concerns that current rules, particularly those under Item 1125 of Regulation AB (asset-level data), have stifled public issuance of private-label RMBS by imposing overly burdensome asset-level data requirements – including providing protected private information – as well as whether the public disclosure framework of Regulation AB prevents dissemination of important borrower-level information to investors.

The SEC is also considering whether to harmonise the definition of "asset-backed security" in Regulation AB with the *Securities Exchange Act 1934* definition.

The SEC adopted Regulation AB II in 2014. Among other things, this required issuers of registered RMBS to provide standardised, asset-level disclosures on hundreds of data points for each underlying mortgage. These requirements were intended to enable investors to perform independent due diligence and restore confidence in the market.

However, since the adoption of these rules, no registered private-label RMBS has been issued, with agency-backed and unregistered (Rule 144A) deals dominating the landscape. On 30 October 2019, the SEC under chairman Jay Clayton solicited market feedback on how to address the issues that created

1 *Concept Release on Residential Mortgage-Backed Securities Disclosures and Enhancements to Asset-Backed Securities Regulation, Release* No. 33-11391 (26 September 2025).

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the absence of registered private-label RMBS. But feedback was limited and the effort appeared to have stalled with the COVID-19 pandemic and subsequent administration change.

The SEC's current review is centered on whether the asset-level disclosure requirements for RMBS are too onerous and whether they have become a key barrier to public issuance. Market participants have argued that the sheer number and complexity of required data fields – up to 270 per mortgage – can be costly and difficult to collect, and also require the disclosure of information that is impossible to provide, especially for seasoned or legacy loans.

The SEC is seeking input on which data points remain essential for investor due diligence, which could be streamlined or eliminated, and whether a more flexible "provide or explain" regime could be adopted. This approach would allow issuers to omit certain data fields if they explain why the information is unavailable.

Meanwhile, market practice for privately issued RMBS often includes the sharing of sensitive borrower and property data, such as five-digit ZIP codes, credit scores and income information. While these data points are valuable for risk analysis, they also raise significant privacy and re-identification risks.

The SEC proposes to explore alternatives, including the use of issuer-sponsored, permissioned websites to share sensitive data with certain investors – an approach already common in the Rule 144A RMBS market. This could help balance the need for transparency with privacy protections, which have been a topic of discussion for various industry participants.

ABS DEFINITION CHANGES

The SEC's adoption of Regulation AB in 2004 included a definition of "asset-backed security" (ABS) that was intended to capture the securities and offerings to which the registration, disclosure and reporting requirements under the *Securities Act 1933* and the *Exchange Act* would apply.

An ABS is defined under Regulation AB as a "security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders".

Because of the limitations of this defined term, asset classes and structures such as collateralised loan obligations, series trusts and synthetic securitisations are not captured and so the disclosure regime and use of SEC Forms SF-1 and SF-3 are not available.

As part of the litany of laws, rules, and regulations adopted as a result of the global financial crisis of 2008, the *Dodd-Frank Act* amended the *Exchange Act* to include a separate, broader definition of "asset-backed security".

Under the *Exchange Act* definition, an ABS is defined as "a fixed income or other security collateralised by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset".

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Managed pool, series and master trust structures are expressly captured by this definition. The *Exchange Act* definition is used primarily in various rules adopted by regulators in response to risks and practices identified during the global financial crisis, including the credit risk retention rules, Rule 15ga-1 regarding repurchase and replacements, Rule 15ga-2 regarding third-party due diligence reports, and the SEC's recently effective Rule 192 regarding certain conflicts of interest.

The SEC recognises that securitisation transactions have become more diverse and complex, structurally and in the types of assets that are securitised. As a result, transactions and structures that do not meet the requirements of an ABS under Regulation AB are not able to take advantage of the SEC's disclosure regime or use Form SF-1 (absent staff no-action letters or guidance permitting exceptions) or Form SF-3 to issue publicly registered securities.

The SEC also believes the competing definitions in Regulation AB and the *Exchange Act* have caused market confusion with respect to the differences, overlap and purpose of each definition. As a result, the SEC is seeking comment about whether it should amend the definition in Regulation AB to better align with the *Exchange Act* definition, as well as to broaden the types of assets and transaction structures that can facilitate publicly registered transactions, and use the SEC's disclosure and reporting regime.

The SEC is also considering potential updates to other related definitions and providing additional interpretive guidance to clarify existing terms, including the terms "sponsor", "originator", "depositor" and "issuing entity".

NEXT STEPS

Comments are due 60 days after publication in the Federal Register. In particular, the SEC asked for the public's input with respect to ways to reduce barriers to entering the ABS market, ways to expand registration and ways to increase liquidity in the ABS market in general. Among other things, we expect the SEC to use the feedback received on this concept release to develop and propose rules related to those topics.

On 1 October 2025, the final rule implementing the quality control standards mandated by the *Dodd-Frank Act* for the use of AVMs became effective[2]. An AVM is defined in the final rule

2 See 89 Fed. Reg. 64538 (Aug. 7, 2024).

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as any computerised model used by mortgage originators and secondary market issuers to determine the value of a consumer's principal dwelling collateralising a mortgage.

The final rule has been adopted by the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Federal Reserve Board – formally, the Board of Governors of the Federal Reserve System – the National Credit Union Administration and the Office of the Comptroller of the Currency.

It requires mortgage originators and secondary market issuers that use AVMs in credit decisions or covered securitisation determinations – whether themselves or through a third party or affiliate – to adopt and maintain certain policies, practices, procedures and control systems relating to the use of AVMs.

While the rule itself is short and deviates minimally from the underlying statute, the substance is in the defined terms. Specifically, the final rule applies to mortgage originators and secondary market issuers.

A "mortgage originator" is defined as any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain, takes a mortgage application, assists a consumer in obtaining or applying to obtain a mortgage, or offers or negotiates terms of a mortgage, as well as any person who represents to the public, through advertising or other means of communicating or providing information, that such person can or will provide any of the services or perform any of these activities.

The final rule excludes a number of persons from the definition, but "mortgage originator" does not exclude people performing activities relating to business-purpose mortgages. In addition, the CFPB's official interpretation makes clear that the term excludes servicers unless a servicer performs mortgage originator activities, such as originating a refinance.

A "secondary market issuer" is defined as any party that creates, structures, or organises a mortgage-backed securities transaction. The final rule does not define what it means to "create," "structure," or "organise" a mortgage-backed security but notes that the definition covers those responsible for the core decisions required for the issuance of mortgage-backed securities.

The final rule imposes requirements on mortgage originators and secondary market issuers if they use AVMs for two purposes. The first is to engage in a "credit decision" – defined as a decision regarding whether and under what terms to originate, modify, terminate or make other changes to a mortgage, including a decision whether to extend new or additional credit or change the credit limit on a line of credit.

The second is a "covered securitisation determination" – defined as a determination regarding whether to waive an appraisal requirement for a mortgage origination in connection with its potential sale or transfer to a secondary market issuer or structuring, preparing disclosures for or marketing initial offerings of mortgage-backed securitisations.

As recognised by the final rule, these defined terms do not include using AVMs for monitoring or verifying the quality or performance of mortgages or mortgage-backed securities.

Consistent with the expanded scope of a "mortgage originator," the final rule defines a "mortgage" as a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract or equivalent consensual security interest is created or retained in a consumer's principal dwelling.

"Mortgage" covers open-end and closed-end transactions, as well as consumer-purpose and business-purpose transactions. Thus, business-purpose transactions otherwise excluded from the *Truth in Lending Act 1968*[3] are subject to the final rule if the mortgage secures the consumer's principal dwelling.

If a mortgage originator or secondary market issuer uses AVMs to engage in credit decisions or covered securitisation determinations, the final rule requires the originator or issuer to adopt and maintain policies, practices, procedures and control systems to ensure that AVMs used in these transactions adhere to certain quality control standards.

"Control systems" is defined as the functions – such as internal and external audits, risk review, quality control and quality assurance – and information systems that are used to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel including with respect to compliance with statutes and regulations.

Specifically, the quality control standards must be designed to:

- Ensure a high level of confidence in the estimates produced.
- Protect against the manipulation of data.
- Seek to avoid conflicts of interest.
- Require random sample testing and reviews.

Compared with the underlying statute, Section 1125 of the *Financial Institutions Reform, Recovery, and Enforcement Act 1989* as amended by the *Dodd-Frank Act*, the final rule only adds the last unique requirement; the first four are identical to the criteria in Section 1125[4].

The agencies noted that while existing nondiscrimination law applies to an institution's use of AVMs, specifying a fifth factor on nondiscrimination would create an independent requirement

3 The *Truth in Lending Act* was enacted in the US to promote informed use of consumer credit by requiring clear disclosure of key terms and the costs of lending to protect consumers from deceptive or unfair lending practices and ensure standardised disclosure of credit terms to consumers so that they can make informed decisions.
4 See 12 U.S.C. § 3354(a).

for institutions to establish policies, practices, procedures and control systems to specifically ensure compliance with applicable nondiscrimination laws, thereby further mitigating discrimination risk in their use of AVMs.

Although the final rule itself does not provide prescriptive requirements for the use of AVMs, the agencies recognise that different policies, practices, procedures and control systems may be appropriate for institutions with different business models and risk profiles.

Moreover, the agencies noted that guidance is already in place to assist regulated institutions in using AVMs in a safe and sound manner, and institutions that are not regulated by the agency or agencies providing guidance may still look to that guidance for assistance with compliance[5]. The agencies have declined to issue additional guidance specific to the final rule at this time.

The final rule does not create or address enforcement for failure to comply with the rule's requirements. Rather, the consequences for noncompliance with the final rule are those applicable to noncompliance with the laws the agencies oversee, such as fines, penalties, and enforcement actions[6].

In reviewing the final rule, institutions should take care to determine whether they fit within the definition of mortgage originator or secondary market issuer and, if so, whether they use AVMs to engage in credit decisions or covered securitisation determinations.

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To the extent that the final rule applies, such institutions should carefully review whether their policies, practices, procedures and control systems adhere to the final rule's requirements, including by looking to AVM guidance already issued by the agencies.

Given the final rule was not put forth until 1 October 2025, the US market is still grappling with how offering materials and transaction documents will be affected, if at all. For example, certain trade groups in the US reached out to the regulators to determine whether underwriters and initial purchasers will have any obligations with respect to the final rule and its requirements.

Changes that are being discussed in the market include risk factor disclosure, additional diligence questions and the inclusion of certain representations and warranties in securities purchase agreements.

As of the date of publication, the US market is still digesting the concept release and final rule. Mayer Brown is staying on top of the market as it develops. ■

5 89 Fed. Reg. 64539 (Aug. 7, 2024) (citing (i) Interagency Appraisal and Evaluation Guidelines, 75 FR 77450, 77468 (Dec. 10, 2010); (ii) Comptroller's Handbook, Model Risk Management, OCC Bulletin 2021-39 (Aug. 18, 2021); (iii) Supervisory Guidance on Model Risk Management, OCC Bulletin 2011-12 (Apr. 4, 2011); (iv) Guidance on Model Risk Management, Federal Reserve Board SR Letter 11-7 (Apr. 4, 2011); (v) Adoption of Supervisory Guidance on Model Risk Management, FDIC FIL-22-2017 (June 7, 2017); (vi) Supplement Guidance to Advisory Bulletin 2013-07 – Model Risk Management Guidance 2013-07, FHFA Advisory Bulletin 2022-03 (Dec. 21, 2022); and (vii) Model Risk Management Guidance, FHFA Advisory Bulletin 2013-07 (Nov. 20, 2013)).

6 See 12 U.S.C. 3354(c).