

According to a number of industry publications, non-U.S. asset-backed securities are continuing to grow at a rapid rate, enough so that the SEC felt necessary to issue additional instructions regarding foreign asset-backed securities. As stated by the SEC, foreign ABS will be required to adhere to the general framework and parameters of Regulation AB, with the exception of one additional element.

If foreign ABS are (a) issued by a foreign issuer, (b) are backed by foreign assets, (3) or are affected by credit enhancements or support [as such in items 1114 or 1115 or Regulation AB], then the following information must be disclosed:

- All mandatory disclosures required for U.S. asset-backed securities in accordance with Regulation AB.
- Thus, foreign ABS will be required to report on Forms 10-D, and 10-K and 8-K, and ongoing disclosures will also be required on Forms 10-D and 10-K.
- A description of "...any pertinent governmental, legal or regulatory or administrative matters and any pertinent tax matters, exchange controls, currency restrictions or other economic, fiscal, monetary or potential factors in the applicable home jurisdiction that could materially affect payments on, or the performance of the assets contained in the pool or the asset-backed securities." ⁽¹⁾

⁽¹⁾ Securities and Exchange Commission 17 CFR Parts 210, 228, et al. Asset Backed Securities: Final Rule

The goal, according to the SEC, is to adequately disclose the legal and regulatory administrative factors listed above, and rightly so. Additionally, the SEC also warns that non-U.S. asset-backed securitization activities are likely to be scrutinized, thus the SEC "... encourages pre-filing conferences with the staff where appropriate to discuss..." ⁽²⁾ the aforementioned legal and regulatory matters.

What might be helpful, according to foreign ABS industry players, is a detailed checklist of the above items required by the SEC for these foreign ABS issuances. The SEC gives a long list of items related to any "pertinent governmental, legal or regulatory or administrative matters."

As Regulation AB starts to take root, it is being implemented and utilized by all in the industry. I am confident we will all begin to see, just like anything else that is compliance-driven, a consistent and effective disclosure pattern that will be viewed by all as acceptable.

⁽²⁾ Securities and Exchange Commission 17 CFR Parts 210, 228, et al. Asset Backed Securities: Final Rule



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