

NEWS IN BRIEF

THE ASF'S FIRST ANNUAL MEETING will be held at the Marriott Marquis in New York City June 24-25. Under the theme, "Charting a Course Through the Perfect Storm", the event will consist of a day-and-a-half of small, focused panels and high level individual speaker presentations. Panel discussions will include, among others, "Action Plan for Troubled Transactions," "The Nature of the ABS Market: Appearance and Reality," and "Accounting for Securitization—U.S. and International Perspectives." Please see the more detailed article and conference schedule on the back page.

REVISED SARBANES-OXLEY ASSET-BACKED STATEMENT was issued by SEC staff in late February, attempting to address industry concern over ABS certifications relating to information produced by parties outside of a certifying party's control. The revised statement does not permit "split certifications" but it allows certifying officers to reasonably rely on backup certifications and other information supplied by third parties. Please see more detailed article on page 2.

REPRESENTATIVES OF THE ASF, ESF, AND THE BOND MARKET ASSOCIATION plan to meet shortly with representatives of the IASB. This is in response to the IASB's interest, following recent public round-table discussions in London, in receiving recommendations from global securitization market participants regarding the most desirable short-term approach for dealing with proposed revisions to IAS 32 and 39.

THE ASF IS WORKING TOGETHER with the European Securitisation Forum and TBMA on an important ESF Accounting "Greenpaper" Project. The project is directed toward developing, if possible, consensus recommendations for global securitization accounting standards. Through the U.S. working group, representatives of TBMA and ASF will have the opportunity to work directly with their ESF counterparts in pursuit of this goal.

THE ASF SECURITIZATION INSTITUTE will begin delivering educational and informational programming in spring 2003. The expected audience for initial programs includes regulators and legislative staffers.

ASF Accounting and Regulatory Seminar

On March 27th, over 180 ABS professionals attended the American Securitization Forum's One-Day seminar focused on "Global Off-Balance Sheet Accounting and Regulatory Update (FIN 46 Focus)" at the New York Marriott Marquis.

Jason Kravitt and Marty Rosenblatt served as program co-chairmen for the full-day event, featuring Ron Lott, the FASB's FIN 46 Program Manager, as the lunch keynote speaker.



Mike Hall, KPMG; Frank Serravalli, PricewaterhouseCoopers; Lisa Filomia-Aktas, Ernst & Young; Jim Mountain, Deloitte & Touche

The program was designed to meet the ASF core goal of providing high quality educational programming for the ABS community. The event was notable for its small, focused panels, which engaged in detailed discussions of timely and substantive accounting, capital and securities regulatory issues in the securitization markets.

Panel topics included "FASB Interpretation 46: Issues That Arise in Connection with Interpreting FIN 46 Including for ABCP Vehicles, CDOs, Leasing Deals," "Save the Q: The Future of QSPE's," "Is Off-Balance Sheet Treatment Still VIE-able? Potential Solutions to Consolidation Under Financial Interpretation 46;" International Accounting Standards and Proposals on Securitization, Sarbanes/Oxley—ABS 10-K Certifications, Basel and Risk Based Capital.

ASF Adopts Recommended Monthly Investor Report Template for Multi-Seller Conduits

The ASF has approved its first recommended market standard—a Monthly Investor Report Template for Multi-Seller Conduits. The standard is designed to elevate ABCP reporting standards and to promote more uniform reporting. This should boost investors' ability to evaluate data from different sources, thus improving information flow and comparability. While adoption of the standard is voluntary for ASF members and non-members, the ASF hopes it will be viewed as embodying best practices and widely adopted throughout the industry.

Currently, investors receive monthly reports from sponsors and administrators of different ABCP conduit programs, each of which follows a different format and provides different information. Because of the format disparities, it has been difficult for investors to compare and analyze these reports. With the adoption of a standardized report format, investors will be able to use the monthly data more effectively. This, in turn, could lead to increased efficiencies for ABCP issuers and conduit sponsors, because investors would have a greater understanding of available products and their performance.

Members of the ASF's Market Standards and Practices Committee's task force worked hard to develop this standardized reporting template, having obtained detailed input from a broad range of ABCP market participants. The ASF hopes program sponsors and administrators will embrace it as a new best practice for multi-seller conduit reporting. To access this standardized monthly investor report template, please go to the ASF's website, www.americansecuritization.com.

New Addition to the ASF: Laura Strothmann Joins

Laura Strothmann, previously an associate in the Asset Finance Group at Credit Suisse First Boston in New York, recently joined the American Securitization Forum as an associate director. A Merrick, Long Island native, she has worked in finance at CSFB and Morgan Stanley.

Ms. Strothmann joined the ASF on January 27 and reports to Dwight Jenkins, the ASF's executive director.

Laura holds a bachelor's degree in government from Cornell University and an MBA from Columbia Business School. She previously worked for Morgan Stanley as a financial analyst in the public finance department in New York, and in Firm Management in Hong Kong. While an associate at CSFB, she worked in the Asset Finance Group on asset-backed transactions, both in the U.S. and Australia.

Revised SEC Sarbanes-Oxley Asset-Backed Guidance Strikes a Workable Compromise

The Sarbanes-Oxley Act of 2002 is arguably the most sweeping securities law reform legislation since the enactment of the Securities Act of 1933 and the Securities Exchange Act of 1934. Publicly registered asset-backed transactions, like all other transactions that create publicly offered securities, have been affected by the Sarbanes-Oxley legislation. The most visible and controversial application of this act to the ABS market has been the new certification requirements for publicly filed periodic reports.

Just after passage of the Act, representatives of TBMA and ASF entered into discussions with SEC staff to clarify the application of new SEC certification rules to ABS transactions. Ren Martin of Sidley Austin Brown & Wood and Cam Cowan of Orrick Herrington & Sutcliff, who is Chairman of the ASF Legal Subcommittee, led the industry response to the SEC, based on input from ASF and TBMA members.

The initial statement of compliance for asset-backed issuers released by the SEC last fall indicated that one party—namely the depositor, servicer, or trustee of the securitization—was responsible for making all the required certifications for the accuracy and completeness of the publicly filed distribution and servicer reports. This statement of compliance tailored the standard Sarbanes-Oxley certifications for use in asset-backed transactions, which typically opt out of the ordinary periodic filing requirements imposed by the Securities Exchange Act under a well-established progeny of no-action letters. These no-action letters allow asset-backed issuers to satisfy their reporting requirements by filing periodic servicing or distribution reports, instead of filing financial statements for the trust or other securitization vehicle.

Many ABS market participants reacted unfavorably to the certification rules proposed in the SEC's initial asset-backed compliance statement. The primary concern to ABS market participants was that the rules did not permit dividing responsibility for the required certifications among the parties to the transaction who were

responsible for the different components of the certified information. An officer who signs a Sarbanes-Oxley certification is subject to the same liability as an officer signing other periodic reports under the Securities Exchange Act, and many experts believe that the Sarbanes-Oxley certification requirements may expand the liability of the signer by requiring that individual, based on his or her knowledge, to personally confirm the issuer's periodic reports. As a result, it may be easier for the SEC to bring a direct action against a signer. It may also make it easier for private litigants to hold the signer responsible for material misstatements or omissions in the documents covered by their certification. The joint TBMA-ASF group followed up with a series of meetings and submissions to the SEC staff advocating, among other things, a reasonable reliance standard for certifiers.

In late February and in advance of the 2002 10-K filing deadlines, the SEC staff issued a revised asset-backed statement that attempted to address the industry concern over certifying information produced by parties outside of the certifying party's control. While the revised statement did not permit the split certifications that the industry had hoped for, it did address the problem by allowing certifying officers to rely on backup certifications produced by third parties. The SEC cautioned, however, that the use of backup certifications from unaffiliated parties does not affect the responsibility of the signer for the certification, or the requirement that any reliance on backup certifications needs to be reasonable.

Most industry participants found this result to be an acceptable compromise in connection with required certifications for their 2002 10-K's filed at the end of March. Going forward, the market can expect continued dialogue among industry participants on this point, as well as the continued evolution of liability-sharing arrangements for Sarbanes-Oxley certifications. It is unlikely, however, that the SEC will provide any additional published asset-backed guidance on these topics in the near future.

Predatory Lending is Theme of Well-Attended Sunset Seminar

On March 12, a distinguished panel of industry executives led a packed house through the third ASF-sponsored Sunset Seminar, “Predatory Lending and its Effects on the Secondary Market.” Citing the importance of home equity securitization to the overall asset-backed market (it comprises over 30% of aggregate ABS issuance in 2002) and recent disruptions to the secondary markets by state and other predatory lending laws, the ASF convened this seminar for market participants to better consider issues in a fast-changing environment.

Moderated by Thacher, Proffitt & Wood’s Stephen Ornstein, the panel consisted of Mike Williams, Vice President at the Bond Market Association’s Washington, D.C. office; Frank Raiter, Managing Director at Standard & Poor’s; and Adam Bass, Senior Executive Vice President at Ameriquest Mortgage Co., one of the market’s larger originators and securitizers of non- and sub-prime mortgages. ASF members and non-members in attendance included representatives from nearly every group associated with securitization, including issuers, investors, investment bankers, rating agency analysts, attorneys, accountants, trustees, and due diligence providers.

The overriding tone of the panel presentations and subsequent audience participation was one of concern, this despite recent changes to Georgia’s harsh legislation (the Georgia Fair Lending Act or GFLA) that resulted from, among other pressures, a secondary market backlash that prompted a widespread pullback from subprime lending in that state. Mr. Ornstein noted the complexity of competing federal, state, and local regulations that are currently on the books or due to be enacted soon. This has weighed heavily on originators, despite record volumes resulting from a low interest rate environment. Further, Mr. Ornstein noted the confusion and lack of certainty surrounding certain statutes that attempt to assign liability to subsequent purchasers of the loans themselves and/or investors in bonds backed by subject loans. While “reasonable” diligence in many of these laws may be a defense to assignee liability, it appears to be a shifting standard or one that is not clearly defined, adding further complexity.

Mr. Bass echoed that concern, citing Ameriquest’s earlier pull out from Georgia and possible exit from lending in New Jersey and other jurisdictions. At the root of the problem, he contended, is the lack of understanding that exists among legislatures and consumer advocacy groups regarding the immediate effect that the secondary market has on consumer lending. Highlighting with colorful insight the background behind the GFLA’s passage, Mr. Bass cautioned the audience not to discount the nature of the legislative process and the important influence of politics. Best practices, such as those initiated several years ago at Ameriquest, are a lender’s best avenue to successful lending in today’s environment.



Stephen Ornstein, Thacher, Proffitt & Wood; Mike Williams, The Bond Market Association; Frank Raiter, Standard & Poor’s; Adam Bass, Ameriquest Mortgage Co.

TBMA’s Mike Williams picked up on that theme while voicing the frustration of many market participants. Mr. Williams noted the efforts of many lenders to work in cooperation with activist groups to arrive at fair lending standards; however, the political sensitivity of the issue has created an environment in which consensus has been difficult to reach. Mr. Williams further noted that, despite possible federal preemption and other proposals at the federal level (for example, the Ney bill), recent economic domestic developments and the war with Iraq have made it more difficult for TBMA, ASF and other secondary market groups to make tangible progress toward achieving a unified legislative solution.

S&P will continue to monitor state law developments as it emphasizes its focus on the end investor in securities, noted Frank Raiter. Mr. Raiter pointed to S&P’s decision to once again rate residential mortgage ABS backed by loans subject to the GFLA, which was amended in part due to S&P’s earlier decision not to rate such deals because of its inability to quantify investor exposure. Mr. Raiter walked through S&P’s “decision tree” approach to rating transactions that includes collateral subject to the statute. This approach is designed to help its analysts rate transactions that are backed by loans subject to a quantifiable assignee liability threshold. At the very least, S&P’s rating approach is designed to introduce objectivity into what continues to be an uncertain regulatory environment.

Audience members voiced their concerns and questions in a spirited Q&A session that raised additional issues, but nonetheless highlighted the importance of predatory lending legislation and its effects on the secondary market to a wide variety of participants in the capital markets as a whole, and the ABS markets in particular.

The discussion did not end in the meeting session or in the overflow room that was set up to handle the larger-than-expected crowd of over 120 participants. A networking cocktail reception was enjoyed by the attendees.

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Deutsche Bank Securities Inc.

STAFF

Dwight Jenkins
American Securitization Forum

Laura Strothmann
American Securitization Forum

First ASF Annual Meeting June 24-25

The American Securitization Forum will hold its first annual educational conference at the New York Marriott Marquis June 24-25 in New York City. The one-and-a-half day event, titled, "Charting a Course Through the Perfect Storm," will include high level individual speaker presentations, as well as instructional and educational panels, and ASF committee meetings, which will be open to all ASF members and non-members in attendance.

A survey conducted by the ASF earlier this year asked members for their opinions on a variety of aspects of the conference, including content. "Not surprisingly," says Laura Strothmann, the associate director of the ASF, "most are interested in substantive topics that are of concern to a broad range of members, such as fraud prevention and servicers' roles, as well as legal, regulatory, and accounting issues. The content will be topical, high quality and highly appropriate for our membership."

The general format of the conference has been determined. It will include a mix of roundtable and panel discussions, as well as individual speaker presentations, highlighted by at least one keynote speaker. Panel discussions will include, among others, "Action Plan for Troubled Transactions" and "The Nature of the ABS Market: Appearance and Reality." Other sessions will focus on securities laws, capital adequacy, and an investor roundtable. Please see the more detailed schedule below.

The annual meeting is being organized by the ASF's Annual Meeting Task Force, led by Diane Wold of GMAC RFC and Diane Citron of Mayer, Brown, Rowe & Maw.

To register and for more details on the ASF Annual Meeting, please go to the ASF's website, www.americansecuritization.com.

Charting a Course Through the Perfect Storm**TUESDAY, JUNE 24**

Registration/Continental Breakfast	7:45 – 8:30 am
Welcoming Remarks	8:30 – 8:45 am
Keynote Speaker: Peter Fisher , Under Secretary of the U.S. Treasury for Domestic Finance	8:45 – 9:30 am
Economic Trends and Securitization Market Impact	9:30 – 10:30 am
Researcher Roundtable Discussion	11:00 – noon
Lunch	noon – 1:15 pm
Accounting for Securitization—U.S. and International Perspectives	1:15 – 2:15 pm
Action Plan for Troubled Transactions	2:15 – 3:15 pm
The Nature of the ABS Market: Appearance and Reality	3:30 – 5:00 pm
Networking Cocktail Reception	5:00 – 7:00 pm

WEDNESDAY, JUNE 25

Continental Breakfast	8:00 – 8:30 am
Recap of Day 1	8:30 – 8:45 am
ASF Plenary Session	8:45 – 9:30 am
Concurrent Sessions:	9:45 – 10:45 am
■ Capital Adequacy Regulation/BASEL II and FFIEC Guidance	
■ Securities Registrations Disclosure and Reporting Initiatives	
Structured Products' Unique Future Value Proposition:	10:45 – 11:45 am
An Investor Roundtable Discussion	
Closing Remarks	11:45 – noon
Conference Concludes	noon

CONTACT INFORMATION

American Securitization Forum
360 Madison Avenue
New York, NY 10017-7111

Dwight Jenkins 646.637.9200
djenkins@americansecuritization.com

Laura Strothmann 646.637.9233
lstrothmann@americansecuritization.com

Media Contacts

Emily Brenner
ebrenner@bondmarkets.com

Katrina Keller
kkeller@bondmarkets.com

ASF Report Subcommittee

Brendan Keane, Co-Editor
Credit Suisse First Boston LLC

Lisa A. Tibbitts, Co-Editor
Moody's Investors Service

The American Securitization Forum (ASF) is a broadly-based professional forum through which participants in the U.S. securitization market can advocate their common interests on a number of important legal, regulatory and market practice issues. The ASF is a forum of The Bond Market Association.