

American Securities Association
Bond Dealers of America
Education Finance Council
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National Association of Bond Lawyers
National Association of Health and Educational Facilities Finance Authorities
National Association of Municipal Advisors
National Council of State Housing Agencies
National Association of State Treasurers
Securities Industry and Financial Markets Association

December 1, 2025

Vanessa A. Countryman

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Concept Release on Residential Mortgage-Backed Securities Disclosures and Enhancements to Asset-Backed Securities Registration
[Release Nos. 33-11391; 34-104102; File No. S7-2025-04]

The undersigned organizations, which collectively represent large portions of the municipal securities market and its participants, appreciate this opportunity to comment in response to the U.S. Securities and Exchange Commission's (the "Commission") Concept Release on Residential Mortgage-Backed Securities Disclosures and Enhancements to Asset-Backed Securities Registration [Release Nos. 33-11391; 34-104102; File No. S7-2025-04] (the "Concept Release"). While we have an outstanding request to extend the comment window on the Concept Release in light of the recently concluded federal government shutdown,¹ we wish to

¹ See November 14, 2025, letter from a subset of our organizations, entitled "Request from Municipal Market Associations for Comment Filing Extension on Release Nos. 33-11391; 34-104102; File No. S7-2025-04." Web access: <https://www.nabl.org/resources/abs-comment-extension-request/>

take this opportunity to submit preliminary thoughts and concerns that the municipal securities market has in response to the proposals set forth in the Concept Release.

The Concept Release intends to solicit information on ways to streamline compliance processes associated with various rules and regulations governing registered mortgage-backed and asset-backed securities (herein collectively referenced as “ABS”) beyond the municipal securities market. We recognize the important economic reasons for the Commission to pursue the Concept Release’s proposals, including reducing burdens and increasing access to registered ABS markets for issuers who may now rely on SEC Rule 144A to raise capital. However, we urge the Commission to consider, in any potential forthcoming rulemaking on the heels of the Concept Release, how any such proposals could affect the municipal securities market. The Commission should particularly consider how rulemaking might add to or create regulatory burdens and liability for issuers and borrowers in the municipal securities market, and how any such added burdens in connection therewith comport with directives of the President and the Office of Management and Budget (“OMB”), specifically the President’s January 31, 2025, Executive Order, entitled “Unleashing Prosperity through Deregulation.”²

Our comments provide background on the municipal securities market and specific responses to questions posed in Section IV of the Concept Release, particularly on considerations relating to potential amendments to the definition of ABS under Regulation AB. Our north star is making sure that the Commission considers the municipal securities market as they look to make changes to Regulation AB through future rulemaking. We also offer additional thoughts on the application of the Securities Exchange Act of 1934 (the “Exchange Act”) definition of ABS in the context of the municipal securities market, which reiterate earlier comments made on various Exchange Act ABS regulatory proposals. Specifically, many of our organizations have previously explained that its application to the municipal securities market is inconsistent with both congressional intent and the statutory framework that largely exempts municipal issuers and borrowers from registration and reporting requirements under the federal securities laws.

² Executive Order (E.O.) 14192, “Unleashing Prosperity through Deregulation,” among other objectives, emphasizes the Executive Branch’s policy “to alleviate unnecessary regulatory burdens place on the American people,” and instructs the heads of Executive Branch agencies to “identify at least 10 existing regulations to be repealed” prior to proposing new regulations. While the Concept Release intends to streamline regulatory processes for participants in private label ABS markets, we reiterate our concern that if the definition of ABS is broadened without a specific indication that it does not apply to the municipal securities market could subject its participants to new, unfamiliar regulatory burdens and concerns.

Our comments are structured as follows:

- I. About the Municipal Securities Market and its Unique Properties
- II. Statutory Protections for Municipal Securities and Congressional Intent
- III. On the Application of the Exchange Act Definition of ABS to Municipal Securities
- IV. On Section IV of the Concept Release: “Definition of Asset-Back Security Generally”
- V. Conclusion

Most importantly, we again urge the Commission to take this opportunity to revisit its initial determinations that certain municipal securities may constitute Exchange Act ABS for the purposes of certain provisions of the *Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010* (the “Dodd-Frank Act”) and instead provide a total exemption for municipal securities from the Exchange Act definition of ABS. See *Section III of our comments*. If the Commission declines to do so, it should ensure that any changes to Regulation AB are articulated and implemented in a manner that does not extend their reach into the municipal market. See *Section IV of our comments*.

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I. About the Municipal Securities Market and its Unique Properties

The \$4.3 trillion municipal securities market serves as a key source of capital for states, local governments, tribes, and nonprofit borrowers. Issues of municipal securities finance critical government services throughout the country—including transportation, water and power infrastructure, educational institutions, and healthcare facilities. The municipal securities market also provides capital for state and local programs that directly or indirectly provide American families with access to reduced tax-exempt borrowing rates for qualified mortgages, rental communities, and student loans through public agency conduit issuers designed and authorized to advance such goals.

Issuers in the market typically issue bonds in which the issuer, obligor, and user of bond proceeds are all the same entity. Some municipal securities, however, are issued as conduit bonds, in which one or more borrower obligors raise capital via a bond issued through a conduit issuer. Borrowers pursue these structures for a host of reasons—but usually these conduit borrowers utilize them to access lower tax-exempt interest rates. While such conduit bonds may share characteristics in common with private label ABS, it is critical to note the many significant ways in which they differ, particularly relating to the role of the conduit issuer:

- Mission Driven Public Purpose: Issuers of municipal conduit bonds are publicly controlled, state and local agencies exercising their debt issuance powers for a public

benefit. Municipal conduit issuers are not driven by profit motive and generally access the municipal market to raise capital for infrastructure; provide affordable mission-driven finance for other public works such as affordable housing, hospitals, educational institutions, higher education loans; or other general services for the public.

- Subject to Strict Federal Tax Law and Other Legal Requirements: The vast majority of municipal securities offerings are issued on a tax-exempt basis.³ Accordingly, the offerings are subject to extensive federal tax law requirements, including that the borrowing serve a qualified public purpose; be subject to public approval; and, in some instances, fall under state volume caps controlling the amount of issuance in a given year. In addition, as instrumentalities of states or their political subdivisions, conduit issuers are subject to strict guardrails and limitations per their authorizing statutes and other state and local laws. They are also subject to myriad ongoing governmental controls and transparent public oversight. Furthermore, their investment activities are typically limited by state and local investment policies that preclude them from engaging in some of the behaviors federal ABS rules seek to prohibit.⁴
- Municipal Issuers Typically Maintain Ownership of Assets: Issuers of municipal securities typically do not transfer ownership of the assets that are the anticipated source of payment for their bonds (e.g. loan agreements between a conduit issuer and a conduit borrower or a bond-funded portfolio of loans) to special purpose entities, as is characteristic of commercial ABS. Instead, they retain ownership, subject to pledges of these assets as security under trust documents and generally retain substantial discretionary rights to administer their financings and to manage and enforce the pledged assets. Such rights may extend to changes in the composition of the pledged assets and to the issuance of additional debt secured by the same trust estate. Revenue bond issuers may provide for security in addition to the anticipated source of payment, such as reserve

³ The “Municipal Markets Facts,” issued by the Municipal Securities Rulemaking Board (the “MSRB”), indicates that \$450 billion of the entire \$513 billion of municipal securities issuances issued in 2024 (> 87 percent) were done so on a tax-exempt basis. While this statistic covers all municipal securities, including those not impacted by ABS rules, it supports the argument that the vast majority of municipal issuances, including potential municipal ABS, are subject to tax law requirements under Section 141 of the IRC. Web access: <https://www.msrb.org/sites/default/files/2022-09/MSRB-Muni-Facts.pdf>

⁴ Commenters have previously articulated how state and local investment policies would preclude conduit issuers of municipal securities from engaging in the sort of adversarial transactions that rules like SEC Rule 192 seek to prevent. See the “Joint Response to ABS Conflicts of Interests Proposal” letter from the National Association of Bond Lawyers et. al. submitted on March 27, 2023 (the “NABL et. al. 2023 Letter”), in response to the SEC’s proposed rulemaking on the subject (File No. S7-01-23). Web access: <https://www.nabl.org/resources/joint-response-to-abs-conflicts-of-interests-proposal/>

funds or issuer or third party guarantees. Municipal issuers also typically engage in other financing and operating activities in connection with the program under which the bonds are issued and often in connection with other public programs.

- Existing Disclosure Framework: The municipal securities market is subject to robust disclosure requirements, through: (i) the application of the anti-fraud provisions to its participants; (ii) obligations on broker-dealers acting as underwriters to review pre-sale information in connection with an offering; and (iii) continuing disclosure undertakings between underwriters and obligated persons. The existing disclosure framework and the frequent application of ongoing disclosure obligations to the obligated person—typically contractually assigned to the conduit borrower in the case of single asset conduit bonds—further limit the utility of ABS rules applied to the conduit issuers. To our knowledge, investors in the municipal securities market are not demanding the additional disclosures and regulatory compliance required under various ABS rules.
- Limited Role of Municipal Securities in Prior Financial Crises: Perhaps most importantly, and as discussed in past letters submitted to the Commission by several of our organizations, the types of municipal security offerings potentially impacted by various ABS proposals and rules were not among the sorts of securities that led to financial distress in the lead-up to the Great Recession financial crisis in 2007-2009. Furthermore, default rates are significantly lower for municipal securities than for registered corporate securities. In a 2023 report, Moody's estimated the five-year Cumulative Default Rate ("CDR") for municipal securities since 2013 to be 0.08 percent. The report further noted that the highest five-year CDR for municipal securities was still only 0.15 percent among the competitive enterprises category, a ratings agency label generally used for revenue bonds. These low default rates contrast to the five-year CDR for corporate securities at 7.8 percent.⁵

II. Statutory Protections for Municipal Securities and Congressional Intent

The municipal securities market is not subject to pre-sale disclosure requirements through the Tower Amendment, a 1975 amendment made to Section 15B(d) of the Exchange Act (15 USC 78o-4(d)) that prohibits both the Commission and the MSRB from requiring "any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of

⁵ See "U.S. Municipal Bond Defaults and Recoveries, 1970-2022" from Moody's Investor Services. Published July 19, 2023.

securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities,” and prohibits the MSRB from requiring “any issuer of municipal securities, directly or indirectly through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer.” Accordingly, municipal securities are exempt from pre-issuance registration requirements imposed by the Commission, including those required under Regulation AB.

The Dodd-Frank Act amended the Exchange Act to include a statutory definition of ABS for the purposes of several new ABS rules. The subsequent post-Dodd-Frank Act ABS rules have inconsistently applied to (or provided exemptions for) municipal securities. Congress provided no mandate in Dodd-Frank or other legislation for the Commission to classify municipal securities as ABS under the Exchange Act. In fact, section 941 of Dodd-Frank explicitly encouraged the Commission to consider a full or partial exemption of municipal securities from the Credit Risk Retention Rule. While we commend the Commission for granting such an exemption from its 2014 final rule on Credit Risk Retention, we believe the Commission erred in its determination to include certain municipal securities as Exchange Act ABS for the purposes of other rules. The lack of a congressional mandate and the statutory implication that municipal securities are not Exchange Act ABS for the purposes of at least one Exchange Act ABS rule bolster our case that Congress: (i) never intended for municipal securities to be classified as Exchange Act ABS; and (ii) empowered the Commission to exclude municipal securities from the Exchange Act definition of ABS.⁶

The Commission’s rule-specific approach to interpreting the Exchange Act’s definition of ABS as potentially applicable to municipal securities since the passage of the Dodd-Frank Act has created uncertainty among, and imposed regulatory complexity on, municipal securities market participants. The Commission should seek to alleviate and address these existing concerns prior to extending the reach of the Exchange Act definition of ABS via the Concept Release’s proposal to harmonize it with the definition of ABS per Regulation AB.

⁶ NABL has previously argued that the Dodd-Frank Act indicated that municipal securities would only be deemed as Exchange Act ABS if the SEC affirmatively determined them to be so. See the November 19, 2010 letter, “NABL Comments on SEC Rel. Nos. 33-9148, 34-63029, 33-9150, and 34-63091” (the “NABL 2010 letter”) for more details. Web access: <https://www.nabl.org/resources/response-sec-proposals-abs-2010/>

III. On the Application of the Exchange Act Definition of ABS to Municipal Securities

While the Concept Release focuses on proposed changes to Regulation AB, its discussion relating to changing and harmonizing its definition of ABS with that of the Exchange Act raises continued concerns that municipal securities market participants have with the Commission's application of the Exchange Act definition of ABS to municipal securities. ABS rules promulgated since the enactment of the Exchange Act definition of ABS have imposed a patchwork of regulatory obligations that burden municipal issuers, serve little functional purpose for investors, and continue to create ambiguity for market participants. To date, the Commission has indicated that some municipal securities may meet the Exchange Act definition of ABS for the purposes of two rules:

- Repurchase Request Disclosure (Rule 15Ga-1): In 2011, the Commission finalized Rule 15Ga-1 that implements Section 943 of the Dodd-Frank Act and requires covered municipal issuers, which are those that met the rule's definition of securitizer and have covenanted to repurchase or replace a securitized asset for breach of representation or warranty if requested by investors, to report such repurchase or replacement requests and their disposition on a quarterly or annual basis to the MSRB's EMMA system. Since its initial proposal, the rule has raised considerable questions among municipal securities market participants as to whether the required disclosures violate the protections afforded to municipal issuers under the Tower Amendment.⁷ While the Commission did provide an extended implementation period, it nonetheless continues to cause considerable burdens and confusion in the municipal securities market. It remains unclear to what extent the submission data is even accessed by municipal issuers.
- Conflicts of Interest Rule (Rule 192): In 2023, the Commission finalized Rule 192, which implemented Section 621 of the Dodd-Frank Act and prohibits securitization participants in an ABS, including municipal securities market participants where applicable, from engaging in conflicted transactions relating to the underlying ABS. The imposition of the rule again caused considerable confusion in the municipal market. As many market securities participants have previously commented, the unique differences of the municipal securities market—including strict investment policies placed on states, political subdivisions, and instrumentalities thereof—make such conflicted transactions by conduit issuers unlikely.⁸

⁷ See letter on "File Numbers S7-24-10 and S7-26-10" from Bond Dealers of America et. al. Web access: <https://www.sec.gov/comments/s7-24-10/s72410-37.pdf>

⁸ See the NABL et. al. 2023 Letter.

In promulgating other post Dodd-Frank Act rules, the Commission has provided carveouts, including for the Credit Risk Retention rule, which implemented section 941 of the Dodd-Frank Act. While section 941 of the statute expressly empowers the Commission to consider such exemptions for the purposes of the Credit Risk Retention rule, we again argue that the Exchange Act's broader definition of ABS also provides the Commission with the authority to exempt municipal securities from the definition and a mandate to consider doing so. We also argue that the Commission's selective application of ABS rules to municipal securities further illustrates its power to exempt municipal securities from Exchange Act ABS definitions and rules.

We maintain that Congress did not intend for municipal securities to fall under the definition of Exchange Act ABS by default and urge the Commission to consider granting a total exemption for municipal securities from its interpretation of the definition. Absent such an exemption, the Commission should exempt municipal issuers from the reporting requirements under Rule 15Ga-1 and from the definition of "securitization participants" for the purpose of Rule 192.

IV. On Section IV of the Concept Release: "Definition of Asset-Back Security Generally"

Section IV of the Concept Release asks commenters to respond to several proposals to amend the Regulation AB definition of ABS, including whether the definition should "cross reference, or otherwise incorporate, the Exchange Act Definition" (Question 33); whether the Commission should "replace the entirety of the Regulation AB ABS Definition with the Exchange Act Definition" (Question 34); and whether the Commission should expand "the Regulation AB ABS Definition to conform with the recently adopted definition of 'asset-backed security' in Securities Act Rule 192" (Question 35). Understandably, municipal securities market participants have concerns about the potential impact of inserting a newer definition of ABS, one based on a statutory concept that has at least for some purposes been applied to some municipal securities, into Regulation AB without a clear indication that such changes will not affect the regulatory requirements or disclosure obligations of municipal issuers or other municipal market participants.

V. Conclusion

If the Commission proceeds with proposals to harmonize or otherwise broaden the definition of ABS under Regulation AB, we urge that it first determine that municipal securities do not meet the Exchange Act definition of ABS—or, failing such a determination, that it explicitly reaffirm

the inapplicability of Regulation AB requirements and disclosure standards to the municipal securities market.

Broad changes in the ABS regulatory framework could pull significant portions of the municipal securities market further under the ABS umbrella, adding to regulatory uncertainty, increasing perceived liability risks, creating traps for the unwary, and potentially changing municipal investor behaviors. Requiring the municipal securities market to be subject to unnecessary ABS rules risks creating barriers to public market entry and increasing the cost of capital formation for issuers and borrowers. We encourage the Commission to consider these requests to ensure well-intentioned efforts, designed to reinvigorate the broader ABS market, do not inadvertently restrict public market access for municipal issuers and borrowers in the country.

We thank you for your time and attention on these important matters. We would welcome the opportunity to have issuers and other market participants meet with Commissioners or Commission staff to discuss the impact the Concept Release proposals may have on the municipal securities market and—most importantly—on states, local governments, nonprofit borrowers, and American families. Please do not hesitate to reach out to the respective contacts, details listed below, at each of our organizations.

Sincerely,

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