



**BANK OF THE WEST**  
**BNP PARIBAS**

April 3, 2018

Katherine Hsu  
Chief, Office of Structured Finance  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: **Release Nos. 33-9638; 34-72982; File No. S7-08-10**  
**Application of Items 1111(h) and 1125 of Regulation AB to Recreational Vehicle Loans**

Dear Ms. Hsu:

On behalf of Bank of the West, the undersigned hereby requests confirmation that, in the view of the Staff (“Staff”) of the Securities and Exchange Commission (the “Commission”), the asset-level information requirements under Items 1111(h) and 1125 of Regulation AB do not currently apply to loans secured by recreational vehicles (“RVs”). As more fully discussed below, the nature of RVs, the characteristics of RV loans and commentary in the Commission’s releases lead us to the conclusions that (a) RV loans do not fit into any of the asset classes for which asset-level information requirements have been adopted to date and (b) the Commission would likely group RV loans with other loans backed by “leisure craft,” which is an asset class for which the Commission has not adopted asset-level information requirements.

Bank of the West is a California banking corporation whose deposits are insured by the Federal Deposit Insurance Corporation (“FDIC”), and provides, among other banking products and services, RV financing to consumers directly and indirectly through RV dealers. Bank of the West has not filed, nor does it currently intend to file, a registration statement with the Commission related to the issuance of asset-backed securities (“ABS”) related to RV loans. Therefore, the interpretive guidance sought by this letter cannot be accomplished through the Commission’s registration statement comment process.

Bank of the West may in the future sponsor securitization transactions involving the issuance of ABS collateralized by RV loans in offerings (“Exempt Offerings”) that are exempt from the registration requirements of Section 5 of the Securities Act of 1933, as amended (the “Securities Act”). As an FDIC insured depository institution, Bank of the West could become subject to the FDIC’s conservator or receiver powers should the bank become insolvent. As receiver or conservator, the FDIC would have various powers under the Federal Deposit Insurance Act, which may include the ability of the FDIC to repudiate the transfer of securitized assets by an insured depository institution (an “IDI”) to its related securitization vehicle. To provide investors

with protection from this risk in appropriately structured securitizations, the FDIC in 2010 adopted a rule (the “FDIC Rule”)<sup>1</sup> that contains several safe harbors for securitization transactions, each of which limits the power the FDIC can exercise in the insolvency of an IDI. One of the preconditions to satisfaction of an applicable safe harbor is that the securitization transaction documents require that information be made available to investors that “at a minimum, shall comply with the requirements of Regulation AB, 17 CFR 229.1100 through 1123 (to the extent then in effect) or any successor disclosure requirements for public issuances, *even if the obligations are issued in a private placement or are not otherwise required to be registered.*”<sup>2</sup> Consequently, the FDIC Rule would require asset-level information disclosures for an Exempt Offering of ABS, if the ABS is backed by those asset classes specified in Items 1111(b) and 1125 of Regulation AB.

In 2010 the Commission initially proposed to apply asset-level information requirements to all securitized assets (other than credit cards, for which “grouped data” was proposed), with additional specialized data points for nine specified categories of assets: residential mortgages, commercial mortgages, automobile loans, automobile leases, equipment loans, equipment leases, student loans, floorplan financings and resecuritizations.<sup>3</sup> This “all inclusive” regime, requiring disclosure for every type of securitized asset, was not ultimately adopted. Instead, the final rules limited asset-level information disclosure to only six asset classes,<sup>4</sup> and they specified a tailored set of data points for each asset class.<sup>5</sup>

In departing from the proposed “all-inclusive” approach and instead limiting the asset-level information requirement to specific asset classes, the Commission noted in its adopting release that each asset class “presents its own unique considerations” and that “the mix of information needed for analysis varies from asset class to asset class.”<sup>6</sup> Optimizing the usefulness and comparability of data points across an asset class was a point of emphasis by the Commission. One of the Commission’s justifications in adopting a standardized approach to asset-level information disclosure was to facilitate investors’ ability to compare the asset-level information of a particular pool to other ABS offerings involving similar assets, along with assessing the expected performance of a new pool based on the performance of past offerings involving similar assets.<sup>7</sup>

Inasmuch as asset-level information is required only if the asset pool includes assets from any of the specified six asset classes, the question is whether RV loans should be considered to fit within one of those six asset classes. The only asset class that would even remotely seem to merit consideration is the one for automobile loans. While we believe that the Commission did not

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<sup>1</sup> “Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation,” 75 Fed. Reg. 62087 (2010) (codified at 12 C.F.R. 360.6).

<sup>2</sup> 12 C.F.R. 360.6(b)(2)(i)(A).

<sup>3</sup> See Asset-Backed Securities, Release No. 33-9117 (Apr. 7, 2010) [75 FR 23328].

<sup>4</sup> Item 1111(h) (17 C.F.R. §229.1111(h)) requires asset-level information “if the asset pool includes residential mortgages, commercial mortgages, automobile loans, automobile leases, debt securities and resecuritizations of asset-backed securities...”

<sup>5</sup> See Item 1125 and the Appendix to Item 1125-Schedule AL (17 C.F.R. §229.1125).

<sup>6</sup> 79 FR 57183, 57198 (Sept. 24, 2014).

<sup>7</sup> 79 FR 57183, 57202 (Sept. 24, 2014).

intend RV loans to be grouped into the automobile loan asset class, the lack of a detailed discussion in the adopting release as to the Commission’s intended scope of the term “automobile” creates uncertainty, leading us to request interpretive guidance.<sup>8</sup>

An “automobile loan” in the ABS market is commonly understood to be a loan backed by a passenger vehicle such as a car, a light-duty truck or a sport utility vehicle. If the Commission’s intent was to encompass a broader range of vehicle types as collateral, it could have used the term “motor vehicle” (which the Commission used at an earlier point in the process, as discussed below) or another more descriptive term. The Commission’s use of the term “automobile” seems intentional and used to encompass only cars, light-duty trucks and SUVs, with one exception. That one exception is motorcycles. Although the adopting release included no substantive discussion of motorcycles,<sup>9</sup> the array of “code descriptors” that can be selected for “vehicle type” does include “motorcycle” as a choice.<sup>10</sup> It seems reasonable to conclude that, if the Commission intended for the automobile loan asset class to encompass more types of collateral, it would have specified those vehicle types, as it did by expressly including motorcycles.

Moreover, in the original Regulation AB adopting release, the Commission defined “motor vehicle” leases in the context of defining what constitutes an ABS, and as part of that definition, provided examples of “automobiles” when stating that automobiles are a subset of “motor vehicles.” The Commission stated that:

Motor vehicle leases for this purpose includes leases for automobiles (which includes light duty trucks, sport utility vehicles and vans), motorcycles, trucks and buses. As proposed, motor vehicle lease would not include leases for leisure craft such as watercraft or snowmobiles.<sup>11</sup>

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<sup>8</sup> We note that the adopting release referenced RV loans, but not in the context of applying the Commission’s asset-level information disclosure regime to RV loans. The adopting release contained the following text in a footnote that was describing the basis of computation of data in a chart that showed the issuance volume in various categories of registered ABS transactions from 2004 through 2013:

“Auto loan ABS [issuance data from Asset-Backed Alert] include[s] ABS backed by auto loans, both prime and subprime, motorcycle loans, truck loans, and RV loans.”

This footnote does not, in our view, in any way support a view that the Commission intended to include RV loans in the automobile loan asset class. First, it is not a statement by the Commission of its views; rather, it is just an explanation of the types of ABS included in the table. Second, we think this sentence actually supports the view that the “Auto loan ABS” category in the chart is a combination of four different classes of ABS: auto, motorcycle, truck and RV. The “truck” category that is referenced, for example, is heavy duty trucks and trailers, which are conventionally considered to be equipment ABS, not auto loan ABS.

<sup>9</sup> The sole reference in the adopting release to motorcycles was in footnote 66, which is discussed above. In our view, that reference also serves to separate motorcycle ABS from auto loan ABS in the common parlance.

<sup>10</sup> See EDGAR ABS XML Technical Specifications, Version 1.7 (July 2017), Section 4.1.6. The other vehicle types specified are Car, Truck, SUV, Other and Unknown. We note that there is a code descriptor that can be selected for vehicle type of “Other.” We do not believe that this descriptor is intended to capture leisure craft such as RVs. Rather, we believe this descriptor is intended to be a catch-all descriptor for passenger vehicles types commonly understood to be automobiles (such as station wagons, mini-vans and passenger vans) that are not captured by the other enumerated descriptors.

<sup>11</sup> See Asset-Backed Securities, Release No. 33-8518 (Dec. 22, 2004), footnote 109.

RVs were not included as an example of an “automobile” or even a “motor vehicle” in this discussion. As discussed more fully below, RVs are not always motorized and are primarily used in leisure activities. The preceding passage seems to be a clear expression that leisure craft were not the same as, or a subset of, automobiles or motor vehicles. If RV loans are to be put into a category that is not strictly limited to RVs, we think that the “leisure craft” grouping suggested by the Commission in the foregoing passage would be an appropriate spot.

The physical characteristics of RVs and their intended use and subsequent loan performance differ from those of automobiles.

There are various sizes and types of RVs, some with motors and others of which are trailers (known in the industry as “towable RVs”) that have no motors.

Motorized RVs include the following types:

- Class A RVs are the largest RVs and can be built on bus or heavy duty truck chassis or can be purpose built models.
- Class B RVs are typically built on a standardized van chassis with a raised roof to facilitate standing or walking.
- Class C RVs (which are larger than Class B RVs) are midsize RVs typically built on heavy or medium duty truck chassis.

Towable RVs include the following types:

- Travel trailers are large portable containers constructed atop a trailer frame.
- Fifth wheels are similar to travel trailers, but feature a “gooseneck” connector that extends over the towing truck and connects from the bottom of an overhang.
- Folding and tent trailers are typically the smallest towable trailers, and feature collapsible compartments that reduce their size when towing.
- Haulers are used to store and transport small craft and equipment, such as ATVs, motorcycles and snowmobiles.

A securitized pool of RV loans could include some or all of these types of RVs, and the concentration of these types of RVs could vary from pool to pool. Approximately half of Bank of the West’s current outstanding portfolio of RV loans (based on principal balance) is comprised of towable RVs. It would be especially anomalous to seek to classify trailers as “automobiles.”

RVs are typically used for leisure activities, such as travelling or camping. While automobiles are sometimes used for leisure activities, their predominant use is to provide transportation for daily tasks, such as getting to and from work, taking children to school and running errands. Also, although ownership of, and perfection of a security in, an RV is effected via a certificate of title, similar to automobiles, there are other assets (such as farm and construction equipment, medium and heavy duty trucks, buses and manufactured homes) that are similarly

subject to state certificate of title laws. But the Commission has not to date adopted asset-level information requirements for loans backed by such assets (other than manufactured home loans, which are considered residential mortgages).

Because of this difference in use, RV loan characteristics and performance differ from those of automobiles. For example, an RV is a luxury good rather than a necessity. So RV loan obligors are on average older and typically have more discretionary income and higher credit scores than auto loan obligors. As a result of this difference in obligor profile, a typical RV loan may be less likely to default as compared to a typical auto loan. On the other hand, if an obligor only has the ability to make a scheduled payment on his or her automobile or RV, that obligor is most likely going to keep its automobile loan current (since as discussed, above, the automobile is likely needed for life's daily tasks and the RV is used for leisure). Also, the term of an RV loan is often 15-20 years, which is substantially longer than the term of an automobile loan (generally no more than 7 years). In addition, RVs often are more customized than automobiles and the average loan balance and loan-to-value ratio for RV loans are typically higher than for automobile loans, in part reflecting the luxury nature of the collateral and the frequent customization. If part of the Commission's rationale for requiring standardized asset-level information disclosures is to give investors the ability to compare characteristics and forecasted performance of individual assets and pools across various deals within an asset class, then RV loans should rightfully be considered as separate from automobile loans.

Finally, in proposing the specified asset-level data points for automobile loans and leases, for example, the SEC's adopting release stated that the data points were derived from the disclosure that had been commonly provided in auto ABS prospectuses. At the time of the 2010 proposing and 2014 adopting releases, RV loan securitizations were not an active asset class<sup>12</sup>. So it is not surprising that neither the adopting release, nor the itemized asset categories to which asset-level information disclosures apply, mention RVs. As noted in the adopting release, the Commission prioritized development of asset-level information disclosure requirements for asset classes that represented a large portion of the registered ABS market, such as mortgage loans and automobile loans and leases.<sup>13</sup> Since RV loans were not an active asset class at the time the Commission proposed or adopted the asset-level information disclosure requirements, and the Commission established disclosure requirements specifically for the most active asset classes in the final disclosure rules, this suggests that RV loans are not an asset class for which the Commission has established asset-level information disclosure requirements to date.

Although we believe that the disclosure of asset-level information is not currently required for securitized pools comprised of RV loans under Items 1111(h) and 1125 of Regulation AB, and RV loans are instead an asset class for which the Commission is still considering how to apply its disclosure regime (similar to equipment loans and leases, floorplan financings and student loans),

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<sup>12</sup> Although we are not aware of any securitization transactions involving RV loans since the Commission's adoption of the asset-level information disclosure requirements, securitization transactions completed prior to the financial crisis that included RV loans often included marine loans in the same securitized pool. This suggests to us that investors did not view RV loans in the same category as automobile loans, but rather viewed them similarly to other leisure craft.

<sup>13</sup> 79 FR 57183, 57201 September 24, 2014).

we ask the Staff to provide confirmation that RV loans are not currently subject to asset-level information requirements.

Bank of the West undertakes that, should the requested relief be granted, any Exempt Offering of ABS it would make that includes RV loans among the securitized assets would not include assets from any asset classes (such as automobile loans) for which asset-level information is then required under Regulation AB.

In accordance with the conversation between you and Kenneth P. Morrison, P.C. of Kirkland & Ellis LLP, we are delivering this letter to you via email. Please feel free to contact the undersigned at (415) 765-4997 or [john.l.harris@bankofthewest.com](mailto:john.l.harris@bankofthewest.com) with any questions or requests for additional information.

Very truly yours,



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