November 30, 2022

Honorable Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Chairman Gensler,

The January 4, 2023, deadline for Rule 144A fixed income securities to comply with Regulation 15c2-11 represents a grave risk to liquidity during an already challenging economic time for markets, including commercial and multifamily real estate.

The CRE Finance Council urges the SEC to take swift action to stop the application of 15c2-11 to Rule 144A fixed income securities.

The CRE Finance Council (CREFC) comprises over 350 institutional members representing U.S. commercial and multifamily real estate investors, lenders, and service providers – a market with an estimated $5.1 trillion of commercial real estate (CRE) debt outstanding. CREFC represents all forms of commercial and multifamily real estate finance, including balance-sheet bank and life company lenders, the GSEs, commercial mortgage-backed securities (CMBS) investors, CMBS issuers, and all third-party service providers.

In the CRE structured-finance markets, Rule 144A transactions include:

- Single-Asset, Single-Borrower (SASB) CMBS and
- Commercial Real Estate Collateralized Loan Obligations (CRE CLOs).

As Rule 144A offerings (collectively, "144A CMBS"), these bonds are available only to Qualified Institutional Buyers (QIBs) and are an important source of investment for pension funds, life insurance companies, asset managers, and other institutional capital. Collectively, the size of the outstanding 144A CMBS market is approximately $350 billion.

For the below reasons, we urge the SEC to clarify that Rule 144A CMBS transactions are excluded from the scope of 15c2-11. While our comments are specific to 144A CMBS, many of these issues are pertinent for all of 144A Asset-Backed Securities (ABS) and fixed income.

Key Points

1. **A Looming Liquidity Crisis.** As of January 4, 2023, 144A CMBS investors will no longer be able to freely secure quotes from broker dealers on $350 billion in outstanding bonds. This situation will be unprecedented and will significantly disrupt these markets on a level similar to that seen during the Global Financial Crisis.

   a. Investors are highly dependent on broker quotes to price the bonds they own.
   b. Investors generally value, or "mark", their books nightly, but they are highly dependent on month-end marks for company level risk-management purposes. The inability to obtain such marks may require that these investors sell their positions.
   c. Left unaddressed, the lack of pricing information could cause a total freeze up in the market and a liquidity crisis that will not only impact bond investors but significant limit the amount of liquidity required by owners of commercial real estate seeking new loans or to refinance maturing existing loans.

2. **Public Disclosure Upends 144A Market for Borrowers:** CMBS borrowers in the 144A market expect confidentiality. If private financial and non-financial information (*e.g.*, rent rolls and lease expirations) were to become public, borrowers could suffer significant risks to privacy and/or competitiveness. This could occur during a period in which commercial real estate and its usage post the global pandemic remains uncertain.

3. **No Replacement for 144A CMBS Market**: Alternative sources of capital are not feasible for these types of borrowers/loans.

   a. The average SASB loan size is approximately $900 million.
   b. Banks and life companies do not have sufficient balance sheets to fund these types of loans, even though they are most often secured by Class-A office, industrial, multifamily, retail and hotel properties.
   c. The Federal Reserve has cautioned banks about CRE concentrations.
   d. When more traditional balance sheet lenders do engage in this business it is often via a multi-handed club transaction with a number of lenders involved. These tend to be complicated and time consuming transactions given the multiple parties.

4. **15c2-11 Provides No Additional Investor Benefit:** CMBS investors in 144A have on-demand access to information on the bonds.

   a. Retail investors cannot directly invest or trade in 144A CMBS.
   b. Public disclosure via 15c2-11 will not provide any benefit to investors in 144A CMBS.

While there have been positive signals that SEC staff and leadership are working on resolving the 15c2-11 issue, broker-dealers, issuers, and investors are caught between a looming deadline and not knowing if relief will come or what relief will look like. Time is of the essence to avert a liquidity event and needless damage to the 144A market.

Sincerely,

CRE Finance Council