

Corporate & Financial Weekly Digest

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SEC Issues Concept Releases on Investment Company Derivative Use, Mortgage Securities and Rule 3a-7

Co-authored by [Gregory Xethalis](#)

On August 31, the Securities and Exchange Commission issued three concept releases regarding: (i) the use of derivatives by investment companies (Derivatives Release), (ii) companies engaged in the business of acquiring mortgages and mortgage-related instruments (Mortgage Securities Release), and (iii) the treatment of asset-backed issuers under Rule 3a-7 (Rule 3a-7 Release). In the concept releases, the SEC requests comments from the public on a variety of issues. Comments for all of the concept releases should be received on or before November 7.

Derivatives Release. The SEC and its staff are reviewing the use of derivatives by management investment companies registered under the Investment Company Act of 1940 (the 1940 Act), including exchange-traded funds (ETFs) as well as business development companies (collectively, Funds). In the Derivatives Release, the SEC requests comments on a range of issues, including potential implications for Fund leverage, portfolio concentration, diversification, valuation, exposure to securities-industry issuers, collateralization, counterparty risk and related matters. Comments received by the SEC will be used to determine whether regulatory initiatives or guidance are needed to improve the current regulatory regime for Funds and, if so, the nature of any such initiatives or guidance. Separate from the Derivatives Release, the SEC is presently examining the impact of leveraged and inverse ETFs, which rely heavily in derivatives in order to obtain their investment objectives, on market volatility in August 2011.

Mortgage Securities Release. Under the Mortgage Securities Release the SEC is reviewing the status of companies under the 1940 Act, such as real estate investment trusts, that are engaged in the business of acquiring mortgages and mortgage-related instruments and that rely on Section 3(c)(5)(C) of the 1940 Act for an exclusion from the definition of investment company (together, Mortgage Pools). To facilitate the review, the SEC is requesting information about such companies and how Section 3(c)(5)(C) is interpreted by, and affects investors in, such companies. The SEC is also requesting commenters' views on the application of the 1940 Act to Mortgage Pools, including

suggestions on steps that the SEC should take to provide greater consistency, regulatory certainty, or clarity with respect to Section 3(c)(5)(C).

Rule 3a-7 Release. The SEC is considering proposals to amend Rule 3a-7 under the 1940 Act. Rule 3a-7 provides certain asset-backed securities issuers with a conditional exclusion from the definition of investment company. The SEC is requesting commenters' views on potential amendments and considerations to reflect market developments since 1992 (the year that Rule 3a-7 was adopted); recent developments affecting asset-backed issuers, including the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the SEC's recent rulemakings regarding asset-backed securities markets; and the role, if any, that credit ratings should continue to play in the context of Rule 3a-7. In the Rule 3a-7 Release, the SEC also withdrew its 2009 proposal to amend Rule 3a-7, which was published at 73 FR 40124 on July 11, 2008.

Click [here](#) to read the Derivatives Release (Release No. IC-29776).

Click [here](#) to read the Mortgage Securities Release (Release No. IC-29778).

Click [here](#) to read the Rule 3a-7 Release (Release No. IC-29779).

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC