Arbor – Failing Par Value Tests

Arbor's fate is in the hands of its bondholders, as Viceroy discovers Arbor is deficient in its servicing of its CLOs. A correction will instigate a Mandatory Redemption event.

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October 16, 2024 –Viceroy Research has obtained copies of Arbor's CLO prospectuses, which shows that Arbor is deficient in the servicing of these deals. A correction and completion of Arbor's servicing deficiencies would result in a Mandatory Redemption event.

Modified Collateral Interests and Appraisal Reduction Events

Arbor's CLO book is severely distressed**. Arbor has modified over two thirds of its CLO book** balance in order to kick the can on defaults and superficially improve the quality of its book.

- Over 70% of Arbor's CLO book has been modified.
- A further ~15% of the book is delinquent.
- Loans are being modified month-on-month in order to prevent delinquencies, or simply become delinquent again.
- The DSCR of the CLO's underlying investments is 0.48x.

September 2024 Update	ARCREN 2021-FL1	ARCREN 2021-FL3	ARCREN 2021-FL4	ARCREN 2022-FL1	ARCREN 2022-FL2	Total
Total deal balance	**488,667,312**	**1,092,587,439**	**2,030,841,170**	**1,952,452,920**	**963,024,999**	**6,527,573,840**
< 1 Month	-	117,370,000	90,900,000	57,580,000	58,800,000	**324,650,000**
30 Days	46,570,215	57,700,000	48,733,000	176,024,785	-	**329,028,000**
60 Days	-	-	-	-	-	**-**
90+ Days	10,514,731	-	34,500,000	6,759,965	-	**51,774,696**
Modified	337,768,347	832,334,440	1,279,561,754	1,499,490,170	638,656,530	**4,587,811,241**
*Adjustment for double count**	*(41,764,731)*	*(144,670,000)*	*(127,233,000)*	*(141,770,000)*	-	***(455,437,731)***
Total delinquent & modified	**353,088,562**	**862,734,440**	**1,326,461,754**	**1,598,084,920**	**697,456,530**	**4,837,826,206**

** Double count adjustment for loans both modified and delinquent. This adjustment was not conducted in previous reports.*

Figure 1 – Viceroy Analysis

Under the terms of the CLO, modifying collateral interests (being the loans against underlying properties) triggers an Appraisal Reduction Event.

> "***Modified Collateral Interest***" means a Collateral Interest that has been modified, other than pursuant to an Administrative Modification or a Criteria-Based Modification, by the CLO Servicer pursuant to the Servicing Agreement (or any other applicable servicing agreement) in a manner that: (i) materially reduces or delays the amount or timing of any payment of principal or interest due thereon; (ii) results in a release of the lien of the mortgage on a material portion of the related underlying mortgaged property or underlying mortgaged properties without a corresponding principal prepayment in an amount not less than the "as-is" fair market value of such material portion, as determined by an appraisal of the property to be released; or (iii) that in the judgment of the CLO Servicer, otherwise materially impairs the value of the security for such Collateral Interest, or reduces the likelihood of timely payment of amounts due thereon, except, in the case of each of the foregoing clauses (i), (ii) or (iii), for any modification expressly provided for in the related Underlying Instruments.

> "***Appraisal Reduction Event***" means, with respect to a Collateral Interest, the occurrence of any of the following events:
>
> (i) the 90th day following the occurrence of any uncured delinquency in any monthly payment;
>
> (ii) receipt of notice that the related borrower has filed a bankruptcy petition or the date on which a receiver is appointed and continues in such capacity or the 90th day after the related borrower becomes the subject of involuntary bankruptcy proceedings and such proceedings are not dismissed;
>
> (iii) the date on which any related underlying mortgaged property becomes an REO Property;
>
> (iv) the date on which such Collateral Interest becomes a Modified Collateral Interest; or
>
> (v) a payment default occurs with respect to a balloon payment due on such Collateral Interest; provided,

Figures 2 & 3 – Arbor CLO Offering Memorandum

Upon the occurrence of an Appraisal Reduction Event, the CLO Servicer (Arbor) is required to make their best efforts to obtain a new appraisal for the collateral interests within 60 days. Arbor has **NOT re-appraised underlying collateral assets** of modified loans. The average time elapsed since these loans' last modifications (not the first modifications) exceeds 6 months[1].

> Upon the occurrence of an Appraisal Reduction Event, the CLO Servicer will be required to use reasonable efforts to obtain, within sixty (60) days of the event that resulted in such Appraisal Reduction Event with respect to a Collateral Interest, an appraisal (or a letter update for an existing appraisal which is less than two years old) of the related mortgaged property or mortgaged properties from an independent MAI appraiser (an "***Updated Appraisal***"). For so long as the related Collateral Interest remains a Specially Serviced Loan, the CLO Servicer will be required to update each Updated Appraisal every twelve (12) months and recalculate the Appraisal Reduction Amount with respect to such Collateral Interest.

Figure 4 – Arbor CLO Offering Memorandum

Viceroy has conducted a back-of-envelope, blue-sky valuation for Arbor Modified Collateral Interest for which Arbor has not obtained an updated appraisal.

Updating Outstanding Appraisals of Modified Collateral Interests	
Outstanding loan amounts	3,069,788,732
Recorded value of underlying assets	3,872,350,000
Reported LTV of Modified Collateral Interests	79.3%
NOI of Modified Collateral Interests	174,943,694
Reported cap rate of Modified Collateral Interests	4.52%
Viceroy Updated Appraisal (Blue-Sky) at 6.5% cap rate*	**2,748,098,113**
Viceroy Updated (Blue Sky) LTV	**112%**

Figure 5 – Viceroy Updated Appraisal

We note that a 6.5% cap rate is extremely generous given the systematic mismanagement of the properties underlying these loans, which have an average build year of 1974 and have not been rehabilitated. The occupancy rate of these properties is 85%, which is the same as when they were purchased (i.e. the occupancy is not low because landlords are refurbishing properties, it is because the properties are dumps). You can read more on the quality (or lack thereof) of Arbor's underlying loan book **here**.

Appraisal Reduction Amounts

An updated appraisal of the underlying collateral is subsequently used to calculate the Appraisal Reduction Amount (ARA) per the calculation below.

$$ARA = Principal\ Balance - [(0.9 \times Appraised\ Value) + Reserve\ Balance]$$

> "***Appraisal Reduction Amount***" means, for a Collateral Interest with respect to which an Appraisal Reduction Event has occurred, an amount equal to the excess, if any, of (a) the Principal Balance thereof, plus all other amounts due and unpaid with respect thereto, over (b) the sum of (i) an amount equal to 90% of the aggregate appraised value for the underlying mortgaged properties related to such Collateral Interest (net of any liens senior to the lien of the related mortgage) as determined by an Updated Appraisal on each such underlying mortgaged property related to such Collateral Interest, plus (ii) the aggregate amount of all reserves, letters of credit and escrows held in connection therewith (other than escrows and reserves for unpaid real estate taxes and assessments and insurance premiums), plus (iii) all insurance and casualty proceeds and condemnation awards that constitute collateral therefor (whether paid or then payable by any insurance company or government authority). With respect to any Collateral Interest that is a Senior Participation, any Appraisal Reduction Amount will be allocated to such participation interest as provided under the applicable Participation Agreement. For the avoidance of doubt, with respect to any Combined Loan, any Appraisal Reduction Amount will be calculated as, and allocated to, the Combined Loan as a whole.

Figure 6 – Arbor CLO Offering Memorandum

[1] Modifications have been erroneously reported to the trustee. We have never received a response as to how these errors came about, or why they have not been corrected.

Viceroy has calculated Arbor's Appraisal Reduction Amount:

Updating Outstanding Appraisals of Modified Collateral Interests	
Principal Balance	3,069,788,732
ARA Modifified Collateral interest Coefficient	0.90
Viceroy Updated Appraisal (Blue-Sky) at 6.5% cap rate*	2,748,098,113
Reserve Balance of Modified Collateral Interests	63,905,202
Appraisal Reduction Amount*	**629,544,536**
*Calculated on loan-by-loan basis, not in whole.	

Figure 7 – Viceroy ARA Calculation

This appraisal reduction amount is window-dressed: modifications to loans are simply used to delay defaults. The underlying performance of investments has not improved and will not improve, even with multi-hundred-point rate cuts. These should be valued as defaulted interests with significantly higher ARAs.

The Par Value Test

The Par Value Test is one of Arbor's CLO Note Protection Tests: a measure of the deal's underlying assets and collateral's ability to repay the senior bonds (A through to E), with adjustments for delinquencies and modifications. The Par Value Test thresholds for each of Arbor's deals are ~1.20x.

The ***"Par Value Test"*** will be met as of any Measurement Date on which any Offered Notes remain outstanding if the Par Value Ratio on such Measurement Date is equal to or greater than 120.21%.

The ***"Par Value Ratio"*** is, as of any Measurement Date, the number (expressed as a percentage) calculated by dividing (a) the Net Outstanding Portfolio Balance on such Measurement Date by (b) the sum of the aggregate outstanding principal amount of the Class A Notes, the Class A-S Notes, the Class B Notes, the Class C Notes, the Class D Notes and the Class E Notes, and the amount of any unreimbursed Interest Advances.

The ***"Net Outstanding Portfolio Balance"*** means, on any Measurement Date, the sum (without duplication) on such date of:

(i) the aggregate Principal Balance of the Collateral Interests other than Modified Collateral Interests and Defaulted Collateral Interests;

(ii) the aggregate Principal Balance of all Principal Proceeds held as Cash and Eligible Investments and all Cash and Eligible Investments held in the Unused Proceeds Account; and

(iii) the sum of the Calculation Amounts attributable to each Collateral Interest that is a Modified Collateral Interest or a Defaulted Collateral Interest;

"***Calculation Amount***" means, at any time:

(i) for a Modified Collateral Interest, the Principal Balance thereof minus any related Appraisal Reduction Amounts; *provided*, that, if an Appraisal Reduction Amount based on an appraisal that is an Updated Appraisal (or, when permitted pursuant to the Servicing Agreement, an existing appraisal that is less than 12 months old) is not determined with respect to such Modified Collateral Interest within 60 days after it becomes a Modified Collateral Interest (except that if an appraisal has not been obtained but has been ordered within such 60-day period, then within 90 days after it becomes a Modified Collateral Interest), the Calculation Amount with respect to such Modified Collateral Interest will be determined in accordance with clause (ii) below until such time (if any) as an Appraisal Reduction Amount based on such required appraisal is determined; and

(ii) for a Defaulted Collateral Interest, the lowest of (a) the applicable Moody's Recovery Rate multiplied by the Principal Balance thereof, (b) the Principal Balance thereof minus any applicable Appraisal Reduction Amounts, and (c) the Market Value thereof.

Figures 8 & 9 – Arbor CLO Offering Memorandum

Arbor appears to fail the Par Value Test for 3 of its deals; 2021-FL4, 2022-FL1 and 2022-FL2.

Par Value Test	2021-FL1	2021-FL3	2021-FL4	2022-FL1	2022-FL2
Class A	132,117,000	393,087,000	988,023,000	967,896,000	567,000,000
Class A-S	51,025,000	108,750,000	139,125,000	82,000,000	116,812,000
Class B	36,306,000	65,625,000	89,250,000	92,250,000	44,625,000
Class C	45,137,000	75,000,000	102,375,000	112,750,000	52,500,000
Class D	56,913,000	99,375,000	139,125,000	148,625,000	66,938,000
Class E	18,644,000	41,250,000	73,500,000	74,312,000	24,937,000
Subtotal	**340,142,000**	**783,087,000**	**1,531,398,000**	**1,477,833,000**	**872,812,000**
Outstanding Portfolio Balance	660,099,751	1,451,357,513	1,679,244,441	2,019,362,135	717,510,000
ARA Modifications	(28,009,065)	(137,023,796)	(72,488,624)	(341,113,837)	(52,054,414)
Net Outstanding Portfolio Balance	632,090,686	1,314,333,717	1,606,755,817	1,678,248,298	665,455,586
Par Value Test	**1.86**	**1.68**	**1.05**	**1.14**	**0.76**

Figure 10 – Viceroy Par Value Test

- We have made no adjustments to the Net Outstanding Portfolio Balance for Defaulted Collateral Interests. This would bring the results of the Par Value Test down further.
- The Par Value Test **excludes Arbor's residual equity interests and junior bonds in the deals**. We reiterate that Arbor faces a complete equity wipe-out on these deals.
- 2021-FL4 and 2022-FL2 appear to fail the Par Value Test without any ARA modifications.
- We believe that, given the month-on-month reduction of Class A shares outstanding in these deals, it is likely Mandatory Redemption is already in place. Substantial portions of cash appear to have been sunk in repaying class A notes in 2021-FL3, 2021-FL4, and 2022-FL2 in the last few months while Arbor has borrowed money elsewhere at substantially higher rates.

Required Redemption of the Offered Notes .... *Mandatory Redemption*. If either of the Note Protection Tests is not satisfied as of any Determination Date, then, on the next Payment Date, Interest Proceeds and, to the extent necessary after such application of Interest Proceeds, Principal Proceeds will be used to redeem the principal of the Offered Notes in accordance with the Priority of Payments to the extent necessary to satisfy the applicable Note Protection Tests (such redemption, a "***Mandatory Redemption***"). See "*Description of the Securities—Payments of Principal of the Notes—Mandatory Redemption in Connection With Failure to Satisfy a Note Protection Test*" and "*Description of the Securities—Priority of Payments*."

Figure 11 – Arbor CLO Offering Memorandum

Bondholders should absolutely enforce the Mandatory Redemption of these deals given the failure of the Note Protection Test. Our calculations show the loans made to Arbor borrowers already exceed the value of the underlying collateral assets, and any further concessions made through modifications are made at the expense of the bondholders.

Arbor's underwriting cannot be trusted as they have continuously and knowingly failed to carry out their duty as servicer.

If bondholders call for a mandatory redemption (which is within their right), Arbor will be forced to use principal, and interest proceeds to repay bondholder principal until the Note Protection Test is passed. The loans vastly exceed the value of any underlying collateral: this is effectively an equity wipe-out event.

Arbor exists at the mercy of its bondholders. The question now: who will be left standing when the music stops?

Attention: Whistleblowers

Viceroy encourage any parties with information pertaining to misconduct within Arbor Realty Trust, its affiliates, or any other entity to file a report with the appropriate regulatory body.

We also understand first-hand the retaliation whistleblowers sometimes face for championing these issues. Where possible, Viceroy is happy act as intermediaries in providing information to regulators and reporting information in the public interest in order to protect the identities of whistleblowers.

You can contact the Viceroy team via email on viceroy@viceroyresearch.com.

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