

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 229, 230, 240, and 249

[RELEASE NOS. 33-9150, 34-63091; FILE NO. S7-26-10]

RIN 3235-AK76

ISSUER REVIEW OF ASSETS IN OFFERINGS OF ASSET-BACKED SECURITIES

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing new requirements in order to implement Section 945 and a portion of Section 932 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Act”). First, we are proposing a new rule under the Securities Act of 1933 to require any issuer registering the offer and sale of an asset-backed security (“ABS”) to perform a review of the assets underlying the ABS. We also are proposing amendments to Item 1111 of Regulation AB that would require an ABS issuer to disclose the nature of its review of the assets and the findings and conclusions of the issuer’s review of the assets. If the issuer has engaged a third party for purposes of reviewing the assets, we propose to require that the issuer disclose the third-party’s findings and conclusions. We also are proposing to require that an issuer or underwriter of an ABS offering file a new form to include certain disclosure relating to third-party due diligence providers, to implement Section 15E(s)(4)(A) of the Securities Exchange Act of 1934, a new provision added by Section 932 of the Act.

DATES: Comments should be received on or before November 15, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission’s Internet comment form

<http://www.sec.gov/rules/proposed.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-26-10 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-26-10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Eduardo Aleman, Special Counsel, Division of Corporation Finance, at (202) 551-3430, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Item 1111¹ of

¹ 17 CFR 229.1111.

Regulation AB² (a subpart of Regulation S-K). We also are proposing to add Rule 193³ under the Securities Act of 1933⁴ (the “Securities Act”) and Rule 15Ga-2⁵ and Form ABS-15G⁶ under the Securities Exchange Act of 1934 (the “Exchange Act”).⁷

I. Background

This release is one of several we are required to issue to implement provisions of the Act.⁸ This release proposes a new rule and certain amendments to implement Section 7(d) of the Securities Act,⁹ which was added by Section 945 of the Act. In addition, we are proposing a new rule and form to implement Section 15E(s)(4)(A) of the Exchange Act,¹⁰ which was added by Section 932 of the Act.

Section 945 of the Act amends Section 7 of the Securities Act to require the Commission to issue rules relating to the registration statement required to be filed by an issuer of ABS. Pursuant to new Section 7(d), the Commission must issue rules to require that an issuer of an ABS perform a review of the assets underlying the ABS, and disclose the nature of such review.¹¹ Section 7(d) requires that we adopt these rules not later than 180 days after enactment.

² 17 CFR 229.1100 through 17 CFR 229.1123.

³ 17 CFR 230.193.

⁴ 15 U.S.C. 77a *et seq.*

⁵ 17 CFR 240.15Ga-2.

⁶ 17 CFR 249.ABS-15G.

⁷ 15 U.S.C. 78a *et seq.*

⁸ Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

⁹ 15 U.S.C. 77g(d).

¹⁰ 15 U.S.C. 78o-7(s)(4)(A).

¹¹ We note that recently adopted amendments to a safe harbor rule by the Federal Deposit Insurance Corporation require, in residential mortgage-backed securities offerings, sponsors to disclose a third-party diligence report on compliance with origination standards and the representations and warranties made with respect to the

Section 932 of the Act adds new Section 15E(s)(4)(A) of the Exchange Act, which also relates to the review of assets underlying an ABS. Section 15E(s)(4)(A) requires an issuer or underwriter of any ABS to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.¹² Because the substance of new Section 7(d) of the Securities Act is related to new Section 15E(s)(4)(A) of the Exchange Act, we are considering both provisions added by the Act together.

II. Proposed Rules

A. Proposed Requirement that an ABS Issuer Perform a Review of the Assets

We are proposing new Rule 193 under the Securities Act to require issuers of ABS to perform a review of the assets underlying registered ABS offerings.¹³ This rule would implement Securities Act Section 7(d)(1),¹⁴ as added by Section 945 of the Act.

assets. See 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 After September 30, 2010, Final Rule, Federal Deposit Insurance Corporation, (Sept. 27, 2010).

¹² We will propose rules to implement the rest of Section 15E(s)(4) at a later date. Section 15E(s)(4)(B) requires a provider of third-party due diligence services to provide a certification to any nationally recognized statistical rating organization (“NRSRO”) rating the transaction. Section 15E(s)(4)(C) requires the Commission to establish the form and content of such certification, and Section 15E(s)(4)(D) requires the Commission to adopt rules requiring an NRSRO to disclose the certification to the public. The Act requires that final regulations under Section 15E(s)(4) be adopted not later than one year after enactment.

¹³ The requirement under this proposal to perform a review should not be confused with, and is not intended to change, the due diligence defense against liability under Securities Act Section 11 [15 U.S.C. 77k] or the reasonable care defense against liability under Securities Act Section 12(a)(2) [15 U.S.C. 77l(a)(2)]. Our proposed rule is designed to require a review of the underlying assets by the issuer and to provide disclosure of the nature, findings and conclusions of such review.

¹⁴ 15 U.S.C. 77g(d)(1).

1. Application of the Proposed Rule

Section 7(d)(1) relates to an asset-backed security, as defined in new Section 3(a)(77) of the Exchange Act.¹⁵ This new statutory definition (“Exchange Act-ABS”) is broader than the definition of “asset-backed security” in Regulation AB¹⁶ and includes securities typically offered and sold in private transactions. Nevertheless, we have concluded that the review requirements mandated by Section 7(d)(1) apply only to registered offerings of ABS because Section 7(d)(1) requires the Commission to issue rules “relating to the registration statement.” Therefore, the rule we are proposing today that would require an ABS issuer to perform a review of the assets applies to issuers of ABS in registered offerings and not issuers of ABS in unregistered offerings.

2. New Securities Act Rule 193

Rule 193 would require an issuer to perform a review of the assets underlying an ABS in a transaction that will be registered under the Securities Act. Rule 193 would not specify the level or type of review an issuer is required to perform.¹⁷ We expect that the issuer’s level and

¹⁵ 15 U.S.C. 78c(a)(77). This definition was added by Section 941(a) of the Act.

¹⁶ See Item 1101(c)(1) of Regulation AB [17 CFR 229.1101(c)(1)].

¹⁷ We understand that various levels and types of review may be performed in a securitization. For example, commentators on a recent proposing release on asset-backed securities have identified that the type of review conducted by a sponsor of a securitization of sub-prime mortgage loans typically falls into three general categories. First, a credit review examines the sample loans to ascertain whether they have been originated in accordance with the originator’s underwriting guidelines. This would include a review of whether the loan characteristics reported by the originator are accurate and whether the credit profile of the loans is acceptable to the sponsor. A second type of review could be a compliance review which examines whether the loans have been originated in compliance with applicable laws, including predatory lending and Truth in Lending statutes. Third, a valuation review entails a review of the accuracy of the property values reported by the originators for the underlying collateral. This could include a review of each original appraisal to assess whether it appeared to comply with the originator’s appraisal guidelines, and the appropriateness of the comparables used in the original appraisal process. See comment letter from The Commonwealth of Massachusetts Office of the Attorney General (“Massachusetts AG comment letter”) on Asset-Backed Securities, SEC Release No. 33-9117 (April 7, 2010) [75 FR 23328] (the “2010 ABS Proposing Release”). The comment letters are available at <http://www.sec.gov/comments/s7-08-10/s70810.shtml>.

type of review of the assets may vary depending on the circumstances. For example, the level or type of review may vary among different asset classes. While proposed Rule 193 would not require a particular level or type of review, we note that, if adopted, required responsive disclosure would describe the level and type of review. We believe the disclosure requirements below will give investors an ability to evaluate the level and adequacy of the issuer's review of the assets.

Rule 193 would not specify the type or level of review an issuer is required to perform or require that a review be designed in any particular manner, although as set out below, we are requesting comment on whether and, if so, how the Commission should specify the nature of the review.¹⁸ We believe that the nature of review may vary depending on numerous circumstances and factors which could include, for example, the nature of the assets being securitized and the degree of continuing involvement by the sponsor. For example, in offerings of residential mortgage-backed securities ("RMBS"), where the asset pool consists of a large group of loans, it may be appropriate, depending on all the facts, to review a sample of loans large enough to be representative of the pool, and then conduct further review if the initial review indicates that further review is warranted. By contrast, for ABS where a significant portion of the cash flow will be derived from a single obligor or a small group of obligors, such as ABS backed by a small number of commercial loans ("CMBS"), it may be appropriate for the review to include every pool asset. Moreover, in ABS transactions where the asset pool composition turns over

¹⁸ Given the 180-day statutory deadline prescribed by the Act, we have not attempted to describe a type of review that may be appropriate for various different asset classes; we believe that devising various levels of review applicable to each different asset class would require a more extensive undertaking than is feasible in the time provided.

rapidly because it contains revolving assets, such as credit card receivables or dealer floorplan receivables, a different type of review may be warranted than in ABS transactions involving term receivables, such as mortgage or auto loans.

While proposed Rule 193 would not specify a particular type or level of review, we note that under our proposal, prospectus disclosure of the nature of review would be required. We believe the disclosure requirements described below will give investors an ability to evaluate the level and adequacy of the issuer's review of the assets. We request comment below on whether disclosure, without mandating the nature of the review to be conducted, is sufficient.

While we are not proposing the nature of the review that would be required, we note that some of the data points proposed in the 2010 ABS Proposing Release describe the type of review items that may be relevant to the review that must be performed to comply with Rule 193.¹⁹ In our proposals requiring enhanced disclosure for an ABS offering, we proposed to require

¹⁹ Our proposal for asset-level data points in our 2010 ABS Proposing Release, which remains outstanding, provides examples of the kind of information that the issuer could undertake to review in order to comply with proposed Rule 193. For example, in the case of RMBS, the Commission proposed requiring, for each loan in the pool, standardized disclosure of, among others, credit score, employment status, and income of the obligor and how that information was verified. Some specific data points that were proposed include:

- The appraised value used to approve the loan, original property valuation type, and most recent appraised value, as well as the property valuation method, date of valuation, and valuation confidence scores;
- Combined and original loan-to-value ratios and the calculation date;
- Obligor and co-obligor's length of employment, whether they are self-employed and the level of verification (e.g., not verified, stated and not verified, or direct independent verification with a third-party of the obligor's current employment); and
- Obligor and co-obligor's wage and other income and a code that describes the level of verification.

For income of the obligor, the issuer would be required, if adopted, under our 2010 ABS Proposing Release to indicate what level of review of the income was conducted. One possible level of review would be that income was verified by previous W-2 forms or tax returns and year-to-date pay stubs, if the obligor was salaried. Another possibility would be that the income was verified for the last 24 months through W-2 forms, pay stubs, bank statements, and/or tax returns. As noted, we are not proposing specific standards for the review required by proposed Rule 193. While the Commission believes these data points may be relevant, they are intended to serve only as examples of items that we anticipate an issuer would consider reviewing in order to comply with proposed Rule 193. These proposals remain outstanding as we consider comments received on the 2010 ABS Proposing Release.

prospectuses for public offerings of ABS and ongoing Exchange Act reports to contain specified asset-level information about each of the assets in the pool.²⁰ The asset-level information would be provided according to proposed standards and in a tagged data format.²¹

Proposed Rule 193 would require that the asset review be conducted by the issuer of the ABS.²² The issuer, for purposes of this rule, would be the depositor or sponsor of the securitization. A sponsor typically initiates a securitization transaction by selling or pledging to a specially-created issuing entity a group of financial assets that the sponsor either has originated itself or has purchased in the secondary market.²³ In some instances, the transfer of assets is a two-step process: the financial assets are transferred by the sponsor first to an intermediate entity, the depositor or the issuer, and then the depositor transfers the assets to the issuing entity for the particular asset-backed transaction. The issuing entity is typically a statutory trust.²⁴ In cases where the originator and sponsor may be different, including in transactions involving a so-

²⁰ Some asset classes such as credit card receivables and stranded costs would be exempt from this rule; however, credit card ABS would be required to provide grouped account data.

²¹ In addition, Section 942 of the Act adds new Section 7(c) to the Securities Act requiring the Commission to adopt regulations requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, standardized information regarding the assets backing that security.

²² Under Securities Act Rule 191 (17 CFR 230.191), the depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the “issuer” for purposes of the asset-backed securities of that issuing entity. “Depositor” means the depositor who receives or purchases and transfers or sells the pool assets to the issuing entity. See Item 1101 of Regulation AB. For asset-backed securities transactions where there is not an intermediate transfer of the assets from the sponsor to the issuing entity, the term depositor refers to the sponsor. For asset-backed securities transactions where the person transferring or selling the pool assets is itself a trust, the depositor of the issuing entity is the depositor of that trust. See id.

²³ As defined in Item 1101 of Regulation AB, the “sponsor” means the person who organizes and initiates an ABS transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity. See 17 CFR 229.1101(1). Where there is not a two-step transfer, the term “depositor” refers to the sponsor.

²⁴ See Asset-Backed Securities, Release No. 33-8518 (Dec. 22, 2004) [70 FR 1506] (“2004 Regulation AB Adopting Release”) at Section III.B.3. The issuing entity is designed to be a passive entity, and in order to meet the definition of ABS issuer in Regulation AB its activities must be limited to passively owning or holding the pool of assets, issuing the ABS supported or serviced by those assets, and other activities reasonably incidental thereto.

called “aggregator,” the review may be performed by the sponsor, but we propose that a review performed by an unaffiliated originator would not satisfy proposed Rule 193. The originator may have different interests in the securitization, especially if the securitization involves many originators where each originator may have contributed a very small part of the assets in the entire pool, and may have differing approaches to the review.²⁵

If an issuer engages a third party for purposes of reviewing the pool assets, then an issuer may rely on the third-party’s review to satisfy its obligations under proposed Rule 193 provided the third party is named in the registration statement and consents to being named as an “expert” in accordance with Section 7 of the Securities Act and Rule 436 under the Securities Act.²⁶ We are aware that, at least with respect to RMBS, there is a specialized industry of third-party due diligence firms.²⁷ These firms typically are retained to review, for example, the accuracy of loan level data.²⁸ Allowing issuers to contract with a third-party due diligence provider²⁹ is consistent with Section 15E(s)(4) of the Exchange Act which, as discussed further below, requires the issuer or underwriter of an ABS to make publicly available the findings and conclusions of a

²⁵ In the case of so-called aggregators, the sponsor acquires loans from many other unaffiliated sellers before securitization.

²⁶ Section 7 of the Securities Act requires the consent of any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement. The third-party’s findings and conclusions must also be disclosed in a registration statement and a consent from the third party must be obtained in accordance with Section 7.

²⁷ See Testimony of Vicki Beal, Senior Vice President Clayton Holdings, Before the Financial Crisis Inquiry Commission (Sept. 23, 2010), available at <http://www.fcic.gov/hearings/pdfs/2010-0923-Beal.pdf>.

²⁸ See, e.g., Vikas Bajaj and Jenny Anderson, Inquiry Focuses on Withholding of Data on Loans, N.Y. TIMES, January 12, 2008; E. Scott Reckard, Sub-prime Mortgage Watchdogs Kept on Leash; Loan Checkers Say Their Warnings of Risk Were Met with Indifference, LOS ANGELES TIMES, March 17, 2008, at C1.

²⁹ In this release, we refer to third parties engaged for purposes of reviewing the assets also as third-party due diligence providers.

third-party due diligence report and requires a third-party due diligence provider that is employed by a nationally recognized statistical rating organization (“NRSRO”), an issuer or an underwriter to provide a written certification to the NRSRO that produces a credit rating. Under Section 15E(s)(4) of the Exchange Act, the Commission is required to establish the appropriate format and content for the certifications “to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for a nationally recognized statistical rating organization to provide an accurate rating.”³⁰ We believe that a “third party engaged for purposes of performing a review” is a broad category that would include any third party on which the issuer relies to review assets in the pool. We believe that the third party engaged by the issuer to perform a review of the assets for purposes of complying with Rule 193 likely would be the same third-party due diligence providers whose reports must be made publicly available by an issuer or underwriter for purposes of Section 15E(s)(4)(A), although we seek comment on whether that is appropriate.

Request for Comment

1. Does our proposed rule to require the issuer of ABS in a registered transaction to perform a review of the assets adequately address Section 7(d)(1) of the Securities Act, as added by Section 945 of the Act? Is this proposal, coupled with the proposed disclosure requirements described below, sufficient to carry out the purposes of Section 7(d)(1) of the Act? Can investors evaluate for themselves the sufficiency of the review undertaken by the issuer? Will issuers undertake a meaningful review absent a minimum review standard?

³⁰ As noted above, we will address these requirements in a subsequent rulemaking.

2. Should we instead mandate a minimum level of review that must be performed on the pool of assets? Would requiring a minimum level of review better carry out the mandate of Securities Act Section 7(d)(1), which imposes a new review requirement, separate from the disclosure requirement in Section 7(d)(2)?³¹ If so, what level of review would be appropriate? For instance, should we require that the review, at a minimum, provide reasonable assurance that the disclosure in the prospectus regarding the assets is accurate in all material respects?³² We note that the federal securities laws currently require that disclosure in the prospectus not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements not misleading.³³ Therefore, we would expect that issuers are currently performing some level of review in order to provide them sufficient comfort to believe that the prospectus disclosure is accurate. A reasonable assurance level would be similar to the standard that companies use in designing and maintaining disclosure controls and procedures required

³¹ We note that this section is not limited to requiring disclosure; the section imposes an obligation to conduct a review and to disclose the nature of the review. In other contexts, we have previously adopted rules pursuant to a legislative mandate that required issuers or other parties to take (or not take) particular action. See e.g., Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, Release No. 33-8238 (June 5, 2003) (adopting rules requiring management of companies subject to the Exchange Act's reporting requirements to establish and maintain adequate internal control over financial reporting for the company as directed by Section 404 of the Sarbanes-Oxley Act of 2002); See also Insider Trades During Pension Fund Blackout Periods, Release No. 34-47225 (Jan. 22, 2003) (adopting rules to give effect to Section 306(a) of the Sarbanes-Oxley Act of 2002), which prohibits directors or executive officers of any issuer of an equity security from conducting transactions in the issuer's securities during a pension plan blackout period. The Act also imposes other substantive requirements, such as requiring securitizers to retain 5% risk. See Section 941 of the Act.

³² Thus, for example, if the prospectus disclosed that the loans are limited to borrowers with a specified minimum credit score, or certain income level, the review, as designed, would be required to provide reasonable assurance that the loans in the pool met this criterion.

³³ See Securities Act Section 11 [15 U.S.C. 77k] and Securities Act Sections 12 [12 U.S.C. 77l]. See also Securities Act Section 17 [15 U.S.C. 77q], Exchange Act Section 10(b) [15 U.S.C. 78j] and Rule 10b-5 under the Exchange Act [17 CFR 240.10b-5].

under Exchange Act Rule 13a-15.³⁴ Our rules generally “require an issuer to maintain disclosure controls and procedures to provide reasonable assurance that the issuer is able to record, process, summarize and report the information required in the issuer’s Exchange Act reports” within appropriate time frames, and companies have been subject to these requirements for many years.³⁵

- If we required that the review, at a minimum, provide reasonable assurance that the disclosure in the prospectus regarding the assets is accurate in all material respects, would issuers and their advisers be familiar with this reasonable assurance level and understand how that level would apply in the context of a review of assets underlying ABS?³⁶
- Would a different level of assurance that the disclosure in the prospectus regarding the assets is accurate in all material respects be appropriate? If so, what level and why?
- Should a minimum standard require that the review be not just designed but also

³⁴ See Exchange Act Rule 13a-15 [17 CFR 240.13a-15].

³⁵ See Management’s Report on Internal Control over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, at Section F.4, Release No. 33-8238 (June 5, 2003). See also Certification of Disclosure in Companies’ Quarterly and Annual Reports, Release No. 34- 8124 (June 14, 2002). ABS issuers must provide in Form 10-K an assessment by each party participating in the servicing function regarding its compliance with specified servicing criteria set forth in Item 1122 of Regulation AB. See 17 CFR 229.1122. A registered public accounting firm must issue an attestation report on such party’s assessment of compliance. See id.

³⁶ Although ABS issuers are not subject to Rule 13a-15, ABS issuers that also issue corporate securities are familiar with it. We previously have recognized that, because the information ABS issuers are required to provide differs significantly from that provided by other issuers, and because of the structure of ABS issuers as typically passive pools of assets, the certification requirements should be tailored specifically for ABS issuers. See Certification of Disclosure in Companies’ Quarterly and Annual Reports, Release No. 34-8124; See also Revised Statement: Compliance by Asset-Backed Issuers with Exchange Act Rules 13a-14 and 15d-14, Statement by the Staff of the Division of Corporation Finance (Feb. 21, 2003), available at <http://www.sec.gov/divisions/corpfin/8124cert.htm>.

effected to provide reasonable assurance that the disclosure was accurate?

- Is there a minimum level of review that would be more appropriate or useful to investors without imposing impracticable burdens and costs on issuers?
- How, if at all, should any such standard of review affect current law regarding antifraud liability? How, if at all, should any such standard of review affect the due diligence defense against liability under Securities Act Section 11³⁷ and the reasonable care defense against liability under Securities Act Section 12(a)(2)³⁸?
- Should the rule further specify the types of matters – e.g., credit – that should be covered by the review?
- In addition, should the rule further specify the level of review? For example, should it set out parameters to determine whether sampling is appropriate?

3. We note that in the 2010 ABS Proposing Release, we proposed requiring that the underlying transaction agreement in a transaction relying on certain Commission safe harbors for an exemption from the Securities Act contain a provision requiring the issuer to provide to any initial purchaser, security holder, and designated prospective purchaser the same information as would be required in a registered transaction.³⁹ Similar to the approach in the 2010 ABS Proposing Release, should we condition the safe harbors for an exemption from registration provided in Regulation D and Securities Act Rule 144A on a requirement that the underlying transaction agreement for the ABS contain a

³⁷ 15 U.S.C. 77k.

³⁸ 15 U.S.C. 771(a)(2).

³⁹ See discussion in Section VI of the 2010 ABS Proposing Release.

representation that the issuer performed a review that complies with proposed Rule 193? Alternatively, if we adopt Rule 193 with some minimum standard of review, should we condition the safe harbors for an exemption from registration provided in Regulation D and Securities Act Rule 144A simply on a requirement that the issuer perform a review of the underlying assets? If so, should we also require that the issuer represent in the transaction agreement that it will certify such review or provide disclosure regarding the nature of the issuer's review and findings and conclusions?

4. Should we specify the types of review that should be performed? For example, should we require that the review verify the accuracy of the data entry of loan information into the loan tape, containing data about the loans in the pool (e.g., loan-to-value ratio, debt-to-income ratio)? Should the rule establish a standard requiring a review sufficient to determine whether the underlying assets meet the underwriting criteria? Should any required review entail reviewing borrowers' income levels to determine borrowers' ability to repay the underlying loans? Should the rule establish a standard for reviewing whether the loans have been originated in compliance with applicable laws, including predatory lending and Truth in Lending statutes? Should we establish standards for a review of the accuracy of the property values reported by the originators for the underlying collateral?⁴⁰ Could each such type of review be conducted across all asset classes (e.g., residential mortgages, commercial mortgages, credit card receivables, resecuritizations)? What standards would be appropriate for each asset class or across all

⁴⁰ See, e.g., joint comment letter from American Society of Appraisals, American Society of Farm Managers and Rural Appraisers, and National Association of Independent Fee Appraisers on the 2010 ABS Proposing Release (recommending standards of appraisal).

asset classes of asset-backed securities?

5. Should we explore devising review standards for each particular asset class and consider proposing more detailed standards for the nature of review at a later date? If so, how?
6. Should our rules, as proposed, permit issuers to rely on a third party that was hired by the issuer to perform the required review of the assets under Rule 193? Should we, as proposed, condition the ability to rely on a third party for this purpose on the third-party's review satisfying the requirements of Rule 193? When we adopt rules in the future to establish the appropriate format and content for the certifications required pursuant to Exchange Act Section 15E(s)(4)(B), we will be required to do so in a manner "to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for a nationally recognized statistical rating organization to provide an accurate rating."⁴¹ Should we condition reliance on third parties for purposes of Rule 193 upon satisfaction of that standard? How else could the proposal better effectuate Exchange Act Section 15E(s)(4)?⁴²
7. If an originator performs a review of the assets and provides the findings and conclusions of its review to the issuer and the originator is not affiliated with the sponsor of the securitization, should we allow an issuer to rely on the originator's review of the assets in order to satisfy the issuer's review requirements? If so, should the information relating to the originator's review be treated similarly to third-party reviews? As described above,

⁴¹ Section 15E(s)(4)(C) of the Exchange Act.

⁴² Section 15E(s)(4)(A) of the Exchange Act requires issuers to make publicly available the findings and conclusions of "any third-party due diligence report."

under our proposal, an issuer would be permitted to rely on a third party to conduct the Rule 193 review provided the review satisfied the requirements of Rule 193 and the third party is named in the registration statement and consents to being named as an expert in accordance with Section 7 of the Securities Act and Rule 436 under the Securities Act.⁴³

If we allow such reviews to satisfy Rule 193, should the findings and conclusions of third-party originators who conduct Rule 193 reviews likewise be subject to expert liability?

8. Is there any other party that an issuer should be allowed to rely upon in order to satisfy the review required by proposed Rule 193? For example, should an issuer be permitted to rely upon the underwriter of the offering? If so, how should we treat the findings and conclusions of that party? Should that party's findings and conclusions be subject to expert liability? If not, how can we ensure that such parties would take appropriate responsibility for any findings included in the issuer's registration statement?
9. We propose to permit an issuer to rely upon a third party that is engaged for purposes of performing a review of the assets to satisfy Rule 193. Is "third party engaged for purposes of performing a review of the pool assets" an appropriate description? If not, what is a more appropriate description? What entities should be considered a "third party engaged for purposes of performing a review"? Should such third-party reviewers include accountants who, for example, perform reviews and prepare reports pursuant to agreed-upon procedures? Should such third-party reviewers include attorneys who, for

⁴³ If an issuer relies on a third party to perform the review of the assets, the third party would be an expert under Securities Act Section 11 [15 U.S.C. 77k] and its consent must be included as an exhibit to the registration statement. See Section 7 of the Securities Act.

example, provide opinions as to the perfection of the security interest in the collateral?⁴⁴

Are there policy reasons why a particular type of third-party reviewer should be excluded from this requirement? We note that the issuer would remain responsible for its disclosure under the federal securities laws, including disclosure regarding pool assets, even if it engages a third party to perform the review required by Rule 193. Should the proposed rule be revised to clarify this point?

10. It appears that the scope of third-party due diligence providers is broad enough to include appraisers and engineers for purposes of Section 15E(s)(4). Is there a basis for a different approach? Should this vary among different asset classes? For example, should the requirements differ depending on whether the asset class for the securities is commercial mortgages or residential mortgages? We are aware that for certain types of ABS offerings (e.g., CMBS offerings) an issuer may receive numerous reports from appraisers and engineers regarding the property underlying the loan.
11. As discussed below, Exchange Act Section 15E(s)(4)(A) requires an issuer or underwriter of ABS to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter. How does new Exchange Act Section 15E(s)(4)(A) impact the analysis here? Should the third parties whose findings and conclusions must be made publicly available under Exchange Act Section 15E(s)(4)(A) be the same group of third parties that are engaged for the review of the assets for purposes of proposed Rule 193? If not, how can we appropriately differentiate between the groups of third-party due diligence providers? In other words, how should

⁴⁴ See, e.g., John Arnholz & Edward E. Gainor, Offerings of Asset-Backed Securities § 6.06 (2007 Supplement).

the rule describe the nature of the work performed by third parties subject to Section 15E(s)(4)(A) versus the nature of the work performed by third parties employed by an issuer whose findings and conclusions should be required to be disclosed in a registration statement if such parties should be different?

12. We have previously noted the potential conflict of interest arising from the “issuer pays” model for NRSROs in which an NRSRO is paid by the arranger of a structured finance product to rate the product.⁴⁵ Are third-party due diligence firms subject to the same type of potential conflicts of interest as credit rating agencies operating under the “issuer pays” model? If so, is there a way to mitigate this potential conflict?
13. Are there other potential conflicts relating to a third-party due diligence provider that we should address? How should we encourage the quality of third-party reviews? Should a third party be required to be independent if the review will be used to satisfy Rule 193? If so, do we need to define “independent”? How should we define it? Should we require disclosure relating to the affiliations of the third party? Item 1119 of Regulation AB⁴⁶ requires disclosure of affiliations among participants in the securitization. Should we revise Item 1119 to require disclosure regarding affiliations between a third-party due diligence provider and the parties listed in Item 1119?

B. Proposed Disclosure Requirements

1. Registered Offerings

⁴⁵ See, e.g., Proposed Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-57967 (June 16, 2008) [73 FR 36212].

⁴⁶ 17 CFR 229.1119.

Item 1111 of Regulation AB⁴⁷ outlines several aspects of the pool that the prospectus disclosure for ABS should cover. We are proposing amendments to Item 1111 to require disclosure regarding the nature of the issuer's review of the assets under proposed Rule 193 and the findings and conclusions of the review. In addition, we are re-proposing amendments from our 2010 ABS Proposing Release to require disclosure regarding the composition of the pool as it relates to assets that do not meet disclosed underwriting standards, as we believe this information would promote a better understanding of the impact of the review on the composition of the pool assets.

a. Nature of Review

We are proposing new Item 1111(a)(7) of Regulation AB to require that an issuer of ABS disclose the nature of the review it conducts to satisfy proposed Rule 193. This would include whether the issuer has hired a third-party firm for the purpose of reviewing the assets. In either case, we expect that this would include a description of the scope of the review, such as whether the issuer or a third party conducted a review of a sample of the assets or what kind of sampling technique was employed (i.e., random or adverse). This proposed requirement would implement Securities Act Section 7(d)(2),⁴⁸ as added by the Act.

b. Findings and Conclusions

In order to harmonize this provision with the language used in Exchange Act Section 15E(s)(4)(A), under proposed Item 1111(a)(7), the issuer would be required to disclose the findings and conclusions of any review performed by the issuer or by a third party engaged for

⁴⁷ 17 CFR 229.1111.

⁴⁸ 15. U.S.C. 77g(d)(2).

purposes of reviewing the assets. Although Section 7(d) of the Securities Act does not require our rules to mandate that the issuer disclose the findings and conclusions of a review in its registration statement, we believe this information is important for investors to consider along with the information in the registration statement relating to the nature of the issuer’s review and the findings and conclusions of third-party due diligence providers, as required to be publicly disclosed by Securities Act Section 7(d) and Exchange Act Section 15E(s)(4)(A). We believe that disclosure of the findings and conclusions of the review would provide investors with a better picture of the assets than only the nature of the review and a better ability to evaluate the review.

As noted above, Section 15E(s)(4)(A) of the Exchange Act requires an issuer or underwriter of any ABS to make publicly available the findings and conclusions of any third-party due diligence report obtained by an issuer or underwriter. Exchange Act Section 15E(s)(4)(A) does not apply to an issuer who itself performs the review of the underlying assets. We believe that it is important to consider these two provisions together to minimize the difference in the required disclosure based merely on whether the issuer performs the review, or instead hires a third party to perform the review.⁴⁹ Consequently, as noted above, for registered offerings of ABS, proposed Item 1111(a)(7) would require disclosure of the findings and conclusions of the issuer or a third-party reviewer. We believe this approach would avoid incentives for “regulatory arbitrage” based merely on whether the review of assets was

⁴⁹ As one commentator has noted, the issuer or underwriter “may decide that it is easier not to retain such an outside firm than to have to describe its procedures and the information it reviewed and then provide a certification to the ratings agency....In short, given the choice, issuers and underwriters might prefer the easier course of doing nothing.” Examining Proposals to Enhance the Regulation of Credit Rating Agencies: Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, 111th Congress, 1st session, p. 6 (2009) (Testimony of John Coffee).

performed internally by the issuer, or whether instead the issuer hired a third party to perform the review. We are concerned that the intent of Exchange Act Section 15E(s)(4)(A) may be frustrated, and investor protection may not be served, if issuers who hired third-party loan review firms to perform a review of the assets were required to make publicly available the findings and conclusions of a review of pool assets, but issuers who performed the review themselves were not, because it could create an incentive for issuers to conduct the review themselves to avoid making publicly available the findings and conclusions of any review of the assets underlying the ABS.

c. Disclosure Regarding Exception Loans

We also are re-proposing additional requirements that we had previously proposed in the 2010 ABS Proposing Release. In the 2010 ABS Proposing Release, we proposed to detail and clarify the type of disclosure that is required to be provided for ABS offerings with respect to deviations from disclosed underwriting standards. We proposed to require that disclosure regarding the inclusion in the pool of assets that deviate from the disclosed underwriting criteria be accompanied by specific data about the amount and characteristics of those assets that did not meet the disclosed standards. We also proposed to require disclosure of what compensating or other factors, if any, were used to determine that the asset should be included in the pool, despite not having met the originator's specified underwriting standards. The commentators that submitted comments on these proposed requirements in the 2010 ABS Proposing Release were generally supportive.⁵⁰

⁵⁰ See, e.g., comment letters from Mortgage Bankers Association, Community Mortgage Banking Project, Realpoint, LLC, CFA Institute, and American Securitization Forum; but see comment letter from IPFS Corporation.

We are re-proposing an amendment to Item 1111 in this release to require similar disclosure.⁵¹ As re-proposed, Item 1111(a)(8) of Regulation AB would require issuers to disclose how the assets in the pool deviate from the disclosed underwriting criteria and include data on the amount and characteristics of those assets that did not meet the disclosed standards. Issuers would be required to disclose the entity (e.g., sponsor, originator, or underwriter) who determined that such assets should be included in the pool, despite not having met the disclosed underwriting standards, and what factors were used to make the determination. For example, this could include compensating factors or a determination that the exception was not material. If compensating or other factors were used, issuers would be required to provide data on the amount of assets in the pool that are represented as meeting each factor and the amount of assets that do not meet those factors. As discussed in the 2010 ABS Proposing Release, we believe that these revisions would further detail and clarify the type of disclosure that is required to be provided for ABS offerings with respect to deviations from disclosed underwriting standards and help elicit important information in areas that became problematic in the recent financial crisis. We also believe that this information would help provide investors with a fuller understanding of the quality and extent of the issuer's review of the assets (through hiring a third-party or otherwise) and how that relates to a determination to either include a loan in the pool or exclude it from the pool.

The requirements proposed here are substantially similar to what we proposed in the 2010 ABS Proposing Release. However, we are proposing an additional requirement, consistent with one commentator's suggestion, that the issuer disclose the entity (e.g., sponsor, originator or

⁵¹ See proposed Item 1111(a)(8) of Regulation AB.

underwriter) who determined that such assets would be included in the pool, despite not having met the disclosed underwriting standards.⁵² We believe that this additional requirement would assist investors in understanding the entities along the securitization chain that may be directing decisions to include exception loans in the pool.

2. Exchange Act Section 15E(s)(4)(A) and new Form ABS-15G

As noted above, Section 932 of the Act amends Exchange Act Section 15E by adding, among other things, a new Section 15E(s)(4)(A) which sets forth the requirement that the issuer or underwriter of any ABS make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter. Unlike Securities Act Section 7(d), which is expressly limited to registered ABS offerings, we believe that the requirements of Exchange Act Section 15E(s)(4)(A) were intended to apply to issuers and underwriters of both registered and unregistered offerings of ABS.⁵³ In this regard, we note that Section 941 of the Act amends Section 3(a) of the Exchange Act to add a definition of “asset-backed security” and that this definition includes asset-backed securities typically offered and sold in unregistered transactions. Further, unlike Section 945 of the Act, Section 932 does not refer to Section 7 of the Securities Act or registration statements filed under the Securities Act.

For registered ABS offerings, this disclosure, with respect to reports obtained by issuers, would be required to be provided in the prospectus as described above. In order to implement the disclosure requirement for unregistered offerings we are proposing new Rule 15Ga-2 under

⁵² See Massachusetts AG comment letter.

⁵³ We note that “underwriter” is a term that is more typically used in connection with registered offerings, and the parties performing similar functions in unregistered transactions are typically referred to as placement agents or initial purchasers. We use the term “underwriter” here to describe all those persons.

the Exchange Act. Proposed Rule 15Ga-2 would require an issuer of Exchange Act-ABS to file a new Form ABS-15G to disclose the findings and conclusions of any third party engaged for purposes of performing a review obtained by an issuer with respect to unregistered transactions.⁵⁴ Rule 15Ga-2 also would require an underwriter of Exchange Act-ABS to file Form ABS-15G with the same information for reports obtained by an underwriter in registered and unregistered transactions. Proposed Form ABS-15G would be filed with the Commission on EDGAR.

We are proposing that Form ABS-15G be required to be filed five business days prior to the first sale of the offering. This requirement, if adopted, would allow investors and NRSROs time to consider the disclosure about a third-party's findings and conclusions regarding its review of the pool assets.⁵⁵

We recognize that public disclosure of information relating to an unregistered offering could raise concerns regarding an issuer's or underwriter's reliance on the private offering

⁵⁴ In a separate release implementing Section 943 of the Act, we are proposing new Form ABS-15G which would be required to be filed by any securitizer that offers asset-backed securities that would be subject to the federal securities laws. See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Release No. 33-9148 (Oct. 4, 2010) (the "Section 943 Release"). The term "securitizer" is defined in Section 15G of the Exchange Act, as added by the Act. Section 15E(s)(4)(B) – (D) also would require that when third-party due diligence services are employed by an NRSRO, an issuer or an underwriter, the person providing the services give a certification to any NRSRO that produces a rating. Section 15E(s)(4) also requires the Commission to issue rules regarding the format, content and disclosure of the certification. As noted above, the Commission will propose and adopt rules to address the other provisions of Section 15E(s)(4) not later than one year after the date of the Act's enactment.

⁵⁵ This five-day time period is intended to be consistent with the proposal in the 2010 ABS Proposing Release that would require that an ABS issuer using a shelf registration statement on proposed Form SF-3 file a preliminary prospectus containing transaction-specific information at least five business days in advance of the first sale of securities in the offering. Commentators' reactions to the proposed five-day requirement in the 2010 ABS Proposing Release were mixed, with some commentators suggesting that five days was longer than investors needed to consider the information in the prospectus (e.g., comment letters from American Bar Association, Bank of America), while other commentators were supportive of the proposed five-day requirement (e.g., comment letter from MetLife, Inc.).

exemptions and safe harbors under the Securities Act.⁵⁶ We intend for Form ABS-15G to be used for both registered and unregistered ABS transactions (although as we note below, if the information has already been provided in a prospectus for a registered transaction, it need not be provided again in Form ABS-15G). We are of the view that issuers and underwriters can disclose information required by Rule 15Ga-2 without jeopardizing reliance on those exemptions and safe harbors, provided that the only information made publicly available is that which is required by the proposed rule, and the issuer does not otherwise use Form ABS-15G to offer or sell securities or in a manner that conditions the market for offers or sales of its securities.⁵⁷

Under our proposal, Form ABS-15G would be signed by the senior officer in charge of securitization of the depositor, if the form were filed to include the findings and conclusions of a third party hired by the issuer. We believe that requiring the senior officer in charge of securitization of the depositor to sign the form is consistent with other signature requirements for filings relating to asset-backed securities.⁵⁸ If the form included the findings and conclusions of a third party engaged by the underwriter, then the form would be signed by a duly authorized officer of the underwriter. We believe that requiring Form ABS-15G to be signed by a duly authorized officer of the underwriter would provide an incentive for the person who signs the form to review it for accuracy.

⁵⁶ See 15 U.S.C. 77d(2), 17 CFR 230.144A, 17 CFR 230.501-508.

⁵⁷ Filing proposed Form ABS-15G would not foreclose the reliance of an issuer on the private offering exemption in the Securities Act and the safe harbor for offshore transactions from the registration provisions in Section 5 [15 U.S.C. 77e]. However, the inclusion of information beyond that required in proposed Rule 15Ga-2, may jeopardize such reliance by constituting a public offering or conditioning the market for the ABS being offered under an exemption.

⁵⁸ See, e.g., signature requirement for Form 10-K (17 CFR 249.312). It is also consistent with our proposed signature requirements for the registration statement for ABS in the 2010 ABS Proposing Release.

As discussed above, because we are proposing that, for registered offerings, the findings and conclusions of the report of a third party that is engaged by the issuer for purposes of asset review would be required to be included in a prospectus that is required to be filed with the Commission,⁵⁹ an issuer that has filed such information on EDGAR would satisfy the Exchange Act Section 15E(s)(4)(A) requirement to make publicly available a third-party report obtained by an ABS issuer. Thus, an ABS issuer that has disclosed the findings and conclusions of a third-party due diligence provider in the first prospectus that is required to be filed under Rule 424 of the Securities Act⁶⁰ and filed in accordance with Rule 424 would not be required to file a Form ABS-15G with the same information. However, any underwriter that has hired a third-party due diligence provider for the registered offering would still be required to file Form ABS-15G with the findings and conclusions of that third-party due diligence provider.

The market for Exchange Act-ABS is global.⁶¹ Securitizers in the United States may sell ABS to offshore purchasers as part of a registered or unregistered offering. As proposed, these transactions would be subject to the requirements of proposed Rule 15Ga-2. In addition, U.S. investors may participate in offerings of ABS that are primarily offered by foreign securitizers to purchasers outside the United States. For example, a small proportion of a primarily offshore offering of ABS may be made available to U.S. investors pursuant to Section 4(2) of the

⁵⁹ In the 2010 ABS Proposing Release, we proposed to require that an asset-backed issuer that offers securities off of a shelf registration statement file a preliminary prospectus at least five business days before first sale. We anticipate that this information would be required to be included in such preliminary prospectus, should we adopt that proposal.

⁶⁰ 17 CFR 230.424.

⁶¹ Indeed, the International Organization of Securities Commissions (IOSCO) cites the recent crisis in the subprime markets, stemming from defaulted mortgage loans in the United States and affected by issues related to liquidity and transparency, as evidence of the interrelation of today's global markets. See Report on the Subprime Crisis – Final Report, Report of the Technical Committee of IOSCO, May 2008, available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD273.pdf>.

Securities Act or Rule 144A under that Act.

We recognize that Exchange Act Section 15E(s)(4)(A) does not specify how its requirements apply to offshore transactions. As noted, consistent with Section 15E(s)(4)(A), proposed Rule 15Ga-2 would require issuers and underwriters to disclose information about unregistered transactions, including those sold in unregistered transactions outside the United States. Securities that are sold in foreign markets and assets originated in foreign jurisdictions may be subject to different laws, regulations, customs and practices which can raise questions as to the appropriateness of the disclosures called for under Form ABS-15G. Although our proposed rules are required by the Act, and we believe the added protections of our rules would benefit investors who purchase securities in these offerings, we are mindful that the imposition of a filing requirement in connection with private placements of ABS in the United States may result in foreign issuers seeking to avoid the filing requirement by excluding U.S. investors from purchasing portions of ABS primarily offered outside the United States, thus depriving U.S. investors of diversification and related investment opportunities.

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14. Are our disclosure proposals appropriate? Should we provide more specific requirements regarding the information that must be provided about the nature and scope of the review? If so, what should we require?
15. Should we consider Securities Act Section 7(d) and Exchange Act Section 15E(s)(4)(A) together and require disclosure of the findings and conclusions of the issuer's or third party's review of the assets, as proposed? Should we, instead, implement Section 15E(s)(4)(A) as part of the later rulemaking under Section 15E?

16. Should we require, as proposed, disclosure relating to assets that deviate from the disclosed origination underwriting criteria?
17. Should we require, as proposed, disclosure of the entity who determined that assets that did not meet the disclosed criteria should be included in the pool, despite not having met the disclosed underwriting criteria? Should issuers be required to disclose, as proposed, what factors were used to make the determination? Would this provide useful information for investors?
18. Is requiring the filing of information regarding the findings and conclusions of the third-party due diligence provider's report on proposed Form ABS-15G on EDGAR an appropriate way for issuers in unregistered offerings and for underwriters in registered and unregistered offerings to make this information publicly available? Should we allow website posting of the information instead? If so, how can we ensure the materials remain public? What advantages does website posting have over requiring that the information be filed on EDGAR? How do we ensure that investors and market participants have access to such information? What would be the liability implications of allowing the information to be posted on a website as an alternative to filing on EDGAR? Are there other appropriate means of making the findings and conclusions "publicly available"?
19. As discussed in request for comment number 10 above, we are aware that for certain types of ABS offerings an issuer may receive numerous reports from appraisers and engineers regarding the property underlying the loan. To what extent do the findings and conclusions of these reports help the issuer in performing its review? We are aware that

CMBS issuers often provide the results of such reports to the “B-piece purchaser” to the extent that the findings of those reports differ from the representations and warranties regarding the assets in the underlying transaction agreements. Should we require that the issuer disclose all of the findings and conclusions provided to a B-piece buyer for purposes of the required disclosure in the registration statement? To what extent do the findings and conclusions of these reports assist rating agencies rating ABS? Should we require, for purposes of Section 15E(s)(4)(A), the findings and conclusions of such reports to be disclosed only to the extent that those findings and conclusions differ from the representations and warranties or the complete list of findings and conclusions provided to a B-piece buyer?

20. Should we provide a temporary hardship exemption from electronic submission of Form ABS-15G with the Commission for filers who experience unanticipated technical difficulties that prevent timely preparation and submission of an electronic filing? Are there any reasons that ABS issuers and underwriters would not be able to submit Form ABS-15G on EDGAR in a timely fashion? If so, what would be an appropriate format for the filing? Would a paper filing be useful to investors and other market participants? Is timely availability of an electronic filing of this information important? If so, should we instead require that the information be posted on a website on the same day it was due to be filed on EDGAR, but require that the filer submit a confirming electronic copy of the information within a prescribed number of business days (e.g., six) of filing the information in paper?⁶²

⁶² See Rule 201 of Regulation S-T [17 CFR 232.201].

21. Is there any reason Exchange Act Section 15E(s)(4)(A) should not apply to both registered and unregistered ABS transactions? If the requirement applies to both registered and unregistered transactions, should the universe of ABS offerings that are subject to the requirement be defined, as proposed, as an offering of asset-backed securities, as that term is defined in Section 3(a)(77) of the Exchange Act? Should the requirement be instead applicable to some other subcategory of asset-backed securities? For example, existing Exchange Act Section 15E(i) refers to a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. Should our rule refer to this description of an asset-backed security instead of the proposed reference to Exchange Act Section 3(a)(77)?⁶³
22. Should we exempt any issuers, underwriters or other parties from this requirement? Should we exempt issuers and underwriters of ABS that are not rated by an NRSRO from having to make publicly available the findings and conclusions of third-party due diligence reports?⁶⁴ As proposed, Rule 15Ga-2 would apply to issuers and underwriters of ABS that are exempted securities as defined in Section 3(a)(12) of the Exchange Act, including government securities and municipal securities. Should such exempted

⁶³ Rules relating to NRSROs have used this terminology, and we have said that this refers to a “broad category of financial instrument that includes, but is not limited to, asset-backed securities such as residential mortgage-backed securities and to other types of structured debt instruments such as collateralized debt obligations, including synthetic and hybrid CDOs, or collateralized loan obligations.” See, e.g., fn. 3 of Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-61050 (Nov. 23, 2009)[74 FR 63832].

⁶⁴ For example, Fannie Mae and Freddie Mac are government sponsored enterprises (“GSEs”) that purchase mortgage loans and issue or guarantee mortgage-backed securities (“MBS”). MBS issued or guaranteed by these GSEs have been, and continue to be, exempt from registration under the Securities Act and reporting under the Exchange Act. These securities have not been, and are not currently, rated by a credit rating agency.

securities be exempt from this provision?⁶⁵

23. Would the proposed requirement that Form ABS-15G be filed five business days prior to first sale provide investors with sufficient time to review the findings and conclusions contained therein? Would it provide NRSROs with sufficient time to take the included information into account in determining a rating? If not, what would be a more appropriate filing deadline and why? Are five business days also appropriate in unregistered offerings? Is there reason to require a different number of days in unregistered offerings?
24. Is our proposed signature requirement for Form ABS-15G appropriate? Is it necessary? Conversely, are there other appropriate individuals that are better suited to sign the form?
25. Should issuers of registered ABS offerings be required to provide notice on Form ABS-15G that they have provided information relating to the third-party due diligence report obtained by the issuer in a prospectus that is filed with the Commission?
26. Where an issuer, underwriter or NRSRO employs a third-party due diligence provider, Section 15E(s)(4)(B) of the Exchange Act also requires that the person providing the due diligence services provide to the NRSRO a written certification in the format and containing content to be determined by the Commission. The Commission is required to prescribe this form and content not later than one year after enactment of the Act.

Although we are not proposing to implement this requirement in this release, we request comment on the appropriate format and content for this certification and how we can

⁶⁵ Exchange Act “exempted securities” include government securities and municipal securities, as defined under the Exchange Act. For example, MBS issued by the Government National Mortgage Association are fully modified pass-through securities guaranteed by the full faith and credit of the United States government. See <http://www.ginniemae.gov/>.

appropriately coordinate the rules and requirements proposed in this release with that statutory requirement.

27. Are there any extra or special considerations relating to offshore sales of ABS that we should take into account in our rules? Should our rules permit issuers or underwriters to exclude information from Form ABS-15G with respect to assets underlying “foreign-offered ABS,” and if so, should foreign-offered ABS be defined to include Exchange Act-ABS that were initially offered and sold solely in accordance with Regulation S, the payments to holders of which are in non-U.S. currency, that are governed by non-U.S. law, and have foreign assets (i.e., assets that are not originated in the United States) that comprise at least a majority of the value of the asset pool? For this purpose, should the foreign asset composition threshold be higher or lower (e.g., 40%, 60%, or 80%)? Would another definition be more appropriate?
28. Should our rules require issuers that are foreign private issuers⁶⁶ to provide information on Form ABS-15G for those Exchange Act-ABS that are to be offered and sold in the United States pursuant to an exemption in an unregistered offering, as proposed? Instead, should our rules only require disclosure about Exchange Act-ABS as to which more than a certain percentage (e.g., 5%, 10% or 20%) of any class of such ABS is sold to U.S. persons?
29. Should we include requirements tailored to revolving asset master trusts? For example, should we include a disclosure requirement in Exchange Act Form 8-K requiring that the issuer provide updated disclosure on its review or due diligence with respect to accounts

⁶⁶ 17 CFR 240.3b-4.

or assets that are added to the pool after the offering transaction has been completed?

Should this be a requirement for each Form 10-D or should it be provided on a quarterly basis instead?

III. General Request for Comment

We request comment on the specific issues we discuss in this release, and on any other approaches or issues that we should consider in connection with the proposed amendments. We seek comment from any interested persons, including investors, asset-backed issuers, sponsors, originators, servicers, trustees, disseminators of EDGAR data, industry analysts, EDGAR filing agents, and any other members of the public.

IV. Paperwork Reduction Act

Certain provisions of the proposed rule amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).⁶⁷ The Commission is submitting these proposed amendments and proposed rules to the Office of Management and Budget (OMB) for review in accordance with the PRA.⁶⁸ An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:⁶⁹

- (1) “Form ABS-15G” (a proposed new collection of information);

⁶⁷ 44 U.S.C. 3501 *et seq.*

⁶⁸ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

⁶⁹ The paperwork burden from Regulation S-K is imposed through the forms that are subject to the requirements in those regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulation S-K.

- (2) “Form S-1” (OMB Control No. 3235-0065);
- (3) “Form S-3” (OMB Control No. 3235-0073); and
- (4) “Regulation S-K” (OMB Control No. 3235-0071).

Compliance with the proposed amendments would be mandatory. Responses to the information collections would not be kept confidential and there would be no mandatory retention period for proposed collection of information.

Our PRA burden estimates for the proposed amendments are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used with respect to ABS, as well as information from outside sources.⁷⁰ When possible, we base our estimates on an average of the data that we have available for the years 2004 through 2009.

1. Form ABS-15G

Form ABS-15G is a new collection of information that relates to proposed disclosure requirements for issuers or underwriters of any ABS. Under the proposed amendments, issuers or underwriters would be required to make publicly available the findings and conclusions of any third party engaged by the issuer or underwriter for the purposes of performing a review of the underlying assets. The burden assigned to Form ABS-15G reflects the cost of preparing and filing the form on EDGAR. The proposed Form ABS-15G would be filed by issuers of unregistered offerings of ABS, and underwriters of registered and unregistered offerings of ABS. During 2004 through 2009, there was an average of 958 registered offerings of ABS per year. We assume for purposes of this PRA that third-party due diligence reports typically are obtained

⁷⁰ We rely on two outside sources of ABS issuance data. We use the ABS issuance data from Asset-Backed Alert on the initial terms of offerings, and we supplement that data with information from Securities Data Corporation (SDC).

only in RMBS and CMBS transactions. This assumption is based on our belief that the smaller the average loan in the pool of assets and the higher the frequency with which the pool loans revolve the less likely it is that there will be a third-party due diligence report. We estimate that RMBS and CMBS comprised 54% (or 517) of the registered offerings during the above time frame.⁷¹ We assume that not all offerings of RMBS and CMBS will involve a third-party due diligence report. We estimate that 75% of RMBS and CMBS offerings would involve a third-party due diligence report. Thus, we estimate that 388 of all registered offerings ($958 \times 0.54 \times 0.75$) involve the hiring of a third-party due diligence provider by an underwriter. Because issuers would include the findings and conclusions of any third-party due diligence report in a prospectus in registered offerings, only underwriters would file a Form ABS-15G in registered ABS offerings.

In addition, over the period 2004 through 2009, the average number of Rule 144A ABS offerings per year was 716.⁷² Because there may be additional ABS offerings that would have been subject to the requirement to file Form ABS-15G (e.g., offerings of asset-backed securities that relied upon Section 4(2) for an exemption from registration), we assume that there would be a total of 800 offerings of asset-backed securities that could be subject to our proposed Form ABS-15G filing requirement. Using the same assumptions and percentage estimates as above, we estimate that 324 ($800 \times 0.54 \times 0.75$) of all unregistered ABS offerings involve the hiring of a third-party due diligence provider by the issuer and underwriter or placement agent. Therefore, we estimate that approximately 712 ($388+324$) Forms ABS-15G would be filed annually. Our

⁷¹ This estimate is based on data from Securities Data Corporation (SDC).

⁷² This is based on ABS issuance data from Asset-Backed Alert and information from SDC.

burden estimate is based on the assumption that the issuer's or underwriter's costs would be limited since Rule 15Ga-2 only requires that issuers or underwriters make publicly available the findings and conclusions they obtained from a third-party. We estimate that the burden to an issuer or underwriter of making the findings and conclusions of a third-party publicly available will be approximately 5 hours to prepare, review and file the Form ABS-15G. This would amount to 3,560 burden hours (5 hours x 712 forms). We allocate 75%, or 2,670 (0.75 x 3,560), of those hours to internal burden hours and 25% for professional costs at \$400 per hour for total outside costs of \$356,000 ($\$400 \times 0.25 \times 3,560$).

2. Rule 15Ga-2

Rule 15Ga-2 contains the requirements for disclosure that an issuer must provide in Form ABS-15G filings described above. The collection of information requirements, however, are reflected in the burden hours estimated for Form ABS-15G. Therefore, Rule 15Ga-2 does not impose any separate burden.

3. Forms S-1 and S-3

We are proposing amendments to Item 1111 of Regulation AB to increase the disclosure that would be required in offerings of ABS registered on either Forms S-1 or S-3. The disclosure required under Item 1111 would include disclosure that otherwise would be required by proposed Exchange Act Rule 15Ga-2 (which implements Section 15E(s)(4)(A) of the Exchange Act), as well as additional information about issuer reviews not required by proposed Rule 15Ga-2. The amendment to Item 1111 would require issuers to disclose how the assets in the pool deviate from the disclosed underwriting criteria, and include data on the amount and characteristics of those assets that did not meet the disclosed standards. Issuers would be

required to disclose the entity who determined that such assets should be included in the pool and what factors were used to make the determination. Under proposed Rule 193, if an issuer employs a third party to perform the review, the third party must be named in the registration statement and consent to being named as an expert in accordance with Securities Act Rule 436. Thus, we anticipate that issuers will incur a burden in obtaining a consent from the third party.

We believe that the proposed requirements would increase the annual incremental burden to issuers by 30 hours per form.⁷³ For registration statements, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the registrant at an average cost of \$400 per hour. From 2004 through 2009, an estimated average of four offerings was registered annually on Form S-1 by ABS issuers. We believe that the proposed requirements would result in an increase to the internal burden to prepare Form S-1 of 30 burden hours ($0.25 \times 30 \times 4$) and an increase in outside costs of \$36,000 ($\$400 \times 0.75 \times 30 \times 4$). During 2004 through 2009, we estimate an annual average of 929 offerings of ABS registered on Form S-3. Therefore, we believe that the proposed requirements would result in an increase to the internal burden to prepare Form S-3 filings of 6,968 burden hours ($0.25 \times 30 \times 929$) and a total cost of \$8,361,000 ($400 \times 0.75 \times 30 \times 929$).

Regulation S-K

Regulation S-K includes the item requirements in Regulation AB and contains the disclosure requirements for filings under both the Securities Act and the Exchange Act. In 2004,

⁷³ This does not reflect burdens associated with the review that would be required as a result of proposed Rule 193, which we believe does not impose a collection of information requirement for purposes of our PRA analysis.

we noted that the collection of information requirements associated with Regulation S-K as it applies to ABS issuers are included in Form S-1 and Form S-3.⁷⁴ The proposed changes would revise Regulation S-K. The collection of information requirements, however, are reflected in the burden hours estimated for the various Securities Act and Exchange Act forms related to ABS issuers. The rules in Regulation S-K do not impose any separate burden. Consistent with historical practice, we have retained an estimate of one burden hour for Regulation S-K for administrative convenience.

Form	Current Annual Responses	Proposed Annual Responses	Current Burden Hours	Increase in Burden Hours	Proposed Burden Hours	Current Professional Costs	Increase in Professional Costs	Proposed Professional Costs
S-1	1,168	1,168	247,982	30	248,012	\$297,578,400	\$36,000	\$297,614,400
S-3	2,065	2,065	236,959	6,968	243,927	\$284,350,500	\$8,361,000	\$292,711,500
Form ABS-15G	-	712	-	2,670	2,670	-	\$356,000	\$356,000
Total				9,668			\$8,753,000	

Request for Comment

We request comments in order to evaluate (1) whether the proposed collection of information is necessary for the proper functioning of the agency, including whether the information would have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information; (3) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) whether there are way to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

⁷⁴ See 2004 Regulation AB Adopting Release.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, with reference to File No. S7-26-10. Request for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-26-10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE, Washington, DC 20549-0213. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Benefit-Cost Analysis

The proposed amendments to our regulations for ABS relate to requiring an issuer of an ABS to perform a review of the assets underlying the security. We are proposing rules that are intended to implement the requirements under new Section 7(d) of the Securities Act. We also are proposing rules that are intended to implement part of new Section 15E(s)(4) of the Exchange Act. First, we are proposing a new Securities Act rule to require issuers of registered offerings of asset-backed securities to perform a review of the assets underlying the asset-backed securities. Second, we also are proposing new requirements in Regulation AB to require disclosure regarding:

- The nature of the review of assets conducted by an ABS issuer;
- The findings and conclusions of a review of assets conducted by an issuer or third party;
- Data on assets in the pool that do not meet the underwriting standards; and
- Disclosure regarding which entity determined that the assets should be included in the pool, despite not having met the underwriting standards and what factors were considered in making this determination.

We also are proposing to require that an issuer or underwriter of any Exchange Act-ABS be required to file the findings and conclusions of a third-party due diligence report on a new form filed on EDGAR.

A. Benefits

The proposed amendments are designed to increase investor protection by implementing the requirement on issuers to perform a review of the underlying assets and disclose the nature of the review. This should lead to enhanced transparency in offerings of ABS, and result in an increase in investors' understanding of the underlying pool of assets. We believe that the proposal to require the issuer to perform a review of the assets underlying an ABS is likely to result in an improvement in the quality of securitized loan pools to the extent that these reviews are able to identify non-compliant or otherwise low-quality assets. It also will allow the public to determine the adequacy and level of due diligence services provided by a third party which is consistent with the purposes of Section 932 of the Act.⁷⁵ We expect that requiring a review of the assets will result in loan pools of higher quality.

⁷⁵ See S. Rep. No. 111-176, at 121 (2010).

Further, the description of the nature of the review and disclosure of findings and conclusions should encourage more rigorous asset reviews, whether by issuers or third parties engaged to perform the asset reviews. These disclosures would complement the requirement to perform a review by improving their quality. We also believe that the proposal to make publicly available on EDGAR the findings and conclusions of third-party due diligence reports in ABS offerings will allow the public to better assess and more easily determine the adequacy and level of due diligence services provided by a third party. This benefit of the proposed rule is consistent with the purposes of Section 932 of the Act as indicated in the legislative history of the Act which states that “many analysts point to the decline of due diligence as a factor that contributed to the poor performance of asset-backed securities during the crisis.”⁷⁶ We also note the reference in the Act’s legislative history to a need to address the lack of due diligence regarding information on which ratings are based.⁷⁷ Finally, although issuers in registered offerings would not be required to use a third party to satisfy the review requirement, as a condition to such use, a third party would be required to consent to being named in the registration statement and thereby accept potential expert liability, which should increase the quality of that review. In registered offerings, the potential expert liability for the findings of third-party reviews provides accountability and creates stronger incentives to perform high-quality reviews that protect investors. The resulting disclosures reduce the information risk of investing in these securities. Our proposal to require disclosure by the issuer of the nature, findings and conclusions of its review could result in improved asset review practices.

⁷⁶ See id.

⁷⁷ See id.

Moreover, this could be useful to investors if they prefer investing in securities about which there is disclosure indicating a more robust review over investing in securities about which the disclosure indicates a less robust review.

The proposed requirement to disclose exception loans should provide important information to investors regarding the characteristics of the pool that may otherwise not be publicly known. For those issuers that currently provide asset-level information about the pool, an investor might be able to determine some information about the number of exception loans; however, even where this could be determined, the proposals would reduce investors' cost of information production by reducing duplicative efforts on their part to gather such data on their own or purchase it through data intermediaries. We also are proposing to require more information about the entities that have determined that an asset that deviates from underwriting standards should, nonetheless, be included in the pool. Because third-party asset review providers typically work for sponsors, there is potentially a conflict of interest when a sponsor can waive or overrule the third-party's conclusions that insufficient compensating factors exist to allow inclusion of an asset that does not meet the underwriting standards governing the pool.⁷⁸ We expect that information about which entity made the determination to include an asset in the pool despite not having met the underwriting standards will provide investors with information to gauge whether the decision to accept such loans otherwise may be subject to a conflict of interest. We also expect this will reduce the cost of information asymmetry and could be useful information to investors because investors may be able to price a securitization of a pool of assets more accurately, and to credit rating agencies in assigning more informed credit ratings.

⁷⁸ See e.g., comment letter from Massachusetts AG.

Our proposal to require disclosure of the nature of the review, as well as the findings and conclusions of any such review, may increase investor confidence in the market for ABS. This proposal, in conjunction with the proposal to require that issuers perform a review, could allow investors to better understand the information about the asset pool and credit risk of the asset pool including whether the asset pool consists of loans to borrowers without the ability to repay the loans, or is composed of loans made to creditworthy borrowers.

In addition, Section 15E(s)(4)(A) of the Exchange Act, as added by Section 932 of the Act, which requires issuers and underwriters to make the findings and conclusions of third-party due diligence reports publicly available, is aimed at improving the quality of information received by rating agencies issuing ratings on asset-backed securities in registered and unregistered offerings.⁷⁹ We have proposed to make this information publicly available on EDGAR. By requiring the proposed Form ABS-15G to be filed on EDGAR, the information that would be required would be housed in a central repository that would preserve continuous access to the information.

B. Costs

The proposed rule would implement the requirement that all issuers of registered ABS offerings perform a review of the underlying assets and that those issuers disclose the nature of their review. Although some issuers of ABS may currently perform a review of the underlying assets, ABS issuers in registered offerings may incur additional costs to perform more extensive reviews, whether the issuer performs the review itself, or hires a third-party to perform the review. It is possible that by not establishing a minimum level of review and leaving the

⁷⁹ See id.

determination of the appropriate level of review to each individual issuer, a lack of a uniform standard could result in investors having difficulty comparing the level of review and the disclosures about the review among various issuers and asset classes.

It is possible that by not establishing a minimum level of review and leaving the determination of the appropriate level of review to each individual issuer, some issuers who otherwise may have performed a more thorough review to meet a proposed minimum level of review may design their reviews to accomplish no more than what is required by the rule.

As proposed, Rule 193 permits an issuer to rely on a third party to perform the required review, provided the review satisfies the standard in Rule 193 and the third party consents to be named in the registration statement. Some asset classes may not have third-party due diligence providers available to be engaged to conduct a review. In instances where an issuer must conduct the review, we believe that the costs of conducting these reviews will not exceed the costs of engaging third parties to conduct the reviews. Third-party due diligence providers are not registered with the Commission and some may not be subject to professional standards. Further, it is possible that third-party providers may lack sufficient capabilities to provide the review for which they are retained. However, our rules would subject third-party due diligence providers in registered transactions to potential expert liability for the disclosure regarding the findings and conclusions of their review of the assets. For certain firms, however, in particular smaller due diligence entities that may lack the financial resources to cover their potential liabilities, expert liability may not be a significant deterrent because these firms have less financial resources exposed to potential liability and may not be as concerned about losing potential claims compared to firms that have more financial resources exposed to liability. This

may create a burden on both qualified providers of due diligence and the securitizers that hire them.

We acknowledge that this requirement would impose costs on issuers and third-party due diligence providers, and they may be required to adjust their practices (and prices in the case of third parties) to account for this new requirement.

Finally, for unregistered offerings, the disclosure of the results of an asset review is required only for third-party reviews. This may indirectly result in discouraging issuers and underwriters from obtaining third-party reviews in unregistered offerings.

Our proposals requiring issuers to disclose the nature of the review as well as the findings and conclusions of such review will impose a disclosure burden. In addition, filers will make the information proposed to be required available on EDGAR, which requires obtaining authorization codes and adherence to formatting instructions. For purposes of the PRA, we estimate that the new disclosure would cause an increase in the total cost of preparing Forms S-1 and S-3 of \$13,995,000. In addition, for purposes of the PRA, we estimate that the cost for including third-party findings in Form ABS-15G would be \$356,000.

Request for Comment

We seek comments and empirical data on all aspects of this Benefit-Cost Analysis including identification and quantification of any additional costs and benefits. Specifically, we ask the following:

- What would be the costs to an issuer of performing a review of the underlying assets? How would this compare to the cost of hiring a third-party provider to perform the review?

- What would be the additional costs arising from the application of expert's liability to third-parties performing reviews for issuers?

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a) of the Exchange Act⁸⁰ requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 2(b) of the Securities Act⁸¹ and Section 3(f) of the Exchange Act⁸² require the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. Below, we address these issues for each of the proposed, substantive changes to offerings of ABS.

As a result of the financial crisis and subsequent events, the market for securitization has declined due, in part, to perceived uncertainty about the accuracy of information about the pools backing the ABS and perceived problems in the securitization process that affected investors' willingness to participate in these offerings.⁸³ Greater transparency of the review performed on the underlying assets would decrease the uncertainty about pool information and, thus, should help investors price these products more accurately. The proposed requirements are likely to

⁸⁰ 15 U.S.C. 78w(a).

⁸¹ 15 U.S.C. 77b(b).

⁸² 15 U.S.C. 78c(f).

⁸³ See, e.g., David Adler, [A Flat Dow for 10 Years? Why it Could Happen](#), BARRONS (Dec. 28, 2009).

positively affect pricing, efficiency, and capital allocation in ABS capital markets.

Finally, the introduction of expert liability on the third-party review providers may have consequences for the competition in this market. The possibility of expert liability may provide an incentive for due diligence providers to improve the quality of their reviews. Thus, one possible market outcome is for reviewers to compete on the quality of their services, because competing on price accompanied by lower quality may cease to be economically viable given the potential liability.

On the other hand, the possibility of expert liability may not be a significant deterrent for smaller due diligence providers that do not have the financial resources to cover their potential liabilities. This may adversely affect competition in both the market for the provision of due diligence and the market for ABS. Diligent providers of asset reviews may be pressured to decrease their standards, their prices or both. In addition, ABS with reviews obtained from such parties may affect the pricing of competing securities. Alternatively, the possibility of expert liability could be an incentive for due diligence providers to improve their capabilities.

In summary, taken together the proposed amendments and regulations implement Congress' mandate under the Act and are designed to improve investor protection, improve the quality of the assets underlying an ABS, and increase transparency to market participants. We believe that the proposals also would improve investors' confidence in asset-backed securities and help recovery in the asset-backed securities market with attendant positive effects on efficiency, competition and capital formation.

We request comment on our proposed amendments. We request comment on whether our proposals would promote efficiency, competition, and capital formation. Commentators are

requested to provide empirical data and other factual support for their views, if possible.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,⁸⁴ a rule is “major” if it has resulted, or is likely to result in:

- an annual effect on the U.S. economy of \$100 million or more;
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposed amendments would be a “major rule” for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

- the potential effect on the U.S. economy on an annual basis;
- any potential increase in costs or prices for consumers or individual industries; and
- any potential effect on competition, investment, or innovation.

VIII. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the proposals contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposals relate to the registration, disclosure and reporting requirements for asset-backed securities under the Act, the Securities Act and the Exchange Act. Securities Act Rule 157⁸⁵ and Exchange Act Rule 0-10(a)⁸⁶ defines an issuer,

⁸⁴ Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁸⁵ 17 CFR 230.157.

⁸⁶ 17 CFR 240.0-10(a).

other than an investment company, to be a “small business” or “small organization” if it had total assets of \$5 million or less on the last day of its most recent fiscal year. As the depositor and issuing entity are most often limited purpose entities in an ABS transaction, we focused on the sponsor in analyzing the potential impact of the proposals under the Regulatory Flexibility Act. Based on our data, we only found one sponsor that could meet the definition of a small broker-dealer for purposes of the Regulatory Flexibility Act.⁸⁷ In addition, we do not believe that any underwriter of ABS would meet the definition of a small entity for purposes of the Regulatory Flexibility Act.⁸⁸ Accordingly, the Commission does not believe that the proposals, if adopted, would have a significant economic impact on a substantial number of small entities.

IX. Statutory Authority and Text of Proposed Rule and Form Amendments

We are proposing the new rules and amendments contained in this document under the authority set forth in Sections 6, 7, 10, 19(a), and 28 of the Securities Act, and Sections 3(b), 15E, 15G, 23(a), 35A and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 229, 230, 240, and 249

Advertising, Reporting and recordkeeping requirements, Securities.

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 — REGULATION S-K

1. The authority citation for part 229 continues to read in part as follows:

⁸⁷ This is based on data from Asset-Backed Alert.

⁸⁸ This is based on data from Asset-Backed Alert.

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend §229.1111 by:
 - a. Revising the introductory text to paragraph (a):
 - b. Adding paragraphs (a)(7) and (a)(8).

The revision and additions read as follows:

§229.1111 (Item 1111) Pool assets.

* * * * *

(a) Information regarding pool asset types and selection criteria. Provide the following information:

* * * * *

(7)(i) The nature of a review of the assets performed by an issuer or sponsor (required by §230.193), including whether the issuer of any asset-backed security engaged a third party for purposes of performing a review of the pool assets underlying an asset-backed security; and

(ii) The findings and conclusions of the review of the assets by the issuer, sponsor, or third party described in paragraph (7)(i) of this section.

Instruction to Item 1111(a)(7): If the issuer has engaged a third party for purposes of performing the review of assets, the issuer must provide the name of the third-party reviewer and comply with the requirements of §230.436 of this chapter.

(8) If any assets in the pool deviate from the disclosed underwriting criteria, disclose how those assets deviate from the disclosed underwriting criteria and include data on the amount and characteristics of those assets that did not meet the disclosed standards. Disclose which entity (e.g., sponsor, originator, or underwriter) determined that those assets should be included in the pool, despite not having met the disclosed underwriting standards, and what factors were used to make the determination, such as compensating factors or a determination that the exception was not material. If compensating or other factors were used, provide data on the amount of assets in the pool that are represented as meeting each such factor and the amount of assets that do not meet those factors.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

Section 230.193 is also issued under sec. 943, Pub. L. No. 111-203, 124 Stat. 1376.

* * * * *

4. Add §230.193 to read as follows:

§230.193 Review of underlying assets in asset-backed securities transactions.

An issuer of an “asset-backed security”, as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)), offering and selling such a security pursuant to a registration statement shall perform a review of the pool assets underlying the

asset-backed security. The issuer may conduct the review or an issuer may employ a third party engaged for purposes of performing the review provided the third party is named in the registration statement and consents to being named as an expert in accordance with §230.436 of this chapter.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 240 is amended by adding authority for §240.15Ga-2 to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a- 20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350 and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

Section 240.15Ga-2 is also issued under sec. 943, Pub. L. No. 111-203, 124 Stat. 1376.

* * * * *

6. Add §240.15Ga-2 to read as follows:

§ 240.15Ga-2 Findings and conclusions of third-party due diligence reports.

(a) The issuer or underwriter of any “asset-backed security” (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)) shall file Form ABS-15G (17 CFR 249.1300) containing the findings and conclusions of any report of a third party engaged for purposes of performing a review of the pool assets obtained by the issuer or underwriter five business days prior to the first sale in the offering.

(b) If the issuer in a registered offering of asset-backed securities has included the information required by paragraph (a) of this section in the first prospectus that is required to be filed under 17 CFR 230.424 for that offering and filed in accordance with 17 CFR 230.424, then the issuer is not required to file Form ABS-15G (17 CFR 249.1300) to include the same information.

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 249 is amended by adding an authority for §249.1300 to read as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

Section 249.1300 is also issued under sec. 943, Pub. L. No. 111-203, 124 Stat. 1376.

* * * * *

8. Add Subpart O and Form ABS-15G (referenced in §249.1300) to Part 249 to read as follows:

Subpart O – Forms for Securitizers of Asset-Backed Securities

§249.1300 Form ABS-15G, Asset-backed securitizer report pursuant to Section 15G of the Securities Exchange Act of 1934

This form shall be used for reports of information required by Rule 15Ga-1 (§240.15Ga-1 of this chapter) and Rule 15Ga-2 (§240.15Ga-2 of this chapter).

Note: The text of Form ABS-15G does not, and this amendment will not, appear in the Code of Federal Regulations.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM ABS-15G

**ASSET-BACKED SECURITIZER
REPORT PURSUANT TO SECTION 15G OF
THE SECURITIES EXCHANGE ACT OF 1934**

Check the appropriate box to indicate the filing obligation to which this form is intended to satisfy:

Rule 15Ga-1 under the Exchange Act (17 CFR 240.15Ga-1)
 Rule 15Ga-2 under the Exchange Act (17 CFR 240.15Ga-2)

Date of Report (Date of earliest event reported) _____

Commission File Number of securitizer: _____

Central Index Key Number of securitizer: _____

Name and telephone number, including area code, of the person to
contact in connection with this filing

For filings under Rule 15Ga-2, also provide the following information:

Central Index Key Number of depositor: _____

Commission File Number of depositor (if applicable): _____

(Exact name of issuing entity as specified in its charter)

Central Index Key Number of issuing entity (if applicable): _____

Commission File Number of issuing entity (if applicable): _____

Central Index Key Number of underwriter (if applicable): _____

Commission File Number of underwriter (if applicable): _____

GENERAL INSTRUCTIONS

A. Rule as to Use of Form ABS-15G.

This form shall be used to comply with the requirements of Rules 15Ga-1 and 15Ga-2 under the Exchange Act (17 CFR 240.15Ga-1 and 17 CFR 240.15Ga-2).

B. Events to be Reported and Time for Filing of Reports.

1. Forms filed under Rule 15Ga-1. In accordance with Rule 15Ga-1, file the information required by Part I in accordance with Item 1.01, Item 1.02, or Item 1.03, as applicable. If the filing deadline for the information occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, then the filing deadline shall be the first business day thereafter.
2. Forms filed under Rule 15Ga-2. In accordance with Rule 15Ga-2, file the information required by Part II no later than five business days prior to the first sale of securities in the offering.

C. Preparation of Report.

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b-12 (17 CFR 240.12b-12). The report shall contain the number and caption of the applicable item, but the text of such item may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b-13 (17 CFR 240.12b-13). All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

D. Signature and Filing of Report.

1. Forms filed under Rule 15Ga-1. Any form filed for the purpose of meeting the requirements in Rule 15Ga-1 must be signed by the senior officer in charge of securitization of the securitizer.
2. Forms filed under Rule 15Ga-2. Any form filed for the purpose of meeting the requirements in Rule 15Ga-2 must be signed by the senior office in charge of securitization of the depositor if information required by Item 2.01 is required to be provided and must be signed by a duly authorized officer of the underwriter if information required by Item 2.02 is required to be provided.
3. Copies of report. If paper filing is permitted, three complete copies of the report shall be filed with the Commission.

INFORMATION TO BE INCLUDED IN THE REPORT

PART I – REPRESENTATION AND WARRANTY INFORMATION

Item 1.01 Initial Filing of Rule 15Ga-1 Representations and Warranties Disclosure

If any securitizer (as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934), issues an asset-backed security (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934), or organizes and initiates an asset-backed securities transaction by selling or transferring an asset, either directly or indirectly, including through an affiliate, to the issuer, provide the disclosures required by Rule 15Ga-1 (17 CFR 240.15Ga-1) at the time the securitizer, or an affiliate commences its first offering of the asset-backed securities after [compliance or effective date of the final rule], if the underlying transaction agreements contain a covenant to repurchase or replace an underlying asset for breach of a representation or

warranty.

Item 1.02 Periodic Filing of Rule 15Ga-1 Representations and Warranties Disclosure

Each securitizer which was required to provide the information required by Item 1.01 of this form shall provide the disclosures required by Rule 15Ga-1 (17 CFR 240.15Ga-1) as of the end of each calendar month, to be filed not later than 15 calendar days after the end of such calendar month.

Item 1.03 Notice of Termination of Duty to File Reports under Rule 15Ga-1

If any securitizer has no asset-backed securities outstanding (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934) held by non-affiliates, provide the date of the last payment on the last asset-backed security outstanding that was issued by or issued by an affiliate of the securitizer.

PART II- ASSET REVIEW INFORMATION

Item 2.01 Findings and Conclusions of a Third Party Engaged by the Issuer to Review Assets

Provide the disclosures required by Rule 15Ga-2 (17 CFR 240.15Ga-2) for any report by a third party engaged by the issuer for the purpose of reviewing assets underlying an asset-backed security.

Item 2.02 Findings and Conclusions of a Third-Party Engaged by the Underwriter to Review Assets

Provide the disclosures required by Rule 15Ga-2 (17 CFR 240.15Ga-2) for any third-party engaged by the underwriter for the purpose of reviewing assets underlying an asset-backed security.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the reporting entity has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

_____ (Depositor, Securitizer, or Underwriter)

Date _____

_____ (Signature)*

*Print name and title of the signing officer under his signature.

By the Commission.

Elizabeth M. Murphy
Secretary

Dated: October 13, 2010.