SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239 and 249

Release Nos. 33-9244; 34-64968; File No. S7-08-10

RIN 3235-AK37

Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment

AGENCY: Securities and Exchange Commission.

ACTION: Re-proposed rule.

SUMMARY: We are revising and re-proposing certain rules that were initially proposed in April 2010 related to asset-backed securities in light of the provisions added by the Dodd-Frank Wall Street Reform and Consumer Protection Act and comments received on our April 2010 proposals. Specifically, we are re-proposing registrant and transaction requirements related to shelf registration of asset-backed securities and changes to exhibit filing deadlines. In addition, we are requesting additional comment on our proposal to require asset-level information about the pool assets. We continue to consider the other matters in our April 2010 proposing release.

DATES: Comments should be received on or before October 4, 2011.

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);
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-08-10 on the subject line; or

- Use the Federal Rulemaking 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 S7-08-10. 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 Web site (http://www.sec.gov/rules/proposed.shtml). Comments are also available for Web site viewing and copying 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 pm. 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: Rolaine Bancroft, Senior Special Counsel, Robert Errett, Special Counsel, or Jay Knight, Special Counsel, in the Office of Structured Finance, at (202) 551-3850, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Item 601[1] of Regulation S-K;[2] Items 1100, 1101, 1109, 1119, and 1121[3] of Regulation AB[4] (a subpart of

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1 17 CFR 229.601.

2 17 CFR 229.10 et al.

3 17 CFR 229.1100, 17 CFR 229.1101, 17 CFR 229.1109, 17 CFR 229.1119, 17 CFR 229.1121.

4 17 CFR 229.1100 through 17 CFR 229.1123.

Regulation S-K); Rules 401 and 415,[5] under the Securities Act of 1933 ("Securities Act");[6] and Form 10-D[7] under the Securities Exchange Act of 1934 ("Exchange Act").[8] We also are proposing to add Form SF-3[9] under the Securities Act.

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5 17 CFR 230.401 and 17 CFR 230.415.

6 15 U.S.C. 77a et seq.

7 17 CFR 249.312.

8 15 U.S.C. 78a et seq.

9 17 CFR 239.45.

I. Background

In April 2010, we proposed rules that would revise the disclosure, reporting and offering process for asset-backed securities ("ABS").[10] In light of the problems exposed by the financial crisis, we had proposed significant revisions to our rules governing offers, sales and reporting with respect to asset-backed securities. These 2010 ABS Proposals were designed to improve investor protection and promote more efficient asset-backed markets.

Among other things, in the 2010 ABS Proposing Release we proposed eligibility requirements to replace the current credit rating references in shelf eligibility criteria for asset-backed security issuers. We also proposed to require that, with some exceptions, prospectuses for public offerings of asset-backed securities and ongoing Exchange Act reports contain specified asset-level information about each of the assets in the pool in a standardized tagged data format. Our proposal also included disclosure requirements as conditions to exemptions from offering registration. Further, we proposed to require asset-backed issuers to provide investors with more time to consider transaction-specific information about the pool assets.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") was enacted in July 2010.[11] The April 2010 ABS proposals sought to address a number of concerns about the ABS offering process and ABS disclosures that were subsequently addressed in the Act, while others were not referenced in the Act. Specifically, two of the proposed requirements – risk retention[12] and continued Exchange Act reporting[13] – will be

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[10] See Asset-Backed Securities, SEC Release No. 33-9117 (April 7, 2010) [75 FR 23328] (the "2010 ABS Proposing Release" or the "2010 ABS Proposals").

[11] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[12] In the 2010 ABS Proposing Release, we proposed to require sponsors of ABS transactions retain a specified amount of each tranche of the securitization, net of hedging. Section 941 of the Act added new

required for most registered ABS offerings as a result of changes mandated by provisions of the Act. We are re-proposing some of the 2010 ABS Proposals at this time in light of the changes made by the Act and comments we received.

Our re-proposals for ABS shelf registration eligibility are also part of several rule revisions we are considering in connection with Section 939A of the Act. Section 939A of the Act requires that we ''review any regulation issued by [us] that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings." Once we have completed that review, the statute provides that we modify any regulations identified in our review to ''remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness'' as we determine to be appropriate. In that connection, we take into account the context and purposes of the affected rules.

Section 15G of the Exchange Act. Section 15G generally requires the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Commission and in the case of the securitization of any "residential mortgage asset," together with the Department of Housing and Urban Development and the Federal Housing Finance Agency, to jointly prescribe regulations relating to risk retention. In March 2011, the agencies proposed rules to implement Section 15G of the Exchange Act. See Credit Risk Retention, SEC Release No. 34-64148 (March 30, 2011) [76 FR 24090] (the "Risk Retention Proposing Release" or "Risk Retention Proposals").

[13] The Commission proposed in the 2010 ABS Proposals to require that an ABS issuer undertake to file Exchange Act reports with the Commission on an ongoing basis as a condition to shelf eligibility. The 2010 ABS Proposals also proposed to require an issuer to confirm, among other things, whether Exchange Act reports required pursuant to the undertaking were current as of the end of the quarter in order to be eligible to use the effective registration statement for takedowns. Section 942(a) of the Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Exchange Act for ABS issuers, and granted authority to the Commission to issue rules providing for the suspension or termination of such duty. Due to the amendment to Section 15(d), the proposed shelf eligibility requirement to undertake to file Exchange Act reports is no longer necessary, including the quarterly evaluation by issuers of compliance with the undertaking. In January 2011, we proposed rules to provide for suspension of the reporting obligations for asset-backed securities issuers when there are no asset-backed securities of the class sold in a registered transaction held by non-affiliates of the depositor. See Suspension of the Duty to File Reports for Classes of Asset-Backed Securities Under Section 15(d) of the Securities Exchange Act of 1934, Release No. 34-63652 (Jan. 6, 2011) [76 FR 2049].

Our re-proposals today for shelf eligibility would require:

- A certification filed at the time of each offering off of a shelf registration statement, or takedown, by the chief executive officer of the depositor or executive officer in charge of securitization of the depositor concerning the disclosure contained in the prospectus and the design of the securitization.
- Provisions in the underlying transaction agreements requiring the appointment of a credit risk manager to review assets upon the occurrence of certain trigger events and provisions requiring repurchase request dispute resolution;
- A provision in an underlying transaction agreement to include in ongoing distribution reports on Form 10-D a request by an investor to communicate with other investors; and
- An annual evaluation of compliance with the registrant requirements.

We are also re-proposing revised filing deadlines for exhibits in shelf offerings to require that the underlying transaction agreements, in substantially final form, be filed and made part of a registration statement by the date the preliminary prospectus is required to be filed under the 2010 ABS Proposal.[14]

We are requesting additional comment on our 2010 ABS Proposals relating to asset-level data in light of Section 942(b) of the Act and comments we received on the 2010 ABS Proposals. Section 942(b) of the Act adds Section 7(c) of the Securities Act to require the Commission to adopt regulations requiring an issuer of an asset-backed security to disclose, for each tranche or class of security, certain loan level information regarding the assets

[14] See discussion regarding proposed Rules 424(h) and 430D below in Section II.

backing that security.[15] Lastly, we are requesting additional comment on our 2010 ABS Proposals relating to privately-offered structured finance products.

II. Securities Act Shelf Registration

Securities Act shelf registration provides important timing and flexibility benefits to issuers. An issuer with an effective shelf registration statement can conduct delayed offerings ''off the shelf'' under Securities Act Rule 415 without staff action.[16] Under our current rules, asset-backed securities may be registered on a Form S–3 registration statement and later offered ''off the shelf'' if, in addition to meeting other specified criteria,[17] the

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15 See Section 7(c) of the Securities Act.

16 As discussed in the 2010 ABS Proposing Release, contemporaneous with the enactment of Secondary Mortgage Market Enhancement Act of 1984 (SMMEA), which added the definition of ''mortgage related security'' to the Exchange Act, we amended Securities Act Rule 415 to permit mortgage related securities to be offered on a delayed basis, regardless of which form is utilized for registration of the offering (Public Law 98–440, 98 Stat. 1689). SMMEA was enacted by Congress to increase the flow of funds to the housing market by removing regulatory impediments to the creation and sale of private mortgage-backed securities. An early version of the legislation contained a provision that specifically would have required the Commission to create a permanent procedure for shelf registration of mortgage related securities. The provision was removed from the final version of the legislation, however, as a result of the Commission's decision to adopt Rule 415, implementing a shelf registration procedure for mortgage related securities. See H.R. Rep. No. 994, 98th Cong., 2d Sess. 14, reprinted in 1984 U.S. Code Cong. & Admin. News 2827; see also Shelf Registration, Release No. 33–6499 (Nov. 17, 1983) [48 FR 52889], at n. 30 (noting that mortgage related securities were the subject of pending legislation). In 1992, in order to facilitate registered offerings of asset-backed securities and eliminate differences in treatment under our registration rules between mortgage related asset-backed securities (which could be registered on a delayed basis) and other asset-backed securities of comparable character and quality (which could not), we expanded the ability to use ''shelf offerings'' to other asset-backed securities. See Simplification of Registration Procedures for Primary Securities Offerings, Release No. 33– 6964 (Oct. 22, 1992) [57 FR 32461]. Under the 1992 amendments, offerings of asset-backed securities rated investment grade by an NRSRO (typically one of the four highest categories) could be shelf eligible and registered on Form S–3. The eligibility requirement's definition of ''investment grade'' was largely based on the definition in the existing eligibility requirement for non-convertible corporate debt securities.

17 In addition to investment grade rated securities, an ABS offering is eligible for Form S–3 registration only if the following conditions are met: (i) Delinquent assets must not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date; and (ii) with respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date. See General Instruction I.B.5 of Form S–3. Moreover, to the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor are or were at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on Form S–3 subject to the requirements of Section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to Section 13, 14 or 15(d) of the Exchange

securities are rated investment grade by a nationally recognized statistical rating organization (NRSRO). As we explained in the 2010 ABS Proposing Release, we recognize that asset-backed issuers have expressed the need to use shelf registration to access the capital markets quickly.[18] Our re-proposed shelf eligibility requirements are designed to help ensure a certain quality and character for asset-backed securities that are eligible for delayed shelf registrations given the speed of these offerings. We discuss our proposed revisions to the registrant and transaction requirements for shelf eligibility below.[19]

A. Proposed Form SF-3

In the 2010 ABS Proposing Release, given the distinctions between ABS offerings and other registered securities offerings, we proposed to add new registration forms that would be used for any sale of a security that meets the definition of an asset-backed security,[20] as defined in Item 1101 of Regulation AB.[21] The proposed new forms, which would be named Form SF-1 and Form SF-3,[22] would require disclosure in accordance with

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Act (15 U.S.C. 78m, 78n or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). Such material (except for certain enumerated items) must have been filed in a timely manner. *See* General Instruction I.A.4 of Form S–3. We are not proposing changes to these other eligibility conditions.

18 According to EDGAR, in 2006 and 2007, only three ABS issuers filed registration statements on Form S-1 that went effective. See the 2010 ABS Proposing Release at 23334.

19 In addition to the removal of references to ratings from the shelf eligibility requirements, we note that our 2010 ABS Proposing Release included proposals to increase the amount of time that investors are required to be provided to review information regarding a particular shelf takedown and, therefore, promote analysis of asset-backed securities in lieu of undue reliance on security ratings for shelf offerings. New Rule 424(h), as proposed in the 2010 Proposing Release, would require an ABS issuer using a shelf registration statement on proposed Form SF-3 to file a preliminary prospectus containing transaction-specific information at least five business days in advance of the first sale of securities in the offering. Proposed new Rule 430D would require the framework for shelf registration of ABS offerings and related Rule 424(h) filing requirements for a preliminary prospectus. Under proposed Rule 430D, the Rule 424(h) preliminary prospectus must contain substantially all the information for the specific ABS takedown previously omitted from the prospectus filed as part of an effective registration statement, except for pricing information. These proposals remain outstanding. See the 2010 ABS Proposing Release at 23335.

20 See the ABS 2010 ABS Proposing Release at 23337.

21 17 CFR 229.1101(c).

22 The proposed forms would be referenced in 17 CFR 239.44 and 17 CFR 239.45.

all the items applicable to ABS offerings that are currently required in Form S-1 and Form S-3 as modified by the 2010 ABS Proposals. Offerings that qualify for delayed shelf registration[23] would be registered on proposed Form SF-3, and all other ABS offerings would be registered on Form SF-1.[24]

With respect to proposed Form SF-3, we are only re-proposing certain registrant and transaction requirements contained in the instructions to the Form. The other parts of proposed Form SF-3, which include, among other things, disclosure requirements and instructions for signatures, remain unchanged and outstanding.[25]

B. Shelf Eligibility for Delayed Offerings

Under the 2010 ABS Proposals, ABS issuers would no longer establish shelf eligibility through an investment grade credit rating.[26] The proposals were part of our broad ongoing effort to remove references to NRSRO credit ratings from our rules in order to reduce the risk of undue ratings reliance and eliminate the appearance of an imprimatur that such references may create.[27] In place of credit ratings, we had proposed to establish four shelf eligibility criteria that would apply to mortgage-related securities and other asset-backed securities alike:

- A certification filed at the time of each offering off of a shelf registration statement, or takedown, by the chief executive officer of the depositor that the

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[23] In this release, we also refer to such offerings on current Form S-3 and proposed Form SF-3 as "shelf offerings." Note that in the 2010 ABS Proposing Release, we proposed to limit the registration of continuous ABS offerings to "all or none" offerings on Form SF-3. That proposal remains unchanged and outstanding. See the 2010 ABS Proposing Release at 23350.

[24] We are not re-proposing any part of Form SF-1 today. Therefore, our 2010 ABS Proposal for Form SF-1 remains outstanding.

[25] The proposed text of the entire Form SF-3 is included in Section XI of this release, as proposed in the 2010 ABS Proposing Release and revised for the registrant and transaction requirements that we are re-proposing today.

[26] See the 2010 ABS Proposing Release at 23338.

[27] See the Security Ratings Release.

assets in the pool have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows to service any payments on the securities as described in the prospectus;

- Retention by the sponsor of a specified amount of each tranche of the securitization,[28] net of the sponsor's hedging (also known as ''risk retention'' or ''skin-in-the-game'');
- A provision in the pooling and servicing agreement that requires the party obligated to repurchase the assets for breach of representations and warranties to periodically furnish an opinion of an independent third party regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement with respect to any loans that the trustee put back to the obligated party for violation of representations and warranties and which were not repurchased; and
- An undertaking by the issuer to file Exchange Act reports so long as non-affiliates of the depositor hold any securities that were sold in registered transactions backed by the same pool of assets.[29]

Similar to the existing requirement that the securities must be investment grade, the 2010 ABS Proposals for registrant and transaction requirements were designed to provide that asset-backed securities that are eligible for delayed shelf-registrations have certain quality and character.

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[28] We use the term ''sponsor'' to mean the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity. See Item 1101(l) of Regulation AB.

[29] See the 2010 ABS Proposing Release at 23338-23348.

Our re-proposal for registrant and transaction requirements for shelf does not contain a requirement for risk retention because, as noted above in Section I, the Risk Retention Proposals are currently being considered by the joint regulators.[30] The Risk Retention Proposals would apply to both registered and non-registered ABS. Although we may consider whether additional risk retention requirements for shelf eligibility are appropriate after the risk retention rules are adopted by the joint regulators, at this point we believe that it would be preferable not to have different risk retention requirements for our shelf eligibility rules. We had proposed that the sponsor of any securitization retain risk in each tranche of the securitization as a partial replacement for the investment grade ratings requirement because we believe that securitizations with sponsors that have continuing risk exposure would likely be higher quality than those without, and we anticipate that the final risk retention rules adopted by the joint regulators should also promote that goal. In addition, we believe disparate risk retention requirements could be confusing and impose unnecessary burdens on the ABS markets. Consequently, we are eliminating the risk retention requirement from our proposal at this time.

Further, our re-proposal for registrant and transaction requirements for shelf does not contain a requirement to include an undertaking to provide Exchange Act reports because, as noted above in Section I, Section 942(a) of the Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Exchange Act for ABS issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty.[31] As a result, ABS issuers with Exchange Act Section 15(d) reporting obligations will continue to report without regard to the shelf eligibility requirements.

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30 See fn. 12.

31 See fn. 13.

As noted above, our re-proposals are limited to certain registrant and transaction requirements contained in the instructions to the Form. The other parts of proposed Form SF-3, such as disclosure and instructions for signatures, remain unchanged and outstanding. We believe that the re-proposed transaction requirements described below would allow ABS issuers to access the market quickly, while providing improved investor protections that would be indicative of a higher quality security, making them appropriate replacements for the investment grade rating condition to eligibility for a delayed shelf offering.

1. Revised and Re-Proposed Transaction Requirements

We are revising and re-proposing certain transaction requirements for shelf to replace the current investment grade rating criterion. As noted above, in light of the Act, our re-proposal does not include a risk retention requirement or a requirement that the issuer undertake to continue Exchange Act reporting. As explained in further detail below, under the re-proposal, the proposed transaction requirements for shelf offerings would include:

- A certification filed at the time of each offering off of a shelf registration statement, or takedown, by the chief executive officer of the depositor or executive officer in charge of securitization of the depositor concerning the disclosure contained in the prospectus and the design of the securitization;
- Provisions in the underlying transaction agreements requiring the appointment of a credit risk manager to review the underlying assets upon the occurrence of certain trigger events and provisions requiring repurchase request dispute resolution; and
- A provision in an underlying transaction agreement to include in ongoing distribution reports on Form 10-D a request by an investor to communicate with other investors.

In the 2010 ABS Proposing Release, we did not propose to change the other current ABS shelf offering transaction requirements related to the amount of delinquent assets in the asset pool and residual values of leases and we are not proposing to change these requirements in this release.[32]

a) Certification

We are re-proposing the transaction requirement, which partially replaces the investment grade ratings criterion for shelf eligibility, for ABS shelf offerings to require that a certification be provided by either the chief executive officer of the depositor or the executive officer in charge of securitization of the depositor. In the 2010 ABS Proposing Release, we proposed that the depositor's chief executive officer certify that to his or her knowledge, the assets have characteristics that provide a reasonable basis to believe they will produce, taking into account internal credit enhancements,[33] cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus.[34]

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[32] See fn. 17.

[33] We note internal credit enhancement would include guarantees applicable to the underlying loans. See letter from Sallie Mae on the 2010 ABS Proposing Release (requesting that the Commission clarify that internal credit enhancement should include all guarantees applicable to government guaranteed student loans). The public comments we received are available on our website at http://www.sec.gov/comments/s7-08-10/s70810.shtml.

[34] As we explained in the 2010 ABS Proposing Release, this condition is similar to the current disclosure requirements for asset-backed issuers in the European Union. Annex VIII, Disclosure Requirements for the Asset-Backed Securities Additional Building Block, Section 2.1 (European Commission Regulation (EC) No. 809/2004 (April 29, 2004). The EU requires asset-backed issuers to disclose in each prospectus that the securitized assets backing the issue have characteristics that demonstrate capacity to produce funds to service any payments due and payable on the securities. Similarly, under the North American Securities Administrator's Association (NASAA)'s guidelines for registration of asset-backed securities, sponsors are required to demonstrate that for securities without an investment grade rating, based on eligibility criteria or specifically identified assets, the eligible assets being pooled will generate sufficient cash flow to make all scheduled payments on the asset-backed securities after taking certain allowed expenses into consideration. The guidelines are available at *www.nasaa.org*. In the 2010 ABS Proposing Release, we explained that because the certification is framed as an ABS shelf eligibility condition instead of a disclosure requirement, we proposed slightly different language than a similar EU disclosure requirement in order to more precisely outline what the officer is certifying to. We proposed a certification rather than a disclosure requirement because we believe the potential focus on the transaction and the disclosure that may result from an individual providing a certification should lead to enhanced quality of the securitization.

This officer would also certify that he or she has reviewed the prospectus and the necessary documents for this certification.[35] We believe, as we did when we proposed the certification for Exchange Act periodic reports, that a certification may cause these officials to review more carefully the disclosure, and in this case, the transaction, and to participate more extensively in the oversight of the transaction, which is intended to result in shelf eligible ABS being of a higher quality than ABS structured without such oversight.[36] In response to the 2010 ABS Proposing Release, the investor members of one commentator agreed and emphasized that the certification would be a valuable and appropriate requirement for shelf eligibility, encouraging more careful issuer review of securitizations.[37] Other commentators, however, expressed concern regarding the certification and suggested that the certification instead just relate to disclosure.[38]

Although integrally related to the disclosure about the structure, assets and securities, we preliminarily believe the certification should not be limited to disclosure. An asset-backed security is the product of multiple and varied contracts. The certification is designed to encourage better oversight by an executive officer of the securitization process. The

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[35] As we noted in the 2010 ABS Proposing Release, a depositor's chief executive officer may conclude that in order to provide the certification, he or she must analyze a structural review of the securitization. Rating agencies also typically conduct a structural review of the securitization when issuing a rating on the securities.

[36] See Certification of Disclosure in Companies' Quarterly and Annual Reports, Release No. 34– 46079 June 14, 2002. *See also* Testimony Concerning Implementation of the Sarbanes-Oxley Act of 2002 by William H. Donaldson, Chairman U.S. Securities and Exchange Commission Before the Senate Committee on Banking, Housing and Urban Affairs (September 9, 2003) (noting that a consequence of ''the combination of the certification requirements and the requirement to establish and maintain disclosure controls and procedures has been to focus appropriate increased senior executive attention on disclosure responsibilities and has had a very significant impact to date in improving financial reporting and other disclosure'').

[37] See letter from Securities Industry Financial Markets Association (SIFMA) (investors) on the 2010 ABS Proposing Release.

[38] Several commentators offered, as an alternative, that the CEO of the depositor certify to the adequacy and accuracy of the disclosure in the offering documents. See letters from American Bar Assosciation (ABA); American Bankers Association and ABA Securities Association (ABASA); American Securitization Forum (ASF); Australian Securitisation Forum (AusSF); Bank of America (BOA); CNH Capital America (CNH); Financial Services Roundtable (FSR); J.P. Morgan Chase & Co. (JP Morgan); Mortgage Bankers Association (MBA); SIFMA (dealers and sponsors); Sallie Mae; and Wells Fargo on the 2010 ABS Proposing Release.

certification also is proposed as a partial substitute for the investment grade rating. As such, we believe it is appropriate to require that the depositor have some belief that the securities being offered and sold pursuant to a shelf registration are of a certain quality. The proposed certification is not a condition for selling or registering asset-backed securities and, in fact, as is the case today, securities that are part of the same transaction may be privately offered and sold and thus would not be subject to the certification. For these reasons, we are not limiting the proposed certification to disclosure as suggested by some commentators. However, we agree that having the certification address disclosure more directly may also improve the oversight and therefore the quality of the securities. Consequently, we are proposing to revise the certification to explicitly address disclosure matters, as described below.

We anticipate that in order to provide the proposed certification, a certifier could rely, in part, on the review that would already be required in order for an issuer to comply with recently adopted Rule 193.[39] Rule 193 implements Section 945 of the Act by requiring that any issuer registering the offer and sale of an ABS perform a review of the assets underlying the ABS. Under the rule, at a minimum, such review must be designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the prospectus is accurate in all material respects. In addition to a review of the assets, the proposed certification, however, would require a review of the structure of the securitization.

Several commentators on the 2010 ABS Proposing Release opposed the certification requirement because they argued, in general, that the depositor's chief executive officer could not be expected to have the knowledge necessary to certify the performance of the

[39] 17 CFR 230.193. In that rulemaking, we also added new Item 1111(a)(7) to Regulation AB [17 CFR 229.1111(a)(7)] to require disclosure in prospectuses of the nature of the review of the assets performed by an issuer, including whether the issuer of any ABS engaged a third party for purposes of performing the review of the pool assets underlying an ABS and the findings and conclusions of the review of the assets. See Issuer Review of Assets in Offerings of Asset-Backed Securities, Release No. 33-9176 (Jan. 20, 2011) [76 FR 4231] the "January 2011 ABS Issuer Review Release").

securities.[40] We understand that an executive officer of the depositor may rely on the work of other parties to assist him or her with structuring an ABS transaction. We do believe however, that the chief executive officer of a depositor should provide appropriate oversight so that he or she would be able to make the certification.

In the 2010 ABS Proposing Release, we also explained that the certification would be a statement of what is known by the signatory at the time of the offering and would not serve as a guarantee of payment of the securities. However, we received comment letters expressing general concern that the text of the proposed certification could be viewed as a guarantee of the future performance of the assets underlying the ABS. [41] In contrast, one investor commentator noted that the certification would not serve as a guarantee, but instead would serve to create accountability and align interests, much like other certification requirements that already exist in the securities regulation and accounting practices.[42] To address commentators' concerns, we are re-proposing the requirement to revise the text of the certification to state that the securitization is not guaranteed by this certification to produce cash flows at times and amounts sufficient to service the expected payments on the asset-backed securities. Furthermore, we have revised the language so that it no longer addresses how the securities "will" pay or perform but instead focuses on the design of the transaction.

We are also re-proposing the requirement in order to allow either the chief executive officer of the depositor or the executive officer in charge of securitization of the depositor to

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40 See letters from ABA; ABASA; Association of Mortgage Investors (AMI); ASF; BOA; CNH; Discover Financil Services (Discover); FSR; JP Morgan; Sallie Mae; SIFMA (dealers and sponsors); and Wells Fargo on the 2010 ABS Proposing Release.

41 See letters from ASF (issuer members), ABASA, CRE Finance Council (CREFC) and Wells Fargo on the 2010 ABS Proposing Release.

42 See letter from Vanguard on the 2010 ABS Proposing Release.

sign the certification. In the 2010 ABS Proposing Release, we had proposed that the chief executive officer of the depositor sign the certification. We explained that the chief executive officer of the depositor is already responsible as signatory of the registration statement for the issuer's disclosure in the prospectus and is subject to liability for material misstatements or omissions under the federal securities laws.[43] We would expect that chief executive officers of depositors, as signatories to the registration statement, would have reviewed the necessary documents regarding the assets, transactions and disclosures.[44] We believe that requiring the chief executive officer of the depositor to sign the certification is consistent with other signature requirements for asset-backed securities.[45]

In the 2010 ABS Proposing Release, we asked whether an individual in a different position should be required to provide the certification, and in particular, whether the senior officer in charge of securitization for the depositor should sign the certification. Moreover, the 2010 ABS Proposals included a requirement that the senior officer in charge of the securitization of the depositor sign the registration statement for ABS issuers, instead of the principal accounting officer or controller of the depositor.[46] Several commentators suggested that the proposed certification be signed by the senior officer in charge of securitization of

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[43] See Securities Act Section 11 (15 U.S.C. 77k(a)) and Exchange Act Section 10(b) (15 U.S.C. 78j(b)).

[44] We also noted that an officer providing a false certification potentially could be subject to Commission action for violating Securities Act Section 17 (15 U.S.C. 77q(a)).

[45] See, e.g., Item 601(b)(31)(ii) of Regulation S–K (exhibit requirement for ABS regarding certification required by Exchange Act Rules 13a–14(d) and 15d–14(d)).

[46] In the 2010 ABS Proposing Release, we recognized that providing signatures of the principal accounting officer or controller of the depositor appears to serve no purpose because ABS issuers are not required to file financial statements under our rules or pursuant to their governing documents, and ABS issuers do not employ a principal accounting officer or controller. Thus, we stated our belief that requiring the senior officer in charge of the securitization to sign the registration statement would be more meaningful in the context of ABS offerings because it is more consistent with our other signature requirements for ABS issuers for Form 10-K. See the 2010 ABS Proposing Release at 23354.

the depositor in order to provide consistency with our outstanding signature page proposal.[47] We agree with commentators' suggestions and believe that requiring such individual to sign the certification would serve the goal of encouraging more extensive oversight of ABS transaction as well as being consistent with our other signature requirements for ABS issuers. However, we believe the officer signing the certification should be an executive officer. The definition of "executive officer" is already provided in Securities Act Rule 405.[48] "Executive officer in charge of securitization" rather than "senior officer in charge of securitization" is more consistent with our other regulations requiring executive officers be signators and our view that more extensive oversight by an executive officer may improve the quality of the securities. Therefore, we are proposing to require that an executive officer in charge of securitization be permitted to sign the certification.

Similar to the 2010 ABS Proposal, under the re-proposal, the statements required in the certification would be made based on the knowledge of the certifying person. We would expect that a chief executive officer and executive officer in charge of securitization of the depositor would have reviewed the necessary documents regarding the assets, transactions and disclosures. Under current requirements, the registration statement for an ABS offering is required to include a description of the material characteristics of the asset pool,[49] as well as information about the flow of funds for the transaction, including the payment allocations, rights and distribution priorities among all classes of the issuing entity's securities, and

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47 See letters from ABA; ABASA; ASF; JP Morgan; MBA and Wells Fargo on the 2010 ABS Proposing Release.

48 The term executive officer, when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant. [17 CFR 230.405].

49 See Item 1111 of Regulation AB [17 CFR 229.1111].

within each class, with respect to cash flows, credit enhancement and any other structural features in the transaction.[50] The proposed certification would be an explicit representation by the certifying person of what is implicit in what should already be disclosed in the registration statement.[51] If the certifying person did not believe the securitization was designed to produce cash flows at times and in amounts sufficient to service expected payments on the asset-backed securities being registered, disclosure about such insufficiency would be required under Securities Act Rule 408 and Exchange Act Rule 10b-5.[52] Similarly, the executive officer would not be able to sign the certification if he or she knew or expected that the design of the securitization would not produce cash flows at times and in amounts sufficient to service expected payments on the asset-backed securities.

Commentators also were concerned about the scope of the certification because, as proposed, the certification would apply to "any payments of the securities as described in the prospectus." A few commentators raised the point that the lower or junior tranches of a securitization are offered at steep discounts because investors expect that the assets will not produce the cash flows necessary to service any payments of those securities.[53] Those lower tranches typically have not been sold in registered transactions because they did not satisfy the current investment grade ratings transaction requirement. In order to provide clarity, we are re-proposing the text of the certification so that the certification would apply to the securities offered and sold pursuant to the registration statement and thus would not apply to

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[50] See Item 202 of Regulation S–K [17 CFR 229.202] and Item 1113 of Regulation AB [17 CFR 229.1113].

[51] This approach is somewhat similar to the approach we took with Regulation AC, which requires certifications from analysts. We noted there that Regulation AC makes explicit the representations that are already implicit when an analyst publishes his or her views—that the analysis of a security published by the analyst reflects the analyst's honestly held views. Section II of Regulation Analyst Certification, Release No. 33–8193 (Feb. 23, 2003) [68 FR 9482].

[52] 17 CFR 230.408 and 17 CFR 240.10b-5.

[53] See letters from ABA, ASF, and Sallie Mae on the 2010 ABS Proposing Release.

privately offered and sold securities even if issued by the same issuing entity. Under our re-proposal, this certification would be an additional exhibit requirement for the shelf registration statement that would not be applicable to the non-shelf registration statement, proposed Form SF–1. We are proposing the certification be dated as of the date of the final prospectus under Rule 424 and would be required to be filed by the time the final prospectus is required to be filed under Rule 424.[54]

Reflecting revisions in response to comments, as described above, the revised proposed certification would be required to be provided by the CEO or the executive officer in charge of securitization for the depositor and would state that,

- the executive officer has reviewed the prospectus and is familiar with the structure of the securitization, including without limitation the characteristics of the securitized assets underlying the offering, the terms of any internal credit enhancements, and the material terms of all contracts and other arrangements entered in to effect the securitization;
- based on the executive officer's knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;
- based on the executive officer's knowledge, the prospectus and other information included in the registration statement of which it is a part, fairly present in all material respects the characteristics of the securitized assets underlying the offering described therein and the risks of ownership of the asset-backed securities described therein, including all credit enhancements

[54] See proposed revision to Item 601(b) of Regulation S–K.

and all risk factors relating to the securitized assets underlying the offering that would affect the cash flows sufficient to service payments on the asset-backed securities as described in the prospectus; and

- based on the executive officer's knowledge, taking into account the characteristics of the securitized assets underlying the offering, the structure of the securitization, including internal credit enhancements, and any other material features of the transaction, in each instance, as described in the prospectus, the securitization is designed to produce, but is not guaranteed by this certification to produce, cash flows at times and in amounts sufficient to service expected payments on the asset-backed securities offered and sold pursuant to the registration statement.[55]

Request for comment:

1. Is our proposal to require a certification by the chief executive officer of the depositor or the executive officer in charge of securitization appropriate as a condition to shelf eligibility? Would the proposed certification encourage more extensive oversight of the transaction, and, therefore, be a partial indicator of an ABS that is a higher quality security?
2. Does the re-proposed language clarify that the certification does not constitute a guarantee?

[55] We note that an executive officer in delivering the certificate is precluded from taking into account external credit enhancements because the certification is expressly directed to the design of the securitization and whether or not taking into account the characteristics of the securitized assets underlying the offering, the structure of the securitization, including internal credit enhancements, and any other material features of the transaction, in each instance, as described in the prospectus, such securitization is designed to produce cash flows at times and in amounts sufficient to service expected payments on the asset-backed securities offered and sold pursuant to the registration statement. An example of an external credit enhancement is a third party insurance to reimburse losses on the pool assets or the securities.

3. Are the chief executive officer of the depositor or the executive officer in charge of securitization of the depositor the appropriate parties that should provide the certification, as proposed? Some of our signature requirements related to ABS refer to "senior officer in charge of securitization."[56] Should we revise all of those references to conform so that they refer to executive officer in charge of securitization?

4. Is the text of the proposed certification appropriate? Would having an executive officer certify that taking into account the structure of the transaction, the disclosure in the prospectus, the exhibits to the registration statement, and the information currently known to the executive officer about the securitized assets backing the securities offered and sold pursuant to the registration statement, there is a reasonable basis to conclude that those assets will generate cash flows in amounts and at times that will permit those securities to make the payments described in the transaction documents, achieve the same result as the proposed certification? Would this certification be appropriate if it also stated that this certification is only an expression of the executive officer's current belief and is not a guarantee that those assets will generate such cash flows, and there may be current facts not known to the executive officer and there may be future developments that would cause his or her opinion to change or that would result in those assets not generating such cash flows?

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[56] The Form 10–K [17 CFR 249.310] report for ABS issuers must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor, or on behalf of the issuing entity by the senior officer in charge of the servicing. In addition, the certifications for ABS issuers that are required under Section 302 of the Sarbanes-Oxley Act must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor if the depositor is signing the Form 10–K report, or on behalf of the issuing entity by the senior officer in charge of the servicing function of the servicer if the servicer is signing the Form 10–K report.

5. Would it be more appropriate to tie the certification to current investment grade rating standards? For instance, should the executive officer certify that the securities being offered and sold under the registration statement have adequate capacity to meet financial commitments, similar to some definitions of investment grade securities?

6. Are there other certifications that would more effectively promote accountability and oversight of the transaction by the executive officer, resulting in shelf eligible ABS being of a higher quality?

7. Would a certification limited to the disclosure in the prospectus effectively promote accountability and oversight of the transaction by the executive officer resulting in shelf-eligible ABS being of higher quality? If so, would the following language be appropriate: I, [certifying individual], certify that:

   1. I have reviewed the prospectus relating to [title of securities the offer and sale of which are registered] and am familiar with the structure of the securitization, including the characteristics of the securitized assets underlying the offering, the terms of any internal credit enhancements and the material terms of all contracts and other arrangements entered in to the effect the securitization];

   2. Based on my knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and

   3. Based on my knowledge, the prospectus and other information included in the registration statement of which it is a part, fairly present in all material respects the characteristics of the securitized assets underlying the offering described therein

and the risks of ownership of the asset-backed securities described therein, including all credit enhancements and all risk factors relating to the securitized assets underlying the offering that would affect the cash flows sufficient to service payments on the asset-backed securities as described in the prospectus.

8. We note above that the proposed certification would be an explicit representation of the certifying person of what is already implicit in the disclosure contained in the registration statement and that as a signatory of the registration statement for the issuer's disclosure in the prospectus, the executive officer can be liable for material misstatements or omissions under the federal securities laws. Would the certification create new potential liability for the certifier?

9. If the CEO or executive officer in charge of securitization of the depositor provides the certification, as proposed, and obtains assistance from a third party, should we require disclosure about the third party? Should the disclosure requirement be the same as or similar to the possible disclosures regarding an independent evaluator that we describe below? If not the same, what disclosures about the third party should be required?

10. Is it appropriate to require the certification be made as of the date of the final prospectus, as proposed? Should it instead be made as of the when the securities are first sold?[57] Or should it be made as of the date of the Rule 424(h) preliminary prospectus?

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[57] [17 CFR 230.159]. Rule 159 provides the following: (a) For purposes of section 12(a)(2) of the Securities Act only, and without affecting any other rights a purchaser may have, for purposes of determining whether a prospectus or oral statement included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading at the time of sale (including, without limitation, a contract of sale), any information conveyed to the purchaser only after such time of sale (including such contract of sale) will not be taken into account and (b) For purposes of section 17(a)(2) of the Act only, and without affecting any other rights the

11. Is it appropriate to require the certification be filed as an exhibit to the registration statement at the time of the final prospectus by means of a Form 8–K, as proposed? Or would it be more appropriate to require the certification be filed at the same time as the proposed Rule 424(h) preliminary prospectus?[58]

12. In lieu of the requirement that the chief executive officer or executive officer in charge of securitization of the depositor provide a certification, should we allow an opinion to be provided by an "independent evaluator" regarding the ABS that would provide the same assurances as the certification? Would permitting such an opinion encourage appropriate oversight of the transaction structure for purposes of determining shelf eligibility? Would allowing an opinion by an independent evaluator give issuers the flexibility to engage a third party to give the certification that would otherwise be required of the CEO or the executive officer in charge of securitization? If we permit an independent evaluator to provide an opinion in lieu of an officer certification, would it be appropriate for us to require that the text of the opinion be the same as the proposed text for the certification by the CEO or executive officer in charge of securitization of the depositor?

13. We note that if we permit an opinion to be provided, we anticipate that the opinion would need to be filed as an exhibit to the registration statement and the independent evaluator would need to consent to being named as an "expert" in the registration statement and be subject to the liability provisions of Section 11 of the

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Commission may have to enforce that section, for purposes of determining whether a statement includes or represents any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading at the time of sale (including, without limitation, a contract of sale), any information conveyed to the purchaser only after such time of sale (including such contract of sale) will not be taken into account.

[58] See discussion below in Section III.A.

Securities Act.[59] Would these requirements be appropriate? Would third parties be willing to act as independent evaluators on this basis?

14. How would we define an independent evaluator for purposes of providing the opinion? For example, would it be appropriate to define an independent evaluator as a person who: (i) has expertise and experience in structuring and evaluating asset-backed securities; (ii) is not affiliated with the issuer or any person involved in the organization or operation of the issuer;[60] (iii) itself, and any of its affiliates, does not knowingly have, or does not have the intention to acquire, any direct or indirect beneficial interest in any securities issued or assets held by the issuer, and (iv) does not have any other material business or financial relationship with the issuer or any person involved in the organization or operation of the issuer.[61] Should we impose any additional or different requirements on an independent evaluator?

15. What steps should the issuer (or another person on behalf of the issuer) need to take to determine whether a prospective independent evaluator meets specified criteria? Should it be able to rely on a statement of the evaluator, for example, that it has the required expertise and experience?

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[59] 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. See also Securities Act Section 11 [15 U.S.C. 77k]

[60] An "affiliate" of, or a person "affiliated" with, a specified person, is defined in Commission rules to mean "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." See, e.g., Securities Act Rule 405 and Exchange Act Rule 12b-2. The term "control" also is defined in those rules as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."

[61] This requirement would not preclude an independent evaluator to serve as an independent evaluator in other ABS transactions of the same sponsor or depositor.

16. Would a provision prohibiting ownership of beneficial interests in securities issued by the issuer or assets held by the issuer and any other material business or financial relationships facilitate the evaluator's independence?

17. Should we place limits on whether an independent evaluator in one transaction could serve as an independent evaluator in other ABS transactions of the same sponsor or depositor?

18. What types of entities are likely to serve as independent evaluators? We anticipate that firms, such as asset management firms, consultants, credit enhancement providers and rating agencies could serve as independent evaluators. Should any types of persons or entities be excluded from being independent evaluators?

19. Should rating agencies be permitted to serve as independent evaluators? If so, should a rating agency hired to issue a credit rating on an ABS also be able to serve as an independent evaluator on the same transaction?

20. Would it be appropriate for a duly authorized person of the independent evaluator to sign on behalf of the independent evaluator? Should the signature of an individual from the independent evaluator be required?

21. Should we require that if an opinion is provided by an independent evaluator, that the prospectus include specific information about the independent evaluator such as the name of the independent evaluator, its f**o**rm of organization, its experience with evaluating ABS, the manner in which the independent evaluator was compensated for the certification, and to the extent material, any affiliations between the independent evaluator and the issuer as well as other transaction parties? In addition, should we add a requirement to describe the basis on which the person responsible for selecting the independent evaluator determined that the

evaluator selected has the requisite expertise and experience? Should we require disclosure regarding the process undertaken by the opinion provider and the factual and analytical bases for such opinion? Should we require any additional disclosure?

b) Credit Risk Manager and Repurchase Request Dispute Resolution Provisions

Commentators on the 2010 ABS Proposing Release suggested that a different third party mechanism for investigating and resolving breaches of representations and warranties concerning the pool assets would better serve the interests of investors than the proposed shelf eligibility criterion regarding representations and warranties.[62] Based on comments received on the 2010 ABS Proposing Release, we are proposing, as a second transaction requirement for ABS shelf offerings, that the underlying transaction documents of an ABS include provisions requiring that the trustee of the issuing entity appoint a credit risk manager to review the underlying assets upon the occurrence of certain trigger events and provide its report to the trustee of the findings and conclusions of the review of the assets. We are also **p**roposing as a part of this shelf eligibility condition to require certain provisions in the underlying transaction agreements in order to resolve repurchase request disputes. As we explain further below, these proposals would be in lieu of the proposed shelf eligibility

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[62] See letters from ABASA; ASF; BOA; JPMorgan; Metlife; Prudential Investment Management (Prudential); SIFMA; Group of 16 Vehicle ABS Issuers (Vehicle ABS Group); Vanguard; Wells Fargo on the 2010 ABS Proposing Release. As we noted in previous Commission releases, the effectiveness of the contractual provisions related to representations and warranties has been questioned and the lack of responsiveness by sponsors to potential breaches of representations and warranties in the pool assets has been the subject of investor complaint. Transaction agreements typically have not included specific mechanisms to identify breaches of representations and warranties or to resolve a question as to whether a breach of the representations and warranties has occurred. Thus, these contractual agreements have frequently been ineffective because, without access to documents relating to each pool asset, it can be difficult for the trustee, which typically notifies the sponsor of an alleged breach, to determine whether or not a representation or warranty relating to a pool asset has been breached. See the 2010 ABS Proposing Release and Disclosure for Asset Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, SEC Release No. 33-9175 (January 20, 2011) [76 FR 4489] (the "943 Release") at 4490.

condition to require a provision in the pooling and servicing agreement to require the party obligated to repurchase assets for breach of representations and warranties to periodically furnish an opinion of an independent third party. We believe that this revised proposal would better strengthen the enforceability of contract terms surrounding the representations and warranties regarding the pool assets for ABS shelf transactions and incentivize obligated parties to better consider the characteristics and quality of the assets underlying the securities, making it an appropriate partial replacement for investment grade ratings.

We have noted in previous Commission releases that in the underlying transaction agreements for an asset securitization, sponsors or originators typically make representations and warranties relating to the pool assets and their origination, including representations about the quality of the pool assets.[63] For instance, in the case of residential mortgage-backed securities, one typical representation and warranty is that each of the loans has complied with applicable federal, state and local laws, including truth-in-lending, consumer credit protection, predatory and abusive laws and disclosure laws. Another representation that may be included is that no fraud has taken place in connection with the origination of the assets on the part of the originator or any party involved in the origination of the assets. Upon discovery that a pool asset does not comply with the representation or warranty, under transaction covenants, an obligated party, typically the sponsor, must repurchase the asset or substitute a different asset that complies with the representations and warranties for the non-compliant asset.

In January 2011, we adopted new rules to implement Section 943 of the Act, requiring disclosure related to representations and warranties in ABS offerings (the "943 Release"). While our new rules under Section 943 require disclosure of fulfilled and

63 See the 2010 ABS Proposing Release. See also the 943 Release.

unfulfilled repurchase request activity, they do not directly address the enforceability, as a practical matter, of put back provisions in the underlying transaction agreements. As we noted in the 943 Release, the effectiveness of the contractual provisions related to representations and warranties has been questioned and lack of responsiveness by sponsors to potential breaches of the representations and warranties relating to the pool assets has been the subject of investor complaint.[64]

In order to address this investor concern, in the 2010 ABS Proposing Release, we proposed a condition to shelf eligibility that would require a provision in the pooling and servicing agreement that would require the party obligated to repurchase the assets for breach of representations and warranties to periodically furnish an opinion of an independent third party regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement with respect to any loans that the trustee put back to the obligated party for violation of representations and warranties and which were not repurchased.[65] Several commentators from both the issuer and investor community were concerned that this proposal was unduly complex, costly, and would not achieve its goals. Instead, commentators generally suggested that a better way to address the concern regarding enforceability of repurchase obligations related to breaches of representations and warranties would be to require a review of the underlying assets by an independent third party, or "credit risk manager".[66] After considering the comment letters received, we are proposing as the second transaction requirement for shelf offerings to replace investment grade ratings, in lieu of the proposed requirement for a third-party opinion, that the underlying transaction

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64 See the 943 Release at 4490.

65 See the 2010 ABS Proposing Release at 23344.

66 See letters from ASF, ABASA, BOA, Vanguard, SIFMA, Wells Fargo, Metlife, Prudential, JPMorgan on the 2010 ABS Proposing Release.

documents include provisions requiring a credit risk manager to review the underlying assets upon the occurrence of certain trigger events that are described below. Under the proposal, the credit risk manager[67] would be appointed by the trustee,[68] not be affiliated with any sponsor, depositor or servicer in the transaction, and would have authorization to access the underlying loan documents.[69] By requiring that the trustee appoint the credit risk manager and requiring that there be no affiliation with the sponsor, depositor or servicer, we are attempting to address any potential conflicts that could arise between the credit risk manager and the obligated party. In addition, we are requiring that the credit risk manager have access to copies of the underlying loan documents so it can perform its duties under the proposed requirement.

We are proposing that the credit risk manager review the underlying assets of the ABS for compliance with the representations and warranties on the underlying pool assets upon the occurrence of trigger events which would be specified in the transaction agreements. We are proposing to require that the transaction agreements require, at a minimum, review by the credit risk manager (1) when the credit enhancement requirements, such as required reserve account amounts or overcollateralization percentages, as specified in the underlying transaction agreements, are not met; and (2) at the direction of investors pursuant to the processes provided in the transaction agreement and disclosed in the prospectus. These two trigger events should facilitate the ability of transaction parties to pursue transaction remedies, which we believe would be a feature of a higher quality

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67 See proposed Item 1101(m) of Regulation AB.

68 See letter from Prudential on the 2010 ABS Proposing Release.

69 Under our proposal, the credit risk manager could also be the same party serving another role in the same transaction, such as the trustee, custodian or an operating advisor (as proposed in the Risk Retention Proposals) as long as it is not affiliated with the sponsor, depositor or servicer. See the Risk Retention Proposing Release at 24109. See also letters from ASF, BOA and SIFMA.

security, as well as directly address commentators' concerns related to representations, warranties and enforcement mechanisms in underlying transaction agreements for the reasons we describe below. At the same time, we are not proposing to mandate that transaction parties follow specific procedures related to the review or repurchase process because we preliminarily believe transaction parties should have the flexibility to tailor the procedures to each ABS transaction, taking into account the specific features of the transaction and/or asset class. Our proposal would require that the transaction agreements require a review by the credit risk manager, at a minimum, in certain specified instances described below. However, the transaction agreements could, at the election of the transaction parties, specify additional triggers for a credit risk manager review. We also expect that the transaction parties may develop more specific and robust procedures for monitoring and reviewing the assets that support the ABS.[70]

Credit enhancement or other structural support for asset-backed securities can be provided in a variety of ways, including both internally structured support as well as externally provided enhancement or support.[71] For example, internal credit enhancement is structured into the transaction to increase the likelihood that one or more classes of asset-backed securities will pay in accordance with their terms, such as subordination provisions, overcollateralization, reserve accounts, cash collateral accounts or spread accounts.

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[70] Some commentators suggested that the credit risk manager be required to review the assets at other trigger events. ASF (investor members) and Metlife suggested that review be required at objectively defined trigger events such as when loans default shortly after origination, when loans become seriously delinquent (60 days), or when the servicer or trustee suspects a breach. ASF (sponsor members) suggested that review be required by terms of the transaction agreement only or when a bona fide and substantiated allegation of breach by a security holder is received. SIFMA suggested that review be required when the credit risk manager determines it is appropriate to assert a claim for breach on behalf of the securitization trust, in the interests of all investors in the aggregate, or as directed by an investor subject to certain standards. We request comment below on whether we should require any of these suggestions in addition to our proposals or as alternatives to our proposal.

[71] See the 2004 ABS Adopting Release at 1548.

Accordingly, the underlying transaction agreements typically require that internal credit enhancement be maintained at a specified amount. We believe it would be appropriate for the credit risk manager to review defaulted assets when the credit enhancements (including structural supports, such as subordination), fall below the required target levels, as specified in the underlying transaction agreements, because if that happens, then losses may be higher than originally expected, thereby calling into question whether the defaulted assets met the representations and warranties provided in the underlying transaction documents. [72]

As we explained in the 943 Release, investors have demanded that trustees enforce repurchase covenants because transaction agreements do not typically contain a provision for an investor to directly make a repurchase demand.[73] However, many investors have been frustrated with the structure and process because, as discussed above, trustees have not enforced repurchase rights and investors have been unable to locate other investors in order to force trustees to do so.[74] In response to this concern, we are proposing as a part of the second shelf eligibility condition that the transaction agreements be required to provide a process whereby investors are able to direct the credit risk manager to review assets for potential breaches of a representation or warranty because we believe that such a requirement facilitates an investor's ability to pursue remedies under the transaction agreement, contributing to a higher quality security. As noted above, we are allowing for flexibility by not specifying the procedural requirements by which investors may make the request.

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[72] For example, if the overcollateralization target amount specified in the transaction document is 3%, then the credit risk manager would be required to conduct a review of the defaulted assets for compliance with representations and warranties when it falls below 3%.

[73] See the 943 Release at 4498.

[74] Typically, investor rights require a minimum percentage of investors acting together in order to enforce the representation and warranty provisions contained in the underlying transaction agreements. We discuss our ABS shelf proposal related to investor communication in Section II.B.1.c. below. See also Alex Ulam, "Investors Try to Use Trustees as Wedge in Mortgage Put-Back Fight," American Banker (Jun. 27, 2011) (noting that investor votes are required in order to force a trustee to take action).

However, because commentators on the 2010 ABS Proposing Release suggested several mechanisms that could be appropriate for investor-directed review of assets and requests for repurchase, we are requesting comment on whether we should specify those procedures as conditions to shelf eligibility.[75] Under the proposal, transaction parties would retain the flexibility to determine the appropriate procedures and times for investor-directed review of underlying assets for each ABS and whatever mechanism is provided would be described in the prospectus.

We are also proposing to require as part of the second shelf eligibility condition that the underlying transaction agreements require that the credit risk manager provide its report to the trustee of the findings and conclusions of its review of the assets.[76] The trustee could then use the report to determine whether a repurchase request would be appropriate under the terms of the transaction agreements, thereby enhancing the effectiveness of the contract provisions of the ABS contributing to the higher quality of the securities. Although we are not proposing to specify the format of the report, we are requesting comment on whether specifying the format of the report is necessary.

We are proposing disclosure requirements in prospectuses and in ongoing reports about the credit risk managers. In prospectuses, we are proposing to require disclosure of the name of the credit risk manager, its form of organization, the extent of its experience serving

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[75] See letter from Metlife on the 2010 ABS Proposing Release (suggesting that bondholders representing 5% or more of a transaction be able to direct the trustee to poll investors on whether to initiate a review of assets. Following such a vote, the sponsor would need to repurchase any non-compliant asset and if the sponsor did not comply, then disputes would be submitted to independent arbitration). See also letters from ASF and SIFMA on the 2010 ABS Proposing Release.

[76] A "report of findings and conclusions" of a review is similar in concept to the requirements of new Rule 193 and Item 1111(a)(7) of Regulation AB. As discussed above, those new rules will require the issuer of an ABS to conduct a review of the pool assets underlying an ABS at the time of securitization and disclose of the findings and conclusions of the review of the assets. See Section II.B.1.a. and fn. 39. We note that the issuer review would be performed at the time of securitization, while the proposed credit risk manager review would be performed pursuant the processes provided in an underlying transaction agreement.

as a credit risk manager for ABS transactions involving similar pool assets, and the manner and amount in which the credit risk manager is compensated for its services.[77] In addition, disclosure would be required about the credit risk manager's duties and responsibilities under the governing documents and under applicable law, any limitations on the credit risk manager's liability under the transaction agreements, any indemnification provisions, and any contractual provisions or understanding regarding the credit risk manager's removal, replacement or resignation, as well as how any related expenses would be paid.[78] Further, disclosure would be required, to the extent material, about any affiliations and relationships between the credit risk manager and other transaction parties.[79] These disclosure requirements are similar to current disclosure requirements for trustees.[80]

In ongoing reports on Form 10-D, if during the distribution period the credit risk manager is required to review the assets, we are proposing to require disclosure of the event(s) that triggered the review by the credit risk manager during the distribution period. We are also proposing that if a report by the credit risk manager of the findings and conclusions of its review of assets that is provided to the trustee during the distribution period, that the full report be filed as an exhibit to the Form 10-D.[81] In addition, we are proposing that if, during the distribution period, a credit risk manager has resigned, or has been removed, replaced or substituted, or if a new credit risk manager has been appointed, disclosure would be required of the date the event occurred, and the circumstances

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77 See proposed Item 1109(c) of Regulation AB in the 2010 ABS Proposing Release.

78 See proposed Item 1109(c) of Regulation AB in the 2010 ABS Proposing Release.

79 See proposed Item 1119(a)(7) of Regulation AB in the 2010 ABS Proposing Release.

80 See Item 1109 of Regulation AB [17 CFR 229.1109].

81 The report would be filed as an additional exhibit under Exhibit 99. See Item 601(b)(99) of Regulation S-K [17 CFR 229.601(b)(99)].

surrounding the change. If a new credit risk manager has been appointed, disclosure required by proposed Item 1109(b) of Regulation AB would be required.

In order to provide a timely mechanism for enforcement of repurchase requirements, we are also proposing to require as a part of the second condition to shelf eligibility that the underlying transaction documents include repurchase request dispute resolution procedures. Under the proposal, the transaction agreements would be required to provide that if an asset, subject to a repurchase request pursuant to the terms of the transaction agreements, is not repurchased by the end of the 180-day period beginning when notice is received, then the party submitting such repurchase request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method.[82] Our proposal would give a requesting party the ability to compel the obligated party to submit to dispute resolution if the obligor did not repurchase the assets. However, because we understand that a party obligated to repurchase will need the time to investigate a repurchase request, our proposal would allow 180 days before a requesting party had the right to compel mediation or arbitration.[83] Of course, the transaction agreements could call for a period shorter than 180 days.

We believe that investors and issuers should both benefit from our proposals to require a credit risk manager and the proposed repurchase request dispute resolution provisions because they are designed to facilitate a timely resolution of repurchase claims. We also believe that these mechanisms are appropriate as one of the requirements for shelf

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[82] See, e.g.,letters from Center for Audit Quality (CAQ), Group of 14 CMBS investors (CMBS Investors), Ernst & Young (E&Y), Prudential on the 2010 ABS Proposing Release.

[83] See letter from Prudential on the 2010 ABS Proposing Release (suggesting that a sponsor should have a specified amount of time to challenge any third party claim). See also letter from SIFMA on the 2010 ABS Proposing Release (suggesting that arbitration be available if the parties do not resolve the repurchase request within 180 days).

eligibility because they provide enhanced mechanisms for transaction parties to pursue contract remedies, thereby contributing to the quality of the security. Our proposal does not specify whether mediation or arbitration must be agreed to by the obligated party in the dispute resolution provision. We preliminarily believe that the requesting party should have the flexibility to select the appropriate mechanism to resolve repurchase disputes, although we request comment on whether we should mandate one or the other.

Request for comment:

22. Is the requirement of a credit risk manager review of the underlying assets appropriate as a condition for shelf eligibility, as proposed? Is it appropriate to require certain terms requiring repurchase dispute resolution in the underlying transaction documents, as a condition for shelf eligibility, as proposed?

23. Is it appropriate to require that the trustee appoint the credit risk manager, as proposed? Should another party be able to appoint the credit risk manager? Should we specify terms for removal and re-appointment of the credit risk manager?

24. Is it appropriate to require that the credit risk manager not be an affiliate of any sponsor, depositor, or servicer, as proposed? Would an affiliate of the sponsor, depositor or servicer be able to objectively perform the credit risk manager review function? Should we require that the credit risk manager be required to represent that no conflict of interest exists between itself and any transaction party, including investors?[84] Would it be appropriate for the trustee to also be the credit risk manager?

[84] See letter from Prudential on the 2010 ABS Proposing Release.

25. Is it appropriate to require that the credit risk manager be given access to copies of the underlying documents related to the pool assets, as proposed? Should the requirement be limited in any way? Are there any privacy considerations? If so, should we require a covenant in the underlying transaction documents that all information be kept confidential?

26. Should we specify an additional requirement that the credit risk manager be given access to all underwriting guidelines and any other documents necessary to evaluate the loans?[85]

27. What types of entities are likely to serve as credit risk managers? Should any types of persons or entities be excluded from being credit risk managers?

28. Are the proposed triggers for review by the credit risk manager appropriate? Is it appropriate to require review when a transaction's required credit enhancement falls below defined target levels, as proposed? Should we specify which types of credit enhancement would be subject to the requirement (e.g., overcollateralization, reserve account)? If so, what types of credit enhancement features should we specify and why? Are there any asset classes, or securitization structures, where no target credit enhancement is specified? Is it appropriate that triggers relating to credit enhancement include structural supports, such as subordination? Are there any other features that should be or should not be included as credit enhancement for purposes of triggering a credit risk manager review?

29. As noted above, we intend that shelf-eligible transaction agreements, at a minimum, provide for the specified trigger events for a credit risk manager review.

[85] See letter from SIFMA on the 2010 ABS Proposing Release.

Will market practice develop to add additional triggers, if any, as circumstances warrant?

30. Is it appropriate to require review by the credit risk manager at the direction of investors, pursuant to the processes provided in the transaction agreement and disclosed in the prospectus? Should we specify the procedures for the investor directed review process? If so, what should the requirements be and why? For example, should we require that investors representing 5% or more of investors in interest (i.e., investors that are not affiliates of the sponsor or servicer) be able to direct a review? Should the percentage of investors required to initiate a review be higher or lower? If the percentage is higher, such as 25%, should we require that investors representing 5% or more of investors in interest first be able to direct the trustee to poll investors on whether to initiate a review of assets?[86] As an alternative to specifying procedures, would it be appropriate to specify certain maximum conditions, where the percentage of investors required to direct review could be no more than a certain percentage, such as 5%, 10%, or 25%?

31. Is our proposal to require a provision that the credit risk manager provide its report to the trustee of the findings and conclusions of its review of the assets appropriate? Should we specify the format of the report?

32. Is our proposal to require the report of the credit risk manager be filed as an exhibit to the Form 10-D filing covering the period in which the report is given to the trustee appropriate? Should it be filed sooner, such as on a Form 8-K within four business days of receipt by the trustee? Should we also require that a

[86] See letter from Metlife on the 2010 ABS Proposing Release.

summary of the report by the credit risk manager of the findings and conclusions of its review of assets be included in the Form 10-D?

33. Are the proposed disclosure requirements in prospectuses regarding credit risk managers appropriate? Should we require any additional disclosure?

34. Should our rules include any other specific triggers for review? Should we require review based on specific triggers, such as the occurrence of delinquency of a specified duration, such as 60, 90, or 120 days? Should we require review of early payment defaults, (e.g., loans that become delinquent within the first 60, 90 or 120 days past origination)?[87] Should we require review of all loans for which the servicer or trustee suspects a breach? If so, how should we define this trigger? Would any of these requirements be in addition to, or as an alternative to the proposed requirements?

35. Should we require that the credit risk manager have discretion to assert a claim for breach on behalf of the securitization trust, in the interests of all investors in the aggregate?[88] Would this requirement be in addition to, or as an alternative to the proposed requirements? Should we specify some or all of the procedures related to the review or repurchase process?

36. Is our proposal to require ongoing disclosure about the credit risk manager and its activities in Form 10-D appropriate? Is our proposal to require disclosure about the event(s) that triggered a credit risk manager review appropriate? Is it appropriate to require the disclosure only with respect to those triggers that are proposed for shelf eligibility (i.e., credit enhancement trigger and investor directed

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87 See letter from Metlife on the 2010 ABS Proposing Release.

88 See letter from SIFMA on the 2010 ABS Proposing Release.

review), as proposed? Or should disclosure be required with respect to any review undertaken by a credit risk manager, pursuant to the provisions in the agreement?

37. Is it appropriate to require disclosure in the Form 10-D of a change of credit risk manager as proposed?

38. In addition to the proposed shelf eligibility and disclosure requirements, should we require that each party with a repurchase obligation provide an annual certificate to the trustee and noteholders certifying that all loans required to be repurchased under the transaction documents have been repurchased or detail why any loans identified as breaching a representation or warranty were not removed.[89]

39. Is our proposal to require dispute resolution provisions in the underlying transaction documents as a shelf eligibility condition, appropriate? Is it appropriate to require that requesting parties wait 180 days until they can force the obligated part to submit to dispute resolution? Should the period be longer or shorter? Should we not specify a particular period, but instead require there to be a set time period in the transaction agreements? Is it appropriate to require that the obligated party agree to either mediation or arbitration, as proposed? Should we require that all the parties agree to either mediation or arbitration? Or should we require one or the other? Is it appropriate to require that the transaction documents provide that investors, in their sole discretion, may elect whether to refer a disputed repurchase request to arbitration or mediation? Would it be more appropriate to require that the transaction documents provide for a mandatory dispute resolution mechanism (specifying mediation or arbitration) after 180 days,

[89] See letter from Sallie Mae on the 2010 ABS Proposing Release.

and disclose the mandatory dispute resolution mechanism in the prospectus, without mandating the details of those provisions?

40. Should we specify who should pay the expenses for mediation or arbitration of the repurchase request? For example, should we require that expenses related to the mediation or arbitration of a repurchase request be paid by the obligated party, the person(s) requesting repurchase, or the issuing entity? Or should expenses be the responsibility of the losing party, or should costs be shared? Is it clear who the losing party would be in mediation? Or should costs be determined by the mediator or arbitrator? Would specifying that the obligated party is required to cover all costs associated with mediation or arbitration of the repurchase request provide further incentive for the obligated party to resolve the request within 180 days? If so, do the benefits of this additional incentive justify the potential costs imposed on the obligated party? If a trustee is the requesting party, and it is determined that the trustee is obligated to pay expenses (by the terms of transaction agreement, the outcome of the dispute resolution procedures, or otherwise) how would the trustee pay for the expenses? Would the possible obligation to pay for the expenses, be yet another disincentive for trustees so they would not initiate a repurchase request?

41. Should we require that if the obligated party fails to agree to mediation or arbitration of any unresolved repurchase dispute within such period, the obligated party would be required to honor the repurchase request?[90]

[90] See letter from Prudential on the 2010 ABS Proposing Release.

c) Investor Communication

As we discussed above, we are aware that investors have had difficulty enforcing rights contained in transactions agreements, and in particular, those relating to the repurchase of underlying assets for breach of representations and warranties. Investors have raised concerns regarding the inability to locate other investors in order to enforce these rights. [91] Frequently, these investor rights require a minimum percentage of investors acting together. In response to the 2010 ABS Proposing Release, one commentator noted that because most ABS are held by custodians or brokers in "street name" through the Depository Trust Company, as a practical matter it is very difficult for ABS investors to communicate with each other in order to jointly exercise any of their substantive protections or rights provided in the transaction documents.[92] Another commentator expressed that given the complexity of securitization structures and the underlying collateral it is important for investors who have identified concerns with the collateral or any structural issue to be able to effectively communicate with other investors in the transaction and to either prompt the trustee to take action or solicit further direction from investors.[93]

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[91] See Alex Ulam, "Investors Try to Use Trustees as Wedge in Mortgage Put-Back Fight," American Banker (Jun. 24, 2011) (noting that many attempted put-backs have "flamed out after investor coalitions failed to get the 25% bondholder votes that pooling and servicing agreements require for a trustee to be forced to take action against a mortgage servicer"). See also Tom Hals and Al Yoon, "Mortgage Investors Zeroing in on Subprime Lender," Thomson Reuters (May 9, 2011) (noting that gathering the requisite number of investors needed to demand accountability for faulty loans pooled into investments is a "laborious" task).

[92] See letter from Metlife on the 2010 ABS Proposing Release (suggesting that the Commission mandate that one ABS transaction party have real-time knowledge of the legal names and contact information of the beneficial owners of each of the bonds in the issuance so that bondholders could request that such transaction party (likely the trustee) send communications to the other bondholders notifying them of suspected breaches of representations and warranties, thus protecting investor identity, but also addressing the collective action problem). The Depository Trust Company provides custody and book-entry transfer services of securities transactions in the U.S. market involving equities, corporate and municipal debt, money market instruments, American depositary receipts, and exchange-traded funds. In accordance with its rules, DTC accepts deposits of securities from its participants (i.e., broker-dealers and banks), credits those securities to the depositing participants' accounts, and effects book-entry movements of those securities.

[93] See letter from Prudential on the 2010 ABS Proposing Release (suggesting that a group of 10% investor interest should be able to initiate communication with others through the trustee).

In connection with these concerns, we are proposing, as a third shelf eligibility requirement, that an underlying transaction agreement include a provision to require the party responsible for making periodic filings on Form 10-D to include in the Form 10-D any request from an investor to communicate with other investors related to an investor's rights under the terms of the ABS that was made during the reporting period received by the party responsible for making the Form 10-D filings where the request is received on or before the end date of a reporting period.[94] By requiring the provision be included in an underlying agreement, the party responsible for making Form 10-D filings would be contractually obligated to disclose an investor's desire to communicate. We preliminarily believe this is an appropriate requirement for shelf eligibility because facilitating communication among investors enables them to exercise the rights included in the underlying transaction agreements, which we believe would address a specific concern about enforceability of representations and warranties raised in ABS transactions and would help to distinguish higher quality ABS from other ABS.

We are also proposing to revise Regulation AB and Form 10-D to include the disclosure requirements related to the investor communication shelf eligibility condition. The disclosure requirements would only apply if the transaction was a registered shelf offering. We are proposing that the disclosure on Form 10-D be required to include the name of the investor making the request; the date the request was received; and a description of the method by which other investors may contact the requesting investor.[95] Under the proposal,

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[94] Most ABS issuers report and distribute payments to investors on a monthly basis. The Form 10-D is required to be filed within fifteen days after a required distribution date, and a distribution date is typically two weeks after the end of a reporting period. For example, for the month of June, under our proposal a request from an investor would have to be received prior to the close of the reporting period on June 30, a distribution would be due to investors by July 15, and the Form 10-D filing due date would be July 30.

[95] See proposed Item 1121(f) and Item 1.B. of Form 10-D.

we are including an instruction to Item 1121(g) to define the type of communications that may be facilitated as a result of the required notices on Form 10-D. The Form 10-D would be required to include disclosure of only those notices of an investor's desire to communicate where the communication relates to investors exercising their rights under the terms of the ABS. Thus, an ABS investor would not be permitted to use this mechanism for other purposes, such as identifying potential customers, marketing efforts, or the like.[96]

We understand that transaction parties might want to specify procedures for verifying the identity of a beneficial owner in a particular ABS prior to including the proposed notice in a Form 10-D. While we are not proposing specific procedural requirements, we believe the procedures should be simple for an investor to follow so that the party responsible for making the disclosure could verify the interest of an investor in the ABS. Therefore, we are proposing an instruction to the shelf eligibility requirement to make clear that the verification requirements that could be contained in the transaction documents, may require no more than the following: (1) if the investor is a record holder of the securities at the time of a request to communicate, then the investor would not have to provide verification of ownership because the person obligated to make the disclosure will have access to a list of record holders and (2) if the investor is not the record holder of the securities at the time of the request to communicate, the person obligated to make the disclosure must receive a written statement from the record holder verifying that, at the time the request is submitted, the investor beneficially held the securities.

[96] To the extent an investor wishes to communicate with other investors about other matters, the investor must consider the potential applicability of other regulatory provisions under the federal securities laws. For example, an investor proposing to commence a tender offer for securities in the ABS class must evaluate whether such a communication is subject to Exchange Act Sections 14(d) and 14(e) and Regulations 14D and 14E thereunder.

Requests for Comment:

42. Is our proposal to require a provision in the transaction agreements to require an investor's request to communicate with other investors to be included on Form 10-D reports an appropriate condition to shelf eligibility? Would investors find the provision valuable?

43. Is the proposed disclosure requirement on Form 10-D appropriate? Should it require different information? Should we prescribe a pre-set list of objective categories that an investor could choose from for the purpose of indicating why it is requesting communication with other investors? If so, what should be the list of defined categories? Would the following be an appropriate list of present categories: servicing, trustee, representations and warranties, voting matters, pool assets, and other?

44. Under the proposal, the Form 10-D would be required to include requests received during the reporting period for the form. Are there any timing concerns? Should the request to communicate instead be required to be filed on Form 8-K?

45. Is the proposed instruction clarifying the maximum type of verification procedures that may be included in the underlying transaction documents appropriate? Are they reasonable requirements to demonstrate ownership? Is the limitation on requirements proving ownership, assuming the holder is not the record holder, necessary or appropriate? Are there other procedures that we should require, or limitations we should impose? Would those be in addition to or in lieu of those described in the proposed instruction? Are there procedures that would be easier for investors to meet but would have the same effect?

46. We understand that investors are often able to obtain reports related to an ABS they own by accessing a password protected website, usually maintained by the trustee. Should the list of investors that have access to the website be enough to verify the interest of an investor?

47. Relatedly, investors have advised us that they sometimes have difficulty receiving notices for investor votes, and, therefore, have not been able to participate in that process. Should we require a Form 8-K be filed to disclose that an investor vote has been noticed? Should the Form 8-K include a copy of the notice? Should the Form 8-K be filed within a specified minimum period of the notice, such as two days? Or would a shorter or longer due date be more appropriate? What other mechanisms would be appropriate to facilitate the ability of an investor to exercise their right to vote and at the same time be appropriate requirements for shelf eligibility?

48. We understand that a number of privately placed CMBS transactions have included more extensive means for investor communication. The following requests for comment are based on our understanding of those transactions. Are these types of arrangements prevalent in CMBS deals? Are they used with other asset classes?

49. Instead of allowing verification of an investor's interest at the time a request to communicate is made, should we instead require as a condition to shelf eligibility that an underlying transaction agreement require the trustee, or some other transaction party, to maintain a list of investors and require the request to be included in the Form 10-D only if the investor is included on the list? If so, how would the person responsible for maintaining the list of investors obtain and

maintain the information? Should a form of investor verification be required to be specified in the underlying transaction agreement in connection with this shelf eligibility condition? If so, when should the investor be required to provide the completed form?

50. Should we require, as a condition to shelf eligibility, that the investor communication notice be distributed in any other way, in addition to, or instead of the Form 10-D? For instance, should we require that the notice be posted on a designated website? If so, when should it be posted? Alternatively, should the notice be required to be distributed to investors by the trustee or some other transaction party? If so, should the notice be required to be distributed only to those investors that voluntarily provide their contact information to the trustee or a person responsible for maintaining an investor list? Would there be any reason that an investor would not provide their contact information? If all investors did not provide their contact information, we expect there would be a possibility that the list of investors would not be complete. Would that frustrate the purposes of this approach?

2. Revised and Re-Proposed Registrant Requirements

In the 2010 ABS Proposals, we proposed to add new registrant requirements related to compliance with the four proposed transaction requirements (i.e., risk retention, third party opinion provision in transaction agreements, officer certification, and an undertaking to file ongoing Exchange Act reports).[97] We also proposed to retain the existing registrant requirement in Form S-3 relating to delinquent filings of the depositor or an affiliate of the

[97] See proposed General Instructions I.A.1. to I.A.4. of proposed Form SF-3 in the 2010 ABS Proposing Release.

depositor for purposes of proposed Form SF-3. Similar to existing requirements, we proposed that prior to filing a registration statement on proposed Form SF-3, to the extent the depositor or any issuing entity previously established by the depositor or an affiliate of the depositor are or were at any time during the twelve month look-back period required to file Exchange Act reports with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed during the twelve months (or shorter period that the entity was required to have filed such materials).[98] Also, such material, other than certain specified reports on Form 8–K, must have been filed in a timely manner.[99] This proposal remains unchanged and outstanding. In the 2010 ABS Proposal, we also proposed to repeal the existing exception from the filing timeliness requirement for Item 6.05 Form 8-K reports. Item 6.05 Form 8-K reports are required to be filed if there is a change in the asset pool characteristics from the description of the asset pool provided in the final prospectus and, thereby, provide important information regarding the composition of the assets.[100] The proposal to require the timely filings of Item 6.05 Form 8-K reports remains unchanged and outstanding. The revised and re-proposed registrant requirements for shelf eligibility are described below.

In light of the changes to the proposed amendments to the transaction requirements described in Section II.B.1. above, we are revising and re-proposing the other registrant requirements to make conforming changes. Specifically, we are proposing to require that to

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98 For Form S-3, an issuer is not eligible for registration on the form if the depositor or an affiliate of the depositor, with respect to a class of asset-backed securities involving the same asset class, has not filed the Exchange Act reports required to be filed or has not filed such reports in a timely manner for a period of twelve months prior to the filing of the registration statement. See General Instruction I.A.4 of Form S-3.

99 See proposed General Instruction I.A.3 to Form SF–3.

100 In the 2010 ABS Proposing Release, we also proposed to lower the threshold amount of change that would trigger a filing requirement for Item 6.05 Form 8-K reports from five percent of any material pool characteristic to one percent. That proposal remains outstanding. See the 2010 ABS Proposing Release at 23392.

the extent the depositor or any issuing entity previously established by the depositor or an affiliate of the depositor is or was at any time during the twelve month look-back period required to comply with the proposed transaction requirements of Form SF-3, with respect to a previous offering of asset-backed securities involving the same asset class, the following requirements would apply:

- Such depositor and each such issuing entity must have timely filed all the required certifications of the depositor's chief executive officer or the depositor's executive officer in charge of securitization;
- Such depositor and each such issuing entity must have timely filed all the transaction agreements that contain the required provisions relating to the credit risk manager and repurchase request disputes; and
- Such depositor and each such issuing entity must have timely filed all the transaction agreements that contain the required provision relating to investor communication.

In addition, in the 2010 ABS Proposing Release, we proposed to include as a separate registrant requirement that there be disclosure in the registration statement stating that the proposed registrant requirements have been complied with. We continue to believe disclosure of compliance with the registrant requirements would provide a means for market participants (as well as the Commission and its staff) to better oversee compliance with the proposed shelf eligibility conditions of Form SF-3. We believe that the requirement is more appropriately located in the instructions to the requirements rather than as a registrant requirement and, therefore, are proposing to include this requirement as an instruction.

Request for comment:

51. Are our re-proposed registrant requirements appropriate?

52. Is the twelve-month look back period appropriate for compliance with the certification, credit risk manager and repurchase dispute resolution transaction requirements, and the investor communication provision? Should it be longer or shorter?

53. Is our proposed instruction to require disclosure in a registration statement of compliance with the registrant requirements appropriate? Should we specify a location in the registration statement for such disclosure?

54. Should we require that registrants provide a "yes" or "no" answer to whether it has complied with all the registrant requirements? If so, should the data be tagged in XML so that it could be an electronically searchable piece of data?[101]

3. Annual Evaluation of Form SF-3 Eligibility in Lieu of Section 10(a)(3) Update

a) Annual Compliance Check related to Timely Exchange Act Reporting

In the 2010 ABS Proposing Release, we proposed to require annual and quarterly evaluations of compliance with the registrant requirements for ABS shelf eligibility. For the evaluation of compliance with the Exchange Act reporting registrant requirement, we proposed to require an annual evaluation of whether the Exchange Act reporting registrant requirement has been satisfied in lieu of a Securities Act Section 10(a)(3) update.[102] Under the 2010 ABS Proposal, an ABS issuer wishing to conduct a takedown off an effective shelf registration statement would be required to evaluate whether the depositor and any affiliated

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[101] We briefly discuss XML tagging below in Section III.B.

[102] As noted in the 2010 ABS Proposing Release, Form S–3 eligibility under the current rules is determined at the time of filing the registration statement and at the time of updating that registration statement under Securities Act Section 10(a)(3) [15 U.S.C. 77j(a)(3)] by filing audited financial statements. Because ABS registration statements do not contain financial statements of the issuer, a periodic determination of whether the issuer can continue to use the shelf would need to be specified by rule. See Securities Act Rule 401(b) [17 CFR 230.401(b)].

issuing entity of the depositor that were required to report under Sections 13(a) or 15(d) of the Exchange Act during the previous twelve months, have filed such reports on a timely basis, as of ninety days after the end of the depositor's fiscal year end.[103] This proposal remains unchanged and outstanding.

b) Annual Compliance Check related to the Fulfillment of the Transaction Requirements in Previous ABS Offerings

In the 2010 ABS Proposing Release, we also proposed to require that in order to conduct a takedown off an effective shelf registration statement, an ABS issuer would be required to conduct an evaluation at the end of the fiscal quarter prior to the takedown of whether the ABS issuer was in compliance with the previously proposed registrant requirements relating to risk retention, third party opinions, the depositor's chief executive officer certification, and the undertaking to file ongoing reports.[104] In response to our proposal, we received four comment letters that did not support the quarterly requirement.[105] One commentator urged us to consider whether penalty options less severe than the loss of shelf eligibility for a year would be appropriate for a single violation but did not suggest specific alternatives.[106] Another commentator suggested that shelf eligibility should be

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[103] As noted in the 2010 ABS Proposing Release, under this proposal the related registration statement could not be utilized for subsequent offerings for at least one year from the date the depositor or the affiliated issuing entity that had failed to file Exchange Act reports then became current in its Exchange Act reports (and the other requirements had been met).

[104] In the 2010 ABS Proposing Release, we had proposed that in order to conduct a takedown off an effective shelf registration statement, an ABS issuer would be required to evaluate at the end of the fiscal quarter prior to the takedown whether, during the previous twelve months, the depositor and its affiliates had filed on a timely basis all of the certifications and transaction agreements required by the shelf eligibility transaction requirements of a previous offering. If they had not, then the depositor could not utilize the registration statement or file a new registration statement on Form SF–3 until one year after the required filings were filed. See 2010 ABS Proposing Release at 23348.

[105] See letters from ASF, BOA, MBA and SIFMA on the 2010 ABS Proposing Release.

[106] See letter from MBA on the 2010 ABS Proposing Release.

suspended only if the staff determines it is appropriate, and only a full year in egregious cases.[107]

In light of the changes we are proposing to the transaction requirements to shelf eligibility described above, and taking into consideration the comments we received, we are revising and re-proposing the registrant requirement to require an annual evaluation of compliance with the transaction requirements of shelf registration. Under the re-proposal, notwithstanding that the registration statement may have been previously declared effective, in order to conduct a takedown off an effective shelf registration statement, an ABS issuer would be required to evaluate, as of ninety days after the end of the depositor's fiscal year end, whether it continues to meet the registrant requirements, which would be the same as our 2010 ABS Proposal for Exchange Act reporting described above. In order to make the provision more workable and to simplify the evaluation for shelf compliance we are revising our proposal from a quarterly evaluation to an annual evaluation.[108] Under the re-proposal, to the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor, is or was at any time during the previous twelve months, required to comply with the proposed new transaction requirements related to the certification, credit risk manager and repurchase dispute resolution provisions, and investor communication provision, with respect to a previous offering of ABS involving the same asset class, such depositor and each issuing entity must have filed on a timely basis, at the required time for each takedown, all transaction agreements containing the provisions that are required by the proposed transaction requirements as well as all certifications.

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107 See letter from SIFMA on the 2010 ABS Proposing Release.

108 Although we are revising our proposal, we emphasize that failure to file the information required by the registrant requirements would be a violation of our rules, and subject to liability accordingly. Furthermore, failing to provide disclosure at the required time periods may raise serious questions about whether all required disclosure was provided to investors prior to investing in the securities.

In response to commentators' concerns that the one-year penalty for missed transaction requirements was too extreme, we are revising and re-proposing to allow depositors and issuing entities to cure any failure to meet the transaction requirements, or failure to file the required certification or transaction agreements at the required time for purposes of ABS shelf eligibility. Under the re-proposal, a depositor and issuing entity could cure the deficiency if it subsequently files the information that was required and after a waiting period, it would be permitted to continue to use its shelf registration statement.[109] Under the proposed cure mechanism, the depositor and issuing entity would be deemed to have met the registrant requirements, for purposes of this Form, 90 days after the date all required filings are filed.

For example, a depositor with a December 31 fiscal year end has an effective shelf registration statement. On March 30, it evaluates compliance with all registrant requirements under proposed Rule 401 (90 days after the last fiscal year end) and determines that it is in compliance. The depositor then offers ABS and does not timely file the required transaction agreements required to be filed on June 20. The depositor would be able to continue to use its existing shelf until it is required to perform the annual evaluation required by proposed Rule 401(g), on March 30 of the following year. After March 30 of Year 2 and until June 20 of Year 2, the depositor would not be able to offer ABS off of the shelf registration statement. Further, the depositor or its affiliates would not be permitted to file a new shelf registration statement after the missed filing on June 20, Year 1 because they could not meet the registrant requirement of timely filing of the transaction agreements containing the provisions required for any shelf offering for the prior twelve months. But, if the depositor

[109] Curing the deficiency would also allow the depositor, or its affiliates to file a new registration statement, if it also meets the other registrant requirements. See proposed General Instruction I.A.1. to proposed Form SF-3.

had cured the defect, for example, on July 1 of Year 1, under the proposal, a new registration statement could be filed 90 days after July 1 of Year 1 (or September 29 of Year 1), instead of waiting until June 20 of Year 2 (when it otherwise would meet the twelve month timely filing requirement). Further, at the time of the next annual evaluation for the old shelf (noted above as March 30 of Year 2), the depositor would be deemed to have met the registrant requirements after 90 days after it had cured the defect on July 1 of Year 1, and the depositor could continue to use its old shelf registration statement (instead of waiting until June 20 of Year 2, as noted above).

Our approach is an attempt to strike a balance between encouraging issuers' compliance with the proposed shelf transaction requirements and commentator's concerns that the one-year penalty period was too long.

Requests for Comment:

55. Should we add, as proposed, registrant requirements that would require, as a condition to form eligibility, affiliated issuers of the depositor that had offered securities of the same asset class that were registered on Form SF-3 to have complied with the certification, credit risk manager review and repurchase dispute resolution eligibility and investor communication conditions that replace the investment grade ratings requirement? Will these requirements lead to better compliance by ABS issuers with the new shelf eligibility conditions that we are proposing? If not, what other mechanisms can we use to ensure compliance?

56. Is it appropriate to require, as proposed, that the certifications and the transaction agreement(s) containing the credit risk manager and repurchase dispute provisions and investor communication provision be required to be filed pursuant to our proposed shelf eligibility conditions and also filed on a timely basis?

57. Should we revise Rule 401, as proposed, to require that as a condition to continued use of an existing shelf registration statement for takedowns, an issuer conduct a periodic evaluation of form eligibility? If not, how should we approach the updating issue since ABS issuers are not required to file amendments for purposes of Section 10(a)(3)?

58. Should we require that the annual evaluation of all the registrant requirements of affiliated issuers have been filed on a timely basis be made as of the 90 days after the depositor's fiscal year, as proposed? Should the evaluation be made on a different timeframe, such as the last day of the most recent fiscal quarter, consistent with our previous proposals?

59. Should we include, as proposed, an ability to cure an issuer's non-timely filing of the certification and agreements containing the credit risk manager review and repurchase dispute resolution and investor communication provisions? Should we require issuers to wait 90 days after curing the defect, as proposed, to be deemed to meet the registrant requirements? Should the period be shorter (e.g., 30 or 45 days) or longer (e.g., 180 or 270 days)?

60. Should we require additional requirements for evaluating compliance with registrant requirements, or an additional penalty for non-compliance with the registrant requirements?

4. General Requests for Comment on Shelf Eligibility

We request comment on our proposals for shelf-eligibility for asset-backed securities.

61. Are all of the proposed shelf eligibility conditions necessary? Would one condition or a combination of fewer conditions be sufficient? As noted above, the 2010 ABS Proposals included risk retention and continued Exchange Act reporting

as two of the four proposed requirements for shelf eligibility. In light of the fact that the Risk Retention proposals will apply to both registered and unregistered transactions, and ABS issuers with Exchange Act reporting obligations will continue to report without regard to shelf eligibility requirements, should we require the proposed requirements for shelf eligibility discussed above? Put another way, are risk retention and continued Exchange Act reporting together, sufficient replacements for the investment grade rating condition to eligibility for shelf offerings, so that no other conditions are necessary or appropriate?

62. We are also considering whether an additional or alternative shelf eligibility condition based on previous offerings should be included in our final rules. In this regard, would an ABS issuer having sufficient experience in the ABS market be an appropriate criterion for shelf registration? For example, would an additional or alternative shelf eligibility condition that would restrict shelf eligibility to depositors with a history of similar prior ABS issuances (e.g., a requirement based on the number of past ABS transactions within the same asset class and similar structure within a specified period of time) be appropriate? What would be the economic impact of such a shelf eligibility condition? Should such a shelf eligibility condition require the registrant and its affiliates, as of a date within 60 days prior to the filing of the registration statement, to have engaged in at least three primary offerings of asset-backed securities in the last three years, provided the following criteria are met: (i) at least one of the previous offerings was registered under the Securities Act of 1933; (ii) the asset-backed securities issued in the previous offerings are of the same asset class as the asset-backed securities registered on the registration statement; and (iii) the structures of the transactions

of the previous offerings are similar to the structure of each transaction registered on the registration statement. If so, should the requirement be an additional shelf eligibility condition, or should it replace one or more of the proposed conditions? Are the criteria described above appropriate? In particular, should we use a different measurement period than the 60 days prior to filing? Would a three year look-back time period be appropriate, or should it be less time (such as 2 years) or more time (such as 4 years)? What should be the required minimum number of transactions? Should all the transactions used for measuring be required to have been registered under the Securities Act? Are the requirements related to the same asset class and similar structure appropriate? Do we need to provide guidance on what is a similar structure, and if so, what kind of guidance? If private or offshore offerings are permitted to count for purposes of this possible shelf eligibility condition, should we require disclosure in the registration statement of these transactions for the purpose of monitoring compliance with the shelf eligibility condition? If so, what disclosure should be required? In order to prevent parties that may otherwise fail this shelf eligibility condition from simply using the registration statement of an unaffiliated eligible depositor (e.g., rent-a-shelf transactions), should the condition also require the registrant to be affiliated with a sponsor and depositor in each of the previous transactions as well as affiliated with a sponsor and depositor in the offerings conducted off the shelf registration statement? Commentators are requested to provide empirical data and other factual support for their views, if possible.

63. Asset-backed issuers may rely on the exclusion from the definition of investment company in Section 3(c)(5) of the Investment Company Act rather than on Rule

3a-7 under the Investment Company Act.[110] Section 3(c)(5) was intended to exclude from the definition of investment company certain factoring, discounting and mortgage companies. However, Rule 3a-7 contains substantive conditions designed to address, among other things, conflicts of interest concerning ABS and Section 3(c)(5) does not contain the same substantive conditions. Would it be appropriate to require, as an additional transaction requirement for ABS shelf eligibility, that the ABS issuer of the transaction meet the requirements of Rule 3a-7? We note that the practical effect of such a requirement would be that transactions excluded from the definition of investment company under Section 3(c)(5) of the Investment Company Act would not be eligible for shelf registration unless they satisfy Rule 3a-7. Would restricting shelf eligibility to those issuers that meet the requirements of Rule 3a-7 give equal access to shelf for all issuers of ABS across asset classes? Should we require disclosure of the basis for the exclusion from the definition of investment company in the prospectus?

III. Disclosure Requirements

A. Exhibits to be Filed with Rule 424(h) Filing

We are proposing to require ABS issuers to file copies of the underlying transaction agreements, including all attached schedules, and other agreements that are referenced (such

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[110] Section 3(c)(5) of the Investment Company Act excludes from the definition of investment company any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: (A) purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance and services; (B) making loans to manufacturers, wholesalers and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services and (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate. Certain asset-backed issuers, including those that securitize retail automobile installment contracts, credit card receivables, trade receivables, boat loans or equipment leases, have sought to rely on the provisions of Section 3(c)(5)(A) or (B).

as those containing representations and warranties regarding the underlying assets), at the same time as a preliminary prospectus that would be required under proposed Rule 424(h).[111]

In the 2010 ABS Proposing Release, we proposed to revise the filing deadlines in shelf offerings to provide investors with additional time to analyze transaction-specific information prior to making an investment decision. Under the proposed ABS shelf procedures, an ABS issuer would be required to file a preliminary prospectus with the Commission for each takedown off of the proposed new shelf registration form for ABS (Form SF–3) at least five business days prior to the first sale in the offering.[112] We proposed to require that such information be filed at least five business days before the first sale of securities in the offering in an effort to balance the interest of ABS issuers in quick access to the capital markets and the need of investors to have more time to consider transaction-specific information. Given many ABS investors' stated desire for more time to consider the transaction and for more detailed information regarding the pool assets, the proposed new filing deadlines were designed to promote independent analysis of ABS by investors rather than reliance on credit ratings. While commentators generally either supported[113] or did not object to this proposed approach, some commentators asked that we shorten the five-day period. For example, several commentators generally suggested the period be reduced to two

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111 See Section II. above and fn. 19. See also the 2010 ABS Proposing Release at 23335.

112 We proposed new Rule 430D to provide the framework for shelf registration of ABS offerings and related Rule 424(h) filing requirements for a preliminary prospectus. Under proposed Rule 430D, the Rule 424(h) preliminary prospectus must contain substantially all the information for the specific ABS takedown previously omitted from the prospectus filed as part of an effective registration statement, except for pricing information. See the 2010 ABS Proposing Release at 23335.

113 See letters from AMI; California Public Employees' Retirement System (CalPERS); CREFC; Rylee Houseknecht; Jamie L. Larson; Investment Company Institute (ICI); AFL-CIO; CFA Institute; Metlife; Prudential and Realpoint on the 2010 ABS Proposing Release.

days.[114] We have not reached a conclusion on that aspect of the proposal and it remains outstanding.

Related to the proposal to require the preliminary prospectus be made available in time to facilitate independent analysis by investors, commentators on the 2010 ABS Proposal requested that investors also have access to copies of the underlying agreements on a more timely basis given the importance of the final documents to an investor's understanding of the actual contractual provisions.[115] In the staff's experience with the filing of these documents, ABS issuers have delayed filing such material agreements with the Commission until several days or even weeks after the offering of securities off of a shelf registration statement, even though these transaction agreements and other documents provide important information regarding the terms of the transactions, representations and warranties about the assets, servicing terms, and many other rights that would be material to an investor.[116] In light of these concerns, we had proposed to amend Item 1100(f) of Regulation AB[117] to clarify the existing exhibit filing requirements by making explicit that the exhibits filed with respect to an ABS offering, registered on proposed Form SF-3, must be on file and made part

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114 See letters from ABA; AmeriCredit; ASF; BOA; CNH; Vanguard; Vehicle ABS Group; and Wells Fargo on the 2010 ABS Proposing Release.

115 See letter from CMBS investors on the 2010 ABS Proposing Release (suggesting that the rules require that key disclosures, including the pooling and servicing agreement, be made available to investors during the marketing period so that investors have adequate time to review prior to making an investment decision). See also letter from Prudential on the 2010 ABS Proposing Release (stating that last minute financial engineering may occur, thereby contributing to poor understanding, and in some instances, misunderstanding of the transaction).

116 In the 2004 ABS Adopting Release we stated that consistent with Item 601 of Regulation S-K, governing documents and material agreements for an ABS offering such as the pooling and servicing agreement, the indenture and related documents must be filed as an exhibit.

117 Item 1100(f) of Regulation AB allows ABS issuers to file agreements or other documents as exhibits on Form 8-K and, in the case of offerings on Form S-3, incorporate the exhibits by reference instead of filing a post-effective amendment.

of the registration statement at the latest by the date the final prospectus is required to be filed pursuant to Rule 424.[118]

As noted above, commentators urged that we should ensure that the exhibits be available for investor review prior to making an investment decision.[119] In light of these concerns, we are re-proposing Item 1100(f) of Regulation AB to also require that the underlying transaction documents, in substantially final form, be filed and made part of the registration statement by the date the Rule 424(h) prospectus is required to be filed. This requirement, if adopted, would allow investors additional time to analyze the actual underlying agreements containing the specific structure, assets, and contractual rights regarding each transaction. If the exhibits filed with the Rule 424(h) prospectus remain unchanged at the time final prospectus under Rule 424(b) is required to be filed, then an issuer would not be required to re-file the same exhibits.[120]

Request for comment:

64. Is our proposed amendment to Item 1100(f) appropriate? Is there any reason that exhibits, in substantially final form, could not be filed by the time the preliminary prospectus is required to be filed under proposed Rule 424(h)?

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[118] We stated in the 2010 ABS Proposing Release that ABS shelf offerings were designed to mirror non-shelf offerings in terms of filing exhibits and final prospectuses. We also noted that the filing requirements for Form S-3 are consistent with Form S-1 because all exhibits to Form S-1 must be filed by the time of effectiveness. See 2010 ABS Proposing Release at 23388.

[119] See fn. 116.

[120] Under this proposal, any change to the agreement could only be minor. As we explained in the 2010 ABS Proposing Release, a material change in the information provided in the Rule 424(h) filing, other than offering price, would require a new Rule 424(h) filing. See the 2010 ABS Proposing Release at 23335. Finalized agreements at the time of the offering may be filed as provided by Instruction 1 to Item 601 of Regulation S-K. The filing requirement for an exhibit (other than opinions and consents) may be satisfied by filing the final form of the document to be used; the final form must be complete, except that prices, signatures and similar matters may be omitted. See Elimination of Certain Pricing Amendments and Revision of Prospectus Filing Procedures, Release No. 33-6714 (June 5, 1987) [52 FR 21252]. We also note that filing of final agreements at the time the final prospectus is due will be after the time of sale of the security for purposes of Rule 159 and Securities Act Section 12(a)(2), and that information conveyed to the investor after the time of sale will not be taken into account for purposes of Section 12(a)(2) of the Securities Act. See Rule 159.

65. Is it appropriate to require that exhibits be filed in "substantially final form" at the time of filing the Rule 424(h) prospectus, as proposed? If we require something other than "substantially final form" what information should we require, and what information may be omitted?

66. Should we require the final form of the exhibits to be filed at the same time as the Rule 424(b) prospectus, if the exhibits have not changed since the 424(h) filing?

67. One commentator also suggested that we require issuers provide investors with a copy of the representations, warranties, remedies and exceptions marked to show how it compares with model provisions developed by the Commercial Real Estate Finance Council (CREFC).[121] Should we require that issuers file as an exhibit a copy of the representations, warranties, remedies and exceptions marked to show how it compares to an industry developed model provisions? If so, should we require that the industry developed model provisions be developed by an industry group whose membership includes issuers, investors, and other market participants? Do such model provisions exist for other asset classes? Should we require that the marked copy be filed at the same time as the Rule 424(h) prospectus? Should we require an updated marked copy be filed at the same time as the Rule 424(b) prospectus if they have not changed since the 424(h) filing?

B. Requests for Comment on Asset-Level Information

1. Section 7(c) of the Securities Act

Section 942(b) of the Act added Section 7(c) to the Securities Act requiring the Commission to adopt regulations requiring an issuer of an asset-backed security to disclose,

[121] See letter from CMBS investors on the 2010 ABS Proposing Release. CREFC is a trade organization for the commercial real estate finance industry.

for each tranche or class of security, information regarding the assets backing that security.[122] It specifies that in adopting regulations, the Commission shall:

(A) set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate the comparison of such data across securities in similar types of asset classes; and

(B) require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence including –

(i) data having unique identifiers relating to loan brokers and originators;

(ii) the nature and extent of the compensation of the broker or originator of the assets backing the security; and

(iii) the amount of risk retention by the originator and the securitizer of such assets.[123]

In the 2010 ABS Proposing Release, to augment our current principles-based pool-level disclosure requirements, we had proposed new requirements to disclose asset-level information in prospectuses and in periodic reports. We believe that our proposal for asset-level data for registered offerings, which remains outstanding, would implement the requirements of Section 7(c) because our proposal would set standards that would facilitate the comparison of data across asset classes, and within the same asset class. Further, our proposals require issuers to disclose asset-level data, which we believe are necessary for investors to independently perform due diligence.

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122 See Section 7(c) of the Securities Act, as added by Section 942(b) of the Act.

123 See Section 7(c)(2) of the Securities Act, as added by Section 942(b) of the Act.

In the 2010 ABS Proposing Release, we explained that investors, market participants, policy makers and others have increasingly noted that asset-level information is essential to evaluating an asset-backed security.[124] We proposed to require, with some exceptions, that prospectuses for public offerings of asset-backed securities and ongoing Exchange Act reports contain specified asset-level information about each of the assets in the pool.[125] Because we believe that issuers should provide transparent and comparable data, we proposed to require asset-level information in a standardized format to be included in the prospectus and periodic reports and filed on EDGAR. Our proposal specifies and defines each item that must be disclosed for each asset in the pool and requires that the asset-level information be provided in a tagged data format using Extensible Markup Language (XML) in order to facilitate data analysis, consistent with the requirements of Section 7(c).[126]

Section 7(c) also requires that we require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence, including data having unique identifiers relating to loan brokers and originators. The 2010 ABS Proposal would require disclosure of the name of the

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[124] See the 2010 ABS Proposing Release at 23355.

[125] We proposed that all asset classes, except for stranded cost and credit cards issuers, provide asset-level data. For credit card and charge card ABS, we proposed that issuers be required to provide grouped account data. See 2010 ABS Proposing Release at 23355.

[126] By proposing to require the asset-level data file in XML, a machine-readable language, we anticipate that users of the data will be able to download the disclosure directly into spreadsheets and databases, analyze it using commercial off-the-shelf software, or use it within their own models in other software formats. As we explained in the 2010 ABS Proposing Release, XML is an open standard that defines or "tags" data using standard definitions. The term ''open standard'' is generally applied to technological specifications that are widely available to the public, royalty-free, at minimal or no cost. The tags establish a consistent structure of identity and context. This consistent structure can be recognized and processed by a variety of different software applications. In the case of XML, software applications, such as databases, financial reporting systems, and spreadsheets recognize and process tagged information. Some issuers already file loan schedules on EDGAR as part of the pooling and servicing exhibit or a free writing prospectus. However, the data is currently filed on EDGAR in ASCII or HTML, both of which do not facilitate data analysis. See the 2010 ABS Proposing Release at 23374.

originator of an asset for all asset classes.[127] If the asset is a residential mortgage, and a MERS number for the originator is available, we proposed to require that the MERS number for the originator be provided.[128]

In addition, for residential mortgages only, we proposed that issuers be required to disclose unique identifiers related to loan originators and company, as required by the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, otherwise known as the NMLS numbers.[129] We note that the NMLS numbers for "originator" and company refer to the individual and company taking the loan application, which would include loan brokers and the company that the broker works for.[130] Therefore, we believe that our proposal to require NMLS numbers would implement the requirements of Section 7(c) with respect to mortgages by requiring a unique numerical identifier for a loan broker.

We are unaware of any standardized unique identifying system used for the purpose of identifying brokers or originators of other asset classes, across all asset classes or within an asset class.[131] Further, we believe that asset classes, other than RMBS and CMBS, do not

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127 See proposed Item 1(a)(4) of Schedule L of Regulation AB in the 2010 ABS Proposing Release.

128 Mortgage Electronic Registration Systems, Inc. (MERS) is affiliated with the Mortgage Industry Standards Maintenance Organization (MISMO), a not-for profit subsidiary of the Mortgage Bankers Association. MERS has developed a unique numbering system and reporting packages to capture and report data at different times during the life of the underlying residential or commercial loan.

129 See proposed Items 2(a)(11) and (12) of Schedule L of Regulation AB in the 2010 ABS Proposing Release. In 2008, Congress passed The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act") which required the creation of a Nationwide Mortgage Licensing System and Registry and unique identifiers for loan originators and company (NMLS numbers). The SAFE Act is designed to enhance consumer protection and reduce fraud by encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators and for the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry. The SAFE Act was enacted as part of the Housing and Economic Recovery Act of 2008, Public Law 110–289, Division A, Title V, sections 1501–1517, 122 Stat. 2654, 2810–2824 (July 30, 2008), codified at 12 U.S.C. 5101–5116.

130 In contrast, note that for purposes of Regulation AB, we have generally interpreted an originator to be the person or entity that extends the credit to the borrower. See the 2004 Adopting Release at 1538.

131 See also Joint Study on the Feasibility of Mandating Algorithmic Descriptions for Derivatives (April 7, 2011), available at http://www.sec.gov/news/studies/2011/719b-study.pdf (also concluding that before

typically use brokers to originate loans; however we request comment on whether brokers are used in other asset classes. We are also requesting comment on whether unique identifiers for loan brokers and originators exist for other asset classes (or a system of unique identifiers could reasonably be established), and if so, whether the data is necessary to independently perform due diligence for other asset classes.

Section 7(c) also requires that we require issuers to disclose asset-level data on the nature and extent of the compensation of the broker or originator of the assets backing the security, if such data are necessary for investors to independently perform due diligence. The 2010 ABS Proposals did not include requirements to provide asset-level data regarding fees to brokers or originators. However, with respect to RMBS, our proposal did include an asset-level disclosure requirement to indicate whether a broker originated a loan.[132] In addition, disclosure of the origination channel for each loan is also required under the 2010 ABS Proposals (i.e., was the loan originated through a bank's own retail operation, a broker, a correspondent lender, etc.).[133] We are not proposing asset-level disclosure requirements for broker's compensation at this time because we believe that the proposed data points may provide the information necessary to perform due diligence on an RMBS pool with respect to broker involvement because investors can analyze the method in which a loan was underwritten based on these data points. We request comment on whether the specific compensation paid to brokers or originators would be useful in performing due diligence for RMBS and for other asset classes and should be required under our final rules. In light of the fact that compensation may be paid in many different forms and calculated in different ways

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mandating the use of standardized descriptions for all derivatives a universal entity identifier and product or instrument identifiers, among other things, are needed).

132 See proposed Item 2(a)(9) of Schedule L of Regulation AB in the 2010 ABS Proposing Release.

133 See proposed Item 2(a)(10) of Schedule L of Regulation AB in the 2010 ABS Proposing Release.

we are requesting comment about the forms of compensation. We also request comment on how to define these data points so that the information provided is standardized and comparable across asset classes or within an asset class.

In addition, Section 7(c) requires that we require issuers to disclose asset-level data related to the amount of risk retention by the originator and securitizer of such assets, if such data are necessary for investors to independently perform due diligence. The 2010 ABS Proposals include a requirement to disclose any interest the sponsor has retained in the transaction, including the amount and nature of that interest.[134] Also, as discussed above, the joint regulators proposed risk retention requirements as required by Section 15G of the Exchange Act and that proposal also includes disclosure requirements concerning the risk retention option selected.[135] The outstanding Risk Retention Proposals do not require originators to retain risk in individual assets of the pool.[136] In light of the outstanding Risk Retention Proposals and 2010 ABS Proposal for sponsor risk retention disclosure, at this time we are not proposing additional disclosure requirements but we are requesting comment on whether risk retention disclosure on an asset-level basis is necessary for investors to independently perform due diligence.

Requests for Comment:

68. Do the 2010 ABS Proposals implement Section 7(c) effectively? Are there any changes or additions that would better implement Section 7(c)?

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134 See proposed Item 1104(e) of Regulation AB in the 2010 ABS Proposing Release.

135 See fn. 12.

136 See the Risk Retention Proposing Release at 24114.

69. Is the proposed XML format an adequate standard for the format of data that, to the extent feasible, facilitates the comparison of data across securities in similar types of asset classes? If not, how could it be improved?

70. Are unique identifiers for loan brokers and/or originators necessary to permit investors to independently perform due diligence for asset classes other than RMBS or CMBS? If so, is there a unique system of identifiers for brokers and originators for other asset classes?

71. Do asset classes other than RMBS or CMBS use brokers?

72. Would it be appropriate to require an originator's tax ID number, RSSD ID number, FDIC Certificate Number or Routing Transit Number (RTN) as a unique identifier?[137] Would any of these identifiers be an appropriate unique identifier across asset classes? Do originators have multiple tax ID numbers, RSSD IDs, FDIC Certificate Numbers, or RTNs? If so, how should we specify which one to use? With respect to tax ID numbers, should we specify that social security numbers should not be provided? Are there any other existing unique identifiers that would be appropriate for these purposes? Should new identification systems be developed? If so, by whom?

73. Is asset-level disclosure related to the nature and extent of the compensation of the broker or originator necessary to independently perform due diligence across all asset classes?

[137] A tax ID number is a unique number assigned by the Internal Revenue Service. An RSSD ID is a unique identifying number assigned by the Federal Reserve for all financial institutions, main offices, as well as branches. An FDIC Certification Number is a unique number assigned by the FDIC used to identify institutions and to issue insurance certificates. An RTN, or a routing transit number, is a nine-digit unique bank identifier originally designed by the American Bankers Association.

74. How are the brokers and originators compensated? Should we require the fee to be expressed as a dollar amount, a percentage or both? If percentage, what should be the basis for calculating the percentage? Is it appropriate for RMBS or CMBS only? Any other asset classes?

75. How should the asset-level data points for broker or originator compensation be defined so that the information provided will be standardized and comparable across asset classes or within an asset class?

76. Is it more useful if the broker or originator compensation disclosure is provided in a format other than at the asset-level?[138] Could it be provided in the prospectus in narrative form or some other tabular format?

77. Is the amount of risk retention, on an asset-level basis, necessary to independently perform due diligence? If so, how should we require it be calculated in light of the outstanding Risk Retention Proposal requiring risk retention in the securities and not the asset? Should we require the amount of risk retention be expressed as a dollar amount, a percentage or both? If percentage, what should be the basis for calculating the percentage?

78. Is it more useful to provide disclosure regarding risk retention in a format other than asset-level? Could it be provided in the prospectus in a narrative form or

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138 The Federal Deposit Insurance Corporation (''FDIC'') recently amended its ''safe harbor'' rule from the FDIC's statutory authority to disaffirm or repudiate contracts of an insured depository institution (''IDI'') with respect to transfers of financial assets by an IDI in connection with a securitization or a participation (the ''FDIC Safe Harbor Rule''). Under the FDIC Safe Harbor Rule the securitization documents must require disclosure to investors of the nature and amount of compensation paid to any mortgage or other broker, noting that this disclosure should enable investors to assess potential conflicts of interests and how the compensation structure affects the quality of the assets securitized or the securitization as a whole. We note, however, that the FDIC Safe Harbor Rule requires disclosure of compensation for RMBS only. See Federal Deposit Insurance Corporation, 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 (Sep. 27, 2010) [70 FR 60287].

some other tabular format? Is the 2010 ABS Proposal to require disclosure of any interest the sponsor has retained in the transaction, sufficient to address the purpose of the asset-level risk retention disclosure requirements in Section 7(c)?

79. In light of the joint Risk Retention Proposals, and the servicing standards included in the proposal, we are requesting comment on whether additional data points related to loss mitigation and RMBS should be required.[139] In the case of borrower default, most pooling and servicing agreements require a servicer, among other things, to take loss mitigation actions in the event the net present value (NPV) of loss mitigation exceeds the estimated NPV of recovery through foreclosure. Should the estimated NPV in both cases be required to be disclosed as an asset-level data point? Should the method of calculation be required to be disclosed as an asset-level data point? Are there standard methods of calculating NPV? Are the formulas for calculating NPV included in the underlying transaction agreements? If not, who determines the method used and should that method be required to be disclosed? Should the assumptions used be required to be disclosed? If not, how can an investor evaluate the NPV? Is it appropriate to require disclosure of the method of calculation and assumptions on an asset-level with Schedule L? Or is it more appropriate to require the disclosure in some other form, such as in narrative form within a periodic report on Form 10-D or Form 8-K?

80. Also related to loss mitigation, should we require additional data points related to compensation paid to servicers related to an individual loan? The 2010 ABS Proposals included certain asset-level data point requirements related to fees

[139] See the Risk Retention Proposing Release at 24127.

earned by the servicer (e.g., servicing fees claimed and performance incentive fees).[140] Are there other ways that servicers are compensated with respect to loss mitigation? Are there any fees that servicers or their affiliates may earn related to loss mitigation of a particular asset? Are there any fees paid to any other parties related to loss mitigation of a particular asset? If so, should we require disclosure of those fees, even if the fees are not paid directly through the issuing entity? Should that disclosure be provided on Schedule L-D, or within the Form 10-D in a narrative form, or both? Would it be appropriate to require this type of disclosure across asset classes? Or should it only be required for certain asset classes, such as RMBS and CMBS?

As we noted in the 2010 ABS Proposing Release, we are sensitive to the possibility that certain asset-level disclosure may raise concerns about the personal privacy of the underlying obligors. In particular, we noted that data points requiring disclosure about the geographic location of the obligor or the collateralized property, credit scores, income and debt may raise privacy concerns. However, information about credit scores, employment status and income would permit investors to perform better credit analysis of the underlying assets. In light of privacy concerns, instead of requiring issuers to disclose a specific location, credit score, or exact income and debt amounts, we proposed ranges, or categories of coded responses.[141] Several commentators noted that our asset-level requirements, as

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[140] See proposed Item 2(m)(1)(iii) and Item 2(m)(1)(xvi) of Schedule L-D for RMBS in the 2010 ABS Proposing Release.

[141] For instance, instead of exact zip code, we proposed that issuers provide an MSA code, a regional geographic locator. For asset-level disclosure data points that require disclosure of obligor credit scores, we proposed coded responses that represent ranges of credit scores (e.g., 500-549, 550-599, etc.). The ranges were based on the ranges that some issuers already provide in pool-level disclosure. For monthly income and debt

proposed, would still raise privacy concerns.[142] Those commentators were generally concerned that asset-level disclosures, despite our attempts to require that certain information be provided in ranges (instead of exact amounts), would not mitigate the possibility that information, including "personally identifiable financial information" or information that would constitute a "consumer report"[143] could be linked to an obligor on an underlying asset.[144] On the other hand, several commentators suggested that asset-level data should be required, and some commentators specifically noted that exact data points, instead of ranges, are needed to evaluate risk and appropriately price the securities.[145] In light of comment letters received and the requirements of new Section 7(c) of the Securities Act, we are soliciting additional comment on privacy concerns raised by the proposed asset-level disclosure requirements.

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ranges, we developed the ranges based on a review of statistical reporting by other governmental agencies (e.g., $1,000-$1,499, $1500-$1,999, etc.). See 2010 ABS Proposing Release at 23357.

142 See, e.g., letters from ABA, Consumers Union, MBA, Vehicle ABS Group, and World Privacy Forum.

143 Personally identifiable financial information generally means any information: that a consumer provides to obtain a financial product or service; about a consumer resulting from any transaction involving a financial product or service; or is otherwise obtained about a consumer in connection with providing a financial product or service to that consumer. See Rule 3(u)(1) of Regulation S-P [17 CFR 248.3(u)(1)]. A consumer report, as defined in the Fair Credit Reporting Act, in general means any information about a consumer bearing on his/her credit or other personal characteristics which will be used to establish a consumer's eligibility for credit, employment and other authorized purposes under the statute. [15 U.S.C.§ 1681a].

144 Commentators were also concerned that it may be possible to identify an individual obligor by matching asset-level data about the underlying property or asset with data available through other public or private sources about assets and their owners (a process known as "reverse engineering"). If an obligor was identified, then the obligor's non-public personal financial status would be discoverable. See, e.g., letter from ABA on the 2010 ABS Proposing Release (explaining concerns related to the goals of the Gramm-Leach-Bliley Act to limit disclosure of personal financial information for marketing purposes without giving individuals an opportunity to opt out of the use of such information).

145 See letters on the 2010 ABS Release from ASF (requesting disclosure of exact credit score and noting that requiring ranges would be a step back in terms of transparency), Interactive Data (noting that asset-level granularity is essential for robust evaluation of loss, default and prepayment risk associated with RMBS); Prudential (suggesting that ranges of FICO score bands are not sufficient to appreciate the linkages between collateral characteristics); and Wells Fargo (expressing concern that restricting information available to investors could result in substantially lower pricing for new RMBS offerings).

Request for comment:

81. How should we require asset-level data, both initially and on an ongoing basis, to implement Section 7(c) effectively, yet also address commentators' privacy concerns?

82. What particular data elements could be revised or eliminated for each particular asset class in order to address commentator's privacy concerns, yet still enable an investor to independently perform due diligence? For instance, if we do not require information about an obligor's credit score and income, while still requiring the other proposed asset data points, are concerns about obligor privacy alleviated while also implementing the requirements of Section 7(c)?

83. Would it be appropriate to require an obligor's credit score and income be provided on a grouped basis in a format similar to our credit card proposal in the 2010 ABS Proposing Release,[146] in addition to requiring all of the other proposed asset-level data points with the prospectus? What would be appropriate groupings (i.e., should the columns or ranges be different than our credit card proposal)? Would that approach alleviate privacy concerns and also implement the requirements of Section 7(c)?

84. Would any of these approaches be appropriate for RMBS, as well as other asset classes?

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[146] The 2010 ABS Proposals proposed that issuers of ABS backed by credit cards provide disclosure more granular than pool-level disclosure by creating "grouped account data." As we explain the 2010 ABS Proposing Release, grouped account data would be created by compressing the underlying asset-level data into combinations of standardized distributional groups using asset-level characteristics and providing specified data about these groups. Like the asset-level data proposals, the grouped account data would be provided in XML to facilitate data analysis. See the 2010 ABS Proposing Release at 23372.

85. Are there other ways to present data that is useful to investors but helps to address privacy concerns? How else can we implement Section 7(c) and also address commentators' privacy concerns related to asset-level reporting?

2. Additional Requests for Comment on Asset-Level Data

As discussed above, in the 2010 ABS Proposing Release, we proposed to require asset-level disclosures for ABS backed by residential mortgages; commercial mortgages; automobile loans or leases; equipment loans or leases; student loans; floorplan financings; corporate debt; and resecuritizations. For ABS backed by credit and charge card receivables we proposed requiring disclosure of grouped account data in lieu of asset-level data. We received many helpful and detailed suggestions regarding many of the proposed asset data points. We received a mixed response to our proposal, with some commentators supporting asset-level disclosure across asset classes and some commentators suggesting that asset-level data would not be appropriate. For several asset classes we received various recommendations for either grouped account disclosures or grouped account and pool-level disclosures in lieu of asset-level disclosures.[147] Some of the letters included detailed suggestions for group data. We will consider these letters along with all the letters on the original proposal. We have at this time made no determination regarding the final rules for any asset class. However for two discrete asset classes, namely Equipment ABS[148] and Equipment Floorplan ABS,[149] we are requesting more information on possible data points.

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147 See, e.g., letters on the 2010 ABS Proposing Release from ASF's auto ABS issuer members and certain investor members (submitting a recommendation for grouped account and pool-level disclosures for ABS backed by auto loans and leases); ASF issuer and investor members (submitting a recommendation for grouped account disclosures for auto floorplan ABS); Sallie Mae (submitting an "aggregated and grouped representative line" proposal for ABS backed by student loans).

148 For purposes of this discussion, we refer to ABS backed by equipment loans and leases as "Equipment ABS.''

149 For purposes of this discussion, we refer to ABS backed by equipment floorplan financings as "Equipment Floorplan ABS.''

For Equipment ABS, our proposal to require asset-level disclosure, like other asset classes, received a mixed response from commentators. Some commentators supported asset-level data for Equipment ABS, while others suggested that asset-level data was not appropriate.[150] The Captive Equipment ABS Issuer Group, CNH, ELFA and Navistar each suggested that asset-level data would create privacy issues, risk dissemination of competitively sensitive information and increase costs. The Captive Equipment ABS Issuer Group, CNH and ELFA also suggested that asset-level data goes beyond what investors need or require for Equipment ABS. Some commentators individually recommended that Equipment ABS issuers should be permitted to present grouped account disclosure similar to what we proposed for credit and charge card issuers. CNH and Navistar also suggested that some of the proposed asset-level data points are inapplicable to Equipment ABS.

We appreciate that Equipment ABS may share some characteristics with other asset classes for which commentators have suggested grouped account data may be appropriate. For example, commentators for the Auto ABS asset class[151] suggested grouped data was more appropriate due to the privacy and competition concerns, and other concerns, raised by asset-level disclosures,[152]and one of these commentators submitted a grouped data and pool-level disclosure format for the Commission to consider as an alternative to asset-level reporting.[153] Our proposal did not include grouped account data for Equipment ABS, and it

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150 See, e.g., letters on the 2010 ABS Proposing Release from MetLife and SIFMA (investors) (each letter suggesting support for asset-level disclosures and revisions to the Commission's asset-level proposal for Equipment ABS); CalPers (expressing general support for asset-level disclosures for Equipment ABS). But see letters on the 2010 ABS Release from CNH, Navistar Financial Corporation (Navistar) and Equipment Leasing and Financing Association (ELFA) and from a group of five captive equipment ABS issuers (Captive Equipment ABS Issuer Group) (each suggesting that asset-level data was not appropriate for Equipment ABS).

151 For purposes of this discussion, we refer to ABS backed by auto loans and leases as "Auto ABS.''

152 See letters from Americredit, ASF (auto ABS issuers), Vehicle ABS Group on the 2010 ABS Proposing Release.

153 See letter on the 2010 ABS Proposing Release from ASF's auto ABS issuer members and certain investors members. The auto ABS issuer members and certain investor members submitted a recommendation

is unclear whether the suggestions we received on a possible grouped account approach for this asset class continued to be supported by commentators based on the comments received.[154] A group of issuers through a trade association submitted a suggestion for standardized pool-level disclosures, but we preliminarily believe that more granular disclosure – either asset-level or grouped account data – is appropriate at the time of offering and on an ongoing basis for Equipment ABS than provided by only pool-level disclosures.[155] In order to better analyze comments received and formulate the appropriate disclosure requirements for Equipment ABS, we request additional comment below.

Request for comment:

86. Is it possible to require asset-level data, both initially and on an ongoing basis, and address commentators' privacy and competitive concerns applicable to the Equipment ABS sector? What particular data elements would need to be revised or eliminated?

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for grouped account and pool-level disclosures for ABS backed by auto loans and leases. The recommendation suggested that at the time of an Auto ABS offering and monthly thereafter an issuer would provide statistical information about the underlying pool in the form of grouped-asset representative data lines and prescribed stratification tables.

[154] Navistar submitted a grouped account disclosure proposal for Equipment ABS, but Navistar subsequently was a signatory to a standardized pool-level format submitted by the Captive Equipment ABS Issuer Group. See letters about the 2010 ABS Proposing Release from Navistar and the Captive Equipment ABS Issuer Group (located in the memorandum to file dated March 8, 2011 covering the staff's meeting with members of the Financial Services Roundtable). It is unclear in light of their participation in the Captive Equipment ABS Issuer Group letter whether Navistar's grouped account suggestion still stands. Also, the Captive Equipment ABS Issuer Group submitted in their letter dated December 13, 2010 (located in the memorandum to filed dated December 15, 2010 covering the staff's meeting with members of the Roundtable) a grouped data proposal. However, as noted above, in March 2011 the Captive Equipment ABS Issuer Group later recommended standardized pool-level disclosures.

[155] See letter regarding the 2010 ABS Proposing Release from members the Captive Equipment ABS Issuer Group contained in the memorandum to file dated March 8, 2011 (suggesting that their recommended pool-level disclosure format was based on feedback they received from investors. However, we did not receive any comment letters from investors that supported this position).

87. Is asset-level data necessary for investors to independently perform due diligence for Equipment ABS?[156] Or would a grouped account disclosure requirement along with pool-level disclosures be sufficient for investors to independently perform due diligence and also address commentators' privacy and competition concerns? If so, would it be appropriate to require for Equipment ABS similar disclosure requirements that were recommended by commentators for Auto ABS? [157]

88. Could the grouped account and pool-level disclosures that commentators recommended for initial and ongoing reporting of Auto ABS be used for Equipment ABS? Would commentators' recommended disclosure requirements for Auto ABS need to be altered to fit the Equipment ABS sector? If so, how would it need to change? Is there a more appropriate grouped account format for Equipment ABS? Please be specific in your response.

For Equipment Floorplan ABS, some commentators suggested that asset-level data was not appropriate.[158] We recognize that Equipment Floorplan ABS, as revolving assets, may share some characteristics with other asset classes for which grouped account data may be appropriate; for instance, credit cards are typically structured as revolving asset master trusts and Equipment Floorplan ABS are also typically structured as revolving asset master trusts. Like Equipment ABS, however, we did not receive a recommendation for a grouped

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156 See Section 7(c) of the Securities Act.

157 See letter on the 2010 ABS Proposing Release from ASF's auto ABS issuer members and certain investors members (submitting a recommendation for grouped account and pool-level disclosures for ABS backed by auto loans and leases.)

158 See letters from Captive Equipment ABS Issuer Group, CNH and Navistar on the 2010 ABS Proposing Release (expressing concerns that asset-level reporting for floorplan receivables ABS was not appropriate due to obligor privacy concerns, concerns over the release of proprietary information and increased costs.)

account data approach.[159] A group of issuers through a trade association recommended that we require standardized pool-level disclosures, but we preliminarily believe that more granular disclosure is appropriate at the time of offering and on an ongoing basis than is provided by only pool-level disclosures.[160] In order to better analyze comments and formulate the appropriate disclosure requirements for Equipment Floorplan ABS, we request additional comment below.

Request for comment:

89. Is it possible to require asset-level data, both initially and on an ongoing basis, and address commentators' privacy and competitive concerns applicable to the Equipment Floorplan ABS sector? What particular data elements would need to be revised or eliminated?

90. Is asset-level data necessary for investors to independently perform due diligence for Equipment Floorplan ABS? Or would a grouped account disclosure requirement be sufficient for investors to independently perform due diligence and also address commentator's privacy and competition concerns? If so, would it be appropriate to require for Equipment Floorplan ABS[161] similar disclosure

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159 Navistar expressed support in their comment letter for the floorplan grouped data disclosure proposal proposed in a letter from the Vehicle ABS Group. See letters from Navistar and the Vehicle ABS Group about the 2010 ABS Proposing Release. However, the Vehicle ABS Group later withdrew support for their recommendation in favor of the grouped account disclosure recommended by ASF's issuer and investor members for ABS backed by auto floorplans. See letter from the Vehicle ABS Group about the 2010 ABS Release dated November 8, 2010. ASF submitted a grouped account recommendation for vehicle floorplan ABS, but it was not clear that this proposal covered Equipment Floorplan ABS. See the letter on the 2010 ABS Proposing Release from ASF issuer and investor members (submitting a recommendation for grouped account disclosures for auto floorplan ABS).

160 See letter regarding the 2010 ABS Proposing Release from members the Captive Equipment ABS Issuer Group contained in the memorandum to file dated March 8, 2011 (suggesting that their recommended pool-level disclosure format was based on feedback they received from investors. However, we did not receive any comment letters from investors that supported this position).

161 See letter from ASF on the auto sector setting forth the alternative disclosure regime recommended by ASF's auto ABS grouped-asset investor members and issuer members.

requirements that were recommended for Auto Floorplan ABS?[162] Would it resolve commentators' privacy and competitive concerns?

91. Could the grouped account disclosures that commentators recommended for initial and ongoing reporting for Auto Floorplan ABS also be used for Equipment Floorplan ABS? Would commentators' recommended disclosure requirements for Auto Floorplan ABS need to be altered to fit the Equipment Floorplan ABS sector? If so, how would it need to change? Is there a more appropriate grouped account format for Equipment Floorplan ABS? Please be specific in your response.

3. Additional Requests for Comment on When to Require Schedule L

In our 2010 ABS Proposing Release under our proposed requirements for when asset-level data would be required in a prospectus, we proposed to require that issuers provide for each asset in the pool all of the asset-level data points enumerated in proposed Schedule L of Regulation AB as of a recent practicable date, defined as the "measurement date," at the time of a Rule 424(h) prospectus.[163] We also proposed that an updated Schedule L, as of the cut-off date for the securitization, be provided with the final prospectus under Rule 424(b). Finally, we proposed that if issuers are required to report changes to the pool under Item 6.05 of Form 8-K, then an updated Schedule L would be required.[164]

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[162] For purposes of this discussion, we refer to ABS backed by auto floorplans as "Auto Floorplan ABS.''

[163] See proposed Item 1111A of Regulation AB and the 2010 ABS Proposing Release at 23356.

[164] In footnote 235 of the 2010 ABS Proposing Release we stated that if a new asset is added to the pool during the reporting period, an issuer would be required to provide the asset-level information for each additional asset as required by our proposed revisions to both Item 1111 of Regulation AB and Item 6.05 of Form 8-K. See the 2010 ABS Proposing Release at 23356.

Under our proposed revisions to Item 6.05 of Form 8-K, however, we proposed that a new Schedule L be required to be filed if any material pool characteristic of the actual asset pool at the time of issuance of the asset backed securities differs by 1% or more than the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424.[165] In our discussion of asset-level ongoing reporting requirements, we stated that if assets are added to the pool during the reporting period, either through prefunding periods, revolving periods or substitution, disclosure would be required under our proposed revisions to Item 6.05 on Form 8-K along with the Schedule L data contained in proposed Item 1111A of Regulation AB.[166]

One investor, in response to our 2010 ABS Proposing Release, recommended that if assets are added to the pool through prefunding periods or revolving periods during the month a new Schedule L should be provided.[167] This commentator suggested that such a requirement will allow investors to evaluate the risk layering introduced by any new collateral that is added to securitizations after issuance. This comment seemed to indicate that it was not clear an Item 6.05 Form 8-K was required when prefunding or revolving assets increased or changed the pool by 1% or more, although that was the intention of the language in the proposal. Therefore, we are requesting additional comment to determine whether we should clarify this proposed requirement by specifying in Item 6.05 that the filing of a Schedule L is required when assets are added to the pool after the issuance of the

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[165] See the 2010 ABS Proposing Release at 23392. As proposed, if any material pool characteristic of the actual asset pool at the time of issuance of the asset backed securities differs by 1% or more than the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424 an issuer would be required to file an Item 6.05 of Form 8-K and provide the disclosures required under Item 1111 and Item 1112 of Regulation AB. Under the proposed Item 1111(h) of Regulation AB issuers would be required to provide a Schedule L. In addition, the item, as proposed to be revised, also requires a description of the changes that were made to the asset pool, including the number of assets substituted or added to the asset pool.

[166] See the 2010 ABS Proposing Release at 23368.

[167] See letter from Prudential (suggesting that for securitizations with prefunding periods or revolving transactions a new Schedule L should be filed monthly when new collateral is added.)

securities, either through prefunding periods, revolving periods or substitution and the triggers in that item are met.

Request for comment:

92. Should we specify in Item 6.05 of Form 8-K that a new Schedule L must be filed when assets are added to the pool after issuance, either through prefunding periods, revolving periods or substitution and the triggers in that item are met?

93. Instead, should we require that filing of a new Schedule L be triggered when assets are added to the pool during a month, distribution period or some other timeframe?

94. Rather than require that Schedule L be filed with [or as an exhibit to] a current report on Form 8-K, under Item 6.05, should it be required to be filed under a new requirement as an exhibit to Form 10-D? Please be specific in your response.

95. Should the Schedule L data include information about all assets in the pool, including the new assets? If so, should we clarify in an instruction this will just be repeating the original schedule or should we require that it be updated? Could any of the information be updated? If so, should we require that? Or should Schedule L data only be required for the assets added during the reporting period?

96. Could investors evaluate risk layering introduced by new assets if a new Schedule L is required only for the new assets added during the relevant period?

97. Current disclosure requirements under Item 1121(b) of Regulation AB require that during a prefunding or revolving period, or if there has been a new issuance of asset-backed securities backed by the same pool under a master trust, during the fiscal year of the issuing entity, updated pool composition information in the Form 10-D report is required to be provided in the last required distribution report of the fiscal year of the issuing entity in accordance with Items 1110, 1111 and 1112 of

Regulation AB.[168] If, as proposed in the 2010 ABS Proposing Release, updated asset-level information would be required to be provided with an Item 6.05 Form 8-K when prefunding or revolving assets change the pool by 1% or more, would the information required by Item 1121(b) be necessary? Should Item 1121(b) be revised to specifically require updated asset-level information be provided in the last required distribution report of the fiscal year of the issuing entity?

4. Additional Requests for Comment on Privately-Issued Structured Finance Products

In the 2010 ABS Proposing Release, we proposed amendments to our safe harbors for exempt offerings and resales and new related rules regarding the information that must be made available to investors in privately-issued asset-backed securities.[169] We proposed to require that, in order for a reseller of a "structured finance product," as proposed to be defined,[170] to sell a security in reliance on Securities Act Rule 144A,[171] or in order for an issuer of a structured finance product to sell a security in reliance on Rule 506 of Regulation D,[172] certain conditions had to be met.[173]

For sales of structured finance products made in reliance on Rule 144A or Rule 506, first, under our proposal the underlying transaction agreement of the issuer would have to grant any purchaser, any security holder and any prospective purchaser of the securities

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168 Also, updated information is required in the first Form 10-D report for the period in which the prefunding or revolving period ends (if applicable).

169 See the 2010 ABS Proposing Release at 23393.

170 The 2010 ABS Proposals would apply to any "structured finance product," which would be more broadly defined than in the Regulation AB Item 1101(c) definition of "asset-backed security" in order to reflect the wide range of securitization products that are sold in the private markets.

171 17 CFR 230.144A.

172 17 CFR 230.506.

173 See proposed revisions toRule 144A(a)(8), Rule 192, Rule 501 and Rule 502 in the 2010 ABS Proposing Release.

designated by the holder the right to obtain, upon request of the purchaser or security holder, information that would be required if the offering were registered on Form S-1 or proposed Form SF-1 under the Securities Act and any ongoing information regarding the securities that would be required by Section 15(d) of the Exchange Act, if the issuer were required to file reports under that section. Second, the issuer would have to represent that it would provide such information to the purchaser, security holder, or prospective purchaser upon request of the purchaser or security holder.[174]

As discussed above, in the 2010 ABS Proposing Release, we also proposed an amendment to Regulation AB that would require issuers of registered ABS offerings to disclose in the prospectus asset-level information in a standardized format.[175] Thus, together with the proposed asset-level requirements, the proposed amendments for privately issued structured finance products would require that issuers in offers and sales of structured finance products in reliance on Rule 144A or Rule 506 would need to provide, upon request, asset-level disclosures, along with other disclosures required by Regulation AB.

In the 2010 ABS Proposing Release, we requested comment on whether we should provide more specificity in the rules for privately issued structured finance products covering what disclosure would be required to be provided and, if so, what types of disclosure we should specifically require and whether the required disclosures should differ by type of security and, if so, in what way. We also requested comment on whether our proposal with respect to ongoing information regarding the securities was appropriate.

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174 See the 2010 ABS Proposing Release at 23396

175 See the ABS 2010 ABS Proposing Release at 23355.

In response to our 2010 ABS Proposals, several commentators expressed concern regarding the disclosure standards for privately issued structured finance products.[176] Commentators noted that there are not clear information requirements for certain types of ABS that are not typically offered under Regulation AB, such as CDOs, CLOs, asset-backed commercial paper or synthetic ABS.[177] Commentators expressed concerns regarding the standards for disclosure and noted that any novel asset type or structure would face uncertainty regarding their disclosure obligations.[178] In addition, some commentators asked the Commission to recognize the unique characteristics of different asset classes.[179]

In light of these comments, we are requesting comment on whether we should only require asset-level disclosures where the "structured finance product" being sold in reliance

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[176] See letters from ABA, ABAASA, Association of Financial Markets in Europe/European Securitisation Forum (AFME/ESF), ASF, Cleary Gottlieb Steen and Hamilton (Cleary), PPM America (PPM), Sallie Mae, SIFMA (dealers and sponsors), Wells Fargo on the 2010 ABS Proposing Release.

[177] See letters from ABA, ASF and SIFMA on the 2010 ABS Proposing Release. The ASF suggested that the proposed disclosure regime would be untenable because the safe harbor for securities that fall outside of the current Regulation AB definition would be subject to a hybrid of the corporate and Regulation AB disclosure requirements, without the benefit of detail on how those disclosure requirements would apply.

[178] See letters from AFME/ESF, SIFMA (dealers and sponsors), and Wells Fargo on the 2010 ABS Proposing Release. SIFMA (dealers and sponsors) suggested that the uncertainty over disclosure requirements could affect the ability of insurance-linked securities, whole business securitizations, future flow securitizations, securitizations of film rights, franchise fees, IP licensing fees, charged-off assets, leases exceeding the limits of the Reg. AB definition of ABS and non-revolving assets exceeding a year to rely upon Rule 144A. Wells Fargo expressed concern regarding the uncertainty in determining the applicable reporting requirements for future flow, film rights, franchise fees, patent royalties, certain lease transactions and novel asset classes and structures.

[179] See letters from ABASA, AFME/ESF and Cleary on the 2010 ABS Proposing Release. AFME/ESF suggested that it would be inappropriate to apply Regulation AB to UK mortgage master trust issuers without adjustment. Cleary urged the Commission to "acknowledge that some of the detailed, asset-level disclosure mandated by the Proposed Rules will simply not be possible for some issuers, in some asset classes, to compile without expending levels of time and expense that are simply not warranted." Cleary recommended revising the proposal to require "issuers to provide (in connection with the initial placements) the information that would be required if the offering were registered on Form S-1 or Form SF-1 under the Securities Act, and to provide (on an ongoing basis) the information that would be required by Section 15(d) of the Exchange Act, in each case if requested, only to the extent that the issuer possesses such information or can acquire it without unreasonable effort or expense." Cleary also suggested that "such required information in each case may differ as to format, presentation, or specific loan-level data points from the requirements of Regulation AB, and that loan-level information may be omitted for one or more portfolio components not exceeding a specified percentage of the relevant portfolio individually and a specified percentage of the relevant portfolio in the aggregate."

on Rule 144A, or Rule 506 of Regulation D, is backed by or collateralized by assets of an asset class for which there are prescribed asset-level reporting requirements in Regulation AB. As proposed, this would include: residential mortgage backed securities; commercial mortgage backed securities; automobiles loans or leases; equipment loans or leases; student loans; floorplan financings; corporate debt; and resecuritizations.

Request for comment:

98. Should we only require that the transaction agreements underlying structured finance products sold in reliance on Rule 144A or sold pursuant to Rule 506 be required to provide for asset-level disclosures if the particular asset class of the securities are of an asset class where asset-level disclosures are prescribed in Regulation AB (i.e., residential mortgage backed securities; commercial mortgage backed securities; automobiles loans or leases; equipment loans or leases; student loans; floorplan financings; corporate debt; and resecuritizations)? Should securities where the asset class is not of an asset class where asset-level disclosure is required under Regulation AB be exempted from providing asset-level disclosure?

99. Is there any reason that we should not require structured finance product issuers that utilize the safe harbors to comply with the proposed asset-level disclosure requirements for initial and/or ongoing information if asset-level disclosure for the particular asset class underlying the transaction is required under Regulation AB?

100. For securities that fall outside the Regulation AB definition of "asset-backed securities," how can the Commission address commentators' concern that those

securities would be subject to a hybrid of the corporate and Regulation AB disclosure requirements?[180]

101. If we do not require asset-level disclosures for certain "structured finance products" or "novel asset types or structures" that fall outside the Regulation ABS definition of "asset-backed securities," are there other types of disclosure that we should require the issuer to provide to investors or prospective purchasers? How should "novel asset types or structures" be defined? Is there any guidance that the Commission should provide for structured finance products that fall outside of Regulation AB's definition of ABS?

C. Waterfall Computer Program

In the 2010 ABS Proposing Release, we proposed to require that most ABS issuers file a computer program that gives effect to the flow of funds, or "waterfall," provisions of the transaction. The proposal was designed to make it easier for an investor to analyze the ABS offering at the time of its initial investment decision and to monitor ongoing performance of the ABS. In this way, market participants would be able to better conduct their own evaluations of ABS. Although several commentators supported the proposal because it would promote transparency and enable investors to make better decisions,[181] several commentators opposed the proposal for various reasons, such as the lack of clarity of

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[180] See letter from ASF on the 2010 ABS Proposing Release (expressing that the array of structured finance products offered and sold in the private placement market may technically fall outside the Regulation AB definition of "asset-backed securities," which would by default subject them to the corporate disclosure regime, together with some elements of the Regulation AB disclosure regime).

[181] See comment letters from AMI; Bank of New York Mellon; CalPERS; Keith G. Cascio; CoStar Group; Council of Institutional Investors; Knowledge Decision Securities; Risk Management Association/Securitization Risk Roundtable; and XBRL US on the 2010 ABS Proposing Release.

the requirements of our proposal,[182] the cost burden on issuers and/or investors,[183] and concern about liability under the federal securities laws.[184] We received many helpful and detailed suggestions regarding the proposed waterfall computer program requirement, and plan to re-propose the requirement separately from adopting requirements for ABS shelf eligibility, offering process and disclosures, including asset-level disclosures. We believe these requirements could be adopted and implemented together, separately from any waterfall disclosure component.

IV. Transition Period

As we explained in the 2010 ABS Proposing Release, we believe that compliance dates should not extend past a year after adoption of the new rules. We are considering the appropriate timing for implementation of the 2010 ABS Proposals and today's re-proposals, if adopted.

Request for comment:

102. Should implementation of any proposals be phased-in? If so, explain why and provide a reasonable timeframe for a phase-in (e.g., six months, one or two years)?

103. Should implementation be based on a tiered approach that relates to a characteristic other than the size of the sponsor? Is there any reason to structure implementation around the asset class of the securities?

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[182] See comment letters from ABA; BOA; Discover; FSR; Vehicle ABS Group; JP Morgan; and Sallie Mae on the 2010 ABS Proposing Release.

[183] See comment letters from ABASA; ABA; American Financial Services Association (AFSA); BOA; Business Software Alliance; Capital One Financial; Citigroup Global Markets (Citi); CREFC; Discover; FSR; Vehicle ABS Group; Intex Solutions; IPFS Corp; JP Morgan; MathWorks; MBA; Navistar; PPM; PricewaterhouseCoopers LLP; Sallie Mae; SIFMA; Trepp; UBmatrix; Wells Fargo; and Wyndham Worldwide on the 2010 ABS Proposing Release.

[184] See comment letters from ABASA; ABA; AFSA; AmeriCredit Corp; BOA; (Citi); Discover; Intex Solutions; JP Morgan; MBA; Sallie Mae; SIFMA; Vehicle ABS Group; Wells Fargo on the 2010 ABS Proposing Release.

V. 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.

VI. Paperwork Reduction Act

A. Background

Certain provisions of the proposed rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[185] 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.[186] 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:[187]

(1) "Form S-3" (OMB Control No. 3235-0073);

(2) "Form 10-D" (OMB Control No. 3235-0604);

(3) "Regulation S-K" (OMB Control No. 3235-0071); and

(4) "Form SF-3 (a proposed new collection of information).

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185 44 U.S.C. 3501 et seq.

186 44 U.S.C. 3507(d) and 5 CFR 1320.11.

187 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.

The forms listed in Nos. 1 through 3 were adopted under the Securities Act and the Exchange Act and set forth the disclosure requirements for registration statements and periodic reports filed with respect to asset-backed securities and other types of securities to inform investors. The form listed in No. 4 is a newly proposed collection of information under the Securities Act. Form SF-3, if adopted, would represent the registration form for offerings that meet certain shelf eligibility conditions and can be offered on a delayed basis under Rule 415.

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

B. Revisions to PRA Reporting and Cost Burden Estimates

Our PRA burden estimate for the existing collection of information on Form S-3 is based on an average of the time and cost incurred by all types of public companies, not just ABS issuers, to prepare the collection of information. In contrast, Form 10-D is a form that is only prepared and filed by ABS issuers. In 2004, we codified requirements for ABS issuers in these regulations and forms, recognizing that the information relevant to asset-backed securities differs substantially from that relevant to other securities.

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 asset-backed securities, as well as information from outside data sources.[188] When possible, we base our estimates on an average of the data that we have available for years 2004 through 2010. In some cases, our estimates for the number of asset-

[188] 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).

backed issuers that file Form 10-D with the Commission are based on an average of the number of ABS offerings in 2006 through 2010.[189]

1. Form S-3 and Form SF-3

Our current PRA burden estimate for Form S-3 is 243,927 annual burden hours. This estimate is based on the assumption that most disclosures required of the issuer are incorporated by reference from separately filed Exchange Act reports. However, because ABS issuers using Form S-3 often present all of the relevant disclosure in the registration statement rather than incorporate relevant disclosure by reference, our current burden estimate for ABS issuers using Form S-3 under existing requirements is similar to our current burden estimate for ABS issuers using Form S-1. During 2004 through 2010, we received an average of 90 Form S-3 filings annually related to asset-backed securities.

We are proposing to move the requirements for asset-backed issuers into new forms that would be solely for the registration by offerings of asset-backed securities. Under the proposal, proposed Form SF-3 would be the ABS shelf equivalent form of existing Form S-3. For purposes of our calculations, we estimate that the proposals relating to shelf eligibility would cause a 5% movement in the number of filers (i.e., a decrease of five registration statements) out of the shelf system due to the new requirements which include the proposed executive officer certification, the proposed transaction requirement for the credit risk manager, the proposed transaction requirement related to investor communications, and the proposed annual evaluations of compliance with timely Exchange Act reporting and timely filing of transaction agreements and certifications.[190] On the other hand, we estimate the

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[189] Form 10-D was not implemented until 2006. Before implementation of Form 10-D, asset-backed issuers often filed their distribution reports under cover of Form 8-K.

[190] We calculated the decrease of five Form SF-3s by multiplying the average number of Form S-3s filed (90) by 5 percent.

number of shelf registration statements for ABS issuers would increase by five as a result of the outstanding proposal from the 2010 ABS Proposing Release to eliminate the practice of providing a base prospectus and a prospectus supplement for these issuers.[191] Thus, we estimate that the annual number of shelf registration statements concerning ABS offerings would remain the same. Accordingly, since the proposals would shift all shelf eligible ABS filings from Form S-3 to Form SF-3, we estimate that the proposals would cause a decrease of 90 ABS filings on Form S-3 and a corresponding number of 90 ABS filings on Form SF-3s filed annually.[192]

In 2004, we estimated that an ABS issuer, under the 2004 amendments, would take an average of 1,250 hours to prepare a Form S-3 to register ABS.[193] Additionally, in the January 2011 ABS Issuer Review Release, we estimated that the requirements described in that release would increase the annual incremental burden to ABS issuers by 30 hours per form.[194] Therefore, we currently estimate that it would take an average of 1,280 hours to prepare a Form S-3 to register ABS. 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.[195]

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191 See Section II.D. of the 2010 ABS Proposing Release. Based on staff reviews, we believe it is very unusual to see ABS registration statements with multiple unrelated collateral types such as auto loans and student loans. There are occasionally multiple related collateral types such as HELOCs, subprime mortgages and Alt-A mortgages in ABS registration statements.

192 This is based on the number of registration statements for ABS issuers filed on Form S-3 and the four changes due to our rule proposal.

193 See 2004 ABS Adopting Release and 2004 ABS Proposing Release.

194 See January 2011 ABS Issuer Review Release at 4239.

195 See, e.g., Credit Ratings Disclosure, Release No. 33-9070 (Oct. 7, 2009) [74 FR 53086].

We are proposing new and revised disclosure requirements for ABS issuers that, if adopted, would be a cost to filing on Form SF-3. In particular, we are proposing to add a shelf eligibility condition that the registrant file a certification at the time of each offering off of a shelf registration statement, or takedown, by the chief executive officer of the depositor or executive officer in charge of securitization of the depositor concerning the disclosure contained in the prospectus and the design of the securitization. We are also proposing a shelf eligibility condition that the underlying transaction agreement must provide for the appointment of a credit risk manager to review assets upon the occurrence of certain trigger events and provisions related to repurchase request dispute resolution. Additionally, we are proposing to require that registrants include disclosures concerning the credit risk manager in the prospectus in the registration statement. Lastly, we are proposing a shelf eligibility condition that the underlying transaction agreement include a provision requiring that the party responsible for making periodic filings on Form 10-D include any request received from an investor to communicate with other investors during the reporting period related to investors exercising their rights under the terms of the asset-backed security. We are also proposing changes to Form 10-D relating to disclosure regarding credit risk managers.

If the proposals are adopted, we estimate that the incremental burden for ABS issuers to complete the disclosure requirements in Form SF-3, prepare the information, and file it with the Commission would be 100 burden hours per response on Form SF-3. As a result, we estimate that each Form SF-3 would take approximately 1,380 hours to complete and file.[196] We estimate the total internal burden for Form SF-3 to be 31,050 hours and the total

[196] The total burden hours to file Form SF-3 are calculated by adding the existing burden hours of 1,280 that we estimate for Form S-3 and the incremental burden of 100 hours imposed by our proposals for a total of 1,380 total burden hours.

related professional costs to be $37,260,000.[197] This would result in a corresponding decrease in Form S-3 burden hours of 28,800 and $34,560,000 in professional costs.[198]

2. Form 10-D

In 2004, we adopted Form 10-D as a new form for only asset-backed issuers. This form is filed within 15 days of each required distribution date on the asset-backed securities, as specified in the governing documents for such securities. The form contains periodic distribution and pool performance information. We estimate that the yearly average number of Form 10-D filings is 10,000[199] and that the proposed new Regulation AB disclosure requirements that would be included in Form 10-D related to investor communications (Item 1121(g)) and credit risk managers (Item 1121(f)) would result in an additional burden of five hours per filing to prepare. Consistent with our estimate in 2004, we estimate that it currently takes 30 hours to complete and file a Form 10-D. Therefore, we estimate that the proposals would increase the number of hours to prepare, review, and file a Form 10-D to 35 burden hours; thus, increasing the total burden hours for all annual Form 10-D responses to an estimate of 350,000 hours.[200]

We allocate 75% of those hours (262,500 hours) to internal burden and the remaining 25% to external costs totaling $35,000,000 using a rate of $400 per hour.

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197 To calculate these values, we first multiply the total burden hours per Form SF-3 (1,380) by the number of Form SF-3s expected under the proposal (90), resulting in 124,200 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 31,050 hours. We allocate the remaining 75 percent of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $37,260,000.

198 To calculate these values, we first multiply the total burden hours per Form S-3 (1,280) by the average number of Form S-3s over the period 2004-2010 (90), resulting in 115,200 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 28,800 hours. We allocate the remaining 75 percent of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $34,560,000.

199 Our estimate is based on 1,000 respondents per year multiplied by 10 filings per respondent.

200 The burden hours are calculated by multiplying 10,000 Form 10-Ds by the 35 burden hours required to complete the form for a total of 350,000 hours.

3. Regulation S-K

Regulation S-K, which includes the item requirements in Regulation AB, contains the requirements for disclosure that an issuer must provide in filings under both the Securities Act and the Exchange Act. We assign one burden hour to Regulation S-K for administrative convenience to reflect that the changes to the regulation did not impose a direct burden on companies.

4. Summary of Proposed Changes to Annual Burden Compliance in Collection of Information

Table 1 illustrates the changes in annual compliance burden in the collection of information in hours and costs for existing reports and registration statements and for the proposed new registration statement for asset-backed issuers. Bracketed numbers indicate a decrease in the estimate.

Form	Current Annual Responses	Proposed Annual Responses	Current Burden Hours	Decrease or Increase in Burden Hours	Proposed Burden Hours	Current Professional Costs	Decrease or Increase in Professional Costs	Proposed Professional Costs
S-3	2,065	1,075	243,927	[28,800]	215,127	$292,711,500	[$34,560,000]	$258,151,500
SF-3	……	90	……	31,050	31,050	……	$37,260,000	$37,260,000
10-D	10,000	10,000	225,000	37,500	262,500	$30,000,000	$5,000,000	$35,000,000

5. Solicitation of Comments

We request comments in order to evaluate: (1) whether the proposed collection of information is necessary for the proper performance of the functions 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 ways 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.[201] We also specifically request comment regarding:

104. Whether and to what extent the proposed shelf eligibility requirements would cause a movement in filers that are currently eligible for shelf registration on Form S-3 out of shelf registration to proposed Form SF-3.

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. S7-08-10. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-08-10, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE, Washington, DC 20549. 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.

VII. Economic Analysis

A. Background

In April 2010, we proposed rules that would revise the disclosure, reporting and offering process for ABS.[202] Among other things, in the 2010 ABS Proposing Release we

[201] We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

proposed eligibility requirements to replace the current credit rating references in shelf eligibility criteria for asset-backed security issuers (i.e., a certification by the chief executive of the depositor, risk retention, third party opinion relating to representations and warranties, and ongoing Exchange Act reporting). We also proposed to require that, with some exceptions, prospectuses for public offerings of asset-backed securities and ongoing Exchange Act reports contain specified asset-level information about each of the assets in the pool in a standardized tagged data format. Further, we proposed to require asset-backed issuers to provide investors with more time to consider transaction-specific information about the pool assets.

In this release, we are re-proposing certain requirements for ABS shelf eligibility and filing deadlines for exhibits in ABS shelf offerings. We are also proposing new Form 10-D disclosure requirements related to investor communications and credit risk managers. Section 23(a) of the Exchange Act[203] 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 Act[204] and Section 3(f) of the Exchange Act[205] 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. We have considered and discussed below the effects of the proposed rules

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202 See the 2010 ABS Proposing Release.

203 15 U.S.C. 78w(a).

204 15 U.S.C. 77b(b).

205 15 U.S.C. 78c(f).

on efficiency, competition, and capital formation, as well as the benefits and costs associated with the Commission's decisions in the proposed rulemaking. Except as noted below, our benefit-cost analysis included in the 2010 ABS Proposing Release remains unchanged and outstanding.

B. ABS Shelf Eligibility Proposals

We are re-proposing the registrant and transaction requirements for ABS shelf registration because two of the proposed transaction requirements in the April 2010 Proposing Release – risk retention and continued Exchange Act reporting – will be required for most registered ABS offerings as a result of changes mandated by provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Further, our re-proposals for ABS shelf registration eligibility are also made in connection with Section 939A of that Act which generally requires that we modify our regulations to remove any references to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness that we determine as appropriate for such regulations. Therefore, instead of the investment grade ratings requirement, under our re-proposal, taking into account the context and purposes of the affected rules, we are proposing a CEO or executive officer certification, provisions in the transaction agreements requiring the appointment of an independent credit risk manager under certain conditions and certain dispute resolution provisions, and provisions in the transaction agreements related to investor communications for any offering off the Form SF-3 shelf registration statement, which we believe would be indicative of a higher quality security.

We are also proposing to require that, in order to conduct a takedown off an effective shelf registration statement, an ABS issuer would be required to conduct an annual evaluation of compliance with the transaction requirements for shelf offerings conducted

during the past year as well as compliance with timely Exchange Act reporting. Further, as re-proposed, issuers would be allowed to cure any failure to timely file the required certification or transaction agreements with required provisions. Specifically, under the re-proposal, the depositor would be deemed to satisfy the registrant requirements related to timely filing the certifications and transaction agreements 90 days after the date all required filings are filed.

1. Benefits

We believe a benefit of the re-proposed ABS shelf eligibility requirements is that they would replace the current investment grade rating condition while providing improved investor protections that would be indicative of a higher quality security. We believe that our proposal to require a certification by the depositor's chief executive officer or executive officer in charge of securitization may cause these officials to review more carefully the disclosure, and in this case, the transaction, and would encourage better oversight of the securitization process. As a result, certifiers may provide a more accurate review of the registration statement disclosures and the transaction. To the extent that a more careful review improves the securitization quality in the presence of such a certification, the proposed certification would be an appropriate eligibility requirement for shelf registration.

We believe that our proposal requiring provisions in the underlying transaction agreements requiring the appointment of a credit risk manager to review assets upon the occurrence of certain trigger events, requiring that the credit risk manager provide a report to the trustee of the findings and conclusions of the reviews of the assets, and requiring repurchase dispute resolution procedures should help the enforceability of contract terms surrounding representations and warranties regarding the pool assets. We are proposing to require that the transaction agreements require, at a minimum, review by the credit risk

manager (1) when the credit enhancement requirements, as specified in the underlying transaction agreements, are not met; and (2) at the direction of investors pursuant to the process provided in the transaction agreement and disclosed in the prospectus. We believe specifying these two minimum trigger requirements should facilitate the ability of transaction parties to pursue transaction remedies, which we believe would be a feature of a higher quality security, while at the same time providing flexibility to transaction parties to develop more robust trigger requirements as they deem appropriate.

The requirement that the credit risk manager not be affiliated with the sponsor, depositor, or servicer helps assure investors that the review of assets is impartial. By not prescribing specific procedures for the review and repurchase process, we are providing the credit risk manager and ABS investors with the flexibility to determine the most appropriate and efficient procedures for each ABS transaction. We believe that taken together our transaction requirements related to the appointment of a credit risk manager would better strengthen the enforceability of contract terms surrounding the representations and warranties regarding the pool assets for ABS shelf transactions and incentivize obligated parties to better consider the characteristics and quality of the assets underlying the securities, thus making them appropriate criteria for shelf eligibility.

We believe that our proposal requiring a provision in an underlying transaction agreement to require the party responsible for making periodic filings on Form 10-D include in the Form 10-D any request from an ABS investor to communicate with other ABS investors related to investors exercising their rights under the terms of the asset-backed security would benefit ABS investors because facilitating communication among ABS investors enables them to exercise the rights included in the underlying transaction agreements. In this regard, as previously discussed in Part II.B.1(c) of this release, we are

aware that ABS investors have had difficulty enforcing rights contained in transactions agreements, and in particular, those relating to the repurchase of underlying assets for breach of representations and warranties. We also believe the disclosure would benefit investors by helping solve collective action problems related to communication between investors and issuers. By decreasing the costs of communication among investors, this proposed requirement helps investors exercise the rights included in the underlying transaction agreements.

The above three shelf eligibility requirements are designed to improve the quality of the securities being offered by strengthening investor protections, so that the offerings may appropriately be conducted quickly. To the extent that better investor protection increases investors' trust in the fairness and security of the ABS markets, the result could be lower cost of capital and increased investor participation in ABS markets, which should facilitate capital formation.

We believe that requiring an annual evaluation of compliance with the registrant requirements in order to continue using an effective shelf registration statement would benefit investors because it would encourage issuers to file their Exchange Act reports and transaction documents in connection with prior offerings at the required time, and therefore, enhance informed investment decisions. We also believe that a 90-day cure period strikes an appropriate balance between monitoring issuers' compliance with the proposed shelf transaction requirements and commentator's concerns that the one-year penalty was too costly.

2. Costs

We believe that the certification transaction requirement could impose additional review and oversight costs, potential litigation costs, and disclosure costs on ABS issuers.

First, since the intent of the certification is to enhance the accountability and oversight of the ABS transaction, if effective, it will result in additional costs related to further verifying the characteristics of the asset pool, the payment and rights allocations, the distribution priorities and other structural features of the transactions. We note that these costs could be lessened to the extent that the certifier could rely in part on the review that would already be required in order for an issuer to comply with recently adopted Rule 193.[206] Ultimately, we believe that for shelf offerings the benefit of improving the accuracy of securitization disclosures and enhancing the accountability and oversight of the ABS transaction justifies these additional review and oversight costs incurred by the ABS issuers.

We have considered that the certification transaction requirement might also result in litigation costs for those signing the certification with the magnitude of the costs dependent on the scope of the certification. We received several comment letters indicating that the certification language included in our 2010 ABS Proposing release could be interpreted as a guarantee of the future performance of the assets underlying the ABS.[207] We realize that unexpected losses incurred by security holders may be the result of misrepresentation by the securitization parties but may also be the outcome of a negative realization. Since the distinction is typically difficult to discern, a certification misinterpreted as a guarantee could have increased the likelihood of litigation, and therefore expected litigation costs to the certifier. In an attempt to mitigate these costs, we are proposing revised certification

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[206] Rule 193 implemented Securities Act Section 7(d), as added by Section 945 of the Act, by requiring that any issuer registering the offer and sale of an ABS perform a review of the assets underlying the ABS.

[207] See letters from ASF (issuer members), ABASA, CREFC and Wells Fargo on the 2010 ABS Proposing Release. Several commentators offered, as an alternative, that the CEO of the depositor certify to the adequacy and accuracy of the disclosure in the offering documents. See letters from ABA; ABASA; ASF; AusSF; BOA; CNH; FSR; JP Morgan; MBA; SIFMA (dealers and sponsors); Sallie Mae; and Wells Fargo.

language, which we believe reduces a certifier's exposure to unnecessary litigation and limits litigation costs that the certification may create.

The proposed transaction requirements for shelf eligibility related to the credit risk manager would increase costs of securitization to ABS issuers to the extent a credit risk manager would not have otherwise been appointed in the transaction because they would be required to hire an additional participant in the transaction in order to maintain shelf eligibility. We have attempted to mitigate these costs by requiring that a credit risk manager be involved in the transaction only upon the occurrence of certain triggering events. We also recognize that not prescribing specific procedures for the review and repurchase process may impose a cost to investors if the transaction parties do not select appropriate procedures for such process. This transaction requirement would also result in some additional disclosure costs as information about the credit risk manager will have to be provided in the ABS prospectus.

The proposed disclosure requirements related to investor communications in distribution reports on Form 10-D would increase the disclosure costs of preparing these respective filings for ABS issuers. We also expect this requirement would impose additional costs on ABS issuers because the person responsible for making periodic filings on Form 10-D would need to design systems to receive investor requests to communicate and verify the identity of the investor making the request.

We believe that requiring an annual evaluation of compliance with the registrant requirements would impose additional costs on ABS issuers because of any systems needed to ensure and check compliance with the reporting and filing requirements. However, we believe these costs should be minimal because these issuers should already have in most

instances systems designed to ensure that reports and transaction agreements are being filed timely in accordance with rules under the Exchange Act or Securities Act, respectively.

We recognize that some of the new shelf registration costs may be passed down the chain of securitization and ultimately to borrowers. The ability to pass costs on to borrowers would be constrained by competition from non-securitizing lenders, which would weaken the competitive ability of firms that solely rely on securitization for funding relative to other financial firms that have other sources of funding.

Finally, if ABS sponsors are forced to bear all or some of these new costs and if these new costs exceed the costs of obtaining a credit rating, then ABS sponsors might choose to avoid the shelf registration process by registering their ABS on the proposed Form SF-1. Alternatively, they might choose to bypass SEC registration altogether and issue in private markets instead. This will have the effect of reduced efficiency and impeded capital formation. We seek comments and empirical data to help us assess the macroeconomic impact of the costs associated with the new shelf registration requirements.

C. Disclosure Requirements

In addition to the shelf eligibility proposals, we are also proposing a disclosure requirement that would require disclosure in the prospectus concerning any party selected as a credit risk manager. We are also proposing to require ABS issuers to file copies of the underlying transaction agreements, including all attached schedules, and other agreements that are referenced (such as those containing representations and warranties regarding the underlying assets), at the same time as a preliminary prospectus that would be required under proposed Rule 424(h). We are also proposing to require in distribution reports filed on Form 10-D disclosure related to the review of pool assets by credit risk managers during the relevant distribution period as well as events involving a change in the credit risk manager.

1. Benefits

We believe that providing disclosure concerning credit risk managers will facilitate an informed assessment by investors as to the appropriateness of the selected credit risk manager. We also believe that providing in distribution reports disclosure related to the credit risk manager's review of assets and any change in the credit risk manager would be beneficial to investors because it would provide them material information concerning such matters on a timely basis. Finally, requiring underlying transaction agreements to be filed in substantially final form at the same time as the preliminary prospectus should benefit investors by allowing them necessary time to analyze the actual underlying agreements containing the specific structure, assets, and contractual rights regarding each transaction. To the extent that additional time for investment analysis results in investors making better informed decisions on how to allocate capital, this requirement could improve economic efficiency and facilitate capital formation.

2. Costs

The proposed disclosure requirements related to credit risk managers in prospectuses and distribution reports would increase the disclosure costs of preparing these filings for ABS issuers. The proposed requirement that ABS issuers file copies of the underlying transaction agreements at the same time as a preliminary prospectus that would be required under proposed Rule 424(h) may increase the costs associated with conducting an offering to the extent that such filing requirement exposes issuers to the risk of changing market conditions; however, such uncertainty is similar to that faced by other issuers of underwritten initial public offerings of debt whose final offer prices are not set for weeks or months after filing. To the extent the requirement requires that documents be completed earlier in the offering process, ABS issuers may face additional costs to accelerate drafting of the required

documents. As noted earlier, for purposes of the PRA, we estimate that the incremental burden for ABS issuers to complete the disclosure requirements in Form SF-3, prepare the information, and file it with the Commission would be 100 burden hours per response on Form SF-3.

D. Requests for Comment

We seek comments on all aspects of this Economic Analysis including identification and quantification of any additional costs and benefits. We also request comments 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.

We further ask the following specific questions:

105. Would the proposed credit risk manager and certification transaction requirement for shelf eligibility impose costs in addition to those identified above? How much would a credit risk manager be compensated for these services? Would insurance costs increase for those providing credit risk manager services or providing a certification? If so, by how much? Are there other measurable costs associated with these proposed requirements?

106. Could the costs associated with the proposed shelf registration requirements be passed down the securitization chain? Would these costs affect an ABS issuer's choice between registering securities on proposed Form SF-3 or registering them on proposed Form SF-1? Would these costs affect an ABS issuer's willingness to register the securities altogether rather than issuing in the private markets?

107. Do you believe that the proposed disclosure requirements will impose costs on other market participants?

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[208] 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.

IX. 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 Securities Act and the Exchange Act. Securities Act Rule 157[209] and Exchange Act Rule 0-10(a)[210] defines an issuer, 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

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208 Public Law 104-121, Title II, 110 Stat. 857 (1996).

209 17 CFR 230.157.

210 17 CFR 240.0-10(a).

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.[211] Accordingly, the Commission does not believe that the proposals, if adopted, would have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We request in particular that commentators describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

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

We are proposing the new rules, forms and amendments contained in this document under the authority set forth in Sections 6, 7, 10, 19(a), and 28 of the Securities Act, Sections 13, 23(a), and 36 of the Exchange Act.[212]

List of Subjects

17 CFR Parts 229, 230, 239, 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:

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

212 15 U.S.C. 777aaa et.seq.

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, 78n-1, 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 §229.601 by:

a. Revising the exhibit table in paragraph (a); and

b. Adding paragraph (b)(36).

§ 229.601 (Item 601) Exhibits.

(1) * * *

EXHIBIT TABLE

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EXHIBIT TABLE															
	Securities Act Forms								Exchange Act Forms						
	S-1	S-3	SF-1	SF-3	S-4[1]	S-8	S-11	F-1	F-3	F-4[1]	10	8-K[2]	10-D	10-Q	10-K
* * * * *															
(36) Depositor Certification for shelf offerings of asset-backed securities	---	---	---	X	---	---	---	---	---	---	---	---	---	---	---
(37) through (98) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

* * * * *

(b) * * *

(36) Certification for shelf offerings of asset-backed securities. For any offering of asset-backed securities (as defined in §229.1101) made on a delayed basis under §230.415(a)(1)(vii), provide the certification required by General Instruction I.B.i.a. of Form SF-3 (referenced in §239.45) exactly as set forth below:

Certification

I, [identify the certifying individual,] certify as of [the date of the final prospectus under Securities Act Rule 424 (17 CFR §239.424)] that:

1. I have reviewed the prospectus relating to [title of all securities, the offer and sale of which are registered] and am familiar with the structure of the securitization, including without limitation the characteristics of the securitized assets underlying the offering, the terms of any internal credit enhancements and the material terms of all contracts and other arrangements entered in to the effect the securitization;

2. Based on my knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

3. Based on my knowledge, the prospectus and other information included in the registration statement of which it is a part, fairly present in all material respects the characteristics of the securitized assets underlying the offering described therein and the risks of ownership of the asset-backed securities described therein, including all credit enhancements and all risk factors relating to the securitized assets underlying the offering that would affect the cash flows sufficient to service payments on the asset-backed securities as described in the prospectus; and

4. Based on my knowledge, taking into account the characteristics of the securitized assets underlying the offering, the structure of the securitization, including internal credit enhancements, and any other material features of the transaction, in each instance, as described in the prospectus, the securitization is designed to produce, but is not guaranteed by this certification to produce, cash flows at times and in amounts sufficient to service expected payments on the asset-backed securities offered and sold pursuant to the registration statement

Date:_____

_____

[Signature]

_____

[Title]

The certification should be signed by the chief executive officer of the depositor or executive officer in charge of securitization of the depositor, as required by General Instruction I.B.1(a) of Form SF-3.

* * * * *

3. Amend §229.1100 by revising paragraph (f) as follows:

§ 229.1100 (Item 1100) General.

* * * * *

(f) Where agreements or other documents in this Regulation AB are specified to be filed as exhibits to a Securities Act registration statement, such agreements or other documents, if applicable, may be incorporated by reference as an exhibit to the registration statement, such as by filing a Form 8-K in the case of offerings registered on Form SF-3

(§239.45 of this chapter). Exhibits, including agreements in substantially final form, must be filed and made part of the registration statement by the date the prospectus is required to be filed under Securities Act Rule 424(h) (§230.424 of this chapter). Final agreements must be filed and made part of the registration statement no later than the date the final prospectus is required to be filed under Securities Act Rule 424 (§230.424 of this chapter).

4. Amend §229.1101 by adding paragraph (m) to read as follows:

§ 229.1101 (Item 1101) Definitions.

* * * * *

(m) Credit Risk Manager means any person appointed by the trustee to review the underlying assets for compliance with the representations and warranties on the underlying pool assets and is not affiliated with any sponsor, depositor, or servicer.

5. Amend §229.1109 to read as follows:

§ 229.1109 (Item 1109) Trustees and other transaction parties.

(a) Trustees. Provide the following information for each trustee:

(1) State the trustee's name and describe the trustee's form of organization.

(2) Describe to what extent the trustee has had prior experience serving as a trustee for asset-backed securities transactions involving similar pool assets, if applicable.

(3) Describe the trustee's duties and responsibilities regarding the asset-backed securities under the governing documents and under applicable law. In addition, describe any actions required by the trustee, including whether notices are required to investors, rating agencies or other third parties, upon an event of default, potential event of default (and how defined) or other breach of a transaction covenant

and any required percentage of a class or classes of asset-backed securities that is needed to require the trustee to take action.

(4) Describe any limitations on the trustee's liability under the transaction agreements regarding the asset-backed securities transaction.

(5) Describe any indemnification provisions that entitle the trustee to be indemnified from the cash flow that otherwise would be used to pay the asset-backed securities.

(6) Describe any contractual provisions or understandings regarding the trustee's removal, replacement or resignation, as well as how the expenses associated with changing from one trustee to another trustee will be paid.

Instruction to Item 1109(a). If multiple trustees are involved in the transaction, provide a description of the roles and responsibilities of each trustee.

(b) Credit risk manager. Provide the following for each credit risk manager:

(1) State the credit risk manager's name and describe its form of organization.

(2) Describe to what extent the credit risk manager has had prior experience serving as a credit risk manager for asset-backed securities transactions involving similar pool assets.

(3) Describe the credit risk manager's duties and responsibilities regarding the asset-backed securities under the governing documents and under applicable law. In addition, describe any actions required by the credit risk manager, including whether notices are required to investors, rating agencies or other third parties, and any required percentage of a class or classes of asset-backed securities that is needed to require the credit risk manager to take action.

(4) Disclose the manner and amount in which the credit risk manager is compensated.

(5) Describe any limitations on the credit risk manager's liability under the transaction agreements regarding the asset-backed securities transaction.

(6) Describe any contractual provisions or understandings regarding the credit risk manager's removal, replacement or resignation, as well as how the expenses associated with changing from one credit risk manager to another credit risk manager will be paid.

6. Amend §229.1119 by adding paragraph (a)(7) as follows:

§ 229.1119 (Item 1119) Affiliations and certain relationships and related transactions.

* * * * *

(a) * * *

(7) Credit risk manager.

* * * * *

7. Amend §229.1121 by reserving paragraphs (d) and (e) and adding paragraphs (f) and (g) as follows:

§ 229.1121 (Item 1121) Distribution and pool performance information.

* * * * *

(d) *Reserved.*

(e) *Reserved.*

(f) Credit risk manager.

(1) Review by credit risk manager. If during the distribution period a credit risk manager is required to review the underlying assets for compliance with the representations and warranties on the underlying assets, provide the following information, as applicable:

(i) A description of the event(s) that triggered the review by the credit risk manager during the distribution period.

(ii) If the credit risk manager provided to the trustee during the distribution period a report of the findings and conclusions of its review of assets, file the full report as an exhibit to the Form 10-D.

(2) Change in credit risk manager. If during the distribution period a credit risk manager has resigned or has been removed, replaced or substituted, or if a new credit risk manager has been appointed, state the date the event occurred and the circumstances surrounding the change. If a new credit risk manager has been appointed, provide the disclosure required by Item 1109(b) (17 CFR 229.1109(b)), as applicable, regarding such credit risk manager.

(g) Investor communication. Disclose any request received from an investor to communicate with other investors during the reporting period received by the party responsible for making the Form 10-D filings on or before the end date of a distribution period. The disclosure regarding the request to communicate is required to include the name of the investor making the request, the date the request was received, and a description of the method by which other investors may contact the requesting investor.

Instruction. An investor would not be permitted to use the ability to request to communicate with other investors as a mechanism to communicate for purposes other than those related to investors exercising their rights under the terms of the asset-backed security.

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

8. 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.

* * * * *

9. Amend §230.401 by:

a. Revising the phrase "and (g)(3)" in paragraph (g)(1) to read ",(g)(3), and (g)(4)"; and

b. Adding paragraph (g)(4).

The addition reads as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(g) * * *

(4) Notwithstanding that the registration statement may have become effective previously, requirements as to proper form under this section will have been violated for any offering of securities where the requirements of General Instruction I.A. of Form SF-3 has not been met as of ninety days after the end of the depositor's fiscal year end prior to such offering.

10. Amend §230.415 by revising paragraph (a)(1)(vii):

§ 230.415 Delayed or continuous offering and sale of securities.

(a) ** *

(1) * * *

(vii) Asset-backed securities (as defined in 17 CFR 229.1101) registered (or qualified to be registered) on Form SF–3 (§ 239.45 of this chapter) which are to be offered and sold on an immediate or delayed basis by or on behalf of the registrant;

Instructions to paragraph (a)(1)(vii): The requirements of General Instruction I.B.1 of Form SF–3 (§ 239.45 of this chapter) must be met for any offerings of an asset-backed security (as defined in 17 CFR 229.1101) registered in reliance on paragraph (a)(1)(vii).

* * * * *

PART 239 – FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

11. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

12. Add §239.45 to read as follows:

§239.45 Form SF–3, for registration under the Securities Act of 1933 of asset-backed securities offered pursuant to certain types of transactions.

This form may be used for registration under the Securities Act of 1933 ("Securities Act") of offerings of asset-backed securities, as defined in 17 CFR 229.1101(c). Any registrant which meets the requirements of paragraph (a) may use this Form for the registration of asset-backed securities (as defined in 17 CFR 229.1101(c)) under the Securities Act which are offered in any transaction specified in paragraph (b) provided that

the requirement applicable to the specified transaction are met. Terms used have the same meaning as in Item 1101 of Regulation AB.

(a) Registrant Requirements. Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of asset-backed securities offered in the transactions specified in paragraph (b):

(1) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form required to comply with the transaction requirements in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) with respect to a previous offering of asset-backed securities involving the same asset class, the following requirements shall apply:

(i) Such depositor and each such issuing entity must have filed on a timely basis all certifications required by paragraph (b)(1)(i); and

(ii) Such depositor and each such issuing entity must have filed on a timely basis all transaction agreements containing the provisions that are required by paragraphs (b)(1)(ii) and (iii).

If such depositor and issuing entity fail to meet the requirements of paragraphs (a)(1)(i) and (ii), such depositor and issuing entity will be deemed to satisfy such requirements for purposes of this Form 90 days after the date it files the information required by paragraphs (a)(1)(i) and (ii).

Instruction to (a)(1). The registrant must provide disclosure in a prospectus that is part of the registration statement that it has met the registrant requirements of paragraph (a)(1).

(2) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8-K (17 CFR 249.308). If Rule 12b-25(b) (17 CFR 240.12b-25(b)) under the Exchange Act was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of "affiliate" in Securities Act Rule 405 (17 CFR 230.405).

(b) Transaction Requirements. If the registrant meets the registrant requirements specified in paragraph (a) above, an offering meeting the following conditions may be registered on Form SF-3:

(1) Asset-backed securities (as defined in 17 CFR 229.1101) to be offered for cash where the following have been satisfied:

(i) Certification. The registrant files a certification in accordance with Item 601(b)(36) of Regulation S-K (§229.601(b)(36)) signed by the chief executive officer of the depositor or executive officer in charge of securitization of the depositor with respect to each offering of securities that is registered on this form.

(ii) Appointment of a credit risk manager and repurchase request dispute resolution provisions. With respect to each offering of securities that is registered on this form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) The selection and appointment by the trustee of the issuing entity of a credit risk manager that is not affiliated with any sponsor, depositor, or servicer of the transaction;

(B) The credit risk manager shall have authority to access copies of the underlying documents related to the pool assets;

(C) The credit risk manager shall be responsible for reviewing the underlying assets for compliance with the

representations and warranties on the underlying pool assets. Reviews shall be required, at a minimum, when either (a) or (b) are met:

(a) The credit enhancement requirements, as specified in the underlying transaction agreements, are not met; or

(b) At the direction of investors, pursuant to the processes provided in the transaction agreement and disclosed in the prospectus.

(D) The credit risk manager shall provide a report to the trustee of the findings and conclusions of the review of the assets.

(E) If an asset subject to a repurchase request, pursuant to the terms of the transaction agreements, is not repurchased by the end of a 180-day period beginning when notice is received, then the party submitting such repurchase request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method.

(iii) Investor communication provision. With respect to each offering of securities that is registered on this form, the pooling and servicing agreement or other transaction agreement, which shall be filed, contains a provision requiring that the party responsible for

making periodic filings on Form 10-D (§249.312) include any request received from an investor to communicate with other investors during the reporting period related to investors exercising their rights under the terms of the asset-backed security. The request to communicate, would be required to include the name of the investor making the request; the date the request was received; and a description of the method by which other investors may use to contact the requesting investor.

Instruction to (b)(1)(iii) If an underlying transaction agreement contains procedures in order to verify that an investor is, in fact, a beneficial owner, the verification procedures may require no more than the following: (1) if the investor is a record holder of the securities at the time of a request to communication, then the investor would not have to provide verification of ownership, and (2) if the investor is not the record holder of the securities, then the person obligated to make the disclosure must receive a written statement from the record holder verifying that, at the time the request is submitted, that the investor beneficially holds the securities.

(iv) Delinquent assets. Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(v) Residual value for certain securities. With respect to securities that are backed by leases other than motor vehicle leases, the portion of

the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(2) Securities relating to an offering of asset-backed securities registered in accordance with paragraph (b)(1) where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of Securities Act Rule 190(c)(1) through (4) (17 CFR 240.190(c)(1) through (4)).

59. Add Form SF-3 (referenced in §239.45) to read as follows:

Note: The text of Form SF-3 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 SF-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification Number)

Commission File Number of depositor: _____
Central Index Key Number of depositor: _____
_____ (Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if available): _____

_____ (Exact name of sponsor as specified in its charter)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

(Approximate date of commencement of proposed sale to the public)

If any of the securities being registered on this Form SF-3 are to be offered on a delayed basis pursuant to Rule 415 under the Securities Act of 1933, check the following box: [ ]

If this Form SF-3 is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

If this Form SF-3 is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be	Amount to be registered	Proposed maximum offering price	Proposed maximum aggregate	Amount of registration fee

registered		per unit	offering price	

Notes to the "Calculation of Registration Fee" Table ("Fee Table"):

1. Specific details relating to the fee calculation shall be furnished in notes to the Fee Table, including references to provisions of Rule 457 (§230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the Fee Table.

2. If the filing fee is calculated pursuant to Rule 457(r) under the Securities Act, the Fee Table must state that it registers an unspecified amount of securities of each identified class of securities and must provide that the issuer is relying on Rule 456(b) and Rule 457(r). If the Fee Table is amended in a post-effective amendment to the registration statement or in a prospectus filed in accordance with Rule 456(b)(1)(ii) (§230.456(b)(1)(ii) of this chapter) , the Fee Table must specify the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee.

3. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 457 under the Securities Act.

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form SF-3.

This instruction sets forth registrant requirements and transaction requirements for the use of Form SF-3. Any registrant which meets the requirements of I.A. below ("Registrant Requirements") may use this Form for the registration of asset-backed securities (as defined in 17 CFR 229.1101(c)) under the Securities Act of 1933 ("Securities Act") which are

offered in any transaction specified in I.B. below ("Transaction Requirement") provided that the requirement applicable to the specified transaction are met. Terms used in this form have the same meaning as in Item 1101 of Regulation AB.

A. Registrant Requirements. Registrants must meet the following conditions in order to use this Form SF-3 for registration under the Securities Act of asset-backed securities offered in the transactions specified in I.B. below:

1. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form required to comply with the transaction requirements in General Instructions I.B.1(a), I.B.1(b), and I.B.1(c) of this form with respect to a previous offering of asset-backed securities involving the same asset class, the following requirements shall apply:

   (a) Such depositor and each such issuing entity must have filed on a timely basis all certifications required by I.B.1(a); and

   (b) Such depositor and each such issuing entity must have filed on a timely basis all transaction agreements containing the provisions that are required by I.B.1(b) and I.B.1 (c);

   If such depositor and issuing entity fail to meet the requirements of I.A.1(a) and I.A.1(b), such depositor and issuing entity will be deemed to satisfy such requirements for purposes of this Form SF-3 90 days after the date it files the information required by I.A.1(a) and I.A.1(b).

Instruction to General Instruction I.A.1: The registrant must provide disclosure in a prospectus that is part of the registration statement that it has met the registrant requirements of I.A.1.

2. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form SF-3 subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for such period (or such shorter period that each such entity was required to file such. In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8-K (17 CFR 249.308). If Rule 12b-25(b) (17 CFR 240.12b-25(b)) under the Exchange Act was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided

such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of "affiliate" in Securities Act Rule 405 (17 CFR 230.405).

B. **Transaction Requirements.** If the registrant meets the Registrant Requirements specified in I.A. above, an offering meeting the following conditions may be registered on this Form:

1. Offerings for cash where the following have been satisfied:

(a) **Certification.** The registrant files a certification in accordance with Item 601(b)(36) of Regulation S-K (§229.601(b)(36)) signed by the chief executive officer of the depositor or executive officer in charge of securitization of the depositor with respect to each offering of securities that is registered on this form.

(b) **Appointment of a credit risk manager and repurchase request dispute resolution provisions.** With respect to each offering of securities that is registered on this form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) The selection and appointment by the trustee of the issuing entity of a credit risk manager that is not affiliated with any sponsor, depositor, or servicer of the transaction;

(B) The credit risk manager shall have authority to access copies of the underlying documents related to the pool assets;

(C) The credit risk manager shall be responsible for reviewing the underlying assets for compliance with the representations and warranties on the underlying pool assets. Reviews shall be required, at a minimum, when either (a) or (b) are met:

(a) The credit enhancement requirements, as specified in the underlying transaction agreements, are not met; or

(b) At the direction of investors, pursuant to the processes provided in the transaction agreement and disclosed in the prospectus.

(D) The credit risk manager shall provide a report to the trustee of the findings and conclusions of the review of the assets.

(E) If an asset subject to a repurchase request, pursuant to the terms of the transaction agreements, is not repurchased by the end of a 180-day period beginning when notice is received, then the party submitting such repurchase request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method.

(c) **Investor Communication Provision.** With respect to each offering of securities that is registered on this form, the pooling and servicing agreement or other transaction agreement, which shall be filed, contains a provision requiring that the party responsible for making

periodic filings on Form 10-D (§249.312) include any request received from an investor to communicate with other investors during the reporting period related to investors exercising their rights under the terms of the asset-backed security. The request to communicate would be required to include the name of the investor making the request, the date the request was received, and a description of the method other investors may use to contact the requesting investor.

Instruction to I.B.1(c) If an underlying transaction agreement contains procedures in order to verify that an investor is, in fact, a beneficial owner, the verification procedures may require no more than the following: (1) if the investor is a record holder of the securities at the time of a request to communication, then the investor would not have to provide verification of ownership, and (2) if the investor is not the record holder of the securities, then the person obligated to make the disclosure must receive a written statement from the record holder verifying that, at the time the request is submitted, that the investor beneficially holds the securities.

(d) **Delinquent assets.** Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(e) **Residual value for certain securities.** With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance

with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

2. Securities relating to an offering of asset-backed securities registered in accordance with General Instruction I.B.1. where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of Securities Act Rule 190(c)(1) through (4) (17 CFR 240.190(c)(1) through (4)).

II. Application of General Rules and Regulations.

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly Regulation C thereunder (l7 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements.

B. Attention is directed to Regulation S-K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form SF-3 directs the registrant to furnish information required by Regulation S-K and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate. Notwithstanding Items 501 and 502 of Regulation S-K, no table of contents is required to be included in the prospectus or registration statement prepared on this Form SF-3. In addition to the information expressly required to be included in a registration statement on this Form SF-3, registrants also may provide such other information as they deem appropriate.

C. Where securities are being registered on this Form SF-3, Rule 456(c) permits, but does not require, the registrant to pay the registration fee on a pay-as-you-go basis and Rule 457(s) permits, but does not require, the registration fee to be calculated on the basis of the aggregate offering price of the securities to be offered in an offering or offerings off the registration statement. If a registrant elects to pay all or a portion of the registration fee on a deferred basis, the Fee Table in the initial filing must identify the classes of securities being registered and provide that the registrant elects to rely on Rule 456(c) and Rule 457(s), but the Fee Table does not need to specify any other information. When the registrant amends the Fee Table in accordance with Rule 456(c)(1)(ii), the amended Fee Table must include either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities referenced in the offerings and the applicable registration fee.

D. Information is only required to be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rule 430D. Required information about a specific transaction must be included in the prospectus in the registration statement by means of a prospectus that is deemed to be part of and included in the registration statement pursuant to Rule 430D, a post-effective amendment to the registration statement, or a periodic or current report under the Exchange Act incorporated by reference into the registration statement and the prospectus and identified in a prospectus filed, as required by Rule 430D, pursuant to Rule 424(h) or Rule 424(b) (§230.424(h) or §230.424(b) of this chapter)

III. Registration of Additional Securities Pursuant to Rule 462(b). With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 411(c) and Rule 439(b) under the Securities Act.

IV. Registration Statement Requirements. Include only one form of prospectus for the asset class that may be securitized in a takedown of asset-backed securities under the registration statement. A separate form of prospectus and registration statement must be presented for each country of origin or country of property securing pool assets that may be securitized in a discrete pool in a takedown of asset-backed securities. For both separate asset classes and jurisdictions of origin or property, a separate form of prospectus is not required for transactions that principally consist of a particular asset class or jurisdiction which also describe one or more

potential additional asset classes or jurisdictions, so long as the pool assets for the additional classes or jurisdictions in the aggregate are below 10% of the pool, as measured by dollar volume, for any particular takedown.

PART I
INFORMATION REQUIRED IN PROSPECTUS

Item 1. Forepart of the Registration Statement and Outside Front Cover Pages of Prospectus.

Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (17 CFR 229.501) and Item 1102 of Regulation AB (17 CFR 229.1102).

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (17 CFR 229.502).

Item 3. Transaction Summary and Risk Factors.

Furnish the information required by Item 503 of Regulation S-K (17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

Item 4. Use of Proceeds.

Furnish the information required by Item 504 of Regulation S-K (17 CFR 229.504).

Item 5. Plan of Distribution.

Furnish the information required by Item 508 of Regulation S-K (17 CFR 229.508).

Item 6. Information with Respect to the Transaction Parties.

Furnish the following information:

(a) Information required by Item 1104 of Regulation AB (17 CFR 229.1104), Sponsors;

(b) Information required by Item 1106 of Regulation AB (17 CFR 229.1106), Depositors;

(c) Information required by Item 1107 of Regulation AB (17 CFR 229.1107), Issuing entities;

(d) Information required by Item 1108 of Regulation AB (17 CFR 229.1108), Servicers;

(e) Information required by Item 1109 of Regulation AB (17 CFR 229.1109), Trustees;

(f) Information required by Item 1110 of Regulation AB (17 CFR 229.1110), Originators;

(g) Information required by Item 1112 of Regulation AB (17 CFR 229.1112), Significant Obligors;

(h) Information required by Item 1117 of Regulation AB (17 CFR 229.1117), Legal Proceedings; and

(i) Information required by Item 1119 of Regulation AB (17 CFR 229.1119), Affiliations and certain relationships and related transactions.

Item 7. Information with Respect to the Transaction.

Furnish the following information:

(a) Information required by Item 1111 of Regulation AB (17 CFR 229.1111), Pool Assets and Item 1111A of Regulation AB (17 CFR 229.1111A), Asset-level information, and Item 1111B of Regulation AB (17 CFR 229.1111B), Grouped account data for credit card pools;

(b) Information required by Item 202 of Regulation S-K (17 CFR 229.202), Description of Securities Registered and Item 1113 of Regulation AB (17 CFR 229.1113), Structure of the Transaction;

(c) Information required by Item 1114 of Regulation AB (17 CFR 229.1114), Credit Enhancement and Other Support;

(d) Information required by Item 1115 of Regulation AB (17 CFR 229.1115), Certain Derivatives Instruments;

(e) Information required by Item 1116 of Regulation AB (17 CFR 229.1116), Tax Matters;

(f) Information required by Item 1118 of Regulation AB (17 CFR 229.1118), Reports and additional information; and

(g) Information required by Item 1120 of Regulation AB (17 CFR 229.1120), Ratings.

Instruction: All registrants are required to file the information required by Item 1111A of Regulation AB (17 CFR 229.1111A), Asset-level information; Item 1111B of Regulation AB (17 CFR 229.1111B), Grouped account data for credit card pools; and Item 1113(h) of Regulation AB (17 CFR 229.1113(h)), Waterfall Computer Program; as exhibits to Form 8-K (17 CFR 249.308) that are filed with the Commission pursuant to Item 6.06 and Item 6.07, respectively, of that form. Incorporation by reference must comply with Item 11 of this Form SF-3.

Item 8. Static Pool.

Furnish the information required by Item 1105 of Regulation AB (17 CFR 229.1105).

Instruction: Registrants may elect to file the information required by this item as an exhibit to Form 8-K (17 CFR 249.308) that is filed with the Commission pursuant to Item 6.08 of that form. Incorporation by reference must comply with Item 11 of this Form SF-3.

Item 9. Interests of Named Experts and Counsel.

Furnish the information required by Item 509 of Regulation S-K (17 CFR 229.509).

Item 10. Incorporation of Certain Information by Reference.

(a) The prospectus shall provide a statement that all current reports filed pursuant to Items 6.06, 6.07 and if applicable, 6.08 of Form 8-K pursuant to Section Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus.

(b) If the registrant is structured as a revolving asset master trust, the documents listed in (1) and (2) below shall be specifically incorporated by reference into the prospectus by means of a statement to that effect in the prospectus listing all such documents:

(1) the registrant's latest annual report on Form 10-K (17 CFR 249.310) filed pursuant to Section 13(a) or 15(d) of the Exchange Act that contains financial statements for the registrant's latest fiscal year for which a Form 10-K was required to be filed; and

(2) all other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in (1) above.

(c) The prospectus shall also provide a statement regarding the incorporation of reference of Exchange Act reports prior to the termination of the offering pursuant to one of the following two ways:

(1) a statement that all subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus; or

(2) a statement that all current reports on Form 8-K filed by the registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus.

Instruction. Attention is directed to Rule 439 (17 CFR 230.439) regarding consent to use of material incorporated by reference.

(d)(1) You must state

(i) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) that you will provide this information upon written or oral request;

(iii) that you will provide this information at no cost to the requester; and

(iv) the name, address, and telephone number to which the request for this information must be made.

Note to Item 11(c)(1). If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(2) You must:

(i) identify the reports and other information that you file with the SEC; and

(ii) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549, between the hours of 10:00 a.m. and 3:00 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

Item 11. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Furnish the information required by Item 510 of Regulation S-K (17 CFR 229.510).

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 12. Other Expenses of Issuance and Distribution.

Furnish the information required by Item 511 of Regulation S-K (17 CFR 229.511).

Item 13. Indemnification of Directors and Officers.

Furnish the information required by Item 702 of Regulation S-K (17 CFR 229.702).

Item 14. Exhibits.

Subject to the rules regarding incorporation by reference, file the exhibits required by Item 601 of Regulation S-K (17 CFR 229.601).

Item 15. Undertakings.

Furnish the undertakings required by Item 512 of Regulation S-K (17 CFR 229.512).

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form SF-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 20____ .

_____
(Registrant)

By

_____
(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

_____
(Signature)

_____
(Title)

_____
(Date)

Instructions.

l. The registration statement shall be signed by the depositor, the depositor's principal executive officer or officers, its principal financial officer, its senior officer in charge of securitization and by at least a majority of its board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S-K concerning signatures pursuant to powers of attorney.

* * * * *

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

13. The authority citation for part 249 continues to read in part as follows:

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

* * * * *

14. Amend Form 10-D (referenced in § 249.312) by reserving Item 1A in Part I and adding Item 1B in Part I as follows:

* * * * *

Item 1A. (Reserved)

Item 1B. Credit Risk Manager and Investor Communication.

For any transaction that included the provisions required by General Instructions I.B.1(b) and I.B.1(c) on Form SF-3 (referenced in § 239.45), provide the information required by Item 1121(f) and (g) of Regulation AB (17 CFR 229.1121(f) and (g)), as applicable.

* * * * *

By the Commission.

Elizabeth M. Murphy
Secretary

Dated: July 26, 2011