



February 6, 2011

By E-Mail: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attn: Elizabeth M. Murphy, Secretary

Re: Release No. 34-63652 (File No. S7-02-11)

Ladies and Gentlemen:

The American Securitization Forum (“ASF”)¹ appreciates the opportunity to submit this letter in response to the request of the Securities and Exchange Commission (the “Commission”) for comments regarding Release No. 34-63652; File No. S7-02-11, dated January 6, 2011 (the “Proposing Release”), relating to reporting requirements for asset-backed securities (“ABS”) under the Securities Exchange Act of 1934 (the “Exchange Act”).

As you are aware, prior to enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”), Section 15(d) of the Exchange Act automatically suspended the duty to file ongoing reports after any fiscal year (other than the fiscal year within which the related registration statement became effective) if the securities of each relevant class were held of record by fewer than three hundred persons. As a result, the reporting obligations of most ABS issuers suspended after they filed one annual report on Form 10-K. Section 942(a) of Dodd-Frank amended Section 15(d) to exclude ABS from the automatic suspension provisions and, in its place, authorized the Commission to suspend or terminate Section 15(d) reporting requirements for any class of ABS on such terms and conditions and for such periods as the Commission deems appropriate.

¹ The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com.

The Commission is now proposing to amend Exchange Act Rule 15d-22(b) to permit issuers to suspend Section 15(d) reporting requirements regarding any class of ABS as to any fiscal year, other than the fiscal year within which the related registration statement became effective, if at the beginning of the fiscal year there are no longer any ABS of such class that were sold in a registered transaction held by non-affiliates of the depositor. We acknowledge the importance to investors and the markets of post-issuance reporting and support efforts to encourage transparency generally. We also appreciate and support the Commission's sensitivity to balancing the needs of investors with the costs to issuers imposed by ongoing reporting obligations. We, therefore, generally support the Commission's proposed amendments to Exchange Act Rule 15d-22, subject to the comments that follow in this letter.

As proposed, new Rule 15d-22(b) would allow an issuer to reassess its Section 15(d) reporting requirements regarding any class of ABS only once per year – at the beginning of the fiscal year. Under this standard, depending on the case, an issuer's reporting requirements could suspend relatively quickly or could continue for a significant period of time – up to an entire year – after its registered ABS are no longer held by any non-affiliates. Notably, however, the difference in the remaining duration of the issuer's ongoing reporting obligations would *not* be based on investor protection considerations, but rather on the arbitrary fact of when during the issuer's fiscal year its registered ABS ceased to be held by non-affiliates.²

We believe that, once an issuer's registered ABS are held exclusively by its affiliates, the interests of the marketplace in post-issuance reporting become far outweighed by the costs and burdens imposed by ongoing reporting. We also believe that all ABS issuers should be treated similarly on the same relevant facts and, therefore, should not be subject to significant differences in how long they must continue to report once their registered ABS are held exclusively by their affiliates. We respectfully request, therefore, that the Commission revise proposed Rule 15d-22(b) to permit an issuer to suspend its reporting requirements immediately once its registered ABS are no longer held by non-affiliates of the depositor. In the alternative, we submit that an ABS issuer should be permitted to reassess those reporting requirements monthly (rather than annually), at the beginning of each calendar month. We believe these changes are entirely consistent with the public's interest and the protection of investors and, consistent with the

² For example, assume that, on March 1, 2011, an ABS issuer with a December 31st fiscal year end offers and sells a class of ABS in a registered transaction and that, at the beginning of its 2014 fiscal year, there are no longer any ABS of that class that are held by non-affiliates of the depositor. Under proposed Rule 15d-22(b), the ABS issuer would be eligible to suspend its reporting requirements immediately. Now assume instead that the same ABS issuer offers and sells a class of ABS in a registered transaction on the same date and that, at the beginning of its 2014 fiscal year, some portion of that class of ABS are held by non-affiliates of the depositor but that two weeks later, on January 16, 2014, there are no longer any ABS of that class that are held by non-affiliates of the depositor. Under proposed Rule 15d-22(b), the ABS issuer would not only *not* be eligible to suspend its Section 15(d) reporting requirements immediately, but would also have to continue to report for the duration of the 2014 fiscal year, until the ABS issuer was again permitted to reassess its reporting requirements at the beginning of its 2015 fiscal year. We agree that the ABS issuer's ongoing reporting requirements should suspend immediately in the first example above, but we do not see any reason why the result should be different, much less substantially delayed, in the second example above.

Commission's stated goal, would eliminate significant costs that issuers would otherwise incur if they were subject to ongoing reporting obligations for periods as long as a year after their registered ABS are no longer held by non-affiliates.

We also request that the Commission revise proposed Rule 15d-22 to address a series of more technical, but nonetheless important, issues that arise out of the text of the proposed new rule or that arise in the wake of Dodd-Frank.

First, we request that the Commission further amend the proposed rule to clarify that, insofar as the rule permits an issuer to suspend its reporting requirements at such time as its registered ABS are no longer held by non-affiliates of the depositor, it is sufficient if the depositor or its affiliates are the beneficial holders of all such ABS, even if the ABS remain held of record by one or more non-affiliates. This could be a common occurrence in the case of securities issued in book-entry form through the facilities of the Depository Trust Company or another registered clearing organization, where the depositor or its affiliates are the beneficial holders of the ABS, but the holder of record is the clearing organization or its nominee, or one of its direct or indirect participants.

Second, we request that the proposed rule be revised to clarify that an issuer may suspend its reporting requirements at such times as its registered ABS *are not* held by non-affiliates, rather than at such time as its registered ABS *are no longer* held by non-affiliates, to avoid what we believe to be an unintended implication that, as to any particular class of ABS, the ABS must have been held by one or more non-affiliates for some period of time before they come to be held by the depositor or its affiliates.³

Third, we request that the proposed rule be revised to clarify that an ABS issuer may suspend its reporting requirements as to fiscal years other than the fiscal year within which the *takedown occurred*, rather than the fiscal year within which the *registration statement became effective*. We believe that this standard would be more consistent with the standards set forth in clauses (a)(1) and (a)(2) of proposed Rule 15d-22.

Fourth, in response to the Commission's request for comment, in cases where an ABS issuer is unable to locate a security holder in order to provide information and make distributions to that security holder, such that the distributions are returned to the issuer without payment to the unknown security holder, and the issuer or its agent has attempted to notify the unknown security holder within seven months of a failed distribution, we strongly believe that an issuer should not be required to count such security holders when determining the number of non-affiliates of the depositor that hold its registered ABS and request that the Commission revise the proposed rule accordingly.

³ In some ABS offerings, particularly in the current distressed capital markets or after risk retention rules are adopted, all or a portion of one or more classes of ABS that are offered for sale to investors pursuant to a registration statement may ultimately be retained by the depositor or sold to one or more of its affiliates. Those securities may be held by the depositor or its affiliates indefinitely, and even until maturity, without ever having been held by non-affiliates of the depositor.

Fifth, we request that the Commission further amend the proposed rule to clarify that, at such time as none of an issuer's registered ABS remain outstanding, the issuer may immediately cease ongoing Exchange Act reporting. We note that, in addition to being a common-sense result, this would have been the result under Exchange Act Section 15(d) and related Commission rules prior to the enactment of Dodd-Frank but that, with the enactment of Dodd-Frank, there is no longer any explicit mechanism that permits an issuer to cease ongoing Exchange Act reporting at such time as all of its registered ABS are retired.

Finally, in response to the Commission's general request for comment, we encourage the Commission to continue its efforts to make reporting on EDGAR less time-consuming and less costly for ABS issuers while providing a more efficient and a more usable retrieval system for investors and the marketplace. EDGAR remains administratively burdensome to use and, in fact, limits the usefulness of information provided through that system. The conversion of documents to ASCII or HTML is not automated on EDGAR and instead requires substantial cost and effort by skilled operators. This lack of automation, in turn, creates a risk of filing delay due to transmission error.

To improve the system, the process by which issuers post documents on EDGAR should be web based and fully automated, and issuers should be able to include files on EDGAR in formats such as PDF and Excel.⁴ The ability to attach files in such formats would eliminate many of the delays and administrative burdens associated with converting files into ASCII or HTML and could also improve the readability and usefulness of information that is filed. We also note that, in many cases, ABS issuers post and archive periodic distribution reports on a website in PDF format and that investors continue to access this information through such websites over EDGAR. We encourage the Commission, therefore, to develop processes and procedures whereby ABS issuers can file Exchange Act reports with the Commission in a far more cost-effective manner and with a functionality and utility that equals or exceeds that available through web-based presentation.

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⁴ Rule 104 under Regulation S-T permits filers to submit unofficial PDF copies of filed documents, but only as an add-on to their official filings in ASCII or HTML. We note that, in connection with its April 2010 "Regulation AB II" rule proposals relating to offering, disclosure and reporting requirements for ABS, the Commission has proposed that static pool information be filed on EDGAR as a PDF file. ASF has provided extensive comment on the Commission's Regulation AB II rule proposals separately, but we take this opportunity to encourage the Commission to make the necessary changes to its electronic filing system, and corresponding changes to Regulation S-T, in order that ABS issuers are able to submit complete official Exchange Act filings on EDGAR in these less burdensome and more useable formats.

ASF Comment Letter on Proposed Amendments to Rule 15d-22

ASF very much appreciates the opportunity to provide the foregoing comments in response to the Commission's Proposing Release. Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact me via telephone at 212.412.7107 or via email at tdeutsch@americansecuritization.com, Evan Siegert, ASF Associate Director, via telephone at 212.412.7109 or via email at esiegert@americansecuritization.com, or ASF's outside counsel on these matters, Michael Mitchell of Orrick, Herrington & Sutcliffe LLP, via telephone at 202.339.8479 or via email at mhmittell@orrick.com.

Sincerely,



Tom Deutsch
Executive Director
American Securitization Forum

cc: Via Hand Delivery

The Honorable Mary L. Schapiro, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Kathleen L. Casey, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Elisse B. Walter, Commissioner
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