

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
United States
www.sec.gov

Chris Barnard

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- **17 CFR Parts 229, 230, 239 and 249**
- **File No. S7-08-10**
- **Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment**

Dear Sir,

Thank you for giving us the opportunity to comment on your Re-proposed Rule: Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment.

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

I generally support these re-proposed rules. I agree with you that your "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"¹; and further that "the re-proposed transaction requirements ... 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"².

¹ Re-proposed rule, page 9.

² Re-proposed rule, page 13.

Certification

I would support that, in lieu of the requirement that the chief executive officer or executive officer in charge of securitization of the depositor provide a certification, you should allow an opinion to be provided by an "independent evaluator" regarding the ABS that would provide the same assurances as the certification. This would possibly provide a more objective and detached basis for certification here. I do accept that permitting such an opinion could reduce executive oversight of the transaction structure for purposes of determining shelf eligibility, but the responsibility for the certification would still reside with the executive in this case. If you permit an independent evaluator to provide an opinion in lieu of an officer certification, it would still be appropriate 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. Furthermore, the independent evaluator should be required to have expertise and experience in structuring and evaluating asset-backed securities, and should be independent of the issuer. Finally, the prospectus should include such information about the independent evaluator that would allow investors to make a judgement on the quality and suitability of the certification. Such information should, as a minimum, include the contact details of the independent evaluator, its experience with evaluating ABS, the compensation received for performing the certification and a statement of its independence from the issuer.

Credit risk manager

I agree with the proposed requirement for credit risk manager review of the underlying assets as a condition for shelf eligibility. This should further enhance investor protections that would be indicative of a higher quality security. The credit risk manager should be required to have expertise and experience serving as a credit risk manager for ABS transactions involving similar pool assets, and should be independent of the sponsor, depositor and servicer. Furthermore, the prospectus should include such information about the credit risk manager that would allow investors to make a judgement on the suitability and experience of the credit risk manager. Such information should include the contact details of the credit risk manager, its experience with reviewing ABS, the compensation received for performing the review and a statement of its independence from the sponsor, depositor and servicer. Finally, I support the proposed disclosure in Form 10-D concerning a change of credit risk manager. I would only additionally recommend that wording should be added to proposed § 229.1121(f)(2) concerning any change in credit risk manager, that would require the new credit risk manager to consult with its immediate predecessor in order to discover if there are any professional reasons not to accept the appointment.

Asset-level information

I agree that the 2010 ABS Proposals would successfully implement Section 7(c) of the Securities Act. They set appropriate and reasonable standards that would facilitate the comparison of data across asset classes, and within the same asset class. Issuers should disclose such asset-level data, as this is necessary for investors to independently and credibly perform the proper due diligence thereon.

Waterfall computer program

In the 2010 ABS Proposals, you 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. I must say that I do not support this proposal, as I do not believe that it would necessarily provide meaningful information to investors, and could even be misleading. I believe that it would be more helpful if ABS issuers would provide a sensitivity analysis on the change in the flow of funds to changing the most sensitive variables and assumptions. This is especially important for highly geared and non-linear related ABS, where the interaction between variables, assumptions and the flow of funds is complex and often counterintuitive.

Yours faithfully

Chris Barnard