

From: Paul Wilkinson
Affiliation: <http://paulwilkinson.com>

Following are comments in response to the request for public comment on the proposed rule entitled Extension of Filing Accommodation for Static Pool Information in Filings with Respect to Asset-Backed Securities.

- Is an extension of the filing accommodation appropriate?

No. Commercial off-the-shelf software and services are available that could easily (relative to the costs of the current dysfunctional system) be adopted to provide for structured disclosure of all material information about ABS to investors, potential investors, and taxpayers. Rather than continue to facilitate inadequate disclosure, the Commission should immediately provide for structured disclosure using an industry standard computer language, either as a voluntary program for ABS holders seeking to obtain market pricing for their securities (or government backing for their activities) or as a mandatory program to expedite economic recovery.

If the EDGAR team and contractor are unable to facilitate timely and adequate disclosure, the SEC should retain other private contractors to do so. For example, ABS data compiled for hedge funds in early 2007, described in this Feb. 2009 Wired magazine article, http://www.wired.com/techbiz/it/magazine/17-03/wp_reboot?currentPage=2, was standardized by one of the leaders in implementing global XBRL standards.

Similar information could be disclosed by issuers to a robust Internet services company, such as Amazon Web Services, and made instantly available to all investors and potential investors, including taxpayers.

ABS issuers may store material information in a variety of proprietary formats, but are amply capable of instructing computers to standardize that information by mapping it to XBRL ABS data tags (many of which were created past year) or, in the event material information is not covered by a tag, of creating custom data tags based on existing data tags to alert investors of non-standard information. If government contracting or other reasons prevent completion of the work to create an adequate system to receive ABS disclosures by Jan. 1, the extension should last only until work to prepare a disclosure system is complete. The effective date could be phased in based on the type of ABS being disclosed. For example, data tags for MBS exist now and their use could be required on an emergency basis within days.

- What would be the consequences if the accommodation lapsed on December 31, 2009 and static pool information was required in an EDGAR filing beginning January 1, 2010?

If the pool information were required in XBRL format, the additional information would provide a wide range of investors and citizens, as well as markets, with considerable transparency into ABS values. If the information were required in HTML or ASCII format, only investors who could afford to pay for the services described in the Wired article would remain capable of exploiting the information in a timely manner.

- How could static pool information be filed with the Commission in a cost-effective manner that continues to allow the information to be provided in a format that promotes utility and functionality? Are there alternative filing mechanisms that could replace or supplement Rule 312?

See first response above.

- Have investors or other market participants had any difficulties with locating, accessing, viewing or analyzing static pool information posted on an Internet Web site pursuant to the filing accommodation provided by Rule 312 of Regulation ST?

The lack of a public market in the securities at issue makes this question irrelevant to the question of the type and extent of disclosure that should be required. "Sophisticated" investors who were allowed to trade risky ABS, and the derivatives of those securities that were created because the underlying ABS were themselves difficult to analyze, may or may not have had trouble accessing the information. It appears that some of those who tagged the data themselves were able to understand it - and were smart enough to make transactions that anticipated the financial crisis. Many of those who relied on the data as posted (either originally to EDGAR or updated under Rule 312) either didn't adequately analyze the information or threw up their hands and relied on paid credit ratings and past performance to justify what are now known to be imprudent investments in securities related to the housing bubble.

- Has the information remained on the Web site for the required duration and have updates and changes been appropriately reflected?

Unknown, but the Commission could use contemporary technology to monitor "updates and changes" itself if it required disclosure in structured data format using global industry standard computer languages.

- Have issuers found that the Internet Web site posting accommodation provided by Rule 312 has enabled them to provide the required static pool information in a cost-effective, efficient and useful manner?

Cost-effective: No, since issuers must pay staff or contractors to decide what is or is not required or prudent to disclose and what disclosure formats to use. It would be more cost-effective for issuers to use an industry standard to reduce the need for expensive case-by-case judgment and reduce overhead costs otherwise charged to investors. For particular issuers, industry standard disclosure could reduce mark-ups attributable to features of "unique" ABS products. In fact, the current system is probably more "benefit-effective" for many issuers than a more transparent system.

For the ABS industry as a whole, however, industry standard disclosure would result in the commoditization of ABS products. Economic rents

would fall, saving investors' money and increasing market liquidity. The industry would become more competitive, meaning lower profit for issuers who currently profit from proprietary standards and limited disclosure -- and higher profits for issuers able to adjust to more transparent and vibrant markets.

Efficient: In addition to above, ad hoc disclosure in non-standard formats and non-standard manners fails to support market efficiency.

Useful: Perhaps, to the extent ABS issuer interests overlap with ABS holder interests, since existing opacity allows ABS holders to value ABS at prices different from those for which they might trade in an open and transparent market.

- Have issuers encountered any issues or problems with Internet Web site posting pursuant to Rule 312?

One issue that comes to mind is the financial crisis itself. It might also be a problem for holders of opaque and difficult-to-value instruments if transparency were to threaten continued political support for government subsidies.

- How should we address those issues or problems?

See first response above.

- Would the proposed one-year extension present particular problems for investors?

To the extent it delays fundamental reform, it will delay the creation of a fair and efficient ABS market, slowing economic recovery.

- Would a shorter or more narrowly tailored extension ameliorate those concerns?

Yes. See first response above.

- Should the filing accommodation be extended for longer than one year, for example, two, three or five years, or made permanent?

No. See above.

- If so, are there any revisions to the rule that should be made? Are there any other changes we should consider making to Rule 312 of Regulation S-T?

Regulation AB should be overhauled to be consistent with basic securities laws requiring registration or exemption. The netherworld of limited registration for the exclusive benefit of "sophisticated" investors should end. ABS issuers should be required to disclose all material information consistent with normal securities laws in a structured format analogous to (and most certainly simpler than) U.S.

GAAP. Those who wish to offer ABS as securities should be required to list them on exchanges similarly to how public company securities are listed, but with expedited industry standard disclosure to minimize compliance costs. SWIFT's article on standards beginning on page 36 of its most recent quarterly publication, here, http://www.swift.com/about_swift/publications/dialogue_magazine/dialogue_Q409.pdf, may provide additional ideas to help bring effective disclosure to the ABS market.