SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for **April 2010,** with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

MARY L. SCHAPIRO, CHAIRMAN

KATHLEEN L. CASEY, COMMISSIONER

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

(54 Documents)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

December 17, 2009

In the Matter of **Placer Gold Corp. f\k\a** **Arctic Oil and Gas Corp.** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Placer Gold Corporation (f\k\a Arctic Oil and Gas Corp.) because questions have arisen regarding the accuracy of assertions in press releases, company websites and periodic reports filed with the Commission concerning, among other things, the company's financial condition.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 am EST, on December 17, 2009 through 11:59 pm EST, on December 31, 2009.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 3, 2010

IN THE MATTER OF XTREME MOTORSPORTS INTERNATIONAL, INC.	ORDER OF SUSPENSION OF TRADING
File No. 500-1	

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Xtreme Motorsports International, Inc. ("Xtreme Motorsports") because questions have arisen regarding trading in the company's stock. Xtreme Motorsports is quoted on the Pink Sheets under the symbol "XTMM."

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST, on March 3, 2010 through 11:59 p.m. EDT, on March 16, 2010.

By the Commission.

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

Elizabeth M. Murphy
Secretary

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Cecile Peters, Chief, Office of Information Technology, at (202) 551-3600; in the Division of Investment Management for questions regarding 13F-HR, 13F-NT, EDGARLink submission validations, and submissions made by deregistered companies contact Ruth Armfield Sanders, Senior Special Counsel, Office of Legal and Disclosure, at (202) 551-6989; in the Office of Interactive Disclosure for questions concerning XBRL requirements contact Jeffrey Naumann, Assistant Director of the Office of Interactive Disclosure, at (202) 551-5352; in the Division of Trading and Markets for questions regarding OMB expiration dates for Forms TA-1 and TA-2 contact Catherine Moore, Special Counsel, Office of Clearance and Settlement, at (202) 551-5718; and in the Office of Information Technology, contact Rick Heroux, at (202) 551-8800.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink[2] and the Online Forms/XML Web site.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[3] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[4]

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[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33-6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on October 30, 2009. See Release No. 33–9077 (October 26, 2009) [74 FR 56107].

[2] This is the filer assistance software we provide filers filing on the EDGAR system.

[3] See Rule 301 of Regulation S-T (17 CFR 232.301).

[4] See Release No. 33–9077 (October 26, 2009) [74 FR 56107] in which we implemented EDGAR Release 9.17.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33-9115; 34-61821; 39-2469; IC-29199]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual to reflect updates to the EDGAR system. Revisions were are being made primarily to support the upgrade of the Mutual Fund Risk/Return Summary Taxonomy, to extend the interactive data/eXtensible Business Reporting Language ("XBRL") validation requirements to all Exhibit 101 attachments regardless of the taxonomy used, and to make minor updates to the validation and processing of Form D submissions and the amendments of 13F-HR and 13F-NT submission types. The EDGAR system is scheduled to be upgraded to support this functionality on April 12, 2010.

The filer manual is also being revised to address minor changes previously made in EDGAR.

The revisions to the Filer Manual reflect changes within Volume II entitled EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 14 (April 2010). The updated manual will be incorporated by reference into the Code of Federal Regulations.

DATES: [Insert date of publication in the Federal Register.] The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: In the Division of Corporation Finance, for questions concerning 8-K Item 5.07, Form D, and updates to the EDGAR state/country list contact

The EDGAR system will be upgraded to Release 10.1 on April 12, 2010 and will introduce the following changes: EDGAR will be upgraded to support the 2010 Mutual Fund Risk/Return Summary Taxonomy, to extend the interactive Data/XBRL validations to all Exhibit 101 attachments regardless of the taxonomy used and to ensure that only one Exhibit 101 document is attached with a submission.

EDGAR will suspend amendments for submission types 13F-HR and 13F-NT if any of these amendments are submitted before the initial filing for the period end date included in the amendment.

Form D validation and processing will be updated to allow filers to indicate if they have solicited sales in foreign countries and to disseminate state and country description in addition to the state and country code.

The EDGARLite templates for Forms TA-1 and TA-2 are being updated to change the OMB expiration date to be "April 30, 2012" and "June 30, 2012" respectively.

The filer manual is also being revised to address minor changes previously made in EDGAR. Those changes are described below.

- Submission types 10KSB and 10KSB/A were removed from the EDGARLink Template 3.
- Support to allow the use of 8-K Item 5.07 (Submission of Matters to a Vote of Security Holders) on submission form types 8-K, 8-K/A, 8-K12B, 8-K12B/A, 8-K12G3, 8-K12G3/A, 8-K15D5, and 8-K15D5/A as of February 28, 2010[5].
- EDGARLink submission validation was updated to validate that the value selected for the "Filer Investment Company Type" field on the main screen of EDGARLink submission types PREM14C, PREM14A, DEFM14A, DEFM14C, N-14, and N-14/A matches the

selected value of the "Investment Company Type" field of the filer CIK when it is provided on the "Series/Classes (Contracts) Information" screen and to validate that the value selected for the "Investment Company Type" on the main screen of EDGARLink submission type 425 matches the value selected for the "Investment Company Type" of the Subject-Company CIK when it is provided on the "Series/Classes (Contracts) Information" screen.

- EDGAR began to accept the submission types NSAR-A, NSAR-B, NSAR-U, NSAR-A/A, NSAR-AT, NSARAT/A, NSAR-B/A, NSAR-BT, NSARBT/A, NSAR-U/A, 24F-2NT, 24F-2NT/A, N-CSR, N-CSRS, N-CSR/A, NCSRS/A, N-PX, and N-PX/A when inactive series and/or classes are included in a submission from a company with a deregistered status for 210 business days from the time the company was deregistered and to suspend those submission types if a deregistered company makes a submission more than 210 business days after becoming deregistered.
- EDGAR's state/country list was updated to include Aland Islands, Guernsey, Isle of Man, Jersey, Saint Barthelemy, Saint Martin, Serbia, Timor-Leste, Canada (Federal Level), and Montenegro and remove East Timor and Yugoslavia.

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S-T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE, Room 1520,

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[5] See Release No. 33-9089 (December 16, 2009) [74 FR 68334].

Washington DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is http://www.sec.gov/info/edgar.shtml.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA)[6]. It follows that the requirements of the Regulatory Flexibility Act[7] do not apply.

The effective date for the updated Filer Manual and the rule amendments is [Insert date of publication in the Federal Register]. In accordance with the APA[8], we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 10.1 is scheduled to be available on April 12, 2010. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S-T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[9] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act

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[6] 5 U.S.C. 553(b).

[7] 5 U.S.C. 601- 612.

[8] 5 U.S.C. 553(d)(3).

[9] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

of 1934,[10] Section 319 of the Trust Indenture Act of 1939,[11] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[12]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

TEXT OF THE AMENDMENT

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232 - REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 et seq.; and 18 U.S.C. 1350

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2. Section 232.301 is revised to read as follows:

§232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the EDGAR Filer Manual, Volume I: "General Information," Version 8

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[10] 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w, and 78ll.

[11] 15 U.S.C. 77sss.

[12] 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.

(September 2009). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 14 (April 2010). Additional provisions applicable to Form N-SAR filers are set forth in the EDGAR Filer Manual, Volume III: "N-SAR Supplement," Version 1 (September 2005). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE, Room 1520, Washington, DC 20549, or call (202) 551-5850, on official business days between the hours of 10:00 am and 3:00 pm. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is http://www.sec.gov/info/edgar.shtml. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

April 01, 2010

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61827 / April 1, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3123 / April 1, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13840

In the Matter of **J. MICHAEL BROULLIRE (CPA),** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against J. Michael Broullire ("Respondent" or "Broullire") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Broullire, age 56, is and has been a certified public accountant licensed to practice in the State of Maryland. During the relevant period, 2003-2006, Broullire practiced accounting with a small accounting firm in Maryland and then with his own accounting business.

2. TVI Corporation is a Maryland corporation headquartered in Glenn Dale, Maryland. TVI's business includes selling emergency response equipment to the government and other purchasers. During the relevant period, TVI's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"). After July 2006, TVI's stock was registered with the Commission pursuant to Section 12(b) and traded on the NASDAQ SmallCap Market under the symbol "TVIN," and then was registered pursuant to Section 12(g) and quoted on the Pink Sheets under the symbol "TVINQ.PK." In September 2009, TVI's stock registration was revoked.

3. On March 25, 2010, the Commission filed a complaint against Broullire in SEC v. Richard V. Priddy, et al. (Civil Action No. 1:10-cv-00739 (BEL)(D. Md.). On March 26, 2010, the court entered an order permanently enjoining Broullire, by consent, from aiding and abetting future violations of Sections 10(b) and 13(a) of the Exchange Act and Rules 10b-5, 12b-20, and 13a-1 thereunder.

4. The Commission's complaint alleged, among other things, that Broullire participated in fraudulent schemes with TVI's former President and CEO and former Executive Vice President by which they created two companies to purchase products and resell them to TVI at approximately a 100% or greater markup. The Complaint also alleged that TVI paid one of these companies a fictitious finder's fee in connection with a corporate acquisition. The Complaint alleged that these fraudulent schemes enriched Broullire and the former TVI executives and materially reduced the net income that TVI reported in its 2004 Form 10-KSB and 2006 Form 10-K.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Broullire's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that Broullire is suspended from appearing or practicing before the Commission as an accountant.

By the Commission.

Elizabeth M. Murphy
Secretary

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-42; File No. S7-07-10]

Privacy Act of 1974: Systems of Records.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of revised system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission ("Commission" or "SEC") proposes to revise a Privacy Act system of records: "Pay and Leave System (SEC-15)". The revisions reflect changes that have occurred since the notice was last published in the Federal Register Volume 64, Number 236 on Thursday, December 9, 1999.

DATES: The proposed changes will become effective [insert date that is 40 days after publication in the Federal Register] unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before [insert date that is 30 days after publication in the Federal Register].

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/other.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-07-10 on the subject line.

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 S7-07-10. 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/other.shtml). Comments are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 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: Barbara A. Stance, Chief Privacy Officer, Office of Information Technology, 202-551-7209.

SUPPLEMENTARY INFORMATION: The Commission proposes to revise the Privacy Act system of records "Pay and Leave System" (SEC-15)." The revisions reflect changes that have occurred since the notice was last published and will update the system name, system location, categories of individuals covered by the system, categories of records in the system, routine uses of records maintained in the system, retrievability of records, records' safeguards, retention and disposition of records, system manager and address, notification procedures, record access procedures, contesting records procedures, and record source categories.

The Commission has submitted a report of the revised system of records to the appropriate Congressional committees and to the Director of the Office of Management

and Budget ("OMB") as required by 5 U.S.C. 552a(r) (Privacy Act of 1974) and guidelines issued by OMB on December 12, 2000 (65 FR 77677).

Accordingly, the Commission is revising the system of records to read as follows:

SEC-15

SYSTEM NAME:

Payroll, Attendance, Retirement and Leave Records.

SYSTEM LOCATION:

1. Payroll files, retirement case files, time and attendance reports, and service history files: SEC, 100 F Street, NE, Washington, DC 20549;
2. Notices of personnel action and other pay-related records: Department of the Interior, National Business Center, Payroll Operations Division, Mail Stop D-2662, 7301 West Mansfield Avenue, Lakewood, CO 80235-2230; and
3. Retired personnel files: National Archives and Records Administration, National Personnel Records Center (Civilian Personnel Records Center), 111 Winnebago Street, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present employees, interns, fellows, volunteers and persons who work at the SEC under the Intergovernmental Personnel Act (employees).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include, but are not limited to: employee name, address, phone number, Social Security number, organization code, pay rate, salary, grade, length of service, pay and leave records, source documents for posting time and leave attendance, and deductions for Medicare, Old Age, Survivors, and Disability Insurance (OASDI, also

known as Social Security), bonds, Federal Employee Group Life Insurance (FEGLI), union dues, taxes, allotments, quarters, retirement, charities, Federal and commercial health benefits, Flexible Spending Account, Long Term Care Insurance, Thrift Savings Plan contributions, award, shift schedules, and pay differential, tax lien data, wage garnishments. The payroll, retirement and leave records described in this notice form a part of the information contained in the Department of the Interior's integrated Federal Personnel and Payroll System (FPPS). Personnel records contained in the FPPS are covered under the government-wide system of records notice published by the Office of Personnel Management (OPM/GOVT-1) and Commission's system of records notice, SEC-39, Personnel Management Employment and Staffing Files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 302; 31 U.S.C. 3512

PURPOSE(S):

The primary uses of the records are for the Commission's fiscal operations for payroll, time and attendance, leave, insurance, tax, retirement, qualifications, and benefits; to prepare related reports to other Federal agencies including the Department of Treasury and the Office of Personnel Management; and to locate SEC employees and determine such matters as their period of service, type of leave, qualifications, benefits, and pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the National Business Center of the U.S. Department of the Interior.
2. To any Federal, state, or local government compiling tax withholding, retirement contributions, or allotments to charities, labor unions, wage garnishments, and other authorized recipients.
3. To any Federal governmental authority or its agents investigating (a) a violation or potential violation of a statute, rule, regulation, or order, or (b) an employee's grievance or complaint.
4. To any member of the public for employment verification at an employee's written request.
5. To any judgment creditor for the purpose of wage garnishment.
6. To any arbitrator under a negotiated labor agreement.
7. To the General Accountability Office, the Office of Management and Budget, and other Federal agencies to support payments of salaries and benefits to SEC employees.
8. To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, the Federal Parent Locator System and the Federal Tax Offset System to (a) locate individuals, (b) identify income sources, (c) establish paternity, (d) verify social security numbers or employment, (e) issue, modify, or enforce orders of support, or (f) administer the Federal Earned Income Tax Credit Program.
9. To a Congressional office in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.
11. To interns, grantees, experts, contractors and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical or stenographic functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.
12. When (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

13. To a commercial contractor in connection with benefit programs administered by the contractor on the Commission's behalf, including, but not limited to, supplemental health, dental, disability, life and other benefit programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases, on computer disc and/or other electronic media. Paper records are stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

These records may be retrieved by identifiers including, but not limited to, individual's name, an employee's name or social security number, birthday, and organizational code.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. Access is limited to those personnel whose official duties require access. Paper records are maintained in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Computerized records are safeguarded through use of access codes and information technology security. Contractors and other recipients providing services to the Commission shall be required to comply with the Privacy Act and applicable agency rules and regulations issued under the Act.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Executive Director, Office of Human Resources, Securities and Exchange Commission, 100 F Street, NE Washington, DC 20549.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual should be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5100.

RECORD ACCESS PROCEDURE:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records should contact the FOIA/Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Records source is from individuals on whom the records are maintained, official personnel records of individuals on whom the records are maintained, time and attendance records, withholding certificates, third-party benefit providers, and other pay-

related records prepared by the individual or the Office of Human Resources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By the Commission.

Florence E. Harmon
Deputy Secretary

Date: April 2, 2010

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61832 / April 2, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13842

In the Matter of **Richard J. Evangelista,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Richard J. Evangelista ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (" Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. During the period from at least October 1999 through September 2001, Evangelista was the head of the stock loan department of Native Nations Securities, Inc.

("Native Nations" f/k/a Freeman Securities Co.), a broker-dealer registered with the Commission and located in Jersey City, New Jersey. Evangelista, 74 years old, is a resident of the State of Florida.

2. On April 1, 2010, a final judgment was entered by consent against Evangelista, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Ramy El-Batrawi, et al., Civil Action Number 06-2247 CAS (VBKx), in the United States District Court for the Central District of California.

3. The Commission's complaint alleges that, from approximately October 1999 through September 2001, Evangelista participated in the manipulation of the share price of the common stock of GenesisIntermedia, Inc. ("GENI"), a California-based company with telemarketing and other operations, whose stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded at the time on the NASDAQ National Market System. The complaint alleges that Evangelista, as the head of the stock loan department at Native Nations, facilitated the loaning of millions of shares of GENI's stock through a complex series of stock loan chains. These stock loans limited the supply of shares available to the market and provided tens of millions of dollars in loan proceeds to the other participants who used those proceeds, in part, to buy and sell millions of shares of GENI stock in dozens of brokerage accounts in order to create a false perception of the demand for GENI stock. The complaint further alleges that Evangelista concealed from Native Nations and the other broker-dealers involved in the stock loans the fact that the source of the GENI stock being loaned was not another broker-dealer, as required by Native Nation's stock loan procedures, but rather was the CEO of GENI and entities acting on the CEO's behalf. The complaint also alleges that Evangelista was secretly compensated for facilitating the stock loans.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Evangelista's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Evangelista be, and hereby is barred from association with any broker or dealer.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a

customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61833 / April 2, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3124 / April 2, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13843

In the Matter of

MICHAEL DEGENNARO

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Michael DeGennaro ("DeGennaro" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

1. DeGennaro, age 44, resides in Long Island, New York. DeGennaro at all relevant times was Senior Vice President of Finance of Symbol Technologies, Inc. ("Symbol").

2. Symbol was at all relevant times (a) a Delaware corporation with principal offices in Holtsville, New York; (b) engaged in the design, manufacture, marketing and servicing of mobile information systems using bar code scanners and similar devices; and (c) a public company whose common stock was traded on the New York Stock Exchange and registered with the Commission pursuant to Section 12(b) of the Exchange Act. On January 9, 2007, Symbol was acquired by Motorola, Inc.

3. As described below, Symbol violated the financial recordkeeping and internal control provisions of Section 13(b)(2) of the Exchange Act due to its failure to maintain the requisite accounting records and implement adequate internal accounting controls.[2]

4. In 2000 and 2001, Symbol created and used certain restructuring charges and related reserves in contravention of GAAP. As a result, Symbol misstated, *inter alia*, its operating expenses and net income on its books and records and in its financial statements.

5. During the relevant period, Symbol recorded non-recurring charges in connection with, *inter alia*, Symbol's: (i) acquisition of Telxon Corporation, which resulted in a $185.9 million restructuring charge recorded in the fourth quarter of 2000; and (ii) Symbol's relocation of manufacturing operations to new facilities, which resulted in a $59.7 million restructuring charge recorded in the third quarter of 2001 (collectively the "Charges"). The Charges were later reversed, in part, because they did not comply with GAAP. Symbol also incorrectly used certain reserves created in conjunction with some of the Charges. The Charges and certain associated reserves were not recorded in accordance with GAAP because, *inter alia*, they misclassified certain expenses, included amounts unrelated to the purpose of the Charge and, in some cases, were used in later periods for unrelated purposes.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] Section 13(b)(2)(A) of the Exchange Act requires registrants to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets. Section 13(b)(2)(B) requires registrants to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles ("GAAP") and to maintain accountability for assets.

6. As Senior Vice President of Finance at Symbol, DeGennaro was one of the Symbol executives who determined how Symbol accounted for and recorded transactions on its books and records and in its financial statements. As such, DeGennaro was one of the Symbol executives who had responsibility for implementing internal accounting controls at Symbol, the purpose of which controls was to provide reasonable assurances that relevant transactions were recorded as necessary to permit preparation of financial statements in accordance with GAAP. DeGennaro, together with others, determined how the Charges were recorded and accounted for on Symbol's internal books and records and in its financial statements. DeGennaro failed to take requisite steps to ensure that Symbol's internal books and records and financial statements accurately reflected each element of the Charges and the uses of associated reserves, and that the Charges and the uses of associated reserves were accounted for in accordance with GAAP.

7. By reason of the foregoing, DeGennaro was a cause of Symbol's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent DeGennaro's Offer.

Accordingly, it is hereby ORDERED that pursuant to Section 21C of the Exchange Act, Respondent DeGennaro cease and desist from causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

By the Commission.

Elizabeth M. Murphy
Secretary

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

April 5, 2010

In the Matter of **AB Liquidating Corp.** **(f/k/a Adaptive Broadband Corp.),** **Globalnet Corp.,** **Greenland Corp.,** **KeraVision, Inc.,** **Lifespan, Inc.,** **STAR Telecommunications, Inc.,** **Telenetics Corp., and** **3DFX Interactive, Inc.,** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AB Liquidating Corp. (f/k/a Adaptive Broadband Corp.) because it has not filed any periodic reports since the period ended December 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Globalnet Corp. because it has not filed any periodic reports since the period ended December 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Greenland Corp. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of KeraVision, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Lifespan, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of STAR Telecommunications, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Telenetics Corp. because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 3DFX Interactive, Inc. because it has not filed any periodic reports since the period ended July 31, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 5, 2010, through 11:59 p.m. EDT on April 16, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Florence E. Harmon
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61836 / April 5, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13844

In the Matter of **AB Liquidating Corp.** **(f/k/a Adaptive Broadband Corp.),** **Globalnet Corp.,** **Greenland Corp.,** **Guinness Telli-Phone Corp.,** **KeraVision, Inc.,** **Lifespan, Inc.,** **STAR Telecommunications, Inc.,** **Telenetics Corp., and** **3DFX Interactive, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents AB Liquidating Corp. (f/k/a Adaptive Broadband Corp.), Globalnet Corp., Greenland Corp., Guinness Telli-Phone Corp., KeraVision, Inc., Lifespan, Inc., STAR Telecommunications, Inc., Telenetics Corp., and 3DFX Interactive, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. AB Liquidating Corp. (f/k/a Adaptive Broadband Corp.) ("ADAPQ")[1] (CIK No. 16357) is a forfeited Delaware corporation located in San Jose, California with a class of

[1]The short form of each issuer's name is also its stock symbol.

securities registered with the Commission pursuant to Exchange Act Section 12(g). ADAPQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2000, which reported a net loss of $30,976,000 for the prior year. On July 26, 2001, ADAPQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of California which was still pending as of March 25, 2010. As of March 24, 2010, the common stock of ADAPQ was quoted on the Pink Sheets operated by Pink OTC Markets, Inc. ("Pink Sheets"), had seven market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

2. Globalnet Corp. ("GLBT") (CIK No. 810932) is a revoked Nevada corporation located in Irvine, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GLBT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB/A for the period ended December 31, 2004. As of March 24, 2010, the common stock of GLBT was quoted on the Pink Sheets, had eight market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

3. Greenland Corp. ("GRLC") (CIK No. 852127) is a revoked Nevada corporation located in San Marcos, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). GRLC is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2005, which reported a net loss of $1,024,000 for the prior nine months. As of March 24, 2010, the common stock of GRLC was quoted on the Pink Sheets, had seven market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

4. Guinness Telli-Phone Corp. ("TELI") (CIK No. 940036) is a Nevada corporation located in Mill Valley, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TELI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q/A for the period ended September 30, 2000, which reported a net loss of $6,499,619 for the prior nine months. As of March 24, 2010, the common stock of TELI was traded on the over-the-counter markets.

5. KeraVision, Inc. ("KERA") (CIK No. 946154) is a forfeited Delaware corporation located in Fremont, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). KERA is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2000, which reported a net loss of $30,085,000 for the prior nine months. On June 6, 2001, KERA filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of California, which was converted to a Chapter 7 proceeding, and was terminated on May 21, 2007. As of March 24, 2010, the common stock of KERA was quoted on the Pink Sheets, had five market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

6. Lifespan, Inc. ("LSPN") (CIK No. 1040839) is a defaulted Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LSPN is delinquent in its periodic filings with the Commission,

having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2007, which reported a net loss of $10,436,531 from the company's inception on January 27, 1997 through September 30, 2007. As of March 24, 2010, the common stock of LSPN was quoted on the Pink Sheets, had seven market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

7. STAR Telecommunications, Inc. ("STRXQ") (CIK No. 1026486) is a forfeited Delaware corporation located in Santa Barbara, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). STRXQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2000, which reported a net loss of $34,710,000 for the prior nine months. On March 13, 2001, STRXQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware which was terminated on January 8, 2008. As of March 24, 2010, the common stock of STRXQ was quoted on the Pink Sheets, had seven market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

8. Telenetics Corp. ("TLNT") (CIK No. 810018) is a suspended California corporation located in Irvine, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TLNT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2004, which reported a net loss of $4,208,187 for the prior nine months. As of March 24, 2010, the common stock of TLNT was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

9. 3DFX Interactive, Inc. ("TDFXQ") (CIK No. 1010026) is a suspended California corporation located in San Francisco, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TDFXQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended July 31, 2002, which reported a net loss of $2,627,000 for the period from February 1, 2001 to March 26, 2001. On October 15, 2002, TDFXQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of California which was still pending as of March 25, 2010. As of March 24, 2010, the common stock of TDFXQ was quoted on the Pink Sheets, had thirteen market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

10. All of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

11. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current

and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

12. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II hereof are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II hereof, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61837 / April 5, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13845

In the Matter of

GENESISINTERMEDIA, INC.,

Respondent.

ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, AND REVOKING REGISTRATION OF SECURITIES PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against GenesisIntermedia, Inc. ("Respondent" or "GenesisIntermedia").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

A. GenesisIntermedia, a Delaware corporation based in Los Angeles, California, operated a consumer telemarketing company, shopping mall kiosks and a car rental company. From June 8, 1999 until April 15, 2002, GenesisIntermedia's common stock was registered under Section 12(b) of the Exchange Act. Since April 15, 2002, the common stock of GenesisIntermedia has been registered under Section 12(g) of the Exchange Act. GenesisIntermedia's common stock is currently traded on the "Grey Market."

B. GenesisIntermedia has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, while its common stock was registered with the Commission in that it has not filed an Annual Report on Form 10-K for any year subsequent to 2000 or quarterly reports on Form 10-Q for any fiscal period subsequent to its fiscal quarter ending September 30, 2001.

IV.

Section 12(j) of the Exchange Act provides as follows:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means of instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission finds that it is necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Repondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Florence E. Harmon
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61880 / April 9, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13854

In the Matter of **Advanced Mineral Technologies, Inc.,** **Respondent.**	**ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, AND REVOKING REGISTRATION OF SECURITIES PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against Advanced Mineral Technologies, Inc. ("AMTO" or "Respondent").

II.

In anticipation of the institution of these proceedings, AMTO has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, AMTO consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), and to the findings as set forth below.

III.

On the basis of this Order and the Respondent's Offer, the Commission finds:

1. AMTO (CIK No. 830821) is a Nevada corporation located in Fairfield, Idaho with a class of securities registered with the Commission under Exchange Act Section 12. As of January 10, 2010, the common stock of AMTO was quoted on the Pink Sheets operated by Pink OTC Markets, Inc. (symbol AMTO), had nine market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

AMTO), had nine market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

2. AMTO has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder while its securities were registered with the Commission in that it has not filed any periodic reports for any fiscal period subsequent to the period ended January 31, 2007.

IV.

Section 12(j) of the Exchange Act provides as follows:

> The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission deems it necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of AMTO's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Elizabeth M. Murphy
Secretary

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-61884

April 9, 2010

ORDER EXEMPTING THE FEDERAL RESERVE BANK OF NEW YORK, MAIDEN LANE LLC AND THE MAIDEN LANE COMMERCIAL MORTGAGE BACKED SECURITIES TRUST 2008-1 FROM BROKER-DEALER REGISTRATION

I. Introduction

The Federal Reserve Bank of New York ("Fed-NY"), Maiden Lane LLC and the Maiden Lane Commercial Mortgage Backed Securities Trust 2008-1 ("Maiden Lane") (together, "Applicants") have requested exemptions from Section 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and certain other related requirements in connection with the restructuring of certain debt instruments acquired by Maiden Lane to facilitate the merger of The Bear Stearns Companies Inc. ("Bear Stearns") with JP Morgan Chase & Co. ("JPMC").

II. Background

This section summarizes the facts as they have been represented to the Commission by counsel on behalf of the Applicants:[1]

It has been represented that, in March 2008, the Fed-NY entered into an arrangement to facilitate the merger of JPMC and Bear Stearns. In connection with the transaction, the Board of Governors of the Federal Reserve ("Board") authorized the Fed-NY under Section 13(3) of the Federal Reserve Act to extend credit to a Delaware limited liability company, Maiden Lane LLC, to fund the purchase of a portfolio of mortgage related securities, residential and commercial mortgage loans and associated hedges from Bear Stearns (the "Asset Portfolio"). Maiden Lane LLC, in turn, established two grantor trusts to hold the Asset Portfolio.[2] The Maiden Lane trust at issue here holds an approximately $4 billion interest in a $20 billion mortgage and mezzanine financing provided to Blackstone LLP ("Blackstone") in 2007 in connection with Blackstone's acquisition of Hilton Worldwide, Inc. ("Hilton").

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[1] See Letter from Dennis C. Hensley, Sidley Austin LLP, to Elizabeth M. Murphy, Secretary, Commission, dated April 8, 2010 ("Maiden Lane Exemptive Request"). The Commission has not independently verified these facts. To the extent that the facts presented and the representations made by counsel are or become inaccurate, the validity of the exemption granted by this order may be called into question.

[2] Maiden Trust LLC owns the trust certificates representing all of the beneficial ownership in each trust.

In addition, it has been further represented that Blackstone has been in negotiations with lenders, including Maiden Lane, in connection with a proposed restructuring of the Hilton debt. Under the proposed restructuring plan, the most junior tranches of the Hilton loans will be converted to preferred equity; portions of more senior tranches will be retired pursuant to a discounted payoff ("DPO"); and various terms and conditions will be amended to address the current financial condition of the assets. As a condition of the DPO, the other lenders that are participating in the DPO (together with Maiden Lane, the "Restructuring DPO Sellers") would have the opportunity to recoup some of their losses by participating in an offering of the common equity of Hilton (the "Offering") at some future date. Each of the other Restructuring DPO Sellers is affiliated with a registered broker-dealer that is generally qualified to serve as an underwriter in any future Offering.

It has further been represented that Maiden Lane, Maiden Lane LLC and the Fed-NY are not registered as broker-dealers, and are not affiliated with a registered broker-dealer. The parties have proposed to enter into a "Closing Statement and Agreement (Mezzanine H, I)" ("DPO Agreement") which will provide that Maiden Lane will not serve or act as underwriter or broker-dealer, or take any action whatsoever with respect to any future Offering.[3] Instead, pursuant to the DPO Agreement, Maiden Lane is to receive a "Contingent DPO Payment" that is to be substantively in the form of:

> an amount equal to the average of the underwriting fee and other fees in connection with the Offering actually paid by Hilton to the Restructuring DPO Sellers at competitive market rates in connection with the Offering (the "Contingent DPO Payment"). If the Offering is for less than $4 Billion, the Contingent DPO Payment payable to [Maiden Lane] shall continue to apply to each supplemental Offering or new initial public Offering of Hilton until the face amount of such Offerings in the aggregate are at least $4 Billion.

It has been represented that any amounts payable to Maiden Lane will be paid in cash by Hilton directly and not out of the underwriters' fee or by the underwriting group.

III. Request for Relief

[3] Section 5 of the DPO Agreement, Hilton Payment, will provide in substance:

> Hilton acknowledges and agrees that [Maiden Lane]'s right to receive any payment pursuant to this Section 5 is not conditioned upon [Maiden Lane]'s serving or acting as an underwriter, broker-dealer, finder, investment adviser or consultant, or otherwise taking any action whatsoever with respect to, or in connection with, the Offering, including any structuring or other preparation of the Offering or participating in any roadshow relating to the Offering, and Hilton acknowledges and agrees that [Maiden Lane] will not serve or act as an underwriter or broker-dealer and will not take any action whatsoever with respect to the offering.

The Applicants state that they do not believe that Maiden Lane will be acting as a broker or dealer as those terms are defined in the Exchange Act by entering into the DPO Agreement and receiving the contemplated Contingent DPO Payment. Nonetheless, they are seeking this exemptive order to give them legal certainty with respect to this issue.[4]

The Applicants have requested exemptions from the registration requirements of Exchange Act Section 15(a)(1)[5] and the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)),[6] and the rules and regulations thereunder, that apply specifically to a broker or dealer whether or not registered with the Commission, to the extent these obligations would arise solely as a result of the DPO. Maiden Lane, Maiden Lane, LLC and the Fed-NY would remain subject to all other applicable provisions of the federal securities laws, including, without limitation, Section 10(b) of the Exchange Act[7] and Rule 10b-5 thereunder.[8]

IV. Exemptions from Section 15(a)(1) of the Exchange Act and Certain Other Requirements

A broker is generally defined as "any person engaged in the business of effecting transactions in securities for the account of others,"[9] and a dealer as "any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise."[10] A person may be "engaged in the business," by receiving compensation

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[4] Section 5 of the DPO Agreement provides:

> Notwithstanding the foregoing, DPO Lender's agreement to the Contingent DPO Payment is subject to receipt by DPO Lender of a confirmation from the SEC, in form and substance satisfactory to the DPO Lender in its sole discretion, with respect to the ability of DPO Lender to hold such Contingent DPO Payment.

[5] 15 U.S.C. 78o(a)(1).

[6] 15 U.S.C. 78o(b)(4) and 78o(b)(6).

[7] 15 U.S.C. 78j(b).

[8] 17 C.F.R. 240.10b-5.

[9] Exchange Act Section 3(a)(4)(A) [15 U.S.C. 78c(a)(4)(A)]. There are statutory exceptions, not applicable here, for banks to the extent they engage in certain limited activities. See Section 3(a)(4)(B) [15 U.S.C. 78c(a)(4)(B)].

[10] Exchange Act Section 3(a)(5) [15 U.S.C. 78c(a)(5)]. The term "dealer" does not, however, include "a person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business." The dealer/trader distinction recognizes that dealers normally have a regular clientele, hold themselves out as buying or selling securities at a regular place of business, have a regular turnover of inventory (or participate in the sale or distribution of new issues, such as by acting as an underwriter), and generally provide liquidity services in transactions with investors (or, in the case of dealers who are market makers, for other professionals). See Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections

(continued...)

tied to the successful completion of a securities transaction.[11] Indeed, the receipt of transaction-based compensation often indicates that such a person is engaged in the business of effecting transactions in securities.[12] Registration helps to ensure that persons who have a "salesman's stake" in a securities transaction operate in a manner that is consistent with customer protection standards governing broker-dealers and their associated persons.[13]

Exchange Act Section 15(a)(2) authorizes the Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, to conditionally or unconditionally exempt from Exchange Act Section 15(a)(1) any broker or dealer or class of brokers or dealers specified in such rule or order,[14] and Exchange Act Section 36 more broadly provides that the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons from any provision or provisions of the Exchange Act or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[15]

The Applicants represent that the DPO is a one-time, extraordinary event for Maiden Lane. They further represent that Maiden Lane's right to receive the Contingent DPO Payment is not conditioned upon Maiden Lane or any of the other Applicants serving or acting as an underwriter, broker-dealer, finder, investment adviser or consultant, or otherwise taking any action whatsoever with respect to, or in connection with, the Offering, including any structuring or other preparation of the Offering or participating in any roadshow relating to the Offering, and Maiden Lane and the other Applicants will not serve or act as underwriter or broker-dealer and will not take any action whatsoever with respect to the Offering. The Applicants also represent that they will not participate in any negotiations between the issuer and any potential investors,

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(...continued)

3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 47364 (Feb. 14, 2003).

[11] See Strengthening the Commission's Requirements Regarding Auditor Independence, Exchange Act Release No. 47265, n.82 (Jan. 28, 2003) (noting that a person may be "engaged in the business," among other ways, by receiving transaction-related compensation).

[12] Persons Deemed Not To Be Brokers, Exchange Act Release No. 22172 (June 27, 1985) (noting that "the receipt of transaction-based compensation often indicates that such a person is engaged in the business of effecting transactions in securities") (hereinafter "Rule 3a4-1 Adopting Release").

[13] See Rule 3a4-1 Adopting Release ("Compensation based on transactions in securities can induce high pressure sales tactics and other problems of investor protection which require application of broker-dealer regulation under the Act.").

[14] 15 U.S.C. 78o(a)(2).

[15] 15 U.S.C. 78mm.

prepare any materials (including financial data and sales literature) relating to the sale of securities, be involved in any distribution of any materials to potential investors, perform any independent analysis of any future Offering, engage in any due diligence activities, assist in or provide financing for any purchases, provide advice relating to the valuation of or the financial advisability of such an investment, perform any of the usual activities of an underwriter, handle any funds or securities, or otherwise engage in activities that would require any of them to register with the Commission as a broker or dealer.

On these unique facts, the receipt by Maiden Lane of compensation that is calculated by reference to the underwriting fees and other fees that the other Restructuring DPO Sellers are likely to receive in connection with any future Hilton Offering does not implicate the sales practice and other protections that broker-dealer registration and other related requirements are designed to provide. Accordingly, based on Applicants' representations that Maiden Lane's right to receive the Contingent DPO Payment is not conditioned upon Maiden Lane or any of the other Applicants serving or acting as an underwriter, broker-dealer, finder, investment adviser or consultant, or otherwise taking any action whatsoever with respect to, or in connection with, the Offering, including any structuring or other preparation of the Offering or participating in any roadshow relating to the Offering, and that the Applicants will not serve or act as an underwriter or a broker or a dealer, or take any action whatsoever with respect to any future Offering, other than receiving the DPO payment, and that they will not participate in any negotiations between the issuer and any potential investors, prepare any materials (including financial data and sales literature) relating to the sale of securities, be involved in any distribution of any materials to potential investors, perform any independent analysis of any future Offering, engage in any due diligence activities, assist in or provide financing for any purchases, provide advice relating to the valuation of or the financial advisability of such an investment, perform any of the usual activities of an underwriter, handle any funds or securities, or otherwise engage in any activities that would require any of them to register with the Commission as a broker or a dealer, the Commission finds that it is consistent with the public interest, the protection of investors, and the purposes of the Exchange Act to grant the requested exemptive relief solely with respect to the activities described in Part II of this order concerning the receipt of the Contingent DPO Payment,

ACCORDINGLY,

IT IS HEREBY ORDERED, pursuant to Section 15(a)(2) of the Exchange Act, that each of Maiden Lane, Maiden Lane, LLC and the Fed-NY is exempt, with respect only to the activities described in this order concerning the receipt of the Contingent DPO Payment, from the registration requirements of Section 15(a)(1) of the Exchange Act.

IT IS HEREBY FURTHER ORDERED, pursuant to Section 36 of the Exchange Act, that each of Maiden Lane, Maiden Lane, LLC and the Fed-NY is exempt, only to the extent the obligations arise from the activities described in this order concerning the receipt of the Contingent DPO Payment, from the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)), and the rules and regulations thereunder, that apply specifically to a broker or dealer whether or not registered with the Commission.

PROVIDED THAT the exemptive relief granted by this order is conditioned upon the Applicants' representations that Maiden Lane's right to receive the Contingent DPO Payment is not conditioned upon Maiden Lane or any of the other Applicants serving or acting as an underwriter, broker-dealer, finder, investment adviser or consultant, or otherwise taking any action whatsoever with respect to, or in connection with, the Offering, including any structuring or other preparation of the Offering or participating in any roadshow relating to the Offering, and that Applicants will not serve or act as and underwriter or a broker or a dealer, or take any action whatsoever with respect to any future Offering, other than receiving the DPO payment, and that they will not participate in any negotiations between the issuer and any potential investors, prepare any materials (including financial data and sales literature) relating to the sale of securities, be involved in any distribution of any materials to potential investors, perform any independent analysis of any future Offering, engage in any due diligence activities, assist in or provide financing for any purchases, provide advice relating to the valuation of or the financial advisability of such an investment, perform any of the usual activities of an underwriter, handle any funds or securities, or otherwise engage in any activities that would require any of them to register with the Commission as a broker or a dealer.

FURTHER PROVIDED THAT, notwithstanding this exemption, Maiden Lane, Maiden Lane LLC and the Fed-NY remain subject to all other applicable provisions of the federal securities laws, including, without limitation, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61888 / April 12, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13855

In the Matter of **Patrick V. Looper,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Patrick V. Looper ("Looper" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Looper, age 71, is a resident of Colorado Springs, Colorado. He was associated with Wellco Energy LLC ("Wellco") from September 2007 through June 2009. He offered and sold fractional undivided interests in oil and gas rights in four projects for which he received commissions of twenty percent of the funds invested by investors that he solicited. He was engaged in the business of effecting transactions in securities for the account of others. However, during the time period from September 2007 through June 2009, Looper was not registered with the Commission as a broker or dealer and was not associated with a broker-dealer registered with the Commission.

2. On March 25, 2010, a final judgment was entered by consent against Looper permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Wellco Energy LLC, et al., Civil Action Number 1:09-CV-1114, in the United States District Court for the District of Colorado.

3. The Commission's complaint alleged that in connection with Looper's sale of fractional undivided interests in oil and gas rights, misrepresentations were made to investors that Wellco was the operator of the four oil and gas projects. The complaint alleged that, in fact, Wellco did not operate the well and purchased fractional undivided interests from another company, which interests if further divided and resold to investors. The complaint further alleged it was misrepresented that Wellco's principal, Justin William Rifkin ("Rifkin"), had extensive experience operating oil and gas prospects. In fact, the complaint alleges, Rifkin's experience was limited to raising money through sales of other oil and gas projects, and he had no experience operating oil and gas wells. The complaint further alleges that, in connection with Looper's offers and sales, misrepresentations were made about how investors' funds would be used, and investors were not told that Looper would receive a twenty percent commission. The complaint also alleged that Looper sold securities when no registration statement was in effect or filed with the Commission.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Looper's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Looper be, and hereby is barred from association with any broker or dealer with the right to reapply for association after five years to the appropriate self-regulatory organization, or if there is none, to the Commission;

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61889 / April 12, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13856

In the Matter of **Richard G. Pacheco,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Richard G. Pacheco ("Pacheco" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Pacheco, age 45, is a resident of Colorado Springs, Colorado. He was associated with Wellco Energy LLC ("Wellco") from September 2007 through June 2009. He offered and sold fractional undivided interests in oil and gas rights in four projects for which he received commissions of twenty percent of the funds invested by investors that he solicited. He was engaged in the business of effecting transactions in securities for the account of others. However, during the time period from September 2007 through June 2009, Pacheco was not registered with the Commission as a broker or dealer and was not associated with a broker-dealer registered with the Commission.

2. On March 25, 2010, a final judgment was entered by consent against Pacheco, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Wellco Energy LLC, et al., Civil Action Number 1:09-CV-1114, in the United States District Court for the District of Colorado.

3. The Commission's complaint alleged that in connection with Pacheco's sale of fractional undivided interests in oil and gas rights, misrepresentations were made to investors that Wellco was the operator of the four oil and gas projects. The complaint alleged that, in fact, Wellco did not operate the well and purchased fractional undivided interests from another company, which interests if further divided and resold to investors. The complaint further alleged it was misrepresented that Wellco's principal, Justin William Rifkin ("Rifkin"), had extensive experience operating oil and gas prospects. In fact, the complaint alleges, Rifkin's experience was limited to raising money through sales of other oil and gas projects, and he had no experience operating oil and gas wells. The complaint further alleges that, in connection with Pacheco's offers and sales, misrepresentations were made about how investors' funds would be used, and investors were not told that Pacheco would receive a twenty percent commission. The complaint also alleged that Pacheco sold securities when no registration statement was in effect or filed with the Commission.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Pacheco's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Pacheco, hereby is barred from association with any broker or dealer with the right to reapply for association after five years to the appropriate self-regulatory organization, or if there is none, to the Commission;

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3013 / April 12, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13857

In the Matter of **KEVIN H. BLOOD,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Kevin H. Blood ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Respondent was president and 75% owner of Capital Wealth Management ("CWM"), an investment adviser registered with the Commission. From July 2007 to April 2009, Respondent served as an investment adviser representative associated with CWM. Respondent is a

certified financial planner and presently holds FINRA Series 6, 7, 24, 63 and 65 licenses. Respondent, age 40, is a resident of Scottsdale, Arizona.

2. On April 2, 2010, a final judgment was entered by consent against Respondent permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action entitled Securities and Exchange Commission v. Kevin H. Blood, Civil Action No. CV10-0731-PHX-SRB, in the United States District Court for the District of Arizona.

3. The Commission's complaint alleged that Respondent engaged in fraud and breached his fiduciary duty to disclose any conflicts of interest when recommending an investment to CWM advisory clients. In recommending this investment, Blood negotiated a separate, undisclosed compensation agreement related to the investment that inured to Blood's personal benefit. Moreover, contrary to representations he made to the CWM clients, Blood failed to secure any bank guarantee or other collateral before transferring the clients' $10.2 million combined investment to a third party, but falsely assured the CWM clients of the continued safety of their investments. Blood later discovered, to the detriment of the CWM clients, that the investment was a sham operation run by a convicted felon.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Blood's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Blood be, and hereby is barred from association with any investment adviser;

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61897 / April 13, 2010

Administrative Proceeding File No. 3-12678

In the Matter of Haidar Capital Management, LLC, Haidar Capital Advisors, LLC, and Said N. Haidar, Respondents.	Notice of Proposed Plan of Distribution and Opportunity for Comment

Notice is hereby given, pursuant to Rule 1103 of the Securities and Exchange Commission's ("Commission") Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. §201.1103, that the Division of Enforcement has filed with the Commission the proposed plan ("Distribution Plan") for the distribution of monies in *In the Matter of Haidar Capital Management, LLC, et al.* The Commission issued an Order Instituting Public Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order pursuant to Section 8A of the Securities Act of 1933, Sections 203(e) and (f) of the Investment Advisers Act of 1940, and Sections 9(b) and (d) of the Investment Company Act of 1940 as to the Respondents, Administrative Proceeding File No. 3-12678 on July 6, 2007 (Securities Act Rel. No. 8820) (the "Order").

OPPORTUNITY FOR COMMENT

Pursuant to this Notice, all interested parties are advised that they may obtain a copy of the Distribution Plan from the Commission's public website, http://www.sec.gov, or by submitting a written request to Stephen Webster, Assistant Regional Director, United States Securities and Exchange Commission, 801 Cherry Street, 19th Floor, Fort Worth, Texas, 76102. Further, all persons desiring to comment on the Distribution Plan may submit their comments, in writing, no later than thirty days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission's Internet comment form (http://www.sec.gov/litigation/admin.shtml); or
3. by sending an e-mail to rule-comments@sec.gov.

Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Number 3-12678" in the subject line. Comments received will be available to the public. Persons should only submit information that they wish to make publicly available.

THE DISTRIBUTION PLAN

The Distribution Plan provides for distribution of disgorgement in the amount of $3,300,000, prejudgment interest in the amount of $1,180,000, and penalty in the amount of $100,000, paid by the Respondents. The proposed plan provides for distribution of the monies among the mutual funds that had marketing arrangements with the Respondents that are the subject of the Order during the period from April 2001 through September 2003; or, in the case of mutual funds that have been merged into other mutual funds, to their successors in interest. Accordingly, the funds are not being distributed according to a claims-made process.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Commissioner Casey and Commissioner Walter not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9116 / April 7, 2010

SECURITIES EXCHANGE ACT OF 1934
Release No. 61856 / April 7, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 3009 / April 7, 2010

INVESTMENT COMPANY ACT OF 1940
Release No. 29203 / April 7, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3125 / April 7, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13847

In the Matter of **MORGAN ASSET MANAGEMENT, INC.; MORGAN KEEGAN & COMPANY, INC.; JAMES C. KELSOE, JR.; and JOSEPH THOMPSON WELLER, CPA,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 4C, 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND RULE 102(e)(1)(iii) OF THE COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Morgan Asset Management, Inc. ("Morgan Asset"); Morgan Keegan & Company, Inc. ("Morgan Keegan");

James C. Kelsoe, Jr. ("Kelsoe"); and Joseph Thompson Weller, CPA ("Weller") (collectively "Respondents"); pursuant to Section 15(b)(4) of the Exchange Act against Morgan Keegan; pursuant to Section 15(b)(6) of the Exchange Act against Morgan Asset, Kelsoe and Weller; pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Morgan Asset and Morgan Keegan; pursuant to Sections 203(f) and 203(k) of the Advisers Act against Kelsoe and Weller; and pursuant to Section 4C[1] of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice against Weller.[2]

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Morgan Asset, incorporated in Tennessee on April 10, 1986, has been an investment adviser registered with the Commission at all relevant times. Morgan Asset's principal place of business is in Memphis, Tennessee. Morgan Asset is a wholly-owned subsidiary of MK Holding, Inc., which in turn is a wholly-owned subsidiary of Regions Financial Corporation.

2. Morgan Keegan, incorporated in Tennessee on June 27, 1969, has been registered with the Commission as a broker-dealer at all relevant times and as an investment adviser since July 27, 1992. During the relevant time period, Morgan Keegan served as the principal underwriter and sole distributor of shares of the open-end Funds. Morgan Keegan's principal place of business is in Memphis, Tennessee.

3. Kelsoe, 46 years of age, is a resident of Memphis, Tennessee. During 2007, Kelsoe was a senior portfolio manager for Morgan Asset. He also was a Managing Director of Morgan Keegan. Kelsoe is a Chartered Financial Analyst and previously held Series 7 and 65 licenses.

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[1] Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

[2] Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

Kelsoe was associated with Morgan Keegan at all relevant times, and was a registered representative of the firm from August 1994 through November 2008.

4. Weller, 44 years of age, is a resident of Memphis, Tennessee. Weller has been employed by Morgan Keegan since 1992. During the relevant period, he was Morgan Keegan's Controller and head of its Fund Accounting Department. He holds Series 7, 27, and 66 licenses and is a CPA who was previously licensed in the State of Tennessee. That license is currently lapsed. Since at least January 1, 1993, Weller has been associated with the investment adviser arm of Morgan Keegan. Additionally, from at least December 1997 through the present, Weller has been a registered representative associated with the broker-dealer arm of Morgan Keegan.

B. OTHER RELEVANT ENTITIES

5. Helios Select Fund, Inc., formerly known as Morgan Keegan Select Fund, Inc. ("Select Fund"), incorporated in Maryland on October 27, 1998, has been an investment company registered with the Commission since its inception. In 2007, the Select Fund contained three open-end portfolios: the Select High Income portfolio, the Select Intermediate Bond portfolio, and the Select Short Term Bond portfolio.

6. Helios High Income Fund, Inc., formerly known as RMK High Income Fund, Inc., a closed-end fund incorporated in Maryland on April 16, 2003, has been an investment company registered with the Commission since its inception.

7. Helios Multi-Sector High Income Fund, Inc., formerly known as RMK Multi-Sector High Income Fund, Inc., a closed-end fund incorporated in Maryland on November 14, 2005 and has been an investment company registered with the Commission since its inception.

8. Helios Strategic Income Fund, Inc., formerly known as RMK Strategic Income Fund, Inc., a closed-end fund incorporated in Maryland on January 16, 2004 has been an investment company registered with the Commission since its inception.

9. Helios Advantage Income Fund, Inc., formerly known as RMK Advantage Income Fund, Inc., a closed-end fund incorporated September 7, 2004, has been an investment company registered with the Commission since its inception.

10. Morgan Asset, through Kelsoe, managed the Helios Select Fund, Inc., the Helios High Income Fund, Inc., the Helios Multi-Sector High Income Fund, Inc., the Helios Strategic Income Fund, Inc., and the Helios Advantage Income Fund, Inc. (collectively, the "Funds") from at least November 2004 through July 29, 2008.

C. THE FRAUDULENT SCHEME

Overview

11. During various periods between at least January 2007 and July 2007, the daily net asset value[3] ("NAV") of each of the Funds was materially inflated as a result of the fraudulent conduct of Respondents. Kelsoe, an employee of Morgan Asset and Morgan Keegan, was the portfolio manager for the Funds. Weller was an officer and treasurer of the Funds and signed and certified their periodic reports to the Commission.

12. Respondent Morgan Keegan, a registered broker-dealer and registered investment adviser, was the principal underwriter and exclusive distributor of the Funds' shares. Morgan Keegan was designated in each of the Funds' prospectuses as authorized to consummate transactions in the securities of the respective Fund. The Funds' Boards of Directors were responsible for pricing the Funds' securities in accordance with the Funds' valuation policies and procedures. Each Fund's Board of Directors delegated this pricing responsibility to Morgan Keegan, by contract. Morgan Keegan priced each portfolio's securities and calculated its daily NAV through its Fund Accounting Department ("Fund Accounting"). Weller, Morgan Keegan's Controller and Head of Fund Accounting, along with other Morgan Keegan personnel, staffed a "Valuation Committee" that purportedly oversaw Fund Accounting's processes and evaluated the prices assigned to securities. Morgan Keegan and Weller failed, despite multiple red flags, to adequately fulfill Morgan Keegan's responsibilities, as delegated to it by the Funds' Boards of Directors, to price the Funds' securities in accordance with their valuation policies and procedures regarding valuation. For example, Fund Accounting accepted unsubstantiated "price adjustments" submitted by Kelsoe that inaccurately inflated the price of certain securities, contrary to the Funds' policies and procedures. Fund Accounting failed to document justifications for such pricing adjustments.

13. The Funds' valuation policies and procedures required that dealer quotes be obtained for certain securities. Unbeknownst to Fund Accounting and the Funds' independent auditor ("Independent Auditor"), Kelsoe actively screened and manipulated the dealer quotes that Fund Accounting and the Independent Auditor obtained from at least one broker-dealer. Kelsoe also failed to advise Fund Accounting or the Funds' Boards of Directors when he received information indicating that the Funds' prices for certain securities should be reduced.

14. Each Fund held securities backed by subprime mortgages, and the market for such securities deteriorated in the first half of 2007. Kelsoe's actions fraudulently forestalled declines in the NAVs of the Funds that would have occurred as a result of the deteriorating market, absent his intervention. Morgan Keegan fraudulently published NAVs for the Funds without following procedures reasonably designed to determine that the NAVs were accurate.

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[3] The "net asset value" or "NAV" of an investment company is the company's total assets minus its total liabilities. An investment company calculates the NAV of a single share (or the "per share NAV") by dividing its NAV by the number of shares that are outstanding.

Acting Contrary to Disclosures

15. Each Fund held, in varying amounts, securities backed by subprime mortgages. Many of these securities lacked readily available market quotations and, as a result, were to be internally priced by the Funds' Boards of Directors, using "fair value" methods. Under Section 2(a)(41)(B) of the Investment Company Act, the Funds must use market values for portfolio securities with readily available market quotations and determine fair value for all other portfolio assets. The fair value of securities for which market quotations are not readily available is the price the Funds would reasonably expect to receive on a current sale of the security.[4]

16. The Funds adopted valuation procedures for pricing the Funds' portfolio securities and, by contract, assigned the task of following those procedures to Morgan Keegan. The Funds' valuation procedures for fair-valued securities mandated that such securities should be valued in "good faith" by the Valuation Committee, considering a series of general and specific factors including "fundamental analytical data relating to the investment," "an evaluation of the forces which influence the market in which the securities are purchased or sold" and "events affecting the security." The procedures, as set forth in the prospectus, required the Valuation Committee to maintain a written report "documenting the manner in which the fair value of a security was determined and the accuracy of the valuation made based on the next reliable public price quotation for that security." The procedures also required that prices assigned to securities be periodically validated through, among other means, broker-dealer quotes. The procedures specified that prices obtained from a broker-dealer could only be overridden when there was "a reasonable basis to believe that the price provided [did] not accurately reflect the fair value of the portfolio security." Whenever a price was overridden, the procedures mandated the basis for overriding the price to be "documented and provided to the Valuation Committee for its review."

17. In filings with the Commission, the Funds stated that the fair value of securities would be determined by Morgan Asset's Valuation Committee using procedures adopted by the Funds. In fact, the responsibility was delegated to Morgan Keegan, which primarily staffed the Valuation Committee. Morgan Keegan and the Valuation Committee failed to comply with the Funds' procedures in several ways. Among other things: (1) the Valuation Committee left pricing decisions to lower level employees in Fund Accounting who did not have the training or qualifications to make fair value pricing determinations; (ii) Fund Accounting personnel relied on Kelsoe's "price adjustments" to determine the prices assigned to portfolio assets, without obtaining any basis for or documentation supporting the price adjustments or applying the factors set forth in the procedures; (iii) Fund Accounting personnel gave Kelsoe excessive discretion in validating the prices of portfolio securities by allowing him to determine which dealer quotes to use and which to ignore, without obtaining documentation to support his adjustments; and (iv) the Valuation

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[4] See AICPA Audit and Accounting Guide - Investment Companies (Sect. 2.35-2.39), which incorporates Accounting Series Release No. 118 ("ASR 118"). The Commission has provided interpretative guidance related to financial reporting in the Accounting Series Releases, which is included in the Codification of Financial Reporting Policies. Thus, conformity with the ASR 118 is required by Commission rules and complies with GAAP. See also Articles 1-01(a) and 6.03 of Regulation S-X.

Committee and Fund Accounting did not ensure that the fair value prices assigned to many of the portfolio securities were periodically re-evaluated, allowing them to be carried at stale values for many months at a time.

18. Morgan Asset adopted its own procedures to determine the actual fair value to assign to portfolio securities and to "validate" those values "periodically." Among other things, those procedures provided that "[q]uarterly reports listing all securities held by the Funds that were fair valued during the quarter under review, along with explanatory notes for the fair values assigned to the securities, shall be presented to the Board for its review." Morgan Asset failed to fully implement this provision of its pricing policy.

19. Between at least January 2007 and July 2007, Kelsoe had his assistant send approximately 262 "price adjustments" to Fund Accounting. These adjustments were contained in approximately 40 emails sent by the assistant to a staff accountant in Fund Accounting who calculated the Funds' NAVs. The adjustments were communications by Kelsoe to Fund Accounting concerning the price of specific portfolio securities. In many instances, these adjustments were arbitrary and did not reflect fair value.

20. Kelsoe's price adjustments were routinely entered upon receipt by the staff accountant into a spreadsheet used to calculate the NAVs of the Funds.

21. Kelsoe knew his prices were being used to compute the Funds' NAVs. Among other things, he received bi-weekly reports on the Funds' holdings and their prices which, by comparison with previous reports, indicated that his price adjustments were being used and were directly affecting the NAVs.

22. Fund Accounting did not request, and Kelsoe did not supply, supporting documentation for his price adjustments. Fund Accounting and the Funds did not record which securities had been assigned prices by Kelsoe.

23. As part of the Funds' valuation procedures, Fund Accounting sometimes requested third party broker-dealer quotes as a means to validate the prices it had assigned to the Funds' securities. The Funds' Independent Auditor used similar requests for third party broker-dealer quotes as part of its annual year-end audits of the Funds. Fund Accounting or the Independent Auditor would periodically send such requests to broker-dealers asking them to provide quotations for various portfolio securities.

24. When month-end dealer quotes were received by Fund Accounting, an employee of Fund Accounting performed a cursory review to estimate whether they contained any securities prices that varied from current portfolio prices by more than five percent. If so, then Kelsoe determined whether the current price should be maintained or a new price—which may or may not have been the price given by the broker-dealer—should be assigned to the security. Thus, Fund Accounting routinely allowed Kelsoe to determine whether dealer quotes were used or ignored.

25. Fund Accounting did not record which dealer quotes had been overridden at Kelsoe's instruction.

26. Weller was the head of Fund Accounting and a member of the Valuation Committee. He knew, or was highly reckless in not knowing, of the deficiencies in the implementation of valuation procedures set forth above, and did nothing to remedy them or otherwise to make sure fair-valued securities were accurately priced and the Funds' NAVs were accurately calculated. Among other things, Weller knew that: (i) the Valuation Committee did not supervise Fund Accounting's application of the valuation factors; (ii) Kelsoe was supplying fair value price adjustments for specific securities to Fund Accounting; (iii) the members of the Valuation Committee did not know which securities Kelsoe supplied fair values for or what those fair values were, and did not receive supporting documentation for those values; and (iv) the only pricing test regularly applied by the Valuation Committee was the "look back" test, which compared the sales price of any security sold by a Fund to the valuation of that security used in the NAV calculation for the five business days preceding the sale. The test only covered securities after they were sold; thus, at any given time, the Valuation Committee never knew how many securities' prices could ultimately be validated by it. Weller nevertheless signed the Funds' annual and semi-annual financial reports on Forms N-CSR, filed with the Commission, including certifications pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002.

27. Morgan Keegan, acting through Weller and Fund Accounting, failed to employ reasonable procedures to price the Funds' portfolio securities and, as a result of that failure, did not calculate accurate NAVs for the Funds. Despite these failures, Morgan Keegan recklessly published daily NAVs of the Funds which it could not know were accurate and, as distributor of the Funds' shares, sold shares to investors based on those NAVs.

Kelsoe's Fraudulent Manipulation of the Funds' Securities Prices

28. Between at least January 2007 and July 2007, Kelsoe manipulated the dealer quotes obtained from at least one broker-dealer ("the Submitting Firm"). At about the time Fund Accounting or the Independent Auditor sent requests for dealer quotes to the Submitting Firm, Kelsoe would confer by e-mail or phone with his contact there (the "Salesman") regarding the quotes. Among other times, Kelsoe had such conversations concerning the month-end quotes for December 31, 2006, February 28, 2007, and March 31, 2007.

29. In some instances, even after causing the Submitting Firm to increase its quotes, Kelsoe subsequently provided price adjustments to Fund Accounting that were higher than even the Submitting Firm's increased quotes. These adjustments were not consistent with the Funds' procedures. Kelsoe and the Salesman also discussed, and the Submitting Firm frequently provided, interim quotes that were lower than the prices at which the Funds were valuing certain bonds, but higher than the initial quotes that the Submitting Firm had intended to provide. The interim quotes were accommodations to Kelsoe to enable him to avoid marking down the securities to the fair value in one adjustment. Kelsoe knew that the interim quotes did not reflect fair value, that the Submitting Firm would provide lower quotes in response to future pricing validation requests, and that he would be required to mark down the securities over time, but he did not

disclose that information to Fund Accounting, the Funds' Boards of Directors or the Independent Auditor.

30. For example, on April 25, 2007, the Salesman and Kelsoe spoke by phone about dealer quotes that would be submitted in connection with the March 31, 2007 audit by the Independent Auditor. The Salesman then told Kelsoe that the Submitting Firm's trading desk had priced down many of the bonds in the Funds. Kelsoe asked the Salesman not to provide low dealer quotes that reflected actual bid prices.

31. As a result of the conversation, on April 30, 2007, the Submitting Firm provided quotes to the Independent Auditor reflecting interim prices for certain bonds, which were higher than the quotes the Submitting Firm originally intended to supply, but lower than the Funds' then current values. For example, the Submitting Firm priced down one bond ("the Long Beach bond") from the previous confirmation price of $81 to $65 as an "interim" step. This interim reduction to $65 was approximately half of the mark-down to $50 that the Submitting Firm's trading desk initially had told the Salesman to communicate to the Independent Auditor for the Long Beach bond. On April 26, 2007, Kelsoe sent a price adjustment to Fund Accounting marking down the price of the Long Beach bond from $78, the price at which the Funds' were valuing the bond at that time, to $72. Fund Accounting promptly entered the $72 price, which was substantially higher than fair value, into the spreadsheet used to calculate the Funds' NAV.

32. The Submitting Firm also refrained from submitting certain quotes to Fund Accounting, where the quotes would have been lower than the current valuations being used by the Funds, as the result of conversations between Kelsoe and the Salesman.

33. Kelsoe did not disclose to Fund Accounting or the Funds' Boards that he had received quotes from the Submitting Firm which were lower than the current valuations recorded by the Funds, and that the Submitting Firm had refrained from submitting quotes to Fund Accounting or had submitted quotes at higher prices than it had originally planned. Kelsoe also did not disclose that he caused the Submitting Firm to alter or withhold quotes.

The Knollwood Bonds

34. In July 2006, Kelsoe purchased from the Submitting Firm, for one or more of the Funds, a Knollwood Collateralized Debt Obligation ("Knollwood bond"), with the guarantee that the Submitting Firm would make a "locked market" and buy it back in six months at the same price, less two coupon payments that the Funds were to receive in the interim. In January 2007, Kelsoe agreed with the Submitting Firm to continue holding the Knollwood bond. On March 30, 2007, the Independent Auditor requested quotes from the Submitting Firm on a number of the Funds' bonds, including the Knollwood bond, for its year-end audit. On April 30, 2007, the Submitting Firm returned the requested quotes to both the Independent Auditor and Kelsoe; however, it did not provide a quote for the Knollwood bond. Consequently, the Knollwood bond continued to be maintained at $92, a price higher than fair value, in the NAV of the relevant Funds.

35. On May 16, 2007, when Morgan Keegan was still valuing the Knollwood bond at $92, Kelsoe and the Salesman discussed the fact that Morgan Keegan would be requesting another quote for it from the Submitting Firm. Kelsoe told the Salesman not to provide a quote to Morgan Keegan unless it was $87.50 or higher. On May 18, 2007, the Salesman advised Kelsoe that he had obtained a $65 quote from the Submitting Firm's trading desk for the Knollwood bond. On June 5, 2007, Kelsoe communicated his unhappiness about the $65 quote to the Submitting Firm, and threatened to stop doing business with it. On June 7, Kelsoe provided a price adjustment for the Knollwood bond at $88, which was not consistent with fair value. On June 22, as a result of Kelsoe's comments, the Submitting firm provided a list of requested quotes to Morgan Keegan, but left the space for the Knollwood quote blank. As a result, the Funds continued to price the Knollwood bond at $88, substantially higher than fair value. Kelsoe did not advise Fund Accounting, the Independent Auditor or the Funds' Boards of Directors that the Submitting Firm had provided to Kelsoe a quote lower than the price at which the Funds were holding the bonds, or that he had prevailed upon the Submitting Firm not to supply the quotes to Fund Accounting or the Independent Auditor.

The Terwin Bonds

36. In addition to engaging in affirmative misconduct to inflate the NAVs of the Funds, Kelsoe also failed to inform Fund Accounting in March 2007—in breach of his fiduciary duty as portfolio manager to the Funds—that he had become aware that seven Terwin Mortgage Trust bonds ("Terwin bonds") held by the Funds had declined substantially in value.

37. On or about March 15, 2007, Kelsoe placed a call to a broker-dealer that was the issuer, distributor, and market maker for the Terwin bonds, to discuss a swap transaction. In discussing the terms of the swap, Kelsoe learned that the values of the Terwin bonds had decreased substantially and that the Submitting Firm would be lowering its dealer quotes in response to a request that would shortly be sent out by Fund Accounting in connection with the Funds' audit, for prices as of March 31, 2007.

38. Despite receiving this news in mid-March 2007, Kelsoe's first communication with Fund Accounting concerning reducing the price of certain Terwin bonds came in the form of a price adjustment submitted to Fund Accounting by Kelsoe's assistant via e-mail on Thursday, March 29, 2007. Over the next day and weekend, Kelsoe informed Fund Accounting of the news he had heard two weeks earlier. On April 2, 2007, before the market opened, Fund Accounting lowered the value of all seven of the Terwin bonds effective as of March 31, 2007.

39. As the result of Kelsoe's delay, the bonds were materially overvalued by the Funds during the last two weeks of March 2007.

Misrepresentations to Investors and the Funds' Boards of Directors

40. Kelsoe also made fraudulent misrepresentations and omissions of material fact directly to the Funds' investors concerning the Funds' performance. Specifically, in each of the Funds annual and semi-annual reports filed with the Commission on Forms N-CSR during the

relevant period (including, among others, the Annual Report for the Morgan Keegan Select Fund, Inc. for the year-ended June 30, 2007 filed with the Commission on October 4, 2007), Kelsoe included a signed letter to investors reporting on the Funds' performance "based on net asset value." Given his actions to manipulate the Funds' NAVs, Kelsoe knew the performance he reported was materially misstated. Kelsoe and, through him, Morgan Asset made untrue statements of material fact concerning the Funds' performance in the Funds' annual and semi-annual reports filed with the Commission on Forms N-CSR. Morgan Asset, through Kelsoe, also defrauded the Funds by providing a quarterly valuation packet reflecting inflated prices for certain securities to the Funds' Boards, failing to disclose to the Funds' Boards information indicating that the Funds' NAVs were inflated, and that Kelsoe was actively screening and manipulating dealer quotes and providing Fund Accounting with unsubstantiated price adjustments. In addition, the prospectuses described Morgan Asset as responsible for fair valuation of the Funds' portfolios.

D. VIOLATIONS

41. As a result of the conduct described above, Respondents Morgan Asset, Kelsoe, Morgan Keegan and Weller willfully violated Section 17(a) of the Securities Act; Section 10(b) of the Exchange Act and Rule 10b-5, thereunder; which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

42. Alternatively, Morgan Asset and Morgan Keegan willfully violated Section 17(a) of the Securities Act; Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Respondents Kelsoe and Weller willfully aided and abetted and caused violations of Section 10(b) of the Exchange Act and Rule 10b-5, thereunder.

43. As a result of the conduct described above, Respondent Morgan Asset willfully violated, and Respondent Kelsoe willfully aided and abetted and caused violations of, Section 206(4) and of the Advisers Act and Rule 206(4)-7 thereunder; which prohibit fraudulent, deceptive or manipulative practices or courses of business by an investment adviser, and requires investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder by their supervised persons, respectively.

44 As a result of the conduct described above, Respondent Morgan Asset willfully violated, and Respondents Kelsoe and Morgan Keegan willfully aided and abetted and caused violations of, Sections 206(1) and 206(2) of the Advisers Act; which prohibit fraudulent conduct by an investment adviser.

45. As a result of the conduct described above, Respondents Morgan Asset, Kelsoe and Weller willfully violated, and Respondent Morgan Keegan willfully aided and abetted and caused violations of, Section 34(b) of the Investment Company Act, which prohibits untrue statements of material fact or omissions to state facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in any registration statement, report or other document filed pursuant to the Investment Company Act or the keeping of which is required pursuant to Section 31(a) of the Investment Company Act.

46. As a result of the conduct described above, Respondent Morgan Keegan willfully violated, and Respondents Morgan Asset, Kelsoe and Weller willfully aided and abetted and caused violations of, Rule 22c-1 promulgated under the Investment Company Act, which makes it unlawful for registered investment companies issuing redeemable securities, persons designated in such issuer's prospectus as authorized to consummate transactions in such securities, and principal underwriters of or dealers in such securities, to sell, redeem, or repurchase such securities except at prices based on their current net asset values.

47. As a result of the conduct described above, Respondents Morgan Asset, Morgan Keegan, Kelsoe, and Weller willfully aided and abetted and caused violations of Rule 38a-1 promulgated under the Investment Company Act, which requires that a registered investment company adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws, including policies and procedures that provide for oversight of compliance by the investment company's investment adviser.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent Morgan Keegan pursuant to Section 15(b)(4) of the Exchange Act and against Morgan Asset, Kelsoe and Weller pursuant to Section 15(b)(6) of the Exchange Act, including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents Morgan Keegan and Morgan Asset pursuant to Section 203(e) of the Advisers Act, and against Respondents Kelsoe and Weller pursuant to Section 203(f) of the Advisers Act, including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents Morgan Keegan, Morgan Asset, Kelsoe and Weller pursuant to Section 9(b) of the Investment Company Act, including, but not limited to, civil penalties pursuant to Section 9(d) of the Investment Company Act;

E. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act, Respondents Morgan Asset, Kelsoe, Morgan Keegan and Weller should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

F. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act, Respondents Morgan Asset, Morgan Keegan, and Kelsoe should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act, Rule 206(4)-7 thereunder, and Section 34(b) of the Investment Company Act;

G. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act, Respondents Morgan Asset and Kelsoe should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 206(4) of the Advisers Act and Rule 206(4)-7 thereunder;

H. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act, Respondents Morgan Asset, Morgan Keegan, Kelsoe and Weller should be ordered to cease and desist from committing or causing violations of and any future violations of Rule 22c-1, promulgated under the Investment Company Act;

I. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act, Respondents Morgan Asset, Morgan Keegan, Kelsoe and Weller should be ordered to cease and desist from committing or causing violations of and any future violations of Rule 38a-1, promulgated under the Investment Company Act;

J. Whether, pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, it is appropriate to censure or deny Respondent Weller the privilege of appearing or practicing before the Commission; and

K. Whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Section 21C(e) of the Exchange Act, Section 203(i) of the Advisers Act and Section 9(e) of the Investment Company Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61867 / April 7, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 3011 / April 7, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13849

In the Matter of

Nicholas Vulpis

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Nicholas Vulpis ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b)

of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Vulpis, age 38, is a resident of Manhasset, New York. Between March 2003 and December 2005, Vulpis worked as the only trader for JLF Asset Management, LLC ("JLF"), an unregistered investment adviser to three hedge funds. In his capacity at JLF, Vulpis possessed and exercised the authority to purchase and sell securities for JLF's fund clients and, generally, to select broker-dealers to execute those trades. During that period, Vulpis worked from office space in Manhattan, New York.

2. On March 26, 2010, a final judgment was entered by consent against Vulpis, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Brian Travis, et al., Civil Action Number 09-CV-2288 (PKC), in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged that, while employed by JLF, Vulpis directed that hedge fund trades of securities, and the associated commissions, be routed to certain broker-dealers in exchange for the payment of personal expenses, including car service for Vulpis' daily commute. Vulpis concealed the bribery scheme, and the material conflicts of interest that it created, from the investment adviser's hedge fund clients, which operated as a fraud and deceit on investors.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Vulpis' Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Vulpis be, and hereby is barred from association with any broker, dealer, or investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served

as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3010 / April 7, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13848

In the Matter of **Brian Travis** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Brian Travis ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Travis, age 33, is a resident of San Diego, California. Between at least March 2003 and October 2005, Travis worked as a back-office clerk at JLF Asset Management, LLC ("JLF"), an unregistered investment adviser to three hedge funds. In his capacity as back-office clerk, Travis was responsible for clearing all of JLF's trades on behalf of its fund clients through its prime broker. Travis also had the primary responsibility for both tracking the JLF fund clients' trading positions, and tracking the amount of commissions paid to the broker-dealers executing JLF's trades. Travis' responsibilities additionally included organizing the foregoing information about portfolio holdings and trading activities, which was used for dissemination to JLF's fund clients.

2. On March 26, 2010, a final judgment was entered by consent against Travis, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Brian Travis, et al., Civil Action Number 09-CV-2288 (PKC), in the United States District Court for the Southern District of New York.

3. The Commission's complaint alleged that, while employed by JLF, Travis directed that hedge fund trades of securities, and the associated commissions, be routed to certain broker-dealers in exchange for the payment of personal expenses. These personal expenses included rent and travel costs for Travis, his relatives, and his pet. Travis concealed the bribery scheme, and the material conflicts of interest that it created, from the investment adviser's hedge fund clients, which operated as a fraud and deceit on investors.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Travis' Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Travis be, and hereby is barred from association with any investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially

waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 229, 230, 232, 239, 240, 243 and 249

Release Nos. 33-9117; 34-61858; File No. S7-08-10

RIN 3235-AK37

ASSET-BACKED SECURITIES

AGENCY: Securities and Exchange Commission

ACTION: Proposed rule.

SUMMARY: We are proposing significant revisions to Regulation AB and other rules regarding the offering process, disclosure and reporting for asset-backed securities. Our proposals would revise filing deadlines for ABS offerings to provide investors with more time to consider transaction-specific information, including information about the pool assets. Our proposals also would repeal the current credit ratings references in shelf eligibility criteria for asset-backed issuers and establish new shelf eligibility criteria that would include, among other things, a requirement that the sponsor retain a portion of each tranche of the securities that are sold and a requirement that the issuer undertake to file Exchange Act reports on an ongoing basis so long as its public securities are outstanding. We also are proposing 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. The asset-level information would be provided according to proposed standards and in a tagged data format using eXtensible Markup Language (XML). In addition, we are proposing to require, along with the prospectus filing, the filing of a computer program of the contractual cash flow provisions expressed as downloadable source code in Python, a

commonly used open source interpretive programming language. We are proposing new information requirements for the safe harbors for exempt offerings and resales of asset-backed securities and are also proposing a number of other revisions to our rules applicable to asset-backed securities.

DATES: Comments should be received on or before [insert date 90 days after publication in the Federal Register].

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: Katherine Hsu, Senior Special Counsel in the Office of Rulemaking, at (202) 551-3430, and Rolaine Bancroft, Special Counsel in the Office of Structured Finance, Transportation and Leisure, at (202) 551-3313, 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 Rule 30-1[1] of the Commission's Rules of General Organization,[2] Items 512[3] and 601[4] of Regulation S-K;[5] Items 1100, 1101, 1102, 1103, 1104, 1106, 1110, 1111, 1121, and 1122[6] of Regulation AB[7] (a subpart of Regulation S-K); Rules 139a, 144, 144A, 167, 190, 401, 405, 415, 424, 430B, 430C, 433, 456, 457, 502 and 503[8] and Forms S-1, S-3 and D[9] under the Securities Act of 1933 ("Securities Act");[10] Rules 11, 101, 201, 202, 305, and

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1 17 CFR 200.30-1.

2 17 CFR 200.1 et al.

3 17 CFR 229.512.

4 17 CFR 229.601.

5 17 CFR 229.10 et al.

6 17 CFR 229.1100, 17 CFR 229.1101, 17 CFR 229.1102, 17 CFR 229.1103, 17 CFR 229.1104, 17 CFR 229.1106, 17 CFR 229.1110, 17 CFR 229.1111, 17 CFR 229.1121 and 17 CFR 229.1122.

7 17 CFR 229.1100 through 17 CFR 229.1123.

8 17 CFR 230.139a, 17 CFR 230.144, 17 CFR 230.144A, 17 CFR 230.167, 17 CFR 230.190, 17 CFR 230.401, 17 CFR 405; 17 CFR 230.415, 17 CFR 230.424, 17 CFR 230.430B, 17 CFR 230.430C, 17 CFR 230.433, 17 CFR 230.456. 17 CFR 230.457, 17 CFR 230.502, and 17 CFR 230.503.

9 17 CFR 239.11, 17 CFR 239.13 and 17 CFR 239.500.

10 15 U.S.C. 77a et seq.

312[11] of Regulation S-T,[12] and Rules 15c2-8 and 15d-22[13] and Forms 8-K, 10-D, and 10-K[14] under the Securities Exchange Act of 1934 ("Exchange Act")[15] and Rule 103[16] of Regulation FD.[17] We also are proposing to add Items 1111A and 1121A[18] to Regulation AB and Rule 192,[19] Rule 430D,[20] Form SF-1,[21] Form SF-3[22] and Form 144A-SF[23] under the Securities Act.

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11 17 CFR 232.11, 17 CFR 232.101, 17 CFR 232.201, 17 CFR 232.202, 17 CFR 232.305 and 17 CFR 232.312.

12 17 CFR 232.10 et seq.

13 17 CFR 240.15c2-8 and 17 CFR 240.15d-22.

14 17 CFR 249.308, 17 CFR 249.310, and 17 CFR 249.312.

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

16 17 CFR 243.103.

17 17 CFR 243.100 et. seq.

18 17 CFR 229.1111A and 17.CFR 229.1121A.

19 17 CFR 230.192.

20 17 CFR 230.430D.

21 17 CFR 239.44.

22 17 CFR 239.45.

23 17 CFR 239.144A.

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I. Executive Summary

A. Background

The recent financial crisis highlighted that investors and other participants in the securitization market did not have the necessary tools to be able to fully understand the risk underlying those securities and did not value those securities properly or accurately. The severity of this lack of understanding and the extent to which it pervaded the market and impacted the U.S. and worldwide economy calls into question the efficacy of several aspects of our regulation of asset-backed securities. In light of the problems exposed by the financial crisis, we are proposing significant revisions to our rules governing offers, sales and reporting with respect to asset-backed securities. These proposals are designed to improve investor protection and promote more efficient asset-backed markets.

Securitization generally is a financing technique in which financial assets, in many cases illiquid, are pooled and converted into instruments that are offered and sold in the capital markets as securities. This financing technique makes it easier for lenders to exchange payment streams coming from the loans for cash so that they can make additional loans or credit available to a wide range of borrowers and companies seeking financing. Some of the types of assets that are financed today through securitization include residential and commercial mortgages, agricultural equipment leases, automobile loans and leases, student loans and credit card receivables. Throughout this release, we refer to the securities sold through such vehicles as asset-backed securities, ABS, or structured finance products.

At its inception, securitization primarily served as a vehicle for mortgage financing. Since then, asset-backed securities have played a significant role in both the

U.S. and global economy. At the end of 2007, there were more than $7 trillion of both agency and non-agency[24] mortgage-backed securities and nearly $2.5 trillion of asset-backed securities outstanding.[25] Securitization can provide liquidity to nearly all major sectors of the economy including the residential and commercial real estate industry, the automobile industry, the consumer credit industry, the leasing industry, and the commercial lending and credit markets.[26]

Many of the problems giving rise to the financial crisis involved structured finance products, including mortgage-backed securities.[27] Many of these mortgage-backed securities were used to collateralize other debt obligations such as collateralized debt obligations and collateralized loan obligations (CDOs or CLOs), types of asset-backed securities that are sold in private placements.[28] As the default rate for subprime and other mortgages soared, such securities, including those with high credit ratings, lost

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[24] Agency securities are securities issued by the government-sponsored enterprises, Ginnie Mae, Fannie Mae or Freddie Mac.

[25] See American Securitization Forum, Study on the Impact of Securitization on Consumers, Investors, Financial Institutions and the Capital Markets (June 17, 2009), at 16 (citing to statistics on outstanding residential mortgage-backed securities and outstanding U.S. ABS collected by the Securities Industry and Financial Markets Association), available at http://www.americansecuritization.com/uploadedFiles/ASF_NERA_Report.pdf.

[26] See testimony of Micah Green, President of the Bond Market Association, Before the Senate Basel Committee on Banking Supervision, A Review of the New Basel Capital Accord, (June 13, 2003), available at http://banking.senate.gov/.

[27] A report by the U.S. Government Accountability Office (GAO) notes that 75% of subprime loans were packaged into securities in 2006. See U.S. Government Accountability Office, Financial Regulation: A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System (Jan. 2009) at 26.

[28] CDOs are typically sold as a private placement to an initial purchaser followed by resales of the securities to "qualified institutional buyers" pursuant to Rule 144A. Pools comprising the CDOs may consist of various types of underlying assets including subprime mortgage-backed securities and derivatives, such as credit default swaps referencing subprime mortgage-backed securities, and even tranches of other CDOs. CLOs are similar to CDOs except that they hold corporate loans, loan participations or credit default swaps tied to corporate liabilities.

their value.[29] CDOs were noted, in particular, to have contributed to the collapse in liquidity during the financial crisis.[30] As the crisis unfolded, investors increasingly became unwilling to purchase these securities, and today, this sentiment remains, as new issuances of asset-backed securities, except for government-sponsored issuances, have recently dramatically decreased.[31] The absence of this financing option has negatively impacted the availability of credit.[32]

The financial crisis highlighted a number of concerns with the operation of our rules in the securitization market. Certain regulations for asset-backed securities rely on the ratings for those securities provided by the ratings agencies, and much has been written about the failures of those ratings accurately to measure and describe the risks associated with certain of those products that were realized during the financial crisis.[33] In addition, investors have expressed concern regarding a lack of time to analyze

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29 See, e.g., The President's Working Group on Financial Markets, Policy Statement on Financial Market Developments, March 2008 (the "PWG March 2008 Report") at 9 (discussing subprime mortgages and the write-down of AAA-rated and super-senior tranches of CDOs as contributing factors to the financial crisis).

30 See, e.g., The Report of the Counterparty Risk Management Policy Group III ("CRMPG III"), Containing Systemic Risk: The Road to Reform, August 6, 2008 (the "2008 CRMPG III Report"), at 53 (noting that lack of comprehension of CDO and related instruments resulted in the display of price depreciation and volatility far in excess of levels previously associated with comparably rated securities, causing both a collapse of confidence in a very broad range of structured product ratings and a collapse in liquidity for such products). Another type of asset-backed security that is privately offered is asset-backed commercial paper (ABCP), which was increasingly collateralized by CDOs and RMBS from 2004 through 2007. The ABCP market severely contracted during the crisis. See PWG March 2008 Report at 8.

31 See, e.g., David Adler, "A Flat Dow for 10 Years? Why it Could Happen," Barrons (Dec. 28, 2009) (noting that new securitization issuances, except those sponsored by the government, have largely come to a halt). In 2008 through the end of September, annualized issuance volumes for overall global securitized and structured credit issuance were approximately $2.4 trillion less than in 2006. See Global Joint Initiative to Restore Confidence in the Securitization Market, Restoring Confidence in the Securitization Markets (Dec. 3, 2008) at 6.

32 Id.

33 See, e.g., The PWG March 2008 Report at 2, 8 (noting that the performance of credit rating agencies, particularly their ratings of mortgage-backed securities and other asset-backed securities, contributed significantly to the financial crisis).

securitization transactions and make investment decisions.[34] While the Commission historically has not built minimum time periods into its registration process to deliberately slow down the market,[35] and instead has believed investors can insist on adequate time to analyze securities (and refuse to invest if not provided sufficient time), we have been told that this is not generally possible in this market, particularly in an active market.[36] In addition, market participants have expressed a desire for expanded disclosure relating to the assets underlying securitizations.[37] Investors have complained that the mechanisms for enforcing the representations and warranties contained in securitization transaction documents are weak, and thus are not confident that even strong representations and warranties provide them with adequate protection. In the private market, we believe that, in many cases, investors did not have the information necessary to understand and properly analyze structured products, such as CDOs, that were sold in transactions in reliance on exemptions from registration.[38] As a result of these and other factors, the financial crisis resulted in an absence of confidence in much of the securitization market.

We are proposing a number of changes to the offering process, disclosure, and reporting for asset-backed securities, which are designed to enhance investor protection

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34 See discussion in Section II.B.1 below.

35 See, e.g., Section IV.A. of Securities Offering Reform, Release No. 33-8591 (Jul. 19, 2005) [70 FR 44722] (release adopting significant revisions to registration, communications and offering process under the Securities Act)(the "Offering Reform Release") (stating that Rule 159 would not result in a speed bump or otherwise slow down the offering process).

36 See discussion in Section II.B.1 below.

37 See also discussion in Section III.A.1 below.

38 The assumption that sophisticated investors are able to fend for themselves in a private asset-backed securities transaction has also been questioned. Cf. Financial Services Authority, The Turner Review: A Regulatory Response to the Global Banking Crisis, March 2009 (the "Turner Review"), at 39 (finding that "the crisis also raises important questions about the intellectual assumptions on which previous regulatory approaches have largely been built").

in this market.[39] The proposals are intended to provide investors with timely and sufficient information, including information in and about the private market for asset-backed securities, reduce the likelihood of undue reliance on credit ratings, and help restore investor confidence in the representations and warranties regarding the assets. Although these revisions are comprehensive and therefore would impose new burdens, if adopted, we believe they would protect investors and promote efficient capital formation. The proposals cover the following areas:

- revisions to the shelf offering process and criteria and prospectus delivery requirements;
- Securities Act and Exchange Act disclosure requirements, including new requirements to disclose standardized asset-level information or grouped asset data and a computer program that gives effect to the cash flow provisions of the transaction agreement (often referred to as the "waterfall"); and
- changes to the Securities Act safe harbors for exempt offerings and exempt resales for asset-backed securities.

In addition, we are proposing clarifying, technical and other changes to the current rules. The proposals are designed to address issues that contributed to or arose from the financial crisis. These proposals are also designed to be forward looking; some of these proposals are designed to improve areas that have the potential to raise issues similar to the ones highlighted in the financial crisis.

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[39] Our proposals, if adopted, would not affect the applicability of the Investment Company Act (15 U.S.C. 80a-1 et seq.) to ABS issuers, including the availability of exclusions from such Act. See, e.g., Section 3(c)(1) or Section 3(c)(7) (15 U.S.C. 80a-3(c)(1) and 80a-3(c)(7)) (for private transactions); Rule 3a-7 [17 CFR 270.3a-7] (for public and private transactions). Our proposals are not intended to affect the application of the Investment Company Act, including the availability of these exclusions, to ABS issuers.

Our proposals are generally consistent with global initiatives that seek to improve practices in the securitization market.[40] These initiatives include calls by international organizations to require greater disclosure by issuers of securitized products, including initial and ongoing information about underlying asset pool performance.[41] Our focus on both the public and private markets for securitized products is supported by recommendations from international regulators about the type of disclosure that should be provided to investors in the private markets.[42]

B. Securities Act 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 further staff clearance. 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,[43] the securities are rated investment grade by a nationally recognized statistical rating organization (NRSRO). As described in detail in Section II.B.3. below, we are proposing to repeal that criterion and establish other criteria for shelf eligibility. We are also proposing changes to the Securities Act rules and forms for issuances of asset-backed securities.

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40 See Improving Financial Regulation – Report of the Financial Stability Board to G20 Leaders, (Sept. 25, 2009) ("The official sector must provide the framework that ensures discipline in the securitisation market as it revives.").

41 Id.

42 International Organization of Securities Commissions, Final Report of the Task Force on the Subprime Crisis (May 2008)(discussing the types of disclosure that, following the model offered by the types of disclosure mandated in the public markets, private investors may want issuers to provide).

43 See discussion of other criteria in fn. 70 below.

We have undertaken a Commission-wide effort to consider whether references to NRSRO credit ratings in all the Commission's regulations are necessary or appropriate and whether they could cause investors to unduly rely on ratings.[44] In this release, we are proposing to eliminate the current means of establishing shelf eligibility for an ABS transaction based on the credit ratings of the securities to be issued.[45] Instead, we are proposing to require for shelf eligibility the following:

- 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[46] that the 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 due and payable on the securities as described in the prospectus;

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[44] See References to Ratings of Nationally Recognized Statistical Rating Organizations, Exchange Act Release No. 58070 (July 1, 2008) [73 FR 40088] (proposing amendments to rules and forms under the Securities Exchange Act); References to Ratings of Nationally Recognized Statistical Ratings Organizations, Investment Company Act Release No. 28327 (July 1, 2008) [73 FR 40124] (proposing amendments to rules under the Investment Company Act and the Investment Advisers Act); Security Ratings, Securities Act Release No. 8940 (July 1, 2008) [73 FR 40106] (proposing amendments to rules and forms under the Securities Act and the Securities Exchange Act) ("2008 Proposing Release").

[45] As part of the Commission-wide effort to consider whether references to NRSRO credit ratings are necessary, we proposed to replace the ratings requirement in the shelf eligibility criteria in the 2008 Proposing Release. See also Section II.A. below. We reopened the comment period in October 2009. References to Ratings of Nationally Statistical Rating Organizations, Release No. 33-9069 (Oct. 5, 2009) [74 FR 52374]. After considering comments, we are withdrawing this part of the proposals in the 2008 Proposing Release, and we are proposing different ABS shelf eligibility requirements to replace the investment grade ratings requirement.

[46] We use the term "depositor" to mean the depositor who receives or purchases and transfers or sells the pool assets to the issuing entity. For ABS transactions where there is not an intermediate transfer of the assets from the sponsor to the issuing entity, the term depositor refers to the sponsor. For ABS transactions where the person transferring or selling the pool assets is itself a trust, the depositor of the issuing entity is the depositor of that trust. See Item 1101(e) of Regulation AB.

- Retention by the sponsor of a specified amount of each tranche of the securitization,[47] 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.

We also are proposing to replace Forms S-1 and S-3 with new forms for registered ABS offerings -- proposed Forms SF-1 and SF-3 -- and to revise the shelf offering structure for those securities. Form SF-3 would be the form used for ABS shelf offerings.

Given many ABS investors' stated desire for more time to consider the transaction and for more detailed information regarding the pool assets,[48] we are proposing to revise the filing deadlines in shelf offerings to provide investors with additional time to analyze transaction-specific information prior to making an investment

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[47] 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.

[48] See discussion in Section III.A.1 below regarding our proposals relating to asset-level information.

decision. These changes are designed to promote independent analysis of ABS by investors rather than reliance on credit ratings. 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.[49] Under the proposal, issuers would use one prospectus for each transaction and the current practice of using core or base prospectuses plus supplements would be eliminated for ABS.

C. Disclosure

In 2004, we adopted a new set of rules prescribing the disclosure requirements for asset-backed issuers.[50] Many disclosure requirements of Regulation AB are principles-based. Regulation AB currently requires that material, aggregate information about the composition and characteristics of the asset pool be filed with the Commission and provided to investors. As described in detail in Sections III, IV and V below, we are proposing additional, and, in some cases, revised disclosure requirements for ABS offerings and ongoing reporting.

For each loan or asset in the asset pool, we are proposing to require disclosure of specified data relating to the terms of the asset, obligor characteristics, and underwriting of the asset. Such data would be provided in a machine-readable, standardized format so that it is most useful to investors and the markets. Under our proposal, issuers would be

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[49] Pursuant to Exchange Act Rule 15c2-8(b) [17 CFR 240.15c2-8(b)], with respect to ABS, a broker-dealer is exempt from the requirement that a preliminary prospectus be delivered to prospective investors at least 48 hours prior to sending a confirmation of sale if the issuer of the securities has not previously been required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or15 U.S.C. 28o). We also are proposing to repeal this exception from Rule 15c2-8(b) such that a broker-dealer would be required to deliver a preliminary prospectus at least 48 hours prior to sending a confirmation of sale in connection with an issuance of ABS, including those issued by ABS issuers exempted from the requirement to file reports pursuant to Section 12(h) of the Exchange Act.

[50] See the 2004 ABS Adopting Release.

required to provide the asset-level data or grouped account data at the time of securitization, when new assets are added to the pool underlying the securities, and on an ongoing basis.

We are proposing to require the filing of a computer program (the "waterfall computer program," as defined in the proposed rule) of the contractual cash flow provisions of the securities in the form of downloadable source code in Python, a commonly used computer programming language that is open source and interpretive. The computer program would be tagged in XML and required to be filed with the Commission as an exhibit. Under our proposal, the filed source code for the computer program, when downloaded and run (by loading it into an open "Python" session on the investor's computer), would be required to allow the user to programmatically input information from the asset data file that we are proposing to require as described above. We believe that, with the waterfall computer program and the asset data file, investors would be better able to conduct their own evaluations of ABS and may be less likely to be dependent on the opinions of credit rating agencies.

We also are proposing additional requirements to refine current disclosure requirements for asset-backed securities. Among other things, we are proposing to require:

- aggregated and loan-level data relating to the type and amount of assets that do not meet the underwriting criteria that is specified in the prospectus;

- for certain identified originators, information relating to the amount of the originator's publicly securitized assets that, in the last three years, has been the subject of a demand to repurchase or replace;
- for the sponsor, information relating to the amount of publicly securitized assets sold by the sponsor that, in the last three years, has been the subject of a demand to repurchase or replace;
- additional information regarding originators and sponsors;
- descriptions relating to static pool information, such as a description of the methodology used in determining or calculating the characteristics of the pool performance as well as any terms or abbreviations used;
- that static pool information for amortizing asset pools comply with the Item 1100(b) requirements for the presentation of historical delinquency and loss information; and
- the filing of Form 8-K for a one percent or more change in any material pool characteristic from what is described in the prospectus (rather than for a five percent or more change, as currently required).

We also are proposing to limit some of the existing exceptions to the discrete pool requirement in the definition of an asset-backed security. This is intended to not only address recent concerns arising out of the financial crisis but also serve to protect against future practices of participants along the chain of securitization that could result in the addition of assets into a securitization pool without a clear understanding of their quality.

D. Privately-Issued Structured Finance Products

A significant portion of securities transactions, including the offer and sale of all CDOs and ABCP, is conducted in the exempt private placement market, which includes both offerings eligible for Rule 144A resales and other private placements.[51] CDOs are typically sold by the issuer in a private placement to one or more initial purchaser or purchasers in reliance upon the Section 4(2) private offering exemption in the Securities Act, which is available only to the issuer, followed by resales of the securities to "qualified institutional buyers" in reliance upon Rule 144A.[52] Subsequent resales may also be made in reliance upon Rule 144A. Rule 144A provides a safe harbor for resellers from being deemed an underwriter within the meaning of Sections 2(a)(11) and 4(1) of the Securities Act[53] for the sale of securities to qualified institutional buyers. If the conditions of the Rule 144A safe harbor are satisfied, sellers may rely on the exemption from Securities Act registration provided by Section 4(1) for transactions by persons other than issuers, underwriters or dealers.[54]

Some have concluded that the events of the financial crisis have demonstrated that a lack of understanding of CDOs and other privately offered structured finance products

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[51] CDOs often permit the active management of their pool assets, which could include engaging in activities the primary purpose of which is to protect or enhance the returns of their equity holders. Such CDOs typically would not meet the requirements of Rule 3a-7 under the Investment Company Act because that rule includes conditions that are intended to permit an issuer to engage only in limited activities that do not in any sense parallel typical 'management' of registered investment company portfolios. Accordingly, these CDOs usually rely on one of the private investment company exclusions, both of which condition the exclusion in part on the issuer not making a public offering. See fn. 39 above.

[52] In general, a qualified institutional buyer is any entity included within one of the categories of "accredited investor" defined in Rule 501 of Regulation D, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least $100 million in securities of issuers not affiliated with the entity (or $10 million for a broker-dealer).

[53] 15 U.S.C. 77b(a)(11) and 15 U.S.C. 77d(1).

[54] See Section II.A. of the Resale of Restricted Securities, Release No. 33-6862 (Apr. 30, 1990) [55 FR 17933] (the "Rule 144A Adopting Release").

by investors, rating agencies and other market participants may have significant consequences to the entire financial system.[55] For example, the ratings of these products proved inaccurate, which significantly contributed to the financial crisis.[56] This lack of understanding by credit rating agencies, investors, and other market participants indicates that the offering processes and disclosure available in the public and private market were inadequate to provide appropriate investor protection. Further, these securities are issued by special purpose vehicles whose only purpose is holding financial assets, with numerous parties involved in the securitization process.[57] As a result, information about those assets and the structure of the vehicle is critical to an informed investment decision.

The safe harbors of Rule 144A and Regulation D that provide the ability to rely on an exemption from registration do not impose specific requirements on the disclosures provided to investors if those investors meet certain size requirements. However, the financial crisis has called into question the ability of our rules, as they relate to the private market for asset-backed securities, to ensure that investors had access to, and had sufficient time and incentives to adequately consider, appropriate information regarding these securities.[58]

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55 See, e.g., The PWG March 2008 Report (noting that originators, underwriters, asset managers, credit rating agencies and investors failed to obtain sufficient information or conduct comprehensive risk assessments on instruments that were often quite complex and also noting that downgrades were even more frequent and severe for CDOs of ABS with subprime mortgage loans as the underlying collateral). See also the Turner Review, at 20 (finding that "the financial innovations of structured credit resulted in the creation of products –e.g, the lower credit tranches of CDOs or even more so CDO-squareds – which had very high and imperfectly understood embedded leverage.").

56 See id.

57 See also discussion in Section VI. below.

58 An assessment of whether the protections of the Act are needed often focuses on whether the purchasers of securities can "fend for themselves." SEC v. Ralston Purina Co., 346 U.S. 119, 125 (1953). Historically, whether this test is met turned on whether information necessary or appropriate to make informed decisions is realistically available to the purchasers. See id. The Supreme Court also noted that "We agree that some employee offerings may come within § 4(1), e.g., one made to executive personnel who because of their position have access to the same kind of information that the Act would make

We are proposing to require enhanced disclosure by asset-backed issuers who wish to take advantage of the safe harbor provisions for these privately-issued securities.[59] In addition, in order to provide additional transparency with respect to the private market for these securities, we are proposing amendments to Rule 144A to require a structured finance product issuer to file a public notice on EDGAR of the initial placement of structured finance products that are eligible for resale under Rule 144A. As we believe that the Commission may benefit from the availability of more information about private placements of structured finance products, we are proposing to require that in submitting such notice, the issuer undertakes to provide offering materials to the Commission upon written request.

All of our proposals, if adopted, would apply to new issuances of asset-backed securities. Therefore, the proposed rules, if adopted, would not impose new requirements on outstanding asset-backed securities.

II. Securities Act Registration

We are proposing a number of changes to the Securities Act registration process for the offer and sale of asset-backed securities. These changes include proposed new eligibility criteria for shelf offerings and changes to the shelf offering process.

A. History of ABS Shelf Offerings

In 1984, mortgage related securities, a subset of asset-backed securities, were first permitted to be offered on a "shelf" basis. Contemporaneous with the enactment of

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available in the form of a registration statement." Id. at 125. See also Lawler v. Gilliam, 569 F.2d 1283 (4th Cir. 1978) (discussing the Supreme Court's observation in Ralston that an offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering' and the ruling that an essential requirement is access to the kind of information that registration would disclose).

[59] We are also proposing to make conforming changes to Regulation D, Form D and Rule 144.

Secondary Mortgage Market Enhancement Act of 1984 (SMMEA),[60] 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.[61] SMMEA defined a mortgage related security to include a security that has a high investment grade credit rating.[62]

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.[63] Under the 1992 amendments, offerings of asset-backed securities rated investment grade by an NRSRO[64]

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60 Pub. L. 98–440, 98 Stat. 1689.

61 See Shelf Registration, Release No. 33–6499 (Nov. 17, 1983) [48 FR 5289]. Mortgage related securities, including such securities as mortgage-backed debt and mortgage participation or pass through certificates, may be offered on a delayed basis under Rule 415. See 17 CFR 230.415(a)(1)(vii). 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 Release No. 33-6499 (Nov. 17, 1983) [48 FR 52889], at n. 30 (noting that mortgage related securities were the subject of pending legislation).

62 The term, "mortgage related security" is defined to include "a security that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization." 15 U.S.C. 78c(a)(41).

63 See Simplification of Registration Procedures for Primary Securities Offerings, Release No. 33-6964 (Oct. 22, 1992) [57 FR 32461].

64 The security is an "investment grade security" for purposes of form eligibility if, at the time of sale, at least one NRSRO has rated the security in one of its generic rating categories which signifies investment grade, typically one of the four highest categories. See General Instructions I.B.2 and I.B.5 of Form S-3.

could be registered on Form S-3.[65] 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.[66]

The 1992 amendments did not prescribe specific disclosure requirements for ABS offerings; disclosure in ABS offerings was based largely on market practices and SEC staff guidance.[67] At the end of 2004, the Commission adopted new rules and amendments under the Securities Act and the Exchange Act addressing the registration, disclosure and reporting requirements for asset-backed securities.[68] In the 2004 amendments ("2004 ABS Adopting Release"), we prescribed specific ABS disclosure requirements for the first time, which are largely principles-based. In addition, under the 2004 amendments, we retained the investment grade ratings condition to ABS Form S-3 eligibility[69] and added additional shelf eligibility conditions.[70]

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[65] Under Securities Act Rule 415, securities registered on Form S-3 or Form F-3 may be offered on a continuous or delayed basis. See 17 CFR 230.415(a)(1)(x).

[66] See Release No. 33-6964.

[67] See id. The 1992 release explained that the Commission did not intend to change the character or quality of the disclosure that is customary in these offerings and explained generally the type of disclosure that was expected for ABS offerings.

[68] See 2004 ABS Adopting Release. In 2003, we raised the question whether to eliminate ratings reliance from our shelf eligibility requirements in a concept release where we requested comment on alternatives to the investment grade ratings component of Form S-3 eligibility for ABS and debt offerings. See Rating Agencies and the Use of Credit Ratings under the Federal Securities Laws, Release No. 33-8236 (Jun. 4, 2003) [68 FR 35258].

[69] We noted in 2004, however, that the Commission was engaged in a broad review of the role of credit ratings agencies in the securities markets and the use of credit ratings for regulatory purposes. See Section II.A.3.c of the 2004 ABS Adopting Release.

[70] 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

In 2008, we proposed several changes to our rules and form requirements that reference investment grade ratings (the "2008 Proposing Release"), including a proposal to revise shelf eligibility criteria for ABS offerings and primary offerings of non-convertible debt by replacing the investment grade ratings component.[71] Our proposal would have replaced investment grade ratings with a requirement that sales registered on Form S-3 be made in minimum denominations and only to qualified institutional buyers, as defined in Rule 144A. We reopened comment on the 2008 Proposing Release on October 5, 2009.[72]

We received comment letters from 35 commenters on the 2008 Proposing Release. Commenters generally opposed the proposed amendments that would have replaced investment grade ratings references in certain rules and the shelf eligibility criteria.[73] Some commenters on the proposed amendments to ABS shelf eligibility noted that the proposed eligibility requirements would result in many ABS issuers registering

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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 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.

71 See the 2008 Proposing Release.

72 See Release No. 33-9069. We also held a Credit Rating Agency Roundtable on April 15, 2009 to consider further information on ratings and rating agencies. Materials related to the roundtable, including an archived webcast and a transcript of the roundtable, are available at http://www.sec.gov/spotlight/cra-oversight-roundtable.htm.

73 See comment letters from American Bar Association (ABA); American Electric Power, American Securitization Forum (ASF), Arizona Public Service Company, Boeing Capital Corporation (Boeing), Cadwalader Wickersham & Taft LLP (Cadwalader), Charles Schwab, Constance Curnow, Davis Polk & Wardwell (Davis Polk), Debevoise & Plimpton (Debevoise), Dewey & LeBoeuf, Dominion Resources, Inc., Edison Electric Institute, Incapital, LLC, Manulife Financial Corporation, Mayer Brown LLP (Mayer), Merrill Lynch Depositor, Inc., Mortgage Bankers Association, PNM Resources, Inc., Securities Industry and Financial Markets Association, Southern Company, WGL Holdings, Inc., and Wisconsin Energy Corporation. The public comments are available at http://www.sec.gov/comments/s7-18-08/s71808.shtml.

offerings on Form S-1[74] or selling the securities privately.[75] After considering comments, we are withdrawing this part of the 2008 proposal and are proposing different replacements to the ratings requirement in the shelf eligibility criteria for ABS issuers that we believe are better measures of quality, and therefore, are more appropriate eligibility criteria. We are also proposing several changes to restructure the registered ABS offering process.

B. New Registration Procedures and Forms for Asset-Backed Securities

1. New Shelf Registration Procedures

Under existing rules, as with offerings of other types of securities registered on Form S-3 and Form F-3, the shelf registration statement for an offering of asset-backed securities will often be effective before a takedown is contemplated. Pursuant to existing Securities Act Rules 409 and 430B,[76] the prospectus in the registration statement may omit the specific terms of a takedown if that information is unknown or not reasonably available to the issuer when the registration statement is made effective.[77] For ABS offerings off the shelf, because assets for a pool backing the securities will not be identified until the time of an offering, information regarding the actual assets in the pool and the material terms of the transaction are sometimes only included in a prospectus or prospectus supplement that is filed with the Commission the second business day after

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74 17 CFR 239.11.

75 See, e.g., comment letters from ABA dated September 12, 2009; ASF; Boeing; Cadwalader; Davis Polk; Debevoise; and Mayer. As the proposal in the 2008 Proposing Release did not add requirements to the safe harbors for privately-issued asset-backed securities, these commenters did not assess whether additional requirements would have changed the result.

76 17 CFR 230.409 and 17 CFR 230.430B.

77 The prospectus disclosure in the registration statement is often presented through a "base" or "core" prospectus and a prospectus supplement. We are proposing to eliminate this type of presentation for asset-backed issuers. See Section II.D.1. below.

first use.[78] This information includes information about the pool, underwriting criteria for the assets and exceptions made to the underwriting criteria, identification of the originators of the assets and other information that is keyed off the identification of specific assets for the pool.

We recognize that asset-backed issuers have expressed the need to use shelf registration to access the capital markets quickly.[79] We understand that the creation of an asset pool to support securitized products is a dynamic and ongoing process in which changes can take place up until pricing. As a result, our proposals today generally maintain the fundamental framework of shelf registration for ABS offerings.

However, we also recognize that it is important for investor protection that ABS investors have not just adequate information to make an investment decision, but also adequate time to analyze the information and the potential investment. For the most part, each ABS offering off of a shelf registration statement involves securities backed by different assets, so that, in essence, from an investor point of view, each offering is like an initial public offering with respect to the ABS issuer. Information regarding the assets is an important piece of information for investors to use to conduct an analysis of the ability of those underlying assets to generate sufficient funds to make payments on the securities. Furthermore, some have noted the lack of time to review transaction-specific information as hindering the investors' ability to conduct adequate analysis of the

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[78] An instruction to Rule 424(b) requires that a form of prospectus or prospectus supplement relating to a delayed offering of mortgage-backed securities or an offering of asset-backed securities be filed no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

[79] Notably, according to EDGAR, in 2006 and 2007, only three ABS issuers filed registration statements on Form S-1 that went effective.

securities.[80] We believe that a more orderly process for asset-backed securities offerings with improved investor protections, where investors and underwriters have additional time to assist their review of offerings, may be needed, even if issuers may not always be able to time their offering in a way that takes advantage of short term price peaks. Therefore, we are proposing rules designed to increase the amount of time that investors have to review information regarding a particular shelf takedown and promote analysis of asset-backed securities in lieu of undue reliance on security ratings for shelf offerings.

a) Rule 424(h) Filing

We are proposing to require an asset-backed 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. This requirement, if adopted, would allow investors additional time to analyze the specific structure, assets, and contractual rights regarding each transaction. Requiring that such information be filed at least five business days before the first sale of securities in the offering is designed 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. We considered whether a longer minimum time period

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[80] See, e.g., Section I.B. of CFA Institute Centre for Financial Market Integrity and Council of Institutional Investors, U.S. Financial Regulatory Reform: The Investor's Perspective, July 2009 (noting that securitized products are sold before investors have access to a comprehensive and accurate prospectus, noting that each ABS offering involves a new and unique security, and recommending that the Commission adopt rules to improve the timeliness of disclosures to investors); Dr. William W. Irving's testimony concerning "Securitization of Assets: Problems and Solutions" Before the Senate Banking, Housing and Urban Affairs Subcommittee on Securities, Insurance, and Investment (Oct. 7, 2009), at 11 (recommending that there be ample time before a deal is priced for investors to review and analyze a full prospectus and not just a term sheet). The testimony is available at http://banking.senate.gov/public/.

than five business days would be more appropriate.[81] However, we are proposing five business days, because we preliminarily believe that the proposals discussed below that require the filing of standardized and tagged loan-level information and a computer program that gives effect to the cash flow provisions of the transaction agreement could reduce the amount of time required by investors to consider transaction specific information. Our requests for comment on the proposed new procedures below include questions about the appropriate amount of time investors need to consider transaction specific information.

Under our proposal, with respect to any takedown of securities in a shelf offering of asset-backed securities where information is omitted from an effective registration statement in reliance on newly proposed Rule 430D, a form of prospectus meeting certain requirements must be filed with the Commission by a means reasonably calculated to result in filing in accordance with proposed Rule 424(h) (the "Rule 424(h) filing" or "Rule 424(h) prospectus") at least five business days prior to the first sale of securities in the offering.[82] If the preliminary prospectus is used earlier than such five business days to offer the securities, then it must be filed by the second business day after first use.

As discussed below, we are proposing new Rule 430D to provide the framework for shelf registration of ABS offerings. The proposed rule explains what information may be omitted from the prospectus filed with the effective registration statement and what information must be contained in the Rule 424(h) filing. Under new Rule 430D, as

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81 Some have suggested that investors be provided with up to two weeks to analyze asset information. See, e.g., Joshua Rosner, Securitization: Taming the Wild West, Roosevelt Institute's Make Markets be Markets (Mar. 3, 2010), at 73.

82 Sale includes "contract of sale." See fn. 31 and accompanying text of the Offering Reform Release.

proposed, the Rule 424(h) filing must contain substantially all the information for the specific ABS takedown previously omitted from the prospectus filed as part of an effective registration statement,[83] except for the information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price. The information required to be filed pursuant to proposed Rule 424(h) would include, among other things, information about the specific asset pool that is backing the securities in the takedown and the waterfall computer program discussed in Section III below. Proposed Rule 430D would provide that 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 and therefore, a new five business-day waiting period.[84] The new Rule 424(h) filing would be required to reflect the change and contain substantially all the information required to be in the prospectus, except for pricing information. For example, if a credit enhancement (that was contemplated in the registration statement) is added to the transaction after a Rule 424(h) filing is filed, we would expect the issuer to file a new Rule 424(h) filing that reflects the credit enhancement and wait an additional five business days before the first sale in the offering. This is designed to provide investors with information and time sufficient to conduct a thorough analysis of new information relating to the offering.

So long as a form of prospectus has been filed in accordance with Rule 430D, ABS issuers could continue to utilize a free writing prospectus or ABS informational and

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[83] For example, the Rule 424(h) filing would include the waterfall computer program that we are proposing to require, as discussed in Section III.B.1 of this release. We believe that investors need adequate time to run the waterfall computer program using the asset data filed with the Rule 424(h) filing.

[84] Whether a change is material for purposes of the proposed requirement would depend on the facts and circumstances. See TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 448-449 (1976). See also Basic v. Levinson, 485 U.S. 224, 231 (1988).

computational materials in accordance with existing rules.[85] However, because we believe that investors should have access to a comprehensive prospectus that contains substantially all of the required information, a free writing prospectus or ABS informational and computational materials could not be used for the purpose of meeting the requirements of proposed Rule 424(h). For liability purposes, a Rule 424(h) filing would be deemed part of the registration statement on the date such form of prospectus is filed with the Commission, or if the preliminary prospectus is used earlier than five business days in advance of the first sale of securities in the offering, then the date of first use.[86] A final prospectus for ABS offerings would continue to be filed pursuant to Rule 424(b). Consistent with Rule 430B for shelf offerings of corporate issuers, under proposed Rule 430D the filing of the final prospectus under Rule 424(b) would trigger a new effective date for the registration statement relating to the securities to which such form of prospectus relates for purposes of liability under Section 11 of the Securities Act.[87]

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[85] ABS informational and computational materials, as defined in Item 1101 of Regulation AB [17 CFR 229.1101], may be used in accordance with Securities Act Rules 167 and 426 [17 CFR 230.167 and 17 CFR 230.426]. Materials that constitute a free writing prospectus, as defined in Securities Act Rule 405 [17 CFR 230.405] may be used in accordance with Securities Act Rules 164 and 433 [17 CFR 230.164 and 17 CFR 230.433].

[86] This is consistent with the existing provisions for other preliminary prospectuses. See Rule 430B(e). We also propose in this release to repeal the exception to the prospectus delivery requirement in Exchange Act Rule 15c2-8(b) for shelf-eligible asset-backed securities. See Section II.C. below.

[87] 15 U.S.C. 77k. The proposed rule does not change the treatment of ABS offerings for purposes of Rule 159 [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.
>
> (b) For purposes of section 17(a)(2) of the Act only, and without affecting any other rights the Commission may have to enforce that section, for purposes of determining whether a

b) New Rule 430D

Currently, the framework for ABS shelf offerings, along with shelf offerings for other securities, is outlined in Rule 430B of the Securities Act. Rule 430B describes the type of information that primary shelf eligible and automatic shelf issuers may omit from a base prospectus in a Rule 415 offering[88] and include instead in a prospectus supplement, Exchange Act report incorporated by reference, or a post-effective amendment.[89] We are proposing new Rule 430D to provide the framework for delayed shelf offerings of asset-backed securities pursuant to Rule 415(a)(1)(vii), as proposed to be revised. If we adopt Rule 430D, existing Rule 430B would no longer apply to ABS offerings.

Proposed Rule 430D would require that with respect to each offering, substantially all the information previously omitted from the prospectus filed as part of an effective registration statement, except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price, be filed at least five business days in advance of the first sale of securities in the offering in accordance with Rule 424(h). Thus, an issuer may not omit such information (other than offering price, underwriting discounts or commissions, discounts or commissions to

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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.

(c) For purposes of section 12(a)(2) of the Act only, knowing of such untruth or omission in respect of a sale (including, without limitation, a contract of sale), means knowing at the time of such sale (including such contract of sale).

88 Under Rule 430B, a form of prospectus filed as part of a registration statement for offerings of asset-backed securities may omit information unknown or not reasonably available pursuant to Rule 409.

dealers, amount of proceeds or other matters dependent upon the offering price) from the Rule 424(h) filing.

We are proposing conforming revisions to the undertakings that are required by Item 512 of Regulation S-K[90] in connection with a shelf registration statement. For the most part, ABS issuers would continue to provide the same undertakings that are currently required of ABS issuers conducting shelf offerings. We are proposing a conforming revision to the undertakings relating to the determination of liability under the Securities Act as to any purchaser in the offering. It would require an undertaking that each prospectus filed by the registrant pursuant to Rule 424(h) would be deemed part of the registration statement as of the date the prospectus was deemed part of, and included in, the registration statement (i.e., the date it was filed with the Commission, or, if the prospectus was used and filed earlier, the second business day after first use).[91] Also, under our proposed revision to Item 512 of Regulation S-K, an issuer would be required to undertake to file the information required to be contained in a Rule 424(h) filing with respect to any offering of securities.

Request for Comment

- We request comment on our proposal to establish a minimum period of time available to investors to review registered ABS offering prospectuses. Are we correct that investors need additional time? Would the proposed timeline for filing the proposed preliminary prospectus at least five business days prior to the date of first sale pose problems for market participants? If so, how could

89 See also Section V.B.1.b of the Offering Reform Release.

90 17 CFR 229.512.

we address those concerns while still providing investors with sufficient time to analyze the securities?

- Is the proposed five business days sufficient time for investors? Should the required minimum number of days that the Rule 424(h) filing must be filed before the first sale be longer (e.g., six, seven, eight, or ten business days) or shorter than what we are proposing (e.g., two or four business days)? Given the increased amount of information that would be made available to investors under this proposal, would investors need more time to consider transaction specific information? Is our belief that the filing of standardized and tagged asset-level information and a computer program that gives effect to the cash flow provisions of the transaction agreement could reduce the amount of time investors need to consider transaction-specific information correct?
- We are cognizant that having a transaction exposed to the markets for some period of time causes concerns to some issuers and underwriters in some instances. However, we also note situations in which transaction-specific information regarding ABS is provided to other deal participants for a longer period prior to selling the securities seemingly with no or minimal effect on the issuer's ability to sell securities. We note, in particular, that the Federal Reserve Board requires information to be provided to it regarding the assets pledged to the Term Asset-Backed Securities Loan Facility (TALF) at least

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[91] This is consistent with the existing undertaking in Item 512 for prospectuses that are filed pursuant to Rule 424(b)(3). See Item 512(a)(5)(i)(A) of Regulation S-K [17 CFR 229.512(a)(5)(i)(A)].

three weeks prior to the subscription date.[92] Similarly, rating agencies receive information prior to rating transactions.[93] If there are issues raised by exposing the transaction publicly to the markets, please provide us with specific information about the concerns and ways we can revise the proposal to address them.

- Under our proposal, the Rule 424(h) filing would not be required to include information dependent on pricing. Is that appropriate? If not, what information should be required to be included and how would an issuer have access to the information in the timeframe that we are proposing?
- Under our proposal, if a material change to the disclosure other than to pricing information occurs, the issuer would be required to file a new Rule 424(h) prospectus with updated information. Is this requirement specific enough? Should we, instead or in addition, specify particular changes that would trigger a filing, or conversely, that would not trigger a filing? Should we, for example, provide that a new Rule 424(h) filing would be required if the asset pool has changed by a certain amount? If so, what should that amount be (e.g., 1%, 5%, or 10% of the final asset pool)? How would other changes be described, such as changes to the waterfall? Would it be appropriate to allow a material change without requiring a new Rule 424(h) filing and a new five-day waiting period? Should the new Rule 424(h) filing be required as

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92 Each issuer wishing to bring a TALF-eligible ABS transaction to market is required to provide, at least three weeks prior to the subscription date, information to the Federal Reserve Bank of New York including, but not limited to, all data on the transaction the issuer has provided to any NRSRO.

93 See Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-59342 (Feb. 2, 2009) [74 FR 6456].

proposed to reflect the change and contain substantially all the information required to be in the prospectus, except for pricing information? Should we only require that the change be reflected in a supplement?

- The requirement to file a new Rule 424(h) filing would trigger another five-day waiting period before the first sale. Is this approach appropriate and workable? If the issuer is required to re-file the preliminary prospectus, as proposed, should the issuer be required to wait another five business days before the first sale, as proposed? If not, how long should the issuer be required to wait?
- Are there any aspects of the Rule 424(h) filing that we should specify must be substantially set at the time it is required to be filed?
- Are there any changes, other than the ones we are proposing, to the Item 512 undertaking that should be made? Is our proposed change to incorporate the Rule 424(h) filing in the undertakings relating to liability so that the Rule 424(h) filing shall be deemed part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement appropriate?
- We have designed the proposed process for ABS shelf registration to strike a balance between facilitating registered ABS offerings and providing investors a meaningful opportunity to analyze the securities. Would our proposal to require that the Rule 424(h) prospectus be filed at least five business days before the first sale make shelf registration sufficiently less attractive to issuers that they would avoid the registered market? If so, are there ways to

address this concern? Below, we are proposing to require more disclosure for private offerings of asset-backed securities that rely on the Commission's safe harbors that allow issuers to rely on an exemption from registration. Should we impose even more restrictions on private offerings of asset-backed securities than what is proposed below? For example, should we condition reliance on Rule 506 of Regulation D on a limitation of the total number of purchasers in an ABS offering, even for offerings to accredited investors or qualified institutional buyers? Alternatively, should we impose fewer restrictions on private offerings of asset-backed securities?

- Should we also require, or require instead, that the initial purchaser or investor hold the securities for a period of time prior to resales in reliance on Rule 144A to better ensure that such resales of asset-backed securities are not a distribution? Could that better ensure that the public registered ABS market operates appropriately and that the existing safe harbors do not inappropriately erode the public markets? If we were to add these additional restrictions on private offerings, what would be the impact on the broader market for structured securities? Would requiring a holding period discourage investors from purchasing ABS in exempt private placements? Would these offerings all be done as public deals, or would these offerings cease to be conducted at all? Should we provide for fewer restrictions – for example, should we require a subset of loan-level disclosures in the context of an exempt private offering? Should issuers or sponsors have the option of providing only certain

information? Or would these rules reduce the aggregate amount of transactions? What would be the economic effect?

2. Proposed Forms SF-1 and SF-3

In order to distinguish the ABS registration system from the registration system for other securities, we are proposing to add new registration forms that would be used for any sales of a security that meets the definition of an asset-backed security, as defined in Item 1101 of Regulation AB.[94] These new forms, which would be named Form SF-1 and Form SF-3,[95] would require all the items applicable to ABS offerings that are currently required in Form S-1 and Form S-3 as modified by the proposed amendments noted below. Offerings that qualify for delayed shelf registration[96] would be registered on proposed Form SF-3, and all other offerings would be registered on Form SF-1.[97]

Proposed Form SF-1 would not contain all the items that are currently required by Form S-1. Specifically, the proposed form would not include the instructions as to summary prospectuses, as we do not believe that the summary prospectus instructions are relevant for ABS offerings. Also, we are proposing to substitute the item in existing Form S-1 permitting incorporation by reference by reporting companies of previously filed Exchange Act reports and documents with an item that is more tailored to asset-backed securities on proposed Form SF-1. As discussed in Section I.D.1 below, we are proposing that ABS issuers file a single prospectus for each takedown with all of the information required by Regulation AB because we believe ABS offerings are more

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94 17 CFR 229.1101(c).

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

96 In this release, we also refer to such offerings as shelf offerings.

closely akin to initial public offerings. Therefore, we are proposing to limit incorporation by reference to certain disclosures. In particular, as discussed below,[98] we are proposing to permit an ABS issuer to incorporate by reference into proposed Form SF-1 information by the time of effectiveness of the registration statement the information that is required to satisfy certain disclosure requirements (i.e., static pool information filed pursuant to Item 6.08 of Form 8-K, asset data filed pursuant to Item 6.06 of Form 8-K, and the waterfall computer program filed pursuant to Item 6.07 of Form 8-K).[99] We also are proposing to permit ABS issuers structured as revolving asset master trusts to incorporate by reference certain asset-level disclosures that would have been provided in previously filed Form 10-Ds.[100]

We are proposing to revise some disclosure requirements that are currently located in Form S-3 but would be moved to proposed Form SF-3. As discussed in the sections immediately following this discussion, we are proposing changes to shelf eligibility for ABS issuers, which will now become the eligibility criteria for proposed Form SF-3. In addition, we are proposing to change an eligibility requirement in existing Form S-3 relating to delinquent filings of the depositor or an affiliate of the depositor for purposes of proposed Form SF-3. 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

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97 We also propose to make conforming changes throughout our rules to refer to the new forms, as appropriate. See, e.g., proposed revisions to Securities Act Rules 167 and 190(b)(1) and the exhibit table in Item 601 of Regulation S-K.

98 See Sections III.A.4., III.B.1.d., and III.E.4. below.

99 See General Instruction IV. and Item 10 of proposed Form SF-1 and Item 11 of proposed Form SF-3.

100 We are proposing to require ABS backed by floorplan receivables to include the performance information of assets that were part of the pool prior to the current offering. See Section III.A.1.e.iv. below.

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.[101] However, for certain specified reports, including reports on Form 8-K pursuant to Item 6.05, untimely filing does not result in loss of eligibility.[102] We are proposing 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, which we discuss in further detail below, 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. Under proposed Form SF-3, the untimely filing of an Item 6.05 Form 8-K report by the depositor or affiliate of the depositor, with respect to a class of asset-backed securities involving the same asset class, during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement would result in the loss of form eligibility for up to twelve months from the time the report was due.[103] As discussed in Section V.C.1 below, we also are proposing 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.

Request for Comment

- We request comment on our proposal to move the registration statement item requirements for ABS offerings into new forms that would apply only to asset-

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101 General Instruction I.A.4 of Form S-3.

102 Id.

103 We are also proposing to amend Rule 415 to require a quarterly evaluation of form eligibility on proposed Form SF-3. See Section II.B.3.e. below.

backed issuers. Would the proposed new forms create any difficulties? If so, please specify.

- We are proposing to move the items applicable to asset-backed securities from Forms S-1 and S-3 to proposed Forms SF-1 and SF-3, with some exceptions noted. Do the proposed forms omit any requirement for asset-backed issuers that should be included? Do any of the requirements need further revisions?
- The proposed Form SF-1 would not include the instructions as to summary prospectuses that are included in Form S-1. Is there any reason we should provide these instructions in proposed Form SF-1 for ABS issuers?
- Are our proposed instructions for incorporation by reference appropriate?
- Should we repeal the existing carve-out for the untimely filing of an Item 6.05 Form 8-K, as we are proposing to do? Why or why not?

3. Shelf Eligibility for Delayed Offerings

We are proposing to eliminate the ability of ABS issuers to establish shelf eligibility in part by means of an investment grade credit rating. This is 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.[104] In place of credit ratings, we are proposing to establish four shelf eligibility criteria that would apply to mortgage related securities and other asset-backed securities alike. These proposed requirements, along with the other current requirements,[105] would determine an asset-backed issuer's eligibility to register for a delayed shelf offering. Similar to the existing requirement that the securities must

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104 See Release No. 33-9069.

be investment grade, the proposed requirements are designed to provide for a certain quality and character for asset-backed securities that are eligible for delayed shelf registrations..

a) Risk Retention

Risk retention requirements have been discussed by some market participants as one potential way to improve the quality of asset-backed securities by better aligning the incentives of the sponsors and originators of the pool assets with investors' incentives. A chain of securitization may involve multiple participants that may serve the function of originator, sponsor, servicer, or trustee.[106] One concern that has been debated is whether the model of securitization where loan originators do not hold the loans they originate but instead repackage and sell them as securities may create a misalignment of incentives between the originator of the assets and the investors in the securities, which misalignment may have contributed to lower quality assets being included in securitizations that did not have continuing sponsor exposure to the assets in the pool.[107] The theory underlying a risk retention requirement is that if a sponsor retains exposure to the risks of the assets, the sponsor is more likely to have greater incentives to include

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105 See fn. 70 above.

106 Under Regulation AB, "servicer" means any person responsible for the management or collection of the pool assets or making allocations or distributions to holders of the asset-backed securities. The term "servicer" does not include a trustee for the issuing entity or the asset-backed securities that makes allocations or distributions to holders of the asset-backed securities if the trustee receives such allocations or distributions from a servicer and the trustee does not otherwise perform the functions of a servicer. See Item 1101(j) of Regulation AB. In some cases, one party may act in two or more different roles, such as when a bank and/or affiliated party of the bank serves in all three functions of originator, sponsor, and servicer of an ABS offering. In contrast, in the case of so-called aggregators, the sponsor acquires loans from many other unaffiliated sellers before securitization.

107 See, e.g., European Central Bank, The Incentive Structure of the 'Originate to Distribute Model,' December 2008, at 5 (noting that securitization is fundamentally vulnerable to certain adverse behavior since agents seek to maximize their benefits while principals cannot fully observe and control the agents' actions); Amiyatosh Purnanandam, "Originate-to-Distribute Model and the Subprime Crisis" (Apr. 27, 2009), available at http://ssrn.com/abstract=1167786.

higher quality assets in the pool. Because we believe that securitizations with sponsors that have continuing risk exposure would likely be higher quality than those without, we are proposing, among other things, to replace the investment grade ratings requirement in the ABS shelf eligibility conditions with a condition that the sponsor of any securitization retain risk in each tranche of the securitization on an ongoing basis. Such a requirement has colloquially been referred to as "risk retention," or "skin in the game." We believe that the proposed risk retention requirement for shelf eligibility would distinguish the types of securities that are of a sufficient quality and character to be shelf eligible while avoiding the possibility of undue reliance on ratings.

Risk retention requirements are being considered in the U.S. and internationally. In the U.S., proposals with such requirements have come in several different forms.[108] Risk retention requirements have recently garnered support.[109] On the other hand, some

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[108] The Federal Deposit Insurance Corporation ("FDIC") recently solicited public comments regarding proposed amendments to a "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 Securitization Proposal"). The FDIC Securitization Proposal also includes risk retention requirements for purposes of providing a safe harbor for IDIs, although in a different context from our proposal which would require risk retention as a condition to shelf eligibility. See Federal Deposit Insurance Corporation, Advance Notice of Proposed Rulemaking Regarding 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 March 31, 2010 (Jan. 7, 2010) [75 FR 934]. The comment letters are available at http://www.fdic.gov/regulations/laws/federal/2010/10comAD55.html. See also H.R. 4173, 111th Cong., (bill that would require a creditor or securitizer to retain five percent of the credit risk on any loan that is transferred, sold, or conveyed); Senate proposal, 111th Congress, "Restoring American Financial Stability Act of 2010" (bill that would require five percent risk retention). The Senate bill contemplates joint rulemaking regarding the risk retention requirement with the SEC, the FDIC and the Office of Comptroller Currency and the House bill contemplates joint rulemaking with the SEC, the National Credit Union Administration Board, the Board of Governors of the Federal Reserve system, the Office of the Comptroller of the Currency, the Office of Thrift Supervisors and the FDIC.

[109] See, e.g., CFA Institute Centre for Financial Market Integrity and Council of Institutional Investors, "U.S. Financial Regulatory Reform: The Investor's Perspective," July 2009 (recommending that ABS sponsors should be required to retain a meaningful residual interest in their securitized products). See, e.g., U.S. Department of Treasury, A New Foundation: Rebuilding Financial Supervision and Regulation, June 17, 2009; H.R. 1728, 111th Cong. §213 (2009). In addition, risk retention by originating lenders has been a component of several guaranteed loan programs administered by the United States Department of Agriculture (USDA) since 1972, when amendments to the Consolidated Farm and Rural

are concerned that mandatory risk retention will not necessarily result in improved asset quality, may not be calibrated to reflect the risk in any given pool and across different asset classes, and may conflict with various other goals and purposes of securitization.[110]

In addition, in its January 2009 framework, a working group on financial reform in the Group of Thirty recommended that regulated financial institutions be required to retain a meaningful portion of the credit risk of the financial assets they are packaging into securitized and other structured credit products.[111] On May 6, 2009, the European Union adopted an amendment to the Capital Requirements Directive, which sets out the rules for Basel II implementation in Europe, that will, upon effectiveness, prohibit a credit institution from investing in a securitization unless there is disclosure from the originator, sponsor, or original lender that one of them will retain, on an ongoing basis, a net economic interest in the securitized credit risk of at least five percent.

We are proposing to make risk retention a part of the shelf eligibility conditions for asset-backed issuers. Under our proposal, Form SF-3 would require that, as a

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Development Act (7 USC 1921 et seq.) expanded the USDA's lending authority to include guarantees of farm and rural development loans issued by commercial lenders. For example, under its guaranteed farm loan program, the Farm Service Agency can guarantee up to 90% of a loan issued by a commercial lender to an eligible farmer, but that lender must retain the full amount of the unguaranteed portion in its portfolio for the life of the loan. See 7 CFR 762.160. Similar conditions are required for guaranteed loan programs administered by the USDA's Rural Housing Service. See, e.g., 7 CFR 3575.4. See also comment letter from MetLife on the FDIC Securitization Proposal ("MetLife FDIC Letter") (generally supporting credit risk retention because it aligns interests with investors and noting that retention should represent a vertical pro rata slice of all securitization obligations, as long as retaining the interest does not cause unintended consolidation issues for the issuer) and comment letter from Consumers Union on the FDIC Securitization Proposal (supporting retention of ten percent of an economic interest because it would create stronger incentives for accurate underwriting).

[110] See, e.g., comment letter from American Securitization Forum and comment letter from American Bar Association on the FDIC Securitization Proposal.

[111] See Group of Thirty, Financial Reform: A Framework for Financial Stability (Jan. 15, 2009), at 51. The Group of Thirty, established in 1978, is a private, nonprofit, international organization composed of representatives of private and public institutions.

condition to shelf eligibility, the sponsor or an affiliate of the sponsor retain a net economic interest in each securitization in one of the two following manners:

- retention of a minimum of five percent of the nominal amount of each of the tranches sold or transferred to investors, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate;[112] or
- in the case of revolving asset master trusts, retention of the originator's interest of a minimum of five percent of the nominal amount of the securitized exposures, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate, provided that the originator's interest and securities held by investors are collectively backed by the same pool of receivables, and payments of the originator's interest are not less than five percent of payments of the securities held by investors collectively.[113]

Under the proposed eligibility requirement, the net economic interest required to be retained to be shelf eligible would be measured at issuance (or at origination in the case of originator's interest), and then maintained on an ongoing basis.[114] Also, proposed

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[112] Under the proposed condition, no sponsor may purchase or sell a security, derivative, or other financial product or enter into an agreement with any third party, in which the terms or payments (or lack of payment) of any of the loans or other assets that underlie the ABS are a material term of that financial product or agreement, if the financial product or agreement in any way reduces or limits the financial exposure of the sponsor to less than five percent of the nominal amount of the ABS. Thus, hedges of market interest or currency exchange rates, would not be taken into account in the calculation of the sponsor's risk retention for purposes of the net five percent risk retention requirement. Hedges tied to securities similar to the ABS also would not be taken into account in the calculation of the sponsor's risk retention. For instance, holding a security tied to the return of a subprime ABX.HE index would not be a hedge on a particular tranche of a subprime RMBS sold by the sponsor unless that tranche itself was in the index.

[113] Currently, credit card ABS structures typically include an originator's interest, which is pari passu with the investors' interest in the pool of receivables.

[114] In 2009, the EU Commission called on Committee of European Banking Supervisors (CEBS) to provide technical advice on the amendment to the Capital Requirements Directive (i.e., Article 122a of the EU Capital Requirements Directive) which will prohibit a credit institution from investing in a securitization unless there is disclosure from the originator or sponsor that it has retained risk. Among

Form SF-3 would require disclosure relating to the interest that is retained by the sponsor.[115] Retention of five percent net economic interest is intended to align incentives of sponsors with investors, such that the quality of the assets in the pool or other aspects of the offering is likely to be higher than for a securitization without risk retention, and, thus, should be an appropriate partial substitute for the existing investment grade ratings requirement in the ABS shelf eligibility conditions. If we adopt a risk retention condition to shelf eligibility, we preliminarily believe that five percent is an appropriate amount of risk to require sponsors to retain and balances our goal of requiring some exposure to risk without overburdening the capital structure of sponsors.[116]

In constructing the risk retention shelf eligibility condition, we also considered, but are not proposing, an option of retaining risk through the retention of randomly selected exposures for purposes of meeting shelf eligibility conditions. If issuers retain randomly selected exposures, we believe the economic effects, including incentive alignment, should be approximately the same as retaining a fixed percentage of the nominal amount of each tranche, if the randomization is properly implemented. However, we believe that it would be both difficult and potentially costly for investors and regulators to verify that exposures were indeed selected randomly, rather than in a manner that favored the sponsor.

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other things, the EU Commission requested the CEBS consider the adequacy of the minimum 5% retention requirement to meet the goal of avoiding misaligned incentives and of mitigating systemic risks from securitization markets. See publication of the Committee of European Banking Supervisors, "CEBS today received a call for technical advice -second part on article 122a of the amended CRD," available at http://www.c-ebs.org/Publications/Calls-for-Advice/2009/CEBS-today-received-a-call-for-technical-advice--s.aspx and Committee of European Banking Supervisors, "Call for Technical Advice on the Effectiveness of a Minimum Retention Requirement for Securitisations," Oct. 30, 2009.

[115] See discussion of proposed requirement relating to sponsor's interest in Section III.C.3. below.

[116] See H.R. 4173, 111th Cong., (bill requiring five percent risk retention); Senate proposal, 111th Congress, "Restoring American Financial Stability Act of 2010" (bill requiring five percent risk retention).

We believe that the proposed two different ways that a sponsor could retain risk to satisfy the risk retention shelf eligibility condition would likely result in better incentive alignment, and, consequently higher quality securities, than retention of only the residual interest in a securitization.[117] "Horizontal risk retention" in the form of retention of the equity or residual interest could lead to skewed incentive structures, because the holder of only the residual interest of a securitization may have different interests from the holders of other tranches in the securitization and, thus, not necessarily result in higher quality securities. The proposed ways that a sponsor could satisfy the risk retention shelf eligibility condition -- either by retaining a "vertical" slice of the securitization, by which we mean taking a portion of the economic risk in each class of security that is being offered, or, in the case of revolving exposures, the originator's interest, would create a direct, shared interest with all the investors in the performance of the underlying assets.

We recognize that there are differing views on the effectiveness of risk retention policies as a means to align the incentives of securitization transaction parties with the interests of investors, both as an intrinsic matter and as compared with other alternatives, as well as concerns about the collateral consequences on the securitization markets associated with conditioning shelf eligibility on risk retention. Some note that originators and other financial institutions active in the mortgage securitization chain suffered massive losses in the financial crisis as a result of their direct and indirect exposure to asset underperformance and, therefore, risk retention exposes financial institutions who

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[117] A particular issuance of asset-backed securities often involves one or more publicly offered classes as well as one or more privately placed classes. In most instances, the subordinated classes, or residual interests, which are typically privately placed, act as structural credit enhancement for the publicly offered senior classes by receiving payments after, and therefore absorbing losses before, the senior classes. Cash flows from the pool assets back both the senior classes and the subordinate classes, and thus allocation of the cash flows to the subordinated classes could affect directly or indirectly the publicly offered classes.

are sponsors to too much risk.[118] Another criticism of risk retention posits that different forms of risk retention, such as retention of the equity piece, may lead issuers to screen assets that go into the pool differently.[119] One industry group has asserted that other forms of requiring potential loss exposure, such as more stringent representations and warranties regarding the assets in the pool, may be preferable to outright retention of an economic interest in the securities.[120] Nevertheless, we believe it appropriate at this time to propose the risk retention requirement detailed herein, balancing various considerations that will need to be accounted for before reaching any final determination as to the best way to proceed.

Although sponsors in the past may have initially held a portion of the securitization, such retention often had different motivations and different effects than retention as we propose it. In many cases, sponsors held small portions. These portions were often a small horizontal slice of the securitization and, therefore, would have been unlikely to have driven the sponsor to focus on the quality of the loans or other underlying assets in order to protect that interest. Also, retention of that small portion of those securities may have been due to an inability or lack of incentive to sell those securities. This was often because the securities had a lower return or carried lower

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118 See Committee on Capital Markets Regulation, The Global Financial Crisis: A Plan for Regulatory Reform, May 2009 ("Committee on Capital Markets Regulation Financial Crisis Report"), at 130.

119 See, e.g., Ingo Fender and Janet Mitchell, "The future of securitisation: how to align incentives?" BIS Quarterly Review, Sept. 2009 available at http://www.bis.org/publ/qtrpdf/r_qt0909e.pdf (study that claimed to show having the originator or arranger retain the equity tranche of a securitization may lead to lower screening effort than other retention schemes and that recommended regulators focus on disclosure of the scale and nature of risk retention).

120 For example, the ASF has proposed model representations and warranties designed to enhance the alignment of incentives of mortgage originators with those of investors in mortgage loans. See American Securitization Forum Press Release, "ASF Proposes Risk Retention and Issues Final RMBS Disclosure and Reporting Packages," July 15, 2009, available at http://www.americansecuritization.com/story.aspx?id=3460.

spread, and thus were of little interest to investors seeking yield, while the higher returning securities were sold. Many of the retained securities were securities backed by similarly ranked tranches of ABS, which magnified rather than diversified risk. It may be the case that originators and/or underwriters underestimated the risk of both higher (senior) and lower (subordinated) tranches, but their retention practices did not result in the sort of overall risk assessment that our proposal would entail.[121] Thus, retaining risk in that manner would have been unlikely to have the same impact on loan originations, risk analysis, or underwriting –and the resultant asset quality -- as the risk retention requirement that we are proposing for ABS shelf eligibility.

In keeping with our belief that incentives are best aligned and quality of assets most significantly impacted if the sponsor retains an equal proportion of all tranches or the economic equivalent, we are proposing to require that, if sponsors select the second risk retention option, they retain a claim whose cash flows are at least five percent of those paid to investors, at all times and in all scenarios. This requirement means that the originator's interest must ultimately be a claim to the same pool of assets as the securities held by investors and must be equivalent in seniority to these securities. The originator's interest would, therefore, be the economic equivalent of retaining a fixed proportion of the nominal amount of all tranches held by investors. We understand that it is a typical practice for credit card ABS to retain an originator's interest in the pool.

For both options, we are proposing to require risk retention net of hedge positions directly related to the securities or exposures taken by the sponsor or its affiliate. This

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[121] See Gillian Tett, Fool's Gold (2009); International Monetary Fund, Global Financial Stability Report: Navigating the Financial Challenges Ahead (Oct. 2009) at 25 (noting that retention of the senior tranche was motivated mainly by difficulties placing them), available at http://www.imf.org/external/pubs/ft/gfsr/2009/02/pdf/text.pdf.

would mean that sponsors would not be able to simply "resell" the specific risks related to the retained securities or asset pool underlying them and remain shelf eligible. The purpose of risk retention is to align the sponsor's incentives with the investors' incentives by exposing each of them to the same risks which thereby promotes higher quality securities in ABS shelf offerings than without risk retention by the sponsor. However, we are primarily concerned with the risks that are under the direct or indirect control of the sponsor (such as the quality of the originator's underwriting standards and the extent of the review undertaken to verify the information regarding the assets). Therefore, hedge positions that are not directly related to the securities or exposures taken by the sponsor or affiliate would not be required to be netted under our proposal. Such positions would include hedges related to overall market movements, such as movements of market interest rates, currency exchange rates, or of the overall value of a particular broad category of asset-backed securities.

As noted above, the proposed risk retention shelf eligibility condition would apply to the sponsor or affiliate of the sponsor. Our proposal is intended to provide an incentive for the sponsor to take additional steps to consider the quality of the assets that are securitized by exposing sponsors to the same credit risk that investors will be exposed to. We believe that there may be reasons to impose these risk retention requirements on the sponsor rather than the originator. Where a non-affiliated aggregator acts as the sponsor of a transaction,[122] the costs of monitoring risk retention born by an originator rather than the sponsor may be disproportionately high because the securitization may include many originators where each originator may have contributed a very small part of

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[122] See discussion in fn. 106 regarding aggregators.

the assets in the entire pool. In addition, if risk retention were imposed on each originator rather than the sponsor, the amount of risk held by each originator may be small. As such, the incentives afforded through risk retention may be diminished or rendered less effective. With risk retention imposed on sponsors, we believe that sponsors would have the appropriate incentives and mechanisms to ensure that originators' lending standards are consistent with the quality and character of the ABS to be offered off of the shelf. Therefore, we believe it is more appropriate to impose risk retention requirements on the sponsor than the non-affiliated originator.[123]

Under our proposal, a sponsor may still conduct a public offering without risk retention. However, such offering would be required to be registered on proposed Form SF-1 rather than proposed Form SF-3. Those offerings would not be eligible for delayed shelf registration, which would subject them to a longer period before they could be completed since a new registration statement would need to be filed and become effective before an offering could be completed. This would allow additional time for the investors to analyze the offering.[124]

We have also considered other ancillary impacts of our proposed risk retention shelf eligibility condition. For example, we considered the impact of the shelf eligibility condition on financial reporting. We note that the Financial Accounting Standards Board's newly-issued Statements of Financial Accounting Standards No. 166 and 167, contained in FASB's Accounting Standards Codification, Topic 860, Transfers and

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[123] As discussed in Section III.C.3 below, we also propose to add requirements for disclosure of any interest in the securities that is retained by the sponsor or originator.

[124] As we are proposing to require in Section III.C.3 below, if the offering does not include risk retention by the sponsor, an issuer should provide clear disclosure that the sponsor of the offering is not required by law to retain any risk in the securities and may sell any interest initially retained at any time, as applicable.

Servicing, and Topic 810, Consolidation, respectively, change the accounting for transfers of financial assets and the criteria for consolidation of variable interest entities. Substantially all types of special-purpose entities used in asset-backed securitization transactions are, for accounting purposes, variable interest entities.

The accounting guidance for consolidation requires a party to consolidate a variable interest entity if it has a variable interest in the securitization that is a controlling financial interest in the variable interest entity. The accounting guidance specifies that a party has a controlling financial interest if it has variable interests with both of the following characteristics: (a) the power to direct the activities of a variable interest entity that most significantly impact the variable interest entity's economic performance, and (b) the obligation to absorb losses of the variable interest entity (or the right to receive benefits from the variable interest entity) that could potentially be significant to the variable interest entity. Only one party, if any, is expected to have a controlling financial interest in a variable interest entity.

A sponsor that retains an economic interest in each tranche of securities, as we are proposing to require as a condition for shelf eligibility, generally will have a variable interest in the asset-backed securitization entity. However, satisfaction of the proposed risk retention condition would not, by itself, be determinative as to whether a sponsor's variable interests would be a controlling financial interest resulting in consolidation. This is the case because each sponsor will need to evaluate the facts and circumstances related to each particular transaction in light of the FASB's newly-issued guidance, including whether the sponsor has the power to direct the activities that most significantly impact the variable interest entity's economic performance. In some cases, the economic

performance of the variable interest entity is most significantly impacted by the performance of the assets that back the securities. In those cases, the activity that most significantly impacts the performance of the assets could be, for example, management of asset delinquencies and defaults or, as another example, selecting, monitoring, and disposing of collateral securities.

We expect the effect of the FASB's newly-issued guidance, together with the effect of satisfaction of our proposed risk retention condition for shelf eligibility (or retention of risk for other reasons), to generally increase the instances in which financial assets (and corresponding financial obligations) continue to be reported in the financial statements of the reporting entity that transfers the financial assets. However, the accounting and consolidation determinations for any particular transaction will depend on judgments about the related facts and circumstances.

We understand that the isolation of the assets comprising the pool from claims of other creditors is important to ABS investors.[125] Currently, credit card issuers typically retain an originator's interest in the pool, so our proposed risk retention shelf eligibility condition should not impact those issuers. Our proposed shelf eligibility requirement of retaining a vertical slice of the securities offered is not intended to have an impact on the isolation of the underlying assets, and we are not aware of any reason to believe it would. The proposed shelf eligibility condition would be to hold an interest in all the securities sold to investors and not the underlying assets directly nor the residual interest. True sale opinions are typically required on the transfer of assets from the originator to

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[125] See The Bond Market Association, International Swaps & Derivatives Association, and Securities Industry Association , "Special Purpose Entities (SPEs) and the Securitization Markets," (Feb. 1, 2002) available at http://www.isda.org/speeches/pdf/SPV-Discussion-Piece-Final-Feb01.pdf (noting that

the depositor. This proposed shelf eligibility condition would apply to the sponsor, which may not necessarily be the originator. Thus, we believe the shelf eligibility condition should not impact whether there has been a true sale at law of the assets and therefore not change the analysis in the event of bankruptcy, insolvency, receivership or conservatorship of the originator or the sponsor.

Request for Comment

- Should we continue to condition shelf eligibility on requirements that are related to the quality of an ABS offering? Should we, as proposed, replace references to investment grade credit ratings with a risk retention requirement and/or the other criteria discussed below, which are intended to increase the likelihood of higher quality securities than securities that are not required to meet such criteria? Is there a possibility that, by establishing a risk retention requirement or any other criteria based on quality, investors may unduly rely on an appearance that incentives are aligned or that the security has greater quality and consequently be less inclined to expend effort to perform their own analyses creating a similar situation that over-reliance on ratings created? Do the policy bases for shelf eligibility suggest eligibility criteria based on quality of securities are appropriate? Conversely, are expedited offerings inconsistent with an attempt to promote independent analysis of asset-backed securities and reduce the likelihood of undue reliance by investors on credit ratings and therefore, should we not allow ABS offerings to be shelf registered? Should we continue to allow short-form registration for asset-backed securities? Given that each asset-backed security

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securitizations would not take place without the ability to establish SPEs, as investors do not want to take on any risk associated with the seller).

offering off the shelf is akin to an initial public offering with respect to the particular issuer, is the premise of most other short form registration (i.e., that an eligible issuer enjoys a widespread market following) applicable to issuers of asset-backed securities?

- We request comment on risk retention as a condition to eligibility for a delayed ABS shelf offering. Would the proposed risk retention condition address concerns relating to the misalignment of incentives and lead to higher quality securities in registered ABS shelf offerings? Is this an appropriate condition for shelf eligibility? Would the requirement incentivize sponsors to consider the quality of the assets being underwritten and sold into the securitization vehicle?
- Is five percent an appropriate amount of risk for the sponsor to retain in order for the offering to be shelf eligible? Should it be higher (e.g., ten or 15%)? Should it be lower (e.g., one or three percent)? Should the amount of required risk retention be tied to another measure?
- Should the risk retention condition require retention of risk by sponsors (as proposed) or by originators?
- Are there other better ways to address alignment of incentives, and thus quality of the securities, in the aggregator situation? Should we require in that situation that all originators and the sponsor retain some risk?
- Should sponsors be permitted to satisfy the risk retention condition through a different form of risk retention than what is proposed (e.g., retention of first loss position or retention of first loss position in conjunction with retention of some form of vertical slice of the securitization)? Should the risk retention condition

relate to retention of the mezzanine tranche? Should the risk retention condition depend on the type and quality of the assets, the structure of the securities and expected economic condition? How could we structure a shelf eligibility condition to take those variables into account?

- We considered but are not proposing an alternative way to satisfy the risk retention shelf eligibility condition based on retention of randomly-selected exposures. We are concerned about the ability to subsequently demonstrate the randomness of the random selection process, including for purposes of monitoring or auditing. Should we include this alternative? Are there any mechanisms that we could adopt that would ensure adequate monitoring of the randomization process if such an alternative were permitted? For example, would our concerns be addressed if the sponsor was required to provide a third party opinion that the selection process has been random and that retained exposures are equivalent (i.e., share a similar risk profile) to the securitized exposures? Would this be sufficient? Would this opinion resemble a credit rating, raising the same issues that rule reliance on credit ratings has had? If this approach were taken, should we impose any requirements on the characteristics of such a third party? Should that third party be considered an expert for purposes of the registration statement?
- If we adopted a random selection alternative, should we require the same disclosure regarding the securitized exposures that are subject to risk retention that is required for the assets in the pool at the time of securitization and on an ongoing basis? Should the shelf eligibility condition require that the retained exposures be subject to the same servicing as the securitized exposures?

- Instead of requiring risk retention as a condition for shelf eligibility, should risk retention be made voluntary for shelf-eligible offerings and issuers only be required to add specified disclosure on the interest that the sponsor or other transaction participants retain? In other words, instead of mandating a certain amount of risk retention, should the requirement be that issuers disclose the percentage of risk retained and in what form? As discussed in greater detail in section III.C.3 of the release, we are also proposing to revise Items 1104, 1108 and 1110 of Regulation AB to require disclosure regarding the sponsor's, a servicer's or a 20% originator's interest retained in the transaction, including amount and nature of that interest. This information would be required for both shelf and non-shelf offerings. If those proposed risk retention disclosure requirements were adopted, would there be a need for or a significant incremental benefit from mandating specific minimum risk retention as a condition of shelf eligibility? Could this incremental benefit be achieved strictly through a market-based mechanism – for example, through fully-disclosed ABS covenants in which the sponsor pre-commits to retain a minimum percentage of the risk of the deal, as opposed to a regulatory requirement? Is the disclosure proposed to be required below sufficient to achieve such a benefit, and if not, what additional disclosures should we require? Would disclosure of the risk retention be a sufficient indicator of shelf-eligible offerings? Should we condition shelf eligibility on requiring the sponsor to covenant that it would maintain a minimum percentage of risk retention? If so, should we provide any limitations on the covenant (e.g., what percentage of tranche or assets must be retained, manner of sponsor's retention,

no hedging)? What are the limitations to a market-based mechanism for risk retention? Would such a transaction covenant be credible and enforceable? Would requiring this transaction covenant, along with disclosure of risk retention pursuant to the covenant, sufficiently distinguish those offerings that should be made shelf eligible from those that should not?

- Should net economic interest be measured at the time of origination/issuance as proposed? Would a different measurement date be more appropriate (e.g., the securitization cut-off date)? If the interest were measured at the time of securitization cut-off date, could this cause issuers to change various terms? Is the amount of retention that is required to be retained on an ongoing basis appropriate? Why or why not?
- Should revolving asset master trusts be permitted to satisfy the shelf eligibility requirement by retaining the originator's interest, as proposed? In those cases, should we require as proposed that the originator's interest and securities held by investors are collectively backed by the same pool of receivables, and payments of the originator's interest are not less than five percent of payments of the securities held by investors collectively? Is that typical in credit card issuances?
- Are the proposed netting provisions appropriate? Do we need to provide more guidance on what kind of hedges would be netted against the retained risk? Is the proposed "directly related" standard appropriate? Is it sufficiently clear what type of hedges would be allowed? Are there certain forms of hedges that we should indicate would not be netted against the retained risk? Is there any concern that sponsors may inadvertently hedge the economic risk required to be retained? If

so, do we need to address that and what is the best way for us to address it? Should we expand the proposed netting provisions to other types of hedging? Should we narrow the proposed netting provisions in any way?

- Should the sponsor be allowed to sell off the retained interest after a certain point in time while non-affiliates of the depositor still hold securities and still remain shelf eligible? If so, when? Would that undermine the purpose of the condition? If not, why not?
- Should there be an alternate condition to the risk retention shelf eligibility condition? For instance, should risk retention apply to RMBS that are backed by mortgages that are not qualified mortgages, as defined H.R. 1728, [126] a recent legislative proposal?[127] Would it be appropriate to require risk retention unless

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126 See, e.g., Mortgage Reform and Anti-Predatory Lending Act, H.R. 1728, 111th Congress.

127 At §203 in H.R. 1728, a qualified mortgage is defined as a mortgage:

(i) that does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a 'non-traditional mortgage' under guidance, advisories, or regulations prescribed by the Federal Banking Agencies;

(ii) that does not provide for a repayment schedule that results in negative amortization at any time;

(iii) for which the terms are fully amortizing and which does not result in a balloon payment, where a 'balloon payment' is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

(iv) which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set--

(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

full documentation has been provided for the assets, the borrower meets a certain minimum credit score, or the terms of the loan do not involve balloon payments? Would such requirements for the mortgages in the pool be a better condition to shelf eligibility than the proposed risk retention shelf eligibility condition? Would such a shelf eligibility condition be difficult to implement? Should we instead condition shelf eligibility on risk retention for loans with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first lien on a dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling?[128] How would we structure a condition that relates to specified characteristics of the assets for other asset

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(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan;

(v) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

(vi) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(vii) (vii) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first seven years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(viii) that does not cause the consumer's total monthly debts, including amounts under the loan, to exceed a percentage established by regulation of the consumer's monthly gross income or such other maximum percentage of such income as may be prescribed by regulation under paragraph (4), and such rules shall also take into consideration the consumer's income available to pay regular expenses after payment of all installment and revolving debt;

(ix) for which the total points and fees payable in connection with the loan do not exceed 2 percent of the total loan amount, where 'points and fees' means points and fees as defined by Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)); and

(x) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (4).

[128] See definition of "higher-priced mortgage loans" in 12 CFR 226.35(a) and Truth in Lending, Federal Reserve System, 73 FR 44522 (July 30, 2008).

classes that may not have those variables or those industry standards or have different underwriting standards? What would be the appropriate categories and thresholds? Do those appropriate categories and thresholds differ for different classes? If so, how? Are there securitized asset classes that have no clear or established standards that could demarcate assets meriting shelf eligibility and those that do not?

- The residual interest of a commercial mortgage securitization is typically sold to a third party purchaser, also known as the "B-piece buyer," before the issuance of the securities. In light of this practice, should we permit third party retention of a portion of the securitization to fulfill the shelf eligibility condition? How can we ensure that incentives between the sponsor and investors are aligned in a manner that results in higher quality if the sponsor is permitted to sell off its risk to a third party? For example, should such a shelf eligibility condition require that if a third party will retain the credit risk, the third party purchaser must retain a higher percentage (e.g., ten or 15%) of the risk, rather than five percent? If we allow this approach, should we condition shelf eligibility on a requirement that the third party separately examine the assets in the pool and/or not sell or hedge its holdings? Are there reasons we should, or should not, permit a third party to retain risk in order satisfy the proposed risk retention condition?[129]
- Should any asset classes or types of securities be exempt from the proposed risk retention shelf eligibility condition or have different risk retention requirements apply? Because of the unique nature of residential mortgages in the financial

[129] In recent years, it was not uncommon for the securitization residual or equity interests to be repackaged into CDOs and sold in the private markets.

markets, should risk retention apply to shelf offerings of residential mortgage-backed securities (RMBS) but not offerings of other ABS? If so, what would be an appropriate partial substitute for investment grade rating for shelf eligibility for those other asset classes?

- How would the proposed risk retention shelf eligibility condition impact how sellers account for the transfer of assets in a securitization transaction? Is it desirable to revise the proposal to lessen that impact and if so, how?
- Would the proposal have an impact on the true sale at law of the assets or on the rights of ABS investors as a result of conservatorship, receivership or bankruptcy of the originator or sponsor? If so, how can we revise the proposed risk retention condition to require risk retention without jeopardizing the transfer of assets as a true sale at law or the remoteness of those assets in the event of any bankruptcy, conservatorship, or receivership of the sponsor or originator?
- We note that FINRA Rule 5130 (Restrictions on the Purchase and Sale of IPOs of Equity Securities) generally prohibits FINRA members from selling initial public offerings to broker dealers and their affiliates. The rule is designed to protect the integrity of the public offering process by ensuring that: 1) members make bona fide public offerings of securities at the offering price; 2) members do not withhold securities in a public offering for their own benefit or use securities to reward persons who can give them future business; and 3) industry insiders do not take advantage of their insider position to purchase IPOs for their own benefit at the expense of the public.[130] Under FINRA's rules, if an ABS is an equity

[130] NASD notice to Members 03-79 (March 23, 2004) Initial Public Offerings.

security, it is excluded from the application of the rule if the security is sold pursuant to an exemption under the Securities Act or if it is an offering of investment grade rated ABS. Will this rule have any significant impact on the ability to retain risk as a requirement for shelf eligibility? While our rule changes would eliminate references to credit ratings, sponsors may still obtain ratings, which would potentially qualify the offering for this exemption. Alternatively, FINRA could change its rule to provide the exemption to shelf-eligible ABS rather than investment grade rated ABS. Are there any other regulations or rules that may impact the retention of risk?

b) Third Party Review of Repurchase Obligations

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 about the quality of the pool assets. For instance, in the case of residential mortgage-backed securities, one such 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 the non-compliant asset with a different asset that complies with the representations and warranties.

The effectiveness of these contractual provisions 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.[131] 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. [132] 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. Investors and trustees must rely on the sponsor to provide the necessary documentation about the assets in question. Without further safeguards, the protective quality of the representations and warranties can be compromised.

We are proposing to require as a condition to shelf eligibility, that the pooling and servicing agreement or other transaction agreement for the securitization, which is required to be filed with the Commission,[133] contain a specified provision to enhance the

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131 See the Committee on Capital Markets Regulation Financial Crisis Report, at 135 (noting that contractual provisions have proven to be of little practical value to investors during the crisis); see also Investors Proceeding with Countrywide Lawsuit, Mortgage Servicing News, Feb. 1, 2009 (describing class action investor suit against Countrywide in which investors claim that language in the pooling and servicing agreements requires the seller/servicer to repurchase loans that were originated with "predatory" or abusive lending practices) and American Securitization Forum, ASF Releases Model Representations and Warranties to Bolster Risk Retention and Transparency in Mortgage Securitizations, (Dec. 15, 2009), available at http://www.americansecuritization.com/. Only large investors of ABS such as Fannie Mae and Freddie Mac have been able to exercise repurchase demands. See Aparajita Saha-Bubna, "Repurchased Loans Putting Banks in Hole," Wall Street Journal (Mar. 8, 2010)(noting that most mortgages bouncing back to lenders are coming from Fannie Mae and Freddie Mac).

132 See also Moody's Investors Service, Inc., Special Report: Moody's Criteria for Evaluating Representations and Warranties in U.S. Residential Mortgage Backed Securitizations (RMBS), November 24, 2008 (noting that historically RMBS have not incorporated mechanisms and procedures to identify breaches of representations and warranties and recommending that post-securitization forensic reviews be conducted by an independent third party for delinquent loans).

133 ABS issuers are currently required to file these agreements as an exhibit to the registration statement.

protective nature of the representations and warranties. The specified provision would require the obligated party (i.e. the representing and warranting party) to furnish a third party's opinion relating to any asset for which the trustee has asserted a breach of any representation or warranty and for which the asset was not repurchased or replaced by the obligated party on the basis of an assertion that the asset met the representations and warranties contained in the pooling and servicing or other agreement.[134] The third party opinion would confirm that the asset did not violate a representation or warranty contained in the pooling and servicing agreement or other transaction agreement. Because we believe that annual review of the assets is not sufficient to address investors' concerns regarding the enforceability of these provisions in the underlying transaction documents, the opinion would be required to be furnished to the trustee at least quarterly.

To better ensure that the opinion is impartial, we are proposing to require that the third party providing the opinion not be an affiliate of the obligated party. This proposed third party loan review condition to shelf eligibility is designed to help ensure that representations and warranties about the assets provide meaningful protection to investors, which should encourage sponsors to include higher quality assets in the asset pool.[135] As a result, we believe that this proposed condition is an appropriate partial substitute for the investment grade ratings requirement.

Request for Comment

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134 See proposed General Instruction I.B.1(b) of proposed Form SF-3. Under existing rules, the transaction agreement is required to be filed as an exhibit to the registration statement. See Item 601 of Regulation S-K [17 CFR 229.601].

135 As described below, we also propose to add a disclosure requirement to Exchange Act Form 10-D that would require disclosure of the number of loans that have been presented for repurchase to the party obligated to repurchase the assets under the transaction agreements and the number of those assets that have not been repurchased or replaced.

- Is this proposed condition an appropriate shelf eligibility condition for ABS offerings?
- Would this proposed condition, which would only require an undertaking from the issuer, have a measurable benefit to investors? Should we require more assurance that third party opinions have been provided to investors as a condition to shelf eligibility? For example, should we instead condition eligibility on receipt of a certification from the trustee in offerings of the same asset class by the depositor or its affiliates to the effect that all required opinions have been obtained? Should we condition eligibility on a requirement that the trustee provide notice if required third party opinions are not obtained, along with an absence of a notice from the trustee to the effect that there was a failure to provide required opinions?
- Should we provide more guidelines in this shelf eligibility condition regarding the specifics of the provision that would be required to be included in the pooling and servicing or other agreement? If so, what should be detailed?
- Should the proposed condition provide any further specification of the terms of the third party opinion provision?
- Is it appropriate to require, as proposed, the third party to be non-affiliated with the obligated party? Should we specify further any requirements relating to providers of the third party opinion? Should we specify that the third party opinion provider must be an independent expert, similar to what is required in Section 314(d)(1)[136] of the Trust Indenture Act of 1939?[137]

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136 15 U.S.C. 77nnn(d)(1).

- Should we specify who should provide the third party opinion or who should not be permitted to provide the opinion? Should diligence firms that provide third party pre-securitization review of a random sample of assets be allowed to provide this opinion? Should we specify that it must be a legal opinion? Would attorneys or law firms be willing to provide this opinion? Why or why not? Would it be appropriate to allow a sponsor's in-house counsel to provide the opinion? If a law firm provides the opinion, should we prohibit the law firm that assisted in the offering from providing such an opinion?
- Based on existing attestation standards of either the PCAOB or AICPA, we do not believe that the proposed opinion could be provided by a public accountant. Would a public accountant be able to provide the proposed opinion under existing attestation standards? If so, which standard or standards should be applied, what level of assurance should be provided and how should the third party opinion be reported?
- Should we provide that the third party opinion must cover all of the representations and warranties in the agreement related to the assets, as proposed? Instead, are there certain representations and warranties that are the most significant that the opinion should cover? Are there types of representations and warranties that the third party opinion should not be required to opine on? For example, are there certain representations and warranties that an attorney or a law firm would not be able to opine on? If so, why?

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137 15 USC 77aaa et. seq.

- Are there any other types of limitations that a third party opinion provider would or should place on the required opinion? In general, what type of exam, assessment or evaluation would a third party opinion provider need to make in order to provide the required opinion?
- How costly or burdensome would it be for an issuer to be required to have a third party provide an opinion to satisfy the proposed shelf eligibility condition? Would this impose too much burden on ABS issuers? Are there ways to lessen the cost?
- Should the third party opinion be required to be furnished annually rather than quarterly, as proposed?
- Should we require that the third party opinion also be filed as an exhibit to an Exchange Act report?
- We are aware of some insurance providers that have offered to insure in the context of mergers and acquisitions any breach of the representations and warranties in the transaction agreement. As an alternative to conditioning ABS shelf eligibility on an undertaking in the transaction agreement that the issuer furnish a third party opinion on assets not repurchased (or instead of the proposed condition), should we allow the issuer to purchase insurance to insure a minimum amount or percentage of the sponsor or originator's obligations under the transaction agreement? If so, what kind of disclosure should we require about the insurance provider? How can we ensure that this alternative method of meeting shelf eligibility adequately improves the incentive structure and therefore the quality of the securities?

c) Certification of the Depositor's Chief Executive Officer

We also are proposing to establish a requirement that, as a condition to ABS shelf eligibility to replace investment grade ratings criteria, the issuer provide a certification signed by the chief executive officer of the depositor of the securitization regarding the assets underlying the securities for each offering.[138] The certification would require the depositor's chief executive officer to 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, cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus. This officer would also certify that he or she has reviewed the prospectus and the necessary documents for this certification.[139]

Because we would frame this ABS shelf eligibility condition as a certification requirement instead of a disclosure requirement, we are using slightly different language than a similar EU disclosure requirement in order to more precisely outline what the officer is certifying to. We are proposing a certification rather than a disclosure requirement because we preliminarily believe the potential focus on the transaction and the disclosure that may result from an individual providing a certification should lead to

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138 See proposed General Instruction I.B.1(c) to proposed Form SF-3.

139 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.

enhanced quality of the securitization.[140] 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.[141]

We are proposing that the statements required in the certification would be made based on the knowledge of the certifying officer. As signatories to the registration statement, we would expect that chief executive officers of depositors 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,[142] 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 within each class, with respect to cash flows, credit enhancement and any other structural features in the transaction.[143] The proposed certification would be an explicit representation by the chief executive officer of the depositor of what is already

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140 For instance, 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 would also conduct a structural review of the securitization when issuing a rating on the securities.

141 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").

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

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

implicit in this disclosure contained in the registration statement.[144] This is similar to the certifications of Exchange Act periodic reports required by Exchange Act Rules 13a-14 and 15d-14,[145] which also refer to the disclosure. As with the certifications required by these rules, the language of the proposed certification could not be altered. Instead, any issues in providing the certification would need to be addressed through disclosure in the prospectus.[146] For instance, if the prospectus describes the risk of non-payment, or probability of non-payment, or other risks that such cash flows will not be produced or such payments will not be made, then those disclosures would be taken into consideration in signing the certification.

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 can be liable for material misstatements or omissions under the federal securities laws.[147] An officer providing a false certification potentially could be subject to Commission action for violating Securities Act Section 17.[148] 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.

Under our proposal, this certification would be an additional exhibit requirement for the shelf registration statement that would not be applicable to the non-shelf

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144 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].

145 17 CFR 240.13a-14 and 17 CFR 240.15d-14.

146 See Section III.D.6 of the 2004 ABS Adopting Release.

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

registration statement, Form SF-1, and that would be required to be filed by the time the final prospectus is required to be filed under Rule 424.[149] 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.[150]

Request for Comment

- Is our proposal to require certification appropriate as a condition to shelf eligibility? Would investors find the certification valuable?
- Is the proposed language for the certification requirement appropriate? Should we revise it in any way? Should we require that the officer certify that he has a reasonable basis to believe that the assets will produce cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus (rather than certify that the assets have characteristics that provide a reasonable basis to believe that the assets will produce cash flows at times and amounts necessary to service payments as described)?
- Should we identify the level of inquiry required by the executive officer? Should we specify which documents (other than the prospectus) would need to be reviewed for purposes of the certification, and, if so, which ones should we specify?
- Under the proposal, the certifying officer could take into account internal credit enhancements for purposes of evaluating whether the assets have characteristics that provide a reasonable basis to believe they will produce cash flows at times

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148 15 U.S.C. 77q(a).

149 See proposed revision to Item 601(b) of Regulation S-K.

and in amounts necessary to service payments on the securities as described in the prospectus. Should we also permit the certifying officer to also take into account external credit enhancements that may be utilized in the securitization?[151]

- Are there concerns that it is not possible for any individual to be in a position to certify that the assets in the pool have characteristics that provide a reasonable basis to believe they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus? If so, how can we address those concerns or are there steps we should take to ensure that the level of uncertainty in the structure and assets is clear to investors?
- Instead of, or in addition to, requiring a certification, should we require the sponsor to disclose its estimates of default probability for all tranches in the transaction, default probability of loans in the pool, and/or the expected recovery rate on the loans conditional on default? Such estimates would be expected to be consistent with assumptions used in sponsors' internal modeling. Would this disclosure potentially provide investors useful insights into the sponsor's view of the creditworthiness of pool assets and the securitization overall? Would it convey information similar to that contained in credit ratings, which also have, historically, reflected beliefs about default probabilities and expected recovery rates? Do sponsors currently have internal models, or make internal assumptions

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150 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)).

151 Examples of external credit enhancement may include third party insurance to reimburse losses on the pool assets or the securities or an interest rate swap or similar swap transaction to provide incidental changes to cash-flow and return.

for valuation purposes, that could be used to readily produce these numbers? If so, should we require that disclosed estimates be consistent with those used in sponsors' internal models? Should we indicate whether or not such disclosures constitute forward-looking statements?

- Should the chief executive officer of the depositor, as proposed, be required to sign the certification, or should an individual in a different position be required to certify? Which individual should be required to sign the certification? Should we instead require that the certification be signed by the senior officer of the depositor in charge of securitization, consistent with other signature requirements for ABS? Given that the depositor is often a special purpose subsidiary of the sponsor, would it be more appropriate to have an officer of the sponsor sign the certification? If so, should it be the senior officer in charge of securitization or some other officer of the sponsor?
- 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?

d) Undertaking to File Ongoing Reports

Our last proposed new shelf eligibility criterion replacing the investment grade ratings requirement is a requirement that the issuer provide an undertaking to file Exchange Act reports with the Commission on an ongoing basis. Exchange Act Section 15(d) requires an issuer with an effective Securities Act registration statement to file ongoing reports with the Commission. However, the statute also provides that for issuers that do not also have a class of securities registered under the Exchange Act the duty to file ongoing reports is automatically suspended after the first year if the securities of each

class to which the registration statement relates are held of record by less than three hundred persons. As a result, typically the reporting obligations of all asset-backed issuers,[152] other than those with master trust structures,[153] are suspended after they have filed one annual report on Form 10-K because the number of record holders falls below, often significantly below, the 300 record holder threshold.[154]

In the proposing release for Regulation AB, we requested comment on whether the ability to suspend reporting under Section 15(d) should be revisited.[155] One investor group recommended conditioning ABS shelf registration upon an issuer agreeing either to continue filing reports under Section 15(d) or to make publicly available on their Web sites copies of reports that contain the information required by Form 10–D.[156] While in 2004 we did not adopt rules that would create ongoing reporting obligations for asset-backed issuers, we did note that the concerns raised by investors confirm the importance

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[152] Under Rule 3b-19 under the Exchange Act [17 CFR 240.3b-19], an issuer is defined in relation to asset-backed securities in the following way:

> (a) The depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the "issuer" for purposes of the asset backed securities of that issuing entity.
>
> (b) The person acting in the capacity as the depositor specified in paragraph (a) is a different "issuer" from that same person acting as a depositor for another issuing entity or for purposes of that person's own securities.

[153] In a securitization using a master trust structure, the ABS transaction contemplates future issuances of asset-backed securities backed by the same, but expanded, asset pool that consists of revolving assets. Pre-existing securities also would therefore be backed by the same expanded asset pool.

[154] One source noted that in a survey of 100 randomly selected asset-backed transactions, the number of record holders provided in reports on Form 15 ranged from two to more than 70. The survey did not consider beneficial owner numbers. See Committee on Capital Markets Regulation Financial Crisis Report, at fn. 349.

[155] See Section III.D.2 of Asset-Backed Securities, Release No. 33–8419 (May 3, 2004) [69 FR 26650].

[156] See comment letter from Investment Company Institute (ICI).

to investors of post-issuance reporting of information regarding an ABS transaction in understanding transaction performance and in making ongoing investment decisions.[157]

We are proposing to require as a condition to ABS shelf eligibility that the issuer undertake to file with the Commission reports to provide disclosure as would be required pursuant to Exchange Act Section 15(d) and the rules thereunder, if the issuer were required to report under that section.[158] The issuer's reporting obligation under the undertaking would extend as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in registered transactions.[159] We believe that ongoing reporting of an asset-backed issuer would provide investors and the markets with transparency regarding many aspects about the ongoing performance of the securities and servicer in its compliance with servicing criteria, among other things. We believe this transparency is important for investors and the market and that it is appropriate to encourage ABS issuers to provide ongoing reports by conditioning shelf eligibility on an undertaking to do so. Thus, we believe this requirement is a reasonable additional condition to shelf eligibility. In conjunction with our proposal to require asset-level information, it may prove even more useful to investors.[160]

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157 See Section III.A.3.d of the 2004 ABS Adopting Release. We noted that modifying the reporting obligation would raise broad issues about the treatment of other non-ABS issuers that do not have public common equity. We believe our ABS shelf eligibility proposal is sufficiently distinguishable from the treatment of non-ABS issuers.

158 See proposed Item 512(a)(7)(ii) of Regulation S-K.

159 We also are proposing to add a checkbox to the cover page of Forms 10-K, 10-D, and 8-K where the issuer would be required to indicate whether the report is being filed pursuant to the proposed undertaking.

160 See the Committee on Capital Markets Regulation Financial Crisis Report, at 151-152 (noting that loan-level data is not useful if issuers can opt out of periodic reporting and recommending that the Commission consider whether Section 15(d) of the Exchange Act should apply to the typical RMBS issuance); Statement of Paul Schott Stevens President and CEO, ICI, for SEC Roundtable on Oversight of Credit Rating Agencies, April 15, 2009, available at http://www.sec.gov/comments/4-579/4579-15.pdf (recommending that the Commission require disclosure under Regulation AB be required to be made on an ongoing basis in spite of Section 15(d)).

In connection with this shelf eligibility condition, we are proposing to require disclosure in the prospectus that is filed as part of the registration statement that the issuer has undertaken and will file with the Commission the reports as would be required pursuant to Exchange Act Section 15(d) and the rules thereunder if the issuer were required to report under that section. Such disclosure would be subject to the same liability as other disclosure in the prospectus.

Also, we are proposing to add a disclosure requirement to Item 1106 of Regulation AB[161] that would require disclosure in a prospectus of any failure in the last year of an issuing entity established by the depositor or any affiliate of the depositor to file, or file in a timely manner, an Exchange Act report that was required either by rule or by virtue of an undertaking. We are proposing further changes to ABS shelf eligibility requirements in connection with the proposed condition, as discussed in the following section.

Request for Comment

- We request comment on our proposal to require ABS issuers who wish to conduct delayed shelf offerings to undertake to file reports that would be required under Section 15(d) of the Exchange Act for as long as non-affiliates of the depositor hold any securities that were sold in registered transactions. Should we impose such a requirement? Should ABS issuers who use shelf registration be permitted to terminate their reporting obligations at an earlier period in time under shelf eligibility conditions? If so, when?

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161 17 CFR 229.1106.

- Should we require, as proposed, the disclosure of any failure in the last year of an issuing entity established by the depositor or any affiliate of the depositor to file, or file in a timely manner, an Exchange Act report that was required either by rule or by virtue of the proposed undertaking?
- We request comment on all of the four new proposed shelf eligibility conditions in general. Are the proposed shelf eligibility conditions appropriate alternatives to the existing investment grade ratings requirement? If one or more of these proposed criteria are not adopted, should an investment grade rating continue to determine whether or not an ABS issuer is eligible for shelf registration? Or should we prohibit ABS issuers from using shelf registration altogether? What would the impact be if ABS issuers were prohibited from utilizing shelf registration? Do the proposed changes to the shelf registration procedures described above, coupled with the proposed shelf eligibility conditions, mitigate concerns about ABS issuers using shelf registration?
- Should our proposed shelf eligibility conditions (or some subset of them) be used in addition to the existing investment grade ratings requirement rather than replace it?
- What is the aggregate effect of the proposed revisions to shelf eligibility criteria and the shelf registration process for ABS offerings? If these revisions are adopted, would this make using non-shelf registration (Form SF-1) more attractive to an ABS issuer? How would this change the costs and benefits analysis for using shelf registration for ABS issuers? Would this change cause shelf registration to be less attractive or become uneconomic?

- If we continue to condition shelf eligibility, in part, on characteristics of the securities that relate to quality, should we establish shelf eligibility based on different criteria than the four proposed criteria? Should shelf eligibility be conditioned on a limitation of the capital structure of ABS offerings? For instance, should shelf offerings not be allowed to include leveraged tranches or should we limit the number of tranches? If so, how many (e.g., five, six, or seven)? Should we put restrictions on the size of each tranche? If so, how should we do that? Should we limit ABS shelf eligibility to offerings backed by assets that are seasoned for some period of time? If so, how much time for each asset class (e.g., six months, one year, or two years)? Are there certain standardized structures that we should use as a requirement for shelf offering?

e) Other Proposed Form SF-3 Requirements

We are proposing other amendments to Rule 401 and the instructions in proposed Form SF-3 relating to form eligibility. Currently, to be eligible to use Form S-3, the existing form for ABS shelf registration, an issuer must meet the form's registrant requirements, which generally pertain for ABS issuers to reporting history under the Exchange Act of the depositor and affiliates of the depositor with respect to the same asset class, and at least one of the form's transaction requirements. One of the current ABS transaction requirements for use of Form S-3 is that the securities are investment grade securities, and above we have described our proposals for four new transaction requirements for use of Form SF-3 that would replace the investment grade ratings requirement (i.e., risk retention, third party opinion review of repurchase demands, certification, and the undertaking to file Exchange Act reports). We are proposing to add

new registrant requirements that pertain to compliance with the four proposed transaction requirements. These registrant requirements would be new shelf eligibility conditions to registration on proposed Form SF-3, and would also serve as the new eligibility conditions to be evaluated prior to conducting an offering off an effective Form SF-3 shelf registration statement.

i) Registrant Requirements to be Met for Filing a Form SF-3

In order to be eligible to file a registration statement on proposed Form SF-3, we are proposing that the registrant meet the following new requirements. First, we are proposing to require that to the extent the sponsor or an affiliate of the sponsor of the ABS transaction being registered was required to retain risk with respect to a previous ABS offering involving the same asset class, then, at the time of filing the registration statement, such sponsor or affiliate must be holding the required risk.

Second, we are proposing that to the extent the depositor or an issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor were at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement required to comply with the other transaction requirements of Form SF-3 ("twelve-month look-back period"), with respect to a previous offering of securities involving the same asset class, the following requirements would apply:

- Such depositor and each such issuing entity must have timely filed all the transaction agreements that contained the required provision relating to the third party opinion review of repurchase demands;[162]

[162] Under our proposal discussed in Section III.F below, we are proposing to revise Item 1100(f) to require that exhibits be filed no later than the date of filing the final prospectus.

- Such depositor and each such issuing entity must have timely filed all the required certifications of the depositor's chief executive officer; and
- Such depositor and each such issuing entity must have filed all the reports that they had undertaken to file during the previous twelve months (or such shorter period during which the depositor or issuing entity had undertaken to file reports) as would be required under the Section 15(d) of Exchange Act if they were subject to the reporting requirements of that section.

Third, as proposed, there must be disclosure in the registration statement on Form SF-3 stating that these proposed registrant requirements have been complied with.

These proposed new registrant requirements are, in many respects, consistent with the existing Form S-3 registrant requirement relating to Exchange Act reporting.[163] As with the existing Form S-3 Exchange Act reporting registrant requirement, which we are retaining for proposed Form SF-3, the proposed new registrant requirements would require specified compliance with respect to previous offerings of the depositor or its affiliates. The proposed twelve-month look-back period (except for the requirement relating to risk retention) is also consistent with the existing Form S-3 Exchange Act reporting registrant requirement. The proposed new registrant requirement relating to risk retention requires an issuer to measure its risk retention as of the date of filing the

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[163] Under existing Form S-3, prior to filing a registration statement, 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 calendar months and any portion of a month immediately preceding the filing of the Form S-3 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). Also, such material, other than certain specified reports on Form 8-K, must have been filed in a timely manner. See General Instruction I.A.4 to Form S-3.

registration statement, which we believe is a reasonable requirement. As described in more detail below, we are not proposing to require the sponsor or an affiliate of the sponsor to ensure that all risk was retained at all times during the previous twelve calendar months, for purposes of shelf eligibility, out of a concern that it may be overly burdensome.

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

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) [164] 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 be specified by rule.[165] Such an evaluation would also provide a means for the Commission and its staff to better oversee compliance with the proposed new Form SF-3 eligibility conditions that would replace the existing investment grade ratings requirement. Therefore, in lieu of Section 10(a)(3) updating, we are proposing to revise Rule 401 to require, as a condition to conducting an offering off an effective shelf registration statement, an annual evaluation of whether the Exchange Act reporting registrant requirements have been satisfied. Under the proposal, an ABS issuer wishing to conduct a takedown off an effective shelf registration statement must evaluate whether affiliated issuers that were required to report under Sections 13(a) or 15(d) of the Exchange Act during the previous

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164 15 U.S.C. 77j(a)(3).

165 See Securities Act Rule 401(b) [17 CFR 230.401(b)].

twelve months, have filed such reports on a timely basis, as of ninety days after the end of the depositor's fiscal year end.[166]

iii) Quarterly Evaluation of Eligibility to Use Effective Form SF-3 for Takedowns

We also are proposing to require a quarterly evaluation of whether the ABS issuer has satisfied the proposed new registrant requirements relating to risk retention, third party opinions, the depositor's chief executive officer certification, and the undertaking to file ongoing reports. Under our proposal, an ABS issuer wishing to conduct a takedown off an effective shelf registration statement must evaluate its compliance with the proposed new registrant requirements as of the last day of the most recent fiscal quarter.

(A) Risk Retention

Accordingly, if the interest that a sponsor was required under the proposed risk retention shelf eligibility condition to retain during the previous twelve months (or shorter period as applicable), with respect to a previous offering of securities off a Form SF-3 registration statement involving the same asset class, was sold off or hedged as of the last day of the most recent fiscal quarter, the related shelf registration statement could not be utilized for subsequent offerings until the fiscal quarter after the sponsor has re-acquired the risk that was required to be retained (e.g., by removing the disqualifying hedge or open market purchases of the securities) and such risk was on the sponsor's books as of the end of the fiscal quarter. We have provided for quarterly testing because we are concerned that more frequent testing could be unnecessarily costly. By requiring an evaluation of risk retention at the end of the quarter, we are not suggesting that a

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[166] Under this proposal, the related registration statement could not be utilized for subsequent offerings for at least one year from the date the issuer that had failed to file Exchange Act reports then became current in its Exchange Act reports (and the other requirements had been met).

sponsor could permissibly sell or hedge the required risk. Such activities would be inconsistent with the risk retention shelf eligibility condition, with the disclosure relating to a sponsor's interest in the transaction that we are proposing to require in the registration statement, and would be subject to our proposed periodic reporting disclosure requirements related to the sponsor's interest described in Section III.C.3. below. At the same time, we are concerned that there may be circumstances where a sponsor or its affiliates undertake transactions that inadvertently hedge a required risk retention interest, and discover this after a take-down off the shelf by an affiliated ABS issuer. We are not proposing that this would necessarily cause the new offering to be deemed not to have been registered on the appropriate form. However, we believe that it is important that our requirements take into consideration a practicable testing schedule that promotes compliance with the proposed shelf eligibility criteria without creating undue burdens or uncertainty for issuers, and we are proposing requirements that would require at least quarterly testing to achieve that goal. Similarly, with respect to our proposed registrant requirement relating to risk retention, we are proposing that an issuer evaluate whether the sponsor has retained required risk at the time of filing the registration statement.

(B) Transaction Agreements and Officer Certification

An ABS issuer must also evaluate whether, during the previous twelve months, the depositor or it affiliates had filed the transaction agreements required to contain the third party opinion provision and the depositor's chief executive officer certifications on a timely basis as of the end of the quarter. If they had not, then the depositor could not utilize the registration statement or file new registration statement on Form SF-3 until one year after the required filings were filed.

(C) Undertaking to File Exchange Act Reports

Finally, under this proposal, an issuer must evaluate whether Exchange Act reports, with respect to previous takedowns off an effective registration statement of the depositor or affiliate of the depositor, where the issuer had undertaken to file such reports during the prior twelve months had, in fact, been filed as of the last day of the most recent fiscal quarter. In this way, the reports required under Section 13(a) or 15(d) must continue to be timely for shelf eligibility but reports required pursuant to the undertaking must be current as of the end of the quarter. As such, the ABS issuer would need to confirm once a quarter that it continued to be eligible to use the effective registration statement for takedowns.

Request for Comment

- 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 risk retention, third party opinion, certification and ongoing reporting shelf eligibility 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?
- Should we require disclosure, as proposed, in the registration statement that the registrant requirements have been complied with? Should we specify a location in the registration statement for such disclosure?
- In our proposed registrant requirements for Form SF-3, we are proposing to require that sponsors of affiliated issuers have retained the required risk at the

time of filing the registration statement. Is that appropriate? Should we require continued monitoring of risk retention compliance instead? Should we provide the loss of shelf eligibility if the sponsor of a previously established affiliated issuer has not retained at any time during the previous twelve months all of the risk that it was required to retain during that time? Or would such a requirement be overly burdensome?

- Is it appropriate to require, as proposed, that the certifications and the transaction agreement containing the required third party opinion provision that are required to be filed pursuant to our proposed shelf eligibility conditions be filed on a timely basis? Why or why not?
- We are proposing to require an affiliated issuer that has undertaken to file Exchange Act reports in the last twelve months to have filed such reports as required pursuant to the Exchange Act rules. Is this an appropriate additional registrant requirement for proposed Form SF-3? Should we also specify that such reports must have been filed on a timely basis?
- 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? Why or why not? If not, how should we address the concern that ABS issuers do not file amendments for purposes of Section 10(a)(3)?
- Should we require, as proposed, that an issuer test for sponsor's compliance with risk retention requirements as of the end of the fiscal quarter? Could there be situations where a sponsor or its affiliates undertake transactions

that inadvertently hedge a required risk retention interest? Alternatively, because the testing for compliance would occur at predictable intervals, are there concerns that the quarterly test for risk retention compliance could allow a sponsor to hold less than the required risk in between testing intervals? Should our requirements provide for testing that is made at different intervals (e.g., once a month, once a distribution period, twice a quarter, at minimum number of random intervals)?

- Should we require that the evaluation of whether Exchange Act reports 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 other proposals here?
- Should we require, as proposed, that the evaluation of whether the registrant requirements relating to risk retention, third party opinions, certification, and the issuer's undertaking to file ongoing reports be made as the last day of the most recent fiscal quarter? Should that evaluation be made at different periods, such as monthly or annually?

4. Continuous Offerings

We also are proposing to amend Rule 415 to limit the registration of continuous offerings for ABS offerings to "all or none" offerings. While we have not encountered particular problems with respect to continuous ABS offerings to date (and we believe that ABS offerings are not typically continuous), we believe that our proposal would help ensure that ABS investors receive sufficient information relating to the pool assets, if an

issuer registered an ABS offering to be conducted as a continuous offering. We believe that this would close a potential gap in our regulations for ABS offerings.

In an all or none offering, the transaction is only completed if all of the securities are sold. However, in a best-efforts or "mini-max" offering, a variable amount of securities may be sold. In those latter cases, because the size of the offering would be unknown, investors would not have the transaction-specific information and, in particular, would not know the specific assets to be included in the transaction. Thus, Item 1111, either in its existing form or as proposed to be amended, could not be complied with.[167] Under our proposal, the continuous offering must be commenced promptly and must be made on the condition that all of the consideration paid for such security will be promptly refunded to the purchaser unless (A) all of the securities being offered are sold at a specified price within a specified time, and (B) the total amount due to the seller is received by the seller by a specified date.[168]

Request for Comment

- Is our proposed amendment to Rule 415 relating to continuous offerings of ABS appropriate?
- Should we restrict the duration of a continuous offering of ABS? If so, how long should the offering be permitted to continue?

5. Mortgage Related Securities

As noted above, mortgage related securities, as that term is defined in Section 3(a)(41) of the Exchange Act, currently are eligible for shelf registration regardless of

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[167] The staff has advised us that they believe that neither best efforts offerings nor any continuous offerings have been utilized in the past for public offerings of asset-backed securities.

[168] All or none offerings are described in Exchange Act Rule 10b-9 [17 CFR 240.10b-9] in the same manner.

form eligibility. This was a provision that was added to Rule 415 contemporaneous with the enactment of SMMEA.[169] As a result, an offering of mortgage related securities that does not meet the requirements of Form S-3 can be registered on a delayed basis on Form S-1.[170]

We believe that mortgage related securities should meet all the requirements we are proposing for shelf eligibility in order to be eligible for registration on a delayed basis since these securities present the same complexities and concerns as other asset-backed securities. To achieve this goal and to better coordinate shelf registration for all types of asset-backed securities, we are proposing to amend Rule 415 to eliminate the provision for shelf eligibility for mortgage related securities regardless of the form that can be used for registration of the securities.[171] Under the proposal, offerings of mortgage related securities will only be eligible for shelf registration on a delayed basis if, like other asset-backed securities, they meet the criteria for eligibility for shelf registration that we are proposing today. Thus, as proposed, delayed shelf offerings of mortgage related securities must be registered on new proposed Form SF-3, and accordingly, must meet the eligibility requirements of Form SF-3.

Request for Comment

- We request comment on the proposed amendment for mortgage related securities. Should we instead treat mortgage related securities differently from other asset-

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169 See Section II.A. and fn. 61 above.

170 See fn. 61 of 2004 ABS Adopting Release.

171 As proposed, Rule 415(a)(1)(vii) would enumerate the provision that permits delayed offerings for all asset-backed securities that are eligible to register on the proposed new Form SF-3. This provision would include offerings of eligible mortgage related securities.

backed securities by continuing to condition the ability to conduct a delayed offering of mortgage related securities on their credit ratings by an NRSRO?

- We are proposing to require that delayed offerings of mortgage related securities be registered on proposed Form SF-3, the same registration form for delayed offerings of other asset-backed securities. Is there any reason to permit delayed offerings of mortgage related securities on either proposed Form SF-1 or proposed Form SF-3?

C. Exchange Act Rule 15c2-8(b)

Except for securities issued under master trust structures, shelf-eligible ABS issuers generally are not reporting issuers at the time of issuance. Under Exchange Act Rule 15c2-8(b),[172] with respect to an issue of securities where the issuer has not been previously required to file reports pursuant to Sections 13(a) and 15(d) of the Exchange Act, unless the issuer has been exempted from the requirement to file reports thereunder pursuant to Section 12(h) of the Exchange Act, a broker or dealer is required to deliver a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the sending of such confirmation ("48-hour preliminary prospectus delivery requirement"). The rule contains an exception to the 48-hour preliminary prospectus delivery requirement for offerings of asset-backed securities eligible for registration on Form S-3. An exception to the 48-hour preliminary prospectus

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[172] 17 CFR 240.15c2-8(b).

delivery requirement was first provided in 1995 by staff no-action position.[173] This staff position was later codified in 2004.[174]

In light of recent economic events and to make this rule consistent with our other proposed revisions, we are proposing to eliminate this exception so that a broker or dealer would be required to deliver a preliminary prospectus at least 48 hours before sending a confirmation of sale for all offerings of asset-backed securities, including those involving master trusts. Because each pool of assets in an ABS offering is unique, we believe that an ABS offering is akin to an initial public offering, and therefore we believe the 48-hour preliminary prospectus delivery requirement in Rule 15c2-8(b) should apply. Even with subsequent offerings of a master trust, the offerings are more similar to an initial public offering given that the mix of assets changes and is different for each offering. Moreover, requiring that a broker or dealer provide an investor with a preliminary prospectus at least 48 hours before sending a confirmation of sale should be feasible and made easier to implement as a result of our proposal that a form of preliminary prospectus be filed with the Commission at least five business days in advance of the first sale in a shelf offering. We, therefore, are proposing to amend Rule 15c2-8(b) by repealing the exception for shelf-eligible asset-backed securities from the 48-hour preliminary prospectus delivery requirement.[175]

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[173] See fn. 163 of the 2004 ABS Adopting Release and accompanying text (discussing staff no-action letters providing relief to ABS issuers from Rule 15c2-8(b)).

[174] In the 2004 ABS Adopting Release, we noted some concerns that investors did not have sufficient time to consider ABS offering information. However, we determined to codify the staff position in light of other proposals that we were considering at the time that sought to address information disparity in the offering process.

[175] Because of the other changes we are proposing, we are also proposing to repeal Rule 190(b)(7). Rule 190(b)(7) provides that if securities in the underlying asset pool of asset-backed securities are being registered, and the offering of the asset-backed securities and the underlying securities is not made on a firm commitment basis, the issuing entity must distribute a preliminary prospectus for both the underlying

Under the proposed amendment, a broker or dealer would be required to comply with the 48-hour preliminary prospectus delivery requirement with respect to the sale of securities by each ABS issuer, regardless of whether the issuer has previously been required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act.[176] In addition, the 48-hour preliminary prospectus delivery requirement would also apply to ABS issuers utilizing master trust structures that are exempt from the reporting requirements pursuant to Section 12(h) of the Exchange Act. In a master trust securitization, assets may be added to the pool in connection with future issuances of the securities backed by the pool.[177] Although ABS issuers utilizing master trust structures may be reporting under the Exchange Act at the time of a "follow-on" or subsequent offering of securities, additional assets are added to the entire pool backing the trust in connection with a subsequent offering of securities. Additional assets are added to the pool also in connection with a subsequent offering by an issuer utilizing a master trust structure that is exempt from reporting under Section 12(h) or the rules thereunder. Requiring a broker-dealer to deliver a preliminary prospectus at least 48 hours before sending a confirmation of sale of ABS involving master trust structures issued by a

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securities and the expected amount of the issuer's securities that is to be included in the asset pool to any person who is expected to receive a confirmation of sale of the asset-backed securities at least 48 hours prior to sending such confirmation. Rule 190(b)(7) effectively overrules the exclusion in Rule 15c2-8 for ABS issuers from the 48-hour preliminary prospectus delivery requirement for particular types of ABS offerings. Because we are proposing to repeal the Rule 15c2-8 exclusion for ABS issuers, and because our proposed disclosure requirements regarding the underlying securities for resecuritizations would require significantly more information than what is required in Rule 190(b)(7) to be provided in the preliminary prospectus, we are proposing to delete Rule 190(b)(7).

176 See definition of issuer in relation to asset-backed securities in Exchange Act Rule 3b-19.

177 The typical master trust securitization is backed by assets arising out of revolving accounts such as credit card receivables or dealer floorplan financings.

reporting ABS issuer could afford investors more time to consider information about the assets that is not provided in Exchange Act reports.[178]

We are also proposing a correcting amendment to Rule 15c2-8(j). Paragraph (j) states that the terms "preliminary prospectus" and "final prospectus" include terms that are defined in a Rule 434. In 1995, at the same time we adopted Rule 434, we added paragraph (j) to expand the use of the terms "preliminary prospectus" and "final prospectus" to reflect the terminology used in Rule 434.[179] Rule 434, however, was later repealed in 2005.[180] Accordingly, we are proposing to delete paragraph (j), which is no longer applicable.

Request for Comment

- Should we adopt a 48-hour preliminary prospectus delivery requirement for all ABS issuers, as proposed? Should we instead provide a different application of the 48-hour preliminary prospectus delivery requirement for ABS issuers? Should a broker or dealer be required to deliver a preliminary prospectus for an ABS offering at a different time from initial public offerings, such as 48 hours before the first sale in the offering (instead of 48 hours before confirmation)?
- Does our proposal to require filing of a preliminary prospectus pursuant to proposed Rule 424(h) at least five business days before the first sale in the offering make the proposed changes to Rule 15c2-8(b) unnecessary? Or is delivery of the preliminary prospectus, as contemplated by Rule 15c2-8(b),

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178 We note that many such issuers currently often provide preliminary prospectuses to investors for each offering. Therefore, we do not believe our proposal would be overly burdensome on such issuers.

179 See Section II.B.4.a of Prospectus Delivery; Securities Transactions Settlement, Release No. 33-7168 (May 11, 1995) [60 FR 26604].

180 Rule 434 was repealed in the Offering Reform Release.

important? Would the proposed amendment to 15c2-8(b) provide a meaningful change in the information and time that investors are given to consider offering materials?[181]

- How should the prospectus delivery requirement apply to master trust structures? Is our proposal appropriate with respect to master trusts? Should we instead amend the rule to apply the 48-hour preliminary prospectus delivery requirement to master trusts only if the pool assets have changed by a specified level? If so, what should that level be (e.g., a change in five, ten, or 20% of pool assets, a change in a specified percentage such as five, ten, or 20% of the dollar value of the pool assets as measured by the principal balance, a significant change in the pool assets)? Are there other ways of measuring change in pool assets? Should this be determined by asset class, and if so, which asset classes should be subject to what standards? For example, should a change in pool assets for purposes of Rule 15c2-8 be measured differently for credit card ABS than for dealer floorplan ABS?

- As proposed, there are no specific disclosure requirements applicable to the 48-hour preliminary prospectus. Do we need to specify further how much asset or other information should be contained in the 48-hour preliminary prospectus? Or

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181 The 48-hour preliminary prospectus delivery requirement is triggered by when a broker-dealer sends a confirmation of sale. Under Exchange Act Rule 10b-10 [17 CFR 240.10b-10], the Commission's confirmation rule, broker-dealers must send confirmations to their customers at or before completion of a securities transaction. Given the industry practice of a lengthy time to complete an ABS transaction, a customer may not receive a preliminary prospectus until well after he or she has made an investment decision. See also Exchange Act Rule 15c1-1 [17 CFR 240.15c1-1] (defining "completion of the transaction").

is that unnecessary in light of proposed Rule 430D and the proposed Rule 424(h) filing requirements?

D. Including Information in the Form of Prospectus in the Registration Statement

1. Presentation of Disclosure in Prospectuses

As currently permitted, asset-backed offerings registered on a shelf basis typically present disclosure through the use of two primary documents: the "base" or "core" prospectus and the prospectus supplement.[182] The base prospectus filed prior to effectiveness of the registration statement outlines the parameters of the various types of ABS offerings that may be conducted in the future, including asset types that may be securitized, the types of security structures that may be used and possible credit enhancements or other forms of support. The registration statement at the time of effectiveness also contains one or more forms of prospectus supplement, which outline the format of transaction-specific information that will be disclosed at the time of each takedown.[183] At the time of a takedown, a final prospectus supplement is used which describes the specific terms of the securities being offered.[184] The base prospectus and the final prospectus supplement together form the final prospectus which is filed with the

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[182] The Form S-3 requirements adopted in 2004 incorporated the existing practice of using a base and supplement format. In Section III.A.3.b. of the 2004 ABS Adopting Release, we noted that we did not intend to change existing practices of asset-backed issuers.

[183] Rule 430B describes the type of information that primary shelf eligible issuers and automatic shelf issuers may omit from a base prospectus in a Rule 415 offering and include instead in a prospectus supplement, Exchange Act report incorporated by reference, or a post-effective amendment. Under Rule 430B a base prospectus in a shelf registration statement must comply with the applicable form requirements, but can omit information that is unknown or not reasonably available to the registrant pursuant to Rule 409. See Section V.B.1.b.i.(A) of the Offering Reform Release.

[184] We note that currently stand alone trust issuers do not usually provide preliminary prospectuses to investors.

Commission pursuant to Securities Act Rule 424(b).[185]

This practice has also been utilized by non-ABS issuers. However, for typical corporate issuers, their base prospectus is substantially shorter than in an ABS offering as the bulk of the information is incorporated by reference into the prospectus from the issuer's Exchange Act reports.

In the 2004 ABS Adopting Release, we explained that when presenting disclosure in base prospectuses and prospectus supplements, the base prospectus must describe the types of offerings contemplated by the registration statement.[186] We also noted that a takedown off of a shelf that involves assets, structural features, credit enhancement or other features that were not described as contemplated in the base prospectus will usually require either a new registration statement (e.g., to include additional assets) or a post-effective amendment (e.g., to include new structural features or credit enhancement) rather than simply describing them in the final prospectus filed with the Commission pursuant to Securities Act Rule 424. However, we admonished registrants to exercise discretion and describe only those material asset types and features reasonably contemplated to be included in an actual takedown in order to make the information easily accessible to investors.[187]

Today, we also remind issuers of the importance of providing disclosure in compliance with our plain English rules. Under Securities Act Rule 421,[188] information

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185 See Section III.A.3.b of the 2004 ABS Adopting Release and Section V.B.1.b.i.(A) of the Offering Reform Release.

186 See Securities Act Rule 409 [17 CFR 230.409] and Section III.A.3.b. of the 2004 ABS Adopting Release.

187 See Section III.A.3.b of the 2004 ABS Adopting Release.

188 17 CFR 230.421. See also A Plain English Handbook: How to Create Clear SEC Disclosure Documents, available at http://www.sec.gov/pdf/handbook.pdf.

in a prospectus must be presented in a clear, concise and understandable manner. The note to Rule 421(b) states that issuers should avoid copying complex information directly from legal documents without any clear and concise explanation of the provisions. The rule also cautions against using boilerplate disclosure and repeating disclosure in different sections of the document because it increases the size of the document and it does not enhance the quality of information.[189]

Notwithstanding the discussion in the 2004 ABS Adopting Release and the provisions of Rule 421, we are concerned that the base and supplement format has resulted in unwieldy documents with excessive and inapplicable disclosure that is not useful to investors. Many ABS prospectuses in this format often include boilerplate disclosure and complex information that appears to be imported directly from forms of transaction agreements. Some issuers file a base prospectus that contemplates multiple asset types, security structures and possible types of enhancement and support that are never actually utilized in a takedown. Moreover, the length of a disclosure document for an ABS offering, as a result of the base and prospectus supplement format, is often overwhelming and is burdensome for investors to navigate.

Another problem that has arisen under current practices is that in some instances, issuers have filed with the Commission at the time of takedown only the prospectus supplement and not the base prospectus that was included in the registration statement. Since the base and the prospectus supplement together form the final prospectus, when an ABS issuer excludes the base prospectus from the EDGAR filing at the time of takedown, an investor needs to locate the base prospectus filed with the initial effective

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189 See 17 CFR 230.421(b).

registration statement on Form S-3 on EDGAR. Given that a shelf registration statement is available for three years,[190] it can be unclear what information from the base prospectus is applicable to the current offering or is superseded by the supplement.

The current format has the unintended effect of encouraging a drafting approach that builds in the largest possible flexibility for as many differing transactions as possible, although with the negative effect that an investor bears the burden of determining which disclosures are relevant to a particular transaction. The current rule benefits issuers but may not be as useful for investors, when the registration statement is primarily for the benefit of investors. We believe we should facilitate investor understanding and access to prospectuses for ABS and eliminate unnecessary disclosures given to investors. Investors must be able to readily access and understand the information for a specific offering. Consequently, we are proposing to eliminate the practice of providing a base prospectus and a prospectus supplement for ABS issuers. To accomplish this, we are proposing to add a provision in new Rule 430D and an instruction to proposed Form SF-3 that would require ABS issuers to file a form of prospectus at the time of effectiveness of the proposed Form SF-3 and to file a single prospectus for each takedown, which would require that all of the information required by Regulation AB be included in the prospectus.[191] We believe our proposal will help issuers comply with our plain English requirements, help reduce the size of the offering documents, and eliminate the need to

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190 See Securities Act Rule 415 (a)(5).

191 Disclosure may still be incorporated by reference as allowed by proposed Rule 430D and the applicable Form requirements. Proposed Rule 430D(c) would provide that information omitted from a form of prospectus that is part of an effective registration statement in reliance on Rule 430D(a) that is subsequently included in the prospectus that is part of a registration statement must contain all of the information that is required to be included in the prospectus pursuant to the requirements of the registration statement with respect to the offering. Under this proposed requirement, an ABS issuer would not be permitted to include information on the offering in a prospectus base and supplement format. We discuss this proposal in more depth in Section II.B.1.b.

review inapplicable disclosure.

Other than the proposed limitation of one depositor and asset class per registration statement discussed below, we believe requiring only one form of prospectus with the registration statement would not limit the flexibility of the issuer to vary its structural features from takedown to takedown. As is the case today, assets, structuring and other features may be presented in brackets in the form of prospectus filed with the registration statement. Under the proposal, issuers could include the same bracketed information in the form of prospectus filed with the registration statement. At the time of the offering, only the disclosure applicable to the transaction at hand would be included in the prospectus provided to investors and filed with the Commission.

Currently, some sponsors create a separate depositor for each of its various loan programs, and each depositor files its own shelf registration statement. Other issuers have included multiple depositors,[192] multiple base prospectuses and multiple prospectus supplements all in one registration statement.[193] Under our proposal, each depositor would be required to file a separate registration statement for each form of prospectus. Each registration statement would cover offerings by one depositor securitizing only one asset class.[194] Although this would change current practice for asset-backed issuers, we

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[192] With respect to registration statements with multiple depositors, each depositor is an issuer of each takedown of securities off of a shelf. See Securities Act Rule 191 [17 CFR 230.191].

[193] Also, the current instructions to Form S-3 state that a registration statement may not merely identify several alternative types of assets that may be securitized. Under current requirements, a separate base prospectus and form of prospectus supplement must be presented for each asset class that may be securitized in a discrete pool in a takedown under that registration statement. See General Instruction V.A.2 of Form S-3 and Section III.A.3.b. of the 2004 ABS Adopting Release.

[194] For instance, resecuritization transactions of mortgage-backed securities would be considered a separate asset class from mortgage-backed securities and, thus, require a separate registration statement, even if the depositor would be the same. As we currently require for offerings registered on Form S-3, a separate registration statement would be required for takedowns involving pools of foreign assets where the assets originate in separate countries or the property securing the pool assets is located in separate countries. In cases where an underlying security such as a special unit of beneficial interest (SUBI) or

believe such a change would make disclosure for investors much more accessible and useful.

Request for Comment

- Is the proposed change to presentation of disclosure in the prospectus appropriate? Would investors benefit from the proposed change? Would it be unduly burdensome for issuers to prepare the disclosure in a single document? If so, how can we better mandate clear and concise documents so that investors are able and encouraged to analyze the investment?
- Is our proposal to require a depositor to file a separate registration statement for each form of prospectus appropriate?
- Are there any particular asset classes that should retain the base and form of prospectus supplement format? If so, why?
- Should issuers be able to file more than one form of prospectus with a registration statement? If so, why? If issuers were permitted to do so, what other steps could be taken to help market participants understand the transaction?
- Are there other changes we should make to the format and form of the prospectus to assist investors in analyzing the potential investment?

2. Adding New Structural Features or Credit Enhancements

We are also proposing to restrict the ability of ABS issuers to file a prospectus under Rule 424(b) for the purpose of adding certain types of information to the form of prospectus. Under the existing Rule 430B, ABS issuers and other issuers are permitted to

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collateral certificate is also registered, the depositor of the underlying SUBI or collateral certificate would also be included in the same registration statement. Collateral certificates and SUBIs are discussed further in Section VII.A. below.

provide the information omitted from the prospectus that is part of a registration statement at the time of the offering as a prospectus supplement, a post-effective amendment, or where permitted as described below, through its Exchange Act filings that are incorporated by reference into the registration statement and prospectus that is part of the registration statement and identified in a prospectus supplement.[195] In the 2004 ABS Adopting Release, we stated our longstanding position that the type or category of asset to be securitized must be fully described in the registration statement at the time of effectiveness.[196] We further explained the structural features contemplated also should be disclosed, as well as identification of the types or categories of securities that may be offered, such as interest-weighted or principal-weighted classes (including IO or PO securities), planned amortization or companion classes or residual or subordinated interests.[197] We stated that a takedown off of a shelf that involves assets, structural features, credit enhancements or other features that were not described as contemplated in the base prospectus will usually require either a new registration statement (*e.g.*, to include additional assets) or a post-effective amendment (*e.g.*, to include new structural features or credit enhancement) rather than simply describing them in the final prospectus filed with the Commission pursuant to Securities Act Rule 424.[198] Although, with Offering Reform, we adopted Rule 430B,[199] which provides all issuers on Form S-3 with the alternative to include information previously omitted in a prospectus filed pursuant to 424(b) or by incorporating periodic and current Exchange Act reports and the staff has

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195 See Securities Act Rule 430B(d) and Offering Reform Release Section V.B.1.b.i.(B).

196 See Section III.A.3.b. of the 2004 ABS Adopting Release.

197 See id.

198 See id.

199 See Securities Act Rule 430B(d) and Section V.B.1.b.i.(B) of the Offering Reform Release.

continued to apply our position articulated in the 2004 ABS Adopting Release. We confirm that position by proposing to codify our statement regarding when a post-effective amendment would be required in Rule 430D.[200]

We are proposing to require that when the issuer desires to add information that relates to new structural features or credit enhancement, the issuer must file that information by post-effective amendment. As a result of this proposal, the staff would have the opportunity to review new structural features or credit enhancements that would be contemplated for future offerings. With respect to new assets, we believe that if the issuer intends to offer securities that are backed by assets that are not contemplated in the form of prospectus that is filed as part of the registration statement, a new registration statement should be filed.[201]

Request for Comment

- Is our proposal to require issuers to file a post-effective amendment to reflect new structural features or credit enhancements and provide a related undertaking appropriate?

E. Pay-as-You-Go Registration Fees

In 2005, we first adopted pay-as-you-go rules[202] to allow well-known seasoned issuers using automatic shelf registration statements to pay filing fees at the time of a securities offering.[203] To alleviate some of the burden of managing multiple registration

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200 See proposed Securities Act Rule 430D(d)(2).

201 If the asset pool includes securities, registration would be required under Securities Act Rule 190.

202 See Securities Act Rules 456(b) [17 CFR 230.456(b)] and 457(r) [17 CFR 230.457(r)].

203 See Section V.B.2.b.(D) of the Offering Reform Release. Under the current pay-as-you-go procedure for WKSIs, an issuer can pay any filing fee, in whole or in part, in advance of takedown or at the time of takedown providing flexibility in the timing of the fee payment. Issuers using pay-as-you-go can still deposit monies in an account for payment of filing fees when due. The fee rules applicable to the use

statements among ABS issuers, we are proposing to allow, but not require, asset-backed issuers eligible to use Form SF-3 to pay filing fees as securities are offered off of a shelf registration statement. If this approach, commonly known as "pay-as-you-go," is adopted for ABS issuers, no filing fees would need to be paid at the time of filing a registration statement on Form SF-3. A dollar amount or a specific number of securities would not be required to be included in the calculation of the registration fee table in the registration statement, unless a fee based on an amount of securities is paid at the time of filing.[204] However, under our proposal the fee table on the cover of the registration statement must list the securities or class of securities registered and must indicate if the filing fee will be paid on a pay-as-you-go basis.[205]

Under our proposal, the triggering event for a fee payment would be the filing of a preliminary prospectus under proposed Rule 424(h).[206] At the time of filing a Rule

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of such account, also referred to as the "lockbox account," apply. The amount of the fee is calculated based on the fee schedule in effect when the money is withdrawn from the lockbox account. This flexibility had been provided so issuers may determine the fee payment approach most appropriate for them. See fn. 529 of the Offering Reform Release.

204 See proposed Securities Act Rule 457(s).

205 In the case of ABS, the fee table on the registration statement would typically list the offering of certificates and notes as separate classes of securities. Each class (or tranche) of those certificates and notes offered would not need to be separately listed on the fee table. However, if the ABS is a resecuritization, where registration of the underlying securities would be required under Rule 190 and the underlying security was not listed on the fee table of the Form SF-3 registration statement, the offering would require a new registration statement. Likewise, if a servicer or trustee invests cash collections in other instruments which may be securities under the Securities Act, such as guarantees or debt instruments of an affiliate, under Rule 190 those underlying securities would also need to be registered concurrently with the asset-backed offering. If those underlying securities were not listed on the fee table of the registration statement, a new registration statement would be required.

206 See proposed Securities Act Rule 456(c). Unlike the pay-as-you-go rules for WKSIs, we do not believe that a cure period is necessary for ABS issuers because we are proposing to require ABS issuers to pay the required fee at the time the preliminary prospectus is filed under Rule 424(h). The timing of the fee payment for ABS would not give rise to the same effective date and registration concerns that arise with WKSIs. Section V.B.2.b.(D) of the Offering Reform Release.

424(h) prospectus,[207] the asset-backed issuer would include a calculation of registration fee table on the cover page of the prospectus and would be required to pay the appropriate fee calculated in accordance with Securities Act Rule 457.[208]

Request for Comment

- Is our proposal for a pay-as-you go fee alternative for ABS issuers appropriate? Should ABS issuers be able to register offerings of an unspecified amount of securities on Form SF-3?
- Would this help with the management of multiple shelves for asset-backed issuers? Are there other steps we could take to help sponsors and depositors manage shelves for ABS?
- Should we revise Rule 457(p), as proposed, to clarify that if an ABS offering is not completed after the fee is paid, the fee could be applied to future registration statements by the same depositor or affiliates of the depositor across asset classes?

F. Signature Pages

We also are proposing to revise the signature pages for registration statements of asset-backed issuers. Securities Act Section 6[209] requires that the registration statement be signed by the issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of

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207 If an issuer is filing a Rule 424(h) filing solely in order to update the fee table and pay additional fees, the 424(h) filing would not trigger a new five business day waiting period.

208 The amount of the filing fee is calculated based on the fee schedule in effect at the time of payment (upon filing in advance, or at the time of an offering) in accordance with the provisions of Rule 457. Thus the fee amount may be different depending on the time of payment. Also, as provided in Rule 457(p), if all or a portion of the securities offered under a registration statement remain unsold after the offering's completion or termination, or withdrawal of the registration statement, the aggregate total dollar amount of the filing fee associated with those unsold securities may be offset against the total filing fee due for a subsequent registration statement. Currently, if an ABS offering is not completed after the fee is paid, the fee could be applied to future registration statements by the same depositor or affiliates of the depositor.

directors or persons performing similar functions. In 2004, we clarified that the depositor is the issuer for purposes of ABS.[210] We codified in the general instructions to Forms S-1 and S-3 that the registration statement must be signed by the depositor, the depositor's principal executive officer or officers, principal financial officer and controller or principal accounting officer, and by at least a majority of the depositor's board of directors or persons performing similar functions.[211]

Asset-backed issuers are not required to file financial statements of the issuer under our rules or pursuant to their governing documents, and these issuers do not employ a principal accounting officer or controller. Thus, because such signatures appear to serve no purpose, we are proposing to exempt asset-backed issuers from the requirement that the depositor's principal accounting officer or controller sign the registration statement.

The Form 10-K 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[212] 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

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209 15 U.S.C. 77f(a).

210 Securities Act Rule 191 and Exchange Act Rule 3b-19 state that the depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the "issuer" for purposes of the asset-backed securities of that issuing entity. These rules also provide that the person acting in the capacity as such depositor is a different "issuer" from that same person acting as a depositor for another issuing entity or for purposes of that person's own securities.

211 See General Instruction VI.C of Form S-1 and General Instruction V.B. of Form S-3.

servicer if the servicer is signing the Form 10-K report. We are now proposing to require that the senior officer in charge of securitization of the depositor sign the registration statement (either on Form SF-1 or Form SF-3) for ABS issuers. We believe that requiring such individual to sign the registration statement is more meaningful in the context of ABS offerings because it is more consistent with our other signature requirements for ABS issuers.

Request for Comment

- Is our proposed amendment to the registration statement signature requirements appropriate? Is there any reason we should not exempt, as we are proposing to do, ABS issuers from the requirement that the depositor's principal accounting officer or comptroller sign the registration statement?
- Is our proposal to require the senior officer in charge of securitization of the depositor to sign the registration statement for ABS issuers appropriate?

III. Disclosure Requirements

In addition to reformatting how prospectuses are presented in ABS offerings, we are proposing several changes to the disclosure requirements in Regulation AB for asset-backed securities. Three of our proposals involve significant changes from our current requirements. First, subject to certain exceptions, we are proposing to require asset-level information regarding each asset in the pool backing the securities. Second, we are proposing that issuers of ABS backed by credit card pools provide standardized grouped account data regarding the underlying asset pool. Third, we are proposing to require that most issuers provide the flow of funds, or waterfall, in a waterfall computer program. In

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[212] 15 U.S.C. 7241.

addition, we are proposing changes that refine other disclosure requirements, including those relating to pool-level disclosure, the prospectus summary, transaction parties, and static pool information.

A. Pool Assets

We are proposing to increase the required disclosure regarding the assets underlying the ABS. We are proposing that in most ABS offerings asset-level data be required in the prospectus at the time of offering and in Exchange Act reports. For credit card ABS issuers, we are proposing that issuers provide grouped account data. In order to facilitate investors' use of asset data files, we are proposing that the data be filed on EDGAR in Extensible Mark-Up Language (XML). We also are proposing revisions to our pool-level disclosure requirements designed to enhance the information available to analyze the pool.

While Regulation AB does not restrict the type or quality of assets that may be included in the asset pool, our rules under the Securities Act are designed to assure that a prospectus contains disclosure regarding the assets that facilitates informed investment decisions.[213] We believe access to robust information concerning the pool assets is important to investors' ability to make informed investment decisions about asset-backed securities.[214] We also believe disclosure about the pool should be as multi-faceted as necessary to provide a full picture of the composition and characteristics of the pool

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213 Item 1111 of Regulation AB contains our disclosure requirements regarding the pool assets. Item 1111 requires disclosure of the material aspects of the composition of the asset pool, sources of pool cash flow, changes to the asset pool, and rights and claims regarding the pool assets. See Section III.B.5. of the 2004 ABS Adopting Release.

214 See also Section III.B.5 of the 2004 ABS Adopting Release.

assets. In addition, it is critical that the pool asset information be presented in a comprehensible and clear fashion.[215]

1. Asset-Level Information in Prospectus

To augment our current principles-based pool-level disclosure requirements, we are proposing a new requirement to disclose asset-level information. Investors, market participants, policy makers and others have increasingly noted that asset-level information is essential to evaluating an asset-backed security.[216] Some have said that there is a need and investor appetite for increased asset-level disclosures.[217] We have heard that understanding a borrower's ability to repay may be more important than the features of the underlying loan, or even the collateral, on an asset-level basis.[218] Others have stated that having access only to pool data (and not asset-level data) has made it difficult to discern whether the riskiest loans were to the most creditworthy borrowers or to the least creditworthy borrowers in the asset pool.[219]

The public availability of asset-level information has been limited. In the past, some transaction agreements for securitizations required issuers to provide investors with

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215 See id.

216 See, e.g., "Restoring Confidence in the Securitization Markets," Global Joint Initiative Report, Dec. 3, 2008, at 11.

217 See Committee on Capital Markets Regulation Financial Crisis Report, at 147 (noting that a survey of data fields provided to investors did not include 21 data fields considered essential by all investors surveyed). See also Joshua Rosner, Securitization: Taming the Wild West, Roosevelt Institute Project on Global Finance, Make Markets Be Markets (Mar. 2010) at 75 (noting investors need for timely loan-level performance data in order to accurately price securities).

218 See Committee on Capital Markets Regulation Financial Crisis Report, at 151 (recommending that standard, granular, loan-level data be provided sufficient to allow investors to complete their own credit analysis). See also Rosner, at 77 (noting that the lack of clear definitions interferes with investors' ability to compare performance of various deals, issuers, and underlying collateral).

219 Testimony of Patricia A. McCoy, Hearing on "Securitization of Assets: Problems and Solutions" before the U.S. Senate Banking Housing and Urban Affairs Subcommittee on Securities, Insurance and Investment, Oct. 7, 2009.

asset-level information, or information on each asset in the pool backing the securities.[220] Such loan schedules provided to an investor are sometimes filed as part of the pooling and servicing agreement or as a free writing prospectus. We believe that all investors and market participants should have access to the information necessary to assess the credit quality of the assets underlying a securitization transaction at inception and over the life of the transaction.[221]

For most investors, the usefulness of asset-level data is generally limited unless the individual data points are standardized. Standardizing the information facilitates the ability to compare and analyze the underlying asset-level data of a particular asset pool as well as compare them with other pools. [222] Standardized and easily accessible data points also may facilitate stronger independent evaluations of ABS by market participants.

Prior to today, the Commission had not proposed to require asset-level data or proposed standards for such information. We are aware that some standards have already been developed for registered and unregistered offerings of commercial mortgage-backed

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220 This usually includes information such as the principal balance at the time of origination, the date of origination, the original interest rate, the type of loan (e.g., fixed, ARM, hybrid), the borrower's debt to income ratio, the documentation level for origination of the loan, and the loan-to-value ratio.

221 Others have noted the importance of loan-level data to investors. See U.S. Department of Treasury, A New Foundation: Rebuilding Financial Supervision and Regulation, June 17, 2009; (noting in particular, that issuers of ABS should be required to disclose loan-level data); Federal Deposit Insurance Corporation, Supervisory Insights: Enhancing Transparency in the Structured Finance Market, available at http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum08/article01_transparency.html (stating that a lack of complete and public dissemination of a securitization's loan-level data reduces transparency and hampers the investor's ability to fully assess risk and assign value).

222 See Statement of Former Federal Reserve Governor Randall S. Kroszner at the Federal Reserve System Conference on Housing and Mortgage Markets, Washington, D.C., Dec. 4, 2008 (stating that a necessary condition for the potential of private-label MBS to be realized going forward is for comprehensive and standardized loan-level data covering the entire pool of loans backing MBS be made available and easily accessible so that the underlying credit quality can be rigorously analyzed by market participants).

securities and residential mortgage-backed securities.[223] The CRE Finance Council (formerly Commercial Mortgage Securities Association)'s[224] Investor Reporting Package includes data fields on loan, property and bond-level information for commercial mortgage-backed securities at issuance and while the securities are outstanding.[225] The American Securitization Forum (ASF)[226] recently published disclosure and reporting packages for residential mortgage-backed securities that included standardized definitions for loan or asset-level information.[227] The package is part of the group's Project on Residential Securitization Transparency and Reporting ("Project RESTART"). The ASF has proposed implementation dates involving new issuance loans under the Disclosure Package of February 1, 2010.[228] Other organizations, such as Mortgage Electronic Registration Systems, Inc. (MERS),[229] have developed reporting packages to capture and report data at different times during the life of the underlying residential or commercial loan. Sellers of mortgage loans to Fannie Mae and Freddie Mac[230] are required to deliver

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223 The collection of standardized disclosure given to investors is generally called a reporting package.

224 The CRE Finance Council (formerly Commercial Mortgage Securities Association) is a trade organization for the commercial real estate finance industry.

225 Materials related to the CRE Finance Council Investor Reporting Package are available at: http://www.crefc.org/.

226 ASF is a securitization industry group that represents issuers, investors, financial intermediaries, rating agencies, legal and accounting firms, trustees, servicers, guarantors, and other market participants.

227 See American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009), available at http://www.americansecuritization.com/.

228 Implementation dates for ongoing monthly reporting under the Reporting Package are set for August 1, 2010 on a trial basis and November 1, 2010 on a permanent basis.

229 MERS is affiliated with the Mortgage Industry Standards Maintenance Organization (MISMO), a not-for profit subsidiary of the Mortgage Bankers Association.

230 Fannie Mae and Freddie Mac are government sponsored enterprises (GSE's) that purchase mortgage loans and issue or guarantee mortgage-backed securities (MBS). MBS issued or guaranteed by these GSEs have been and continue to be exempt from registration under the Securities Act and reporting under the Securities Exchange Act. As a result, only non-GSE ABS, or so called "private label" ABS, will be required to comply with the new rules. For more information regarding the GSEs, see Task Force on

loan-level data in a standardized electronic form.[231] Other federal agencies, such as the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) also collect certain loan-level data on mortgages. The OCC and the OTS gather mortgage performance data from national banks and thrifts.[232] We are unaware of any publicly available data standards for other asset classes and currently there is no mandatory requirement that issuers follow any of these standards for reporting to investors in asset-backed securities.

Because we believe that issuers should provide transparent and comparable data, we are proposing 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. In our discussion below, we refer to each individual item requirement as an asset-level data point. Some of the asset-level data points that we are proposing are indicator fields. Indicator fields will require an answer of "yes" or "no," and are designed to facilitate investor review of the data.[233] We are also proposing an instruction to Schedule L that

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Mortgage-Backed Securities Disclosure, "Staff Report: Enhancing Disclosure in the Mortgage-Backed Securities Markets" (Jan. 2003) available on our Web site at http://www.sec.gov/news/studies/mortgagebacked.htm.

231 See Fannie Mae Loan Delivery Data requirements at https://www.efanniemae.com/sf/refmaterials/prodmortcodes/index.jsp. See also Freddie Mac Product Delivery requirements at http://www.freddiemac.com/singlefamily/sell/delivery/.

232 The results are collected and published in a quarterly Mortgage Metrics Report. The reports are available at http://www.occ.gov/mortgage_report/MortgageMetrics.htm or at http://www.ots.treas.gov/?p=Mortgage%20Metrics%20Report. See Joint Press Release of the Office of the Comptroller of the Currency and the Office of Thrift Supervision, "OCC and OTS Expand Data Collection on Mortgage Performance," February 13, 2009, available at http://www.occ.treas.gov/ftp/release/2009-9.htm. (attaching Web site link to the data dictionary).

233 For example, we are proposing an asset-level data point to disclose whether the asset has been modified. The response would be either yes or no. If the answer is no, a preparer or user of the data would then know that asset-level data points related to modifications would not be applicable to that particular asset.

will contain definitions for some of the terms that we use throughout the schedule. Because we believe that asset-level data should be provided to investors and all market participants in a form that facilitates data analysis, we are also proposing to require that asset-level data be filed on EDGAR in XML format. These proposals would be in addition to the disclosure currently required about the composition and characteristics of the pool of assets taken as a whole. We believe the pool-level disclosure currently required by Regulation AB is still important to investment decisions and can facilitate an investor's understanding of the overall investment opportunity.

Request for Comment

- Is our proposal to require asset-level disclosure with data points identified in our rules appropriate?
- Is a different approach to asset-level disclosure preferable, such as requiring it generally, but relying on industry to set standards or requirements? If so, how would data be disclosed for all the asset classes for which no industry standard exists or for which multiple standards may exist? To the extent multiple standards exist, how would investors be able to compare pools? Please be detailed in your response.
- We note that there are several different standards under which asset-level data is already required. Would our requirements impose undue burdens on ABS issuers?
- Should we instead amend our current requirements regarding pool-level disclosure by requiring issuers to present certain pool-level tables in a standardized manner? For instance, should we specify how statistical data

should be presented by defining the groups or incremental ranges that must be presented? What would those appropriate groups or incremental ranges be for an individual table? For instance, what would be the appropriate range for obligor income and why? Please be specific in your response.

- Are the definitions of terms in the proposed instruction to Schedule L appropriate? Are there any other terms that should be included in the instruction?

a) When Asset-Level Data Would be Required in the Prospectus

Today we are proposing new Item 1111(h) and Schedule L of Regulation AB which enumerate all of the data points that must be provided for each asset in the asset pool at the time of the offering. Schedule L data would be an integral part of the prospectus, and in order to facilitate investor analysis prior to the time of sale, we are proposing to require issuers to provide Schedule L data as of a recent practicable date that we define as the "measurement date" at the time of a Rule 424(h) prospectus. So that investors receive a data file with final pool information at the time of the offering, we also are proposing that an updated Schedule L, as of the cut-off date for the securitization, be provided with the final prospectus under Rule 424(b).[234] Likewise, if issuers are required to report changes to the pool under Item 6.05 of Form 8-K, updated Schedule L data would be required.[235] As we discuss in Section III.A.3, we are proposing a new Item 6.06 to Form 8-K for issuers to file the XML data file.

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234 The cut-off date would be the date specified in the instruments governing the transaction (i.e., the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders).

235 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 Item 1111 and Item 6.05 on Form 8-K.

Request for Comment

- Is the proposed requirement to provide Schedule L data with the proposed Rule 424(h) prospectus, the final prospectus under 424(b) and for changes under Item 6.05 of Form 8-K appropriate? Should Schedule L data be required at any other time? If so, please tell us when and why.
- Are the proposed measurement dates appropriate? Are there any data fields that would be inappropriate or too burdensome to supply as of two different measurement dates (i.e., the measurement date and the cut-off date)? If so, please specify the data field and provide a detailed explanation.
- Should we provide further guidance about what would be a recent practicable date for purposes of determining the measurement date?

b) Proposed Disclosure Requirements and Exemptions

We are proposing that issuers of ABS of most asset classes must provide the standardized data points enumerated in Schedule L. The proposed standardized data points would serve to indicate the payment stream related to a particular asset, such as the terms, expected payment amounts, indices and whether and how payment terms change over time. Such data points would be important in order to analyze the future payments on the asset-backed securities. To perform better prepayment analysis or credit analysis, we are proposing data points that indicate the quality of the obligor or the asset origination process. For instance, in the case of residential mortgages, data points we are proposing to require, among others, are credit score of the obligors, employment status, income, and how that information was verified. To perform analysis of the collateral related to the asset in the pool, we are proposing data points related to each property. For

instance, in the case of loans or leases secured by automobiles, issuers would need to provide data points related to the type and model of car and the value of the car.

Except with respect to certain asset classes (as described below), we are proposing that every issuer must provide the data points listed under Item 1. General described below. We are proposing to subdivide Schedule L based on the asset class. We believe the general data points are consistent with the principles-based definition of an asset-backed security and apply to almost every asset class underlying a transaction that has been registered in the past, and should also apply to any new asset classes that may be included in a registered offering in the future. We also propose asset class specific data point requirements for eleven specific asset classes: residential mortgages, commercial mortgages, auto loans, auto leases, equipment loans, equipment leases, student loans, floorplan financings, corporate debt and resecuritizations. We are proposing item requirements for these asset classes because, based on our experience with registered offerings for these types of asset classes, we believe these data points are among those that represent the more useful information for investors.

i) Proposed Coded Responses

Consistent with our efforts to standardize asset-level disclosure, we are proposing that issuers provide responses to the asset-level disclosure requirements as a date, a number, text or a coded response. The required coded responses will be contained in the EDGAR Technical Specifications. Attached at the end of this release we provide an appendix which contains a table for the proposed general item requirements as well as asset class specific item requirements. Each table lists the proposed item number, the title of the proposed data field, the proposed definition, the proposed response type and

codes, if applicable, and proposed category of information. The proposed category of information designates the type of information we are proposing so that users will know when the data point is applicable.

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 are aware 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. As we stated in the 2004 ABS Adopting Release, issuers and underwriters should be mindful of any privacy, consumer protection or other regulatory requirements when providing loan-level information, especially given that in most cases, the information would be publicly filed on EDGAR.[236] However, as we noted above, 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 are proposing ranges, or categories of coded responses.

For instance, to designate geographic location of an obligor who is a person, instead of requiring, city, state or zip code of the property, we are proposing that issuers provide the broader geographic delineations of Metropolitan or Micropolitan Statistical Areas. [237] Metropolitan and Micropolitan Statistical Areas are geographic areas, designated by a five-digit number, defined by the U.S. Office of Management and Budget (OMB) for use by Federal statistical agencies in collecting, tabulating, and publishing

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236 See Section III.C.1.c. of the 2004 ABS Adopting Release.

237 Current lists and definitions of Metropolitan and Micropolitan Statistical Areas are available at http://www.census.gov/population/www/metroareas/metrodef.html.

Federal statistics.[238] A Metropolitan Statistical Area may also contain a subdivision, called a Metropolitan Division.[239] As an example, if the underlying property that serves as collateral to a mortgage is located in Alexandria, Virginia, the issuer would need to designate the geographic location as 47894 - Washington-Arlington-Alexandria, DC-VA-MD-WV, the appropriate Metropolitan Division.

For asset-level disclosure data points that require disclosure of obligor credit scores, we are proposing coded responses that represent ranges of credit scores. The ranges are based on the ranges that some issuers already provide in pool-level disclosure. For monthly income and debt ranges, we developed the ranges based on a review of statistical reporting by other governmental agencies.

We also realize that a situation may arise where an appropriate code for disclosure may not be currently available in the technical specifications. To accommodate those situations, our proposals provide a coded response for "not applicable," "unknown" or "other." However, "not applicable," "unknown" or "other" would not be appropriate responses to a significant number of data points and registrants should be mindful of their

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238 A Metropolitan Statistical Area contains a core urban area of 50,000 or more population, and a Micropolitan Area contains an urban core of at least 10,000 (but less than 50,000) population. Each Metro or Micro area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core. The OMB also further subdivides and designates New England City and Town Areas. The OMB may also combine two or more of the above designations and identify it as a Combined Statistical Area.

239 For example, 47900 designates the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area. 47900 contains two subdivisions. One is 13644 Bethesda-Frederick-Rockville, MD Metropolitan Division which includes Frederick County and Montgomery County. The other is 47894 Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division which contains the District of Columbia, DC; Calvert County, MD; Charles County, MD; Prince George's County, MD; Arlington County, VA; Clarke County, VA; Fairfax County, VA; Fauquier County, VA; Loudoun County, VA; Prince William County, VA; Spotsylvania County, VA; Stafford County, VA; Warren County, VA; Alexandria City, VA; Fairfax City, VA; Falls Church City, VA; Fredericksburg City, VA; Manassas City, VA; Manassas Park City, VA; and Jefferson County, WV. See OMB Bulletin No. 09-01, "Update of Statistical Area Definitions and Guidance on Their Uses," List 3, November 2008.

responsibilities to provide all of the disclosures required in the prospectus and other reports.[240] Additionally, a situation may arise where an issuer would like to disclose other data not already defined in our proposed disclosure requirements.[241] In these cases, registrants should provide appropriate explanatory disclosure. As we discuss in more detail below, we are proposing that issuers file explanatory disclosure and or definitions of additional data points as another exhibit to Form 8-K at the same time the asset-level data file is required to be filed on Form 8-K. The Form 8-K and each of these exhibits would be incorporated by reference into the prospectus.[242]

Request for Comment

- Are the proposed coded responses contained in the attached tables appropriate? Please be specific in your responses by commenting on specific proposed line items and codes.
- The combination of certain asset-level data disclosures may raise privacy concerns. Are there particular asset-level data points that give rise to privacy concerns, in addition to the ones noted above and why? Are there other ways we could provide investors with similar information and lessen privacy concerns? Which information raises the most significant privacy concerns?
- Which data points, or combination of data points would be the most important to an investor's analysis? For instance, if we do not adopt any requirement to disclose geographic location, would the coded range of FICO score, coded

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240 See Securities Act Rule 409 [17 CFR 230.409] and Exchange Act Rule 12b-21[17 CFR 240.12b-21].

241 See our discussion regarding adding tags to our XML schema in Section III.A.4. below.

242 See Section III.A.4. below, proposed Item 6.06 to Form 8-K and proposed Item 601(b)(103) of Regulation S-K

range of income, and sales price still be useful to investors? If we do not adopt a requirement to disclose geographic location, a coded range of FICO score and coded range of income, would the sales price alone still be useful to investors? Please be specific in your response.

- Is our approach to geographic location appropriate? Does the use of the Metropolitan or Micropolitan Statistical Area, or Metropolitan Division provide investors with meaningful disclosure? Should we require only Metropolitan and Micropolitan Statistical Area which would be a broader description? For example, for a property in Alexandria, Virginia, 47900-Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area would be the appropriate designation that would be a larger geographic area than Metropolitan Division. Would disclosure by state or zip code be appropriate? If a particular geographic area is experiencing a low volume of real estate transactions, would the low volume of transactions make it easier to identify the underlying obligor using other publicly available resources? Are there other ways to designate geographic location that would provide investors meaningful disclosure while also addressing privacy concerns? For instance, instead of requiring geographic location at the asset-level, should we proscribe requirements for a pool-level table that presents the geographic concentration of the pool subdivided by state, size of loan and number of loans? In using such a pool-level disclosure approach would it also be necessary to subdivide by income, credit score and sales price?

- Is our approach to credit scores, income and debt appropriate? Does our approach appropriately balance investor need for the information while addressing privacy concerns? Do the categories provide meaningful ranges for investor analysis? If not, please be specific in your response. Should we instead require asset-level disclosure of the specific credit score, amount of income and amount of debt of an obligor?
- Are there other privacy issues that arise for issuers of ABS backed by foreign assets? How do the privacy laws of foreign jurisdictions differ from U.S. privacy laws? If the privacy laws of foreign jurisdictions are more restrictive regarding the disclosure of information, how should we accommodate issuers of ABS backed by foreign assets? Is there substitute information that could be provided to investors? Please be specific in your response.

ii) Proposed General Disclosure Requirements

With respect to each asset in the pool, the issuer would be required to provide the disclosure described below. A description of the 28 proposed data points is provided in Table 1 of the Appendix. We believe the proposed general item requirements are basic characteristics of assets that would be useful to investors in ABS across asset classes.

1. A unique asset number applicable only to that asset and the source of the number. We are aware that identifiers for each asset may be generated in many ways. These identification numbers may have been generated at origination or at different times through the securitization process. An asset number is necessary so that investors and other market participants may follow the performance of a loan through ongoing periodic reporting. We do

not propose a specific naming or numbering convention; however, we are proposing an instruction to clarify what type of asset numbers would satisfy this requirement and an instruction to clarify that the same asset number should be used to identify the asset for all reports required of an issuer under Section 13(a) or 15(d) of the Exchange Act. For instance, asset number types that would satisfy the requirements could be generated by CUSIP Global Services (CUSIP);[243] the American Securitization Forum (ASF Universal Link); MERS (Mortgage Identification Number); by the registrant;[244] or by using the convention "[CIK-number]-[Sequential asset number]";[245]

2. Whether the asset is designated to a particular collateral group. Some asset pools designate assets to particular groups in order to determine how cash flows will be passed on to investors;
3. Information regarding origination, such as origination date, original amount of the loan or contract, original term of the asset in number of months;
4. The asset maturity date, which is the month the final payment on the asset is scheduled to be made;
5. The original amortization term, which is the number of months in which the asset would be retired if the amortizing principal and interest were to be paid each month;

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243 A CUSIP number would be appropriate if the asset being securitized itself is a security.

244 For instance, if a registrant uses its own unique numbering to track the asset throughout its life, disclosure of that number would satisfy this proposed item requirement.

245 For instance, if a registrant used the "[CIK-number]-[Sequential asset number]" format, the number would first list the 10-digit CIK of the issuing entity and the second half would be a number for the pool, e.g, " 0000350001-000001."

6. Information regarding interest rate, such as the original interest rate, amortization type which means whether the interest rate is fixed or adjustable;
7. If the asset has an interest only term, the number of months in which the obligor is permitted to pay only interest on the asset;
8. Whether the interest calculation is simple or actuarial. A simple interest calculation is always based on the original principal, thus interest on interest is not included. An actuarial calculation is based on principal plus accrued interest;
9. The identity of the primary servicer that has the right to service the asset, either by name or by the MERS organization number (in the case of RMBS);
10. The servicing fees, either expressed as a percentage of the asset amount or as a flat-dollar amount, as applicable;
11. The servicing advance methodology by indicating the code that best describes the manner in which principal and/or interest are to be advanced by the servicer;
12. Whether the loan or asset was an exception to defined or standardized underwriting criteria; and
13. The measurement date, which would be the date the asset-level data is provided in accordance with proposed Item 1111(h)(1).[246]

As discussed above, proposed Item 1111(h)(2) would also require issuers to provide Schedule L data as part of a final prospectus filed in accordance with Rule

[246] As discussed above, proposed Item 1111(h)(1) would require issuers provide Schedule L data at the time of a Rule 424(h) prospectus as of a recent practicable date.

424(b), as of the cut-off date for the securitization.[247] The cut-off date would be the date specified in the instruments governing the transaction (i.e., the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders). In addition, we are proposing the following data points to update for activity that could occur during the period between the time the asset-level data would have been previously provided in the proposed Rule 424(h) prospectus and the cut-off date.

1. The current asset balance, current interest rate, and current payment amount due.
2. The number of days the obligor is delinquent and the number of payments the obligor is past due as of the cut-off date.
3. If the obligor has not made the full scheduled payment, the number of days between the scheduled payment date and the cut-off date.[248] We are proposing this item requirement so that investors will receive comparable data about the payment performance of an asset.[249] We note that the disclosure provided in response to this proposed requirement may differ from other

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247 We note that the proposed requirement to file Schedule L data with the final prospectus does not address the timing and adequacy of information available to the investor at the time the investment decision is made. Under Securities Act Rule 159, information conveyed after the time of the contract of sale (e.g., a final prospectus) is not taken into account in evaluating the adequacy of information available to the investor at the time the investment decision was made.

248 For example, if the scheduled payment date is December 25, and the full payment due is not received by the cut-off date for the report, December 31, the appropriate response to this item would be 6 days. We note that some delinquency recognition policies may not consider the payment delinquent at the same point in time.

249 We are also proposing that issuers be required to report the number of days a full scheduled payment is past due in each Form 10-D. See discussion in Section III.A.2.a.

asset-level or pool-level delinquency disclosure due to the various delinquency recognition policies across issuers and asset classes.[250]

4. Remaining term to maturity, which would be the number of months between the cut-off date and asset maturity date.

Request for Comment

- Are the general data points that would apply to all securitizations (other than credit cards, charge cards and stranded costs) appropriate? Should any be deleted or made applicable only to certain asset classes? If so, what data points? Are there any other data points that should apply to all asset classes? Please provide a detailed explanation of the reasons why or why not.
- Is the approach to asset number identifier workable? Should we only require or permit one type of asset number for all asset classes? If so, which one would be most useful? It appears that our proposed naming convention of "[CIK-number]-[Sequential asset number]" would be applicable to all asset classes. Does the use of an asset number alleviate potential privacy issues for the underlying obligor? Why or why not? What issues arise if the asset

[250] We are proposing this item instead of proposing to define delinquency for all issuers. In the 2004 ABS Adopting Release we stated that delinquency should be determined in accordance with any of the following: the transaction agreements for the asset-backed securities; the delinquency recognition policies of the sponsor, any affiliate of the sponsor that originated the pool asset or the servicer of the pool asset; or the delinquency recognition policies applicable to such pool asset established by the primary safety and soundness regulator of any entity listed above or the program or regulatory entity that oversees the program under which the pool asset was originated. We adopted that definition because commenters requested flexibility since policies relating to delinquency vary somewhat across asset types and sponsors. The approach we adopted gave consideration to a party's delinquency recognition policies and we emphasized robust disclosure about those policies. For instance, some sponsors do not consider an obligor delinquent when any portion of a contractually required payment is late, but instead only when less than some percentage or amount of a payment is received. See Section III.A.d.iii. of the 2004 ABS Adopting Release. In the context of standardized asset-level data, we believe the disclosure of the number of days from the scheduled payment due date and the cut-off date allows flexibility for the definition of delinquent while allowing for analysis and comparability of asset-level data.

number is determined by the registrant? Would there be any issues with investors being able to specifically identify each asset and follow its performance through periodic reporting?

- Should we require a data point to disclose the CIK number of the sponsor? Would all sponsors have a CIK number? If not, in what other ways could we require standardized disclosure of the identity of sponsors?
- Should we define delinquency in order to provide comparable delinquency disclosure across issuers and asset classes? If so, how should it be defined and why? Would market participants be able to make changes to their current systems to capture information to satisfy a standardized delinquency disclosure requirement? Would such a requirement be burdensome? Is there another way to provide comparable delinquency disclosure across issuers and asset classes? Please be detailed in your response.
- The response to some data points requires the identification of a party (e.g., originator or servicer) or the MERS generated number of the organization. Is this approach to identification workable? Do any issues arise with allowing a text response to these types of data points? What alternatives would alleviate such issues? What if the organization does not have a MERS number?

iii) Asset Specific Data Points

As discussed in detail below, we are proposing to further subdivide the Schedule L data points so that issuers can determine whether or not the data field applies to their transaction. For instance, if the asset pool contains only residential mortgages, then issuers would only need to provide those data points designated under proposed Items 1

and 2 of Schedule L. Similarly, if the asset pool contains only student loans, the issuer would only need to provide those data points designated under proposed Items 1 and 8. If the asset pool contains assets for which we have not proposed asset class specific data points, the issuer would only need to provide those general data points designated under proposed Item 1. Further, if the asset pool of residential mortgages consists only of fixed-rate mortgages, all of the data points related to adjustable rate mortgages[251] need not be included in the data file. Likewise, in a pool of student loans, if the asset pool comprised only loans issued under a federal student loan program, such as the Federal Family Education Loan Program (FFELP),[252] information related to private label student loan programs need not be included in the data file.[253] The issuer, however, may need to provide data in the appropriate indicator field, which is a "yes" or "no" answer to whether the characteristic is present. This approach is designed to facilitate investor review of the asset-level data.

Request for Comment

- Is the proposed subdivision of Schedule L appropriate? Would this approach facilitate investor review of the asset-level data?

iv) Proposed Exemptions

We are proposing to exclude ABS backed by credit cards, charge cards, and stranded costs from the requirement to provide asset-level data. Based on staff reviews of credit card and charge card asset pools, it appears that some may contain as many as

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251 Item 2(a)(16) of proposed Schedule L.

252 FFELP loans are generally based on need, instead of credit quality of the underlying obligor. For more information, see the U.S. Department of Education Web site at http://www2.ed.gov/programs/ffel/index.html.

253 Item 8(c) of proposed Schedule L.

20 to 45 million accounts. Based on the overwhelming volume of data in these types of asset classes, we do not believe that granular asset-level information would be as useful for investors and the provision of asset-level data may be cost-prohibitive for issuers. We have also heard anecdotally that investors in credit card or charge card ABS do not have a desire for asset-level data. For these asset classes, we are proposing that credit card ABS issuers provide grouped account data that we discuss below.[254]

For ABS backed by stranded costs, the underlying asset is transition property or system restoration property. Stranded costs are the costs associated with a decline in the value of electricity-generating assets due to restructuring of the industry, and the underlying property is called transition property.[255] System restoration property is a similar underlying asset, but provides for recovery of system restoration costs incurred by electric utilities as a result of hurricanes, tropical storms, ice or snow storms, floods and other weather-related events and natural disasters. These types of property are usually created by the action of a state legislature or other designated authority.[256] The property generally includes a right and interest to impose, collect and receive charges payable by electric customers in a particular territory. Also, this right usually provides that the designated state authority may periodically adjust the charges billed to customers in order to recover the stranded costs in the event all collections are not made. Because transition property is not originated on a customer-by-customer basis, and is instead the right to

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254 See Section III.A.3.

255 When the electricity industry deregulated, prices for electricity were expected to decline as competition was introduced into the market. With prices projected to fall more than production costs, utilities would earn less and the value of their assets would shrink. Thus, with falling prices eroding the value of the utilities' assets, some of their costs would be unrecoverable, or stranded. See Electric Utilities: Deregulation and Stranded Costs, Congressional Budget Office, October 1998.

256 See, e.g., Public Utility Regulatory Act. TEX. UTIL. CODE ANN. §§ 39.001-.463

impose charges on customers based on electrical usage, we preliminarily do not believe it is appropriate to require asset-level data be provided for stranded cost ABS.

Request for Comment

- Should asset-level data be provided by credit card, charge card or stranded cost issuers? If so, please explain why and what asset-level data should be provided.
- Would requiring asset-level data for these asset classes, rather than grouped asset data, as proposed below, be useful for investors? Is the volume of data in these types of asset classes a concern to investors? If so, are there ways to address this, for example, by facilitating the presentation of the data, to make it more useful to investors?
- Are there any other asset classes that should be exempt from the requirement to provide asset-level data and why?
- In light of the proposal not to set forth asset-level data for these assets, is there any pool-level data that should be provided by credit card, charge card, or stranded cost issuers? If so, please identify the pool-level data that we should require and explain why.
- Should we specify standardized definitions for pool-level data? For instance, for credit cards or charge cards, should we define terms such as modification, excess spread and charge-off? How are issuers currently defining these various terms?
- Should pool-level data for credit cards and charge cards be provided at the same time that we propose for other issuers to provide Schedule L data (i.e.,

with the proposed Rule 424(h) prospectus, the final prospectus under 424(b) and for changes under Item 6.05 of Form 8-K)? Should it also be provided at any other time, such as in periodic reports? If so, please tell us when and why.

- Should we revise Item 1111 to require pool-level disclosure in a standardized format for ABS backed by credit cards or charge cards? Current Item 1111 requires issuers to present pool-level statistical information in appropriate distributional groups or incremental ranges in addition to presenting appropriate overall pool totals, averages and weighted averages, if such presentation will aid in the understanding of the data. In the case of credit cards and charge cards, should we proscribe the distributional groups or incremental ranges for material pool characteristics such as credit scores, credit limit, account balance, account age, geographic location or annual percentage rate (APR)?[257] For instance, in the case of FICO credit scores, should the distributional groups be similar to the coded response ranges for asset-level data in proposed Item 2(c)(3) of Schedule L?[258] What other types of credit scores are used by credit card issuers, if any? Are any proprietary? What distributional groups would be useful for disclosure of other types of credit scores?

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257 In the FDIC Securitization Proposal, the FDIC also solicited comments on specific questions of disclosure related to securitizations. We note the suggestions of one commenter regarding the disclosure that should be provided by issuers of ABS backed by credit cards. See comment letter from MetLife on the FDIC Securitization Proposal ("MetLife FDIC Letter"), available at http://www.fdic.gov/regulations/laws/federal/2010/10comAD55.html.

258 See Table 2 of the Appendix to this release.

- In the case of credit limit and account balance, should we proscribe the following distributional groups for disclosure with respect to credit card and charge card pools: (1) <$1,000; (2) $1,000-$5,000; (3) $5,000-$10,000; (4) $10,000-$20,000; (5) $20,000-$30,000; (6) $30,000-$40,000; (7) $40,000-$50,000; and (8) greater than $50,000? Would using these distribution groups lead to useful disclosure?
- In the case of account age, should we proscribe the following distributional groups for disclosure with respect to credit card and charge card pools: (1) 12 months or less; (2) 12-24 months; (3) 24-36 months; (4) 36-48 months; (5) 48-60 months; (6) 60-84 months; (7) 84-120 months; and (8) over 120 months? Would using these distribution groups lead to useful disclosure?
- In the case of geographic location, should we require disclosure by state or by Metropolitan Statistical Area for credit card and charge card pools?[259]. Which would be more useful? Should issuers be required to disclose all states or Metropolitan Statistical Areas for the entire pool, or only the top 10, 20 or some other number?
- In the case of interest rate or APR, what would be the appropriate distributional groups? For example, would the following distributional groups be appropriate: (1) 0 to 1.99%; (2) 2.00% to 4.99%; (3) 5.00% to 9.99%; (4) 10.00% to 14.99%; (5) 15.00% to 19.99%; (6) 20.00% to 24.99%; (7) 25.00% to 29.99%; (8) 30.00% to 34.99%; (9) 35.00% to

259 See discussion in Section III. A.1.b.i. above.

39.99%; and (10) over 40.00%? Are there other characteristics that should be included in the same statistical table of information, such as how many accounts are currently deferring interest, deferring interest/principal, or other types of promotions?

- Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose the amount of credit that is available for purchases? If so, should we proscribe the following distributional groups: (1) <$1,000; (2) $1,000-$5,000; (3) $5,000-$10,000; (4) $10,000-$20,000; (5) $20,000-$30,000; (6) $30,000-$40,000; (7) $40,000-$50,000; and (8) greater than $50,000? Would using these distribution groups lead to useful disclosure? Would this information be useful to investors and why?
- Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose the type of products in the pool? For instance, credit card products could include affinity,[260] co-branded cards,[261] merchant cards, partner cards, and reward cards. Would this information be useful to investors and why?
- Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose whether there any accounts in the pool are under a debt management program, have

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260 Affinity card programs are offered by organizations such as universities, alumni associations, sports teams, professional associations and others.

261 A co-branded credit card generally is a credit card jointly sponsored by a bank and retail merchant, such as a department store.

redefaulted, are diluted or whether the account has been closed? Would this information be useful to investors and why?

- Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose payment habits of the obligors, such as the number of accounts, or percentage of the pool that make minimum payments, pays balances in full, or other payment types? Are there any other categories of payment behavior that would be useful to investors?
- Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose whether the obligors are homeowners, mortgage holders or renters? Would this information be useful to investors and why? Do issuers have this information? Because credit card securitizations are usually structured as master trusts, how would issuers be able to provide updated information at the time of each takedown?
- Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose whether the obligors are employed and if so, the type of employment? Should we specify the categories for this type of information, such as: (1) professional; (2) technical; (3) managerial; (4) clerical; (5) sales; (6) service; (7) agricultural; (8) laborers; (9) military; (10) student; (11) retired; (12) unemployed; and (13) unknown? Would this information be useful to investors and why?

- Should we require issuers of ABS backed by credit cards and charge cards provide statistical tables to disclose the level of education of the obligors? Should we specify the categories for this type of information such as: (1) graduate; (2) college-4 year; (3) college-2 year; (4) high school or (5) unknown? Would this information be useful to investors and why?
- Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose the debt-to-income ratio of the obligors? Would this information be useful to investors and why? Should the debt-to-income ratio be defined and calculated in the same manner as required in Schedule L?[262] What would the appropriate distributional categories? For example, would the following distributional groups be appropriate: (1) 0 to 4.99%; (2) 5.00% to 9.99%; (3) 10.00% to 14.99%; (4) 15.00% to 19.99%; (5) 20.00% to 24.99%; (6) 25.00% to 29.99%; (7) 30.00% to 34.99%; (8) 35.00% to 39.99%; (9) 40.00% to 44.99%; (10) 45.00% to 49.99%; (11) 50.00% to 54.99%; (12) 55.00% to 59.99%; (13) 60.00% to 64.99%; (14) 65.00 to 69.99%; (15) 70.00% to 74.99%; (16) over 75.00%?
- Because credit card securitizations are usually structured as master trusts, how would issuers be able to provide updated information

262 See proposed Items 2(a)(21)(iv) and 2(a)(20)(v) of Schedule L.

described in the previous four bullet points at the time of each takedown?

- Should we specify the data that should be presented for each distributional group in the above requests for comment? For instance, for each distributional group of credit scores, issuers typically provide a table detailing the number of accounts, dollar amount and percentage of the pool. Should we also require that issuers provide the following information for each credit score distributional group in the same table: (1) weighted average credit limit; (2) weighted average utilization rate; (3) weighted average account age; (4) percentage of obligors that pay in full; (5) percentage of obligors that make minimum payments; (6) weighted average credit score; (7) weighted average APR; (8) portfolio yield; (9) amount of interchange; (10) amount of fees; (11) amount of gross charge-offs; (12) amount of recoveries; (13) amount of prepayments; (14) dollar amount of accounts that are over 30 days delinquent; (15) number of accounts that are over 30 days delinquent; and (16) weighted average excess spread?[263] Is there any other information that would be useful for investors in this format?

- Should we require aggregated asset-level data in a machine-readable form for issuers of ABS backed by stranded costs so that investors may download the data and input it into a waterfall computer program? If so, please specify the

[263] See, e.g., Appendix A, Attachment I of the MetLife FDIC Letter.

characteristics, the appropriate distributional groups and related definitions and formulas, if applicable.

c) Residential Mortgage-Backed Securities

We are proposing 137 data points for ABS backed by residential mortgages. The staff has surveyed the data and definitions provided by the organizations mentioned above, as well as other industry sources. We are proposing to require additional data fields that relate to residential mortgages that are based mainly on information already typically provided by sellers to Fannie Mae and Freddie Mac or likely to be collected by participants in Project RESTART.

Some of the Fannie Mae, Freddie Mac and Project RESTART data points appear in the general section (Item 1), because we believe those data points would apply to all types of asset-backed securities. We did not, however, include every data point included in those loan-level packages. We believe that there are numerous ways to capture the same data, and after reviewing other loan-level data dictionaries, our definitions may have minor differences from those in Fannie Mae, Freddie Mac and Project RESTART because we wanted to make sure that we captured disclosure that may be provided to other organizations. For instance, we believe that many of the points are also consistent with the data dictionary developed by MISMO.[264] We also reviewed other data definitions currently used by banks for reporting to the OCC and OTS.[265] As noted above, we also are proposing several indicator fields that usually require a "yes" or "no" answer in order to facilitate investor review of the data.

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[264] As noted above, MISMO is an affiliate of MERS. The MISMO data dictionary is available at http://www.mismo.org/pages/Residential%20Specifications.aspx.

[265] See "OCC/OTS Mortgage Metrics – Loan Level Data Collection: Field Definitions," January 7, 2009, available at http://www.occ.treas.gov/ftp/release/2009-9a.pdf.

With respect to each mortgage in the pool, the issuer would be required to disclose the information described below. A complete description of each proposed data point is provided in Table 2 of the Appendix to this release.

1. A code that describes the loan purpose.
2. The lien position of the loan.
3. Whether the obligor is subject to any prepayment penalties, a code that describes the type of penalty, the term of penalty and a code that describes how the penalty is calculated.
4. The origination channel and whether a broker took the application.
5. The Nationwide Mortgage Licensing System (NMLS) loan originator number and loan origination company number.[266]
6. Whether the loan allows for negative amortization and information regarding the negative amortization terms which would include:

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[266] 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. 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. The Federal Housing Finance Agency will require that mortgages purchased by Freddie Mac and Fannie Mae include loan-level identifiers of the loan originator and loan origination company for mortgage applications taken on or after July 1, 2010. The original date of compliance was January 1, 2010; however, this has been extended to July 1, 2010. See Federal Housing Finance Agency News Release,"FHFA Announces New Mortgage Data Requirements," January 15, 2009, available at http://www.fhfa.gov/webfiles/400/LoanOrigIDS11509.pdf. See also Freddie Mac Bulletin 2009-27, December 4, 2009, available at http://www.freddiemac.com/sell/guide/bulletins/pdf/bll0927.pdf and Fannie Mae Selling Notice "Mortgage Loan Data Requirements – Update," October 6, 2009, available at https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2009/ntce100609.pdf.The NMLS maintains the following Web site: http://mortgage.nationwidelicensingsystem.org/Pages/default.aspx.

a. the maximum dollar amount and the number of months negative amortization amount allowed;

b. the initial and subsequent number of months an obligor can initially pay the minimum payment before a new payment is determined;

c. the current negative amortization amount that has accumulated;

d. the number of months the payment is fixed and the initial and subsequent limits on payment increases and decreases;

e. the length of the initial and any subsequent recast periods in number of months; and

f. the current minimum payment amount.

7. Whether the loan has been modified. If so:

a. the number of modifications;

b. a code that describes the reason for modification;

c. the effective date of the modification;

d. updated debt-to-income ratios of the obligor;

e. the total amount added to the principal balance of the loan due to the modification or capitalized amount;

f. any deferred amount that is non-interest bearing; and

g. the pre-modification interest rate, the pre-modification payment amount, and the forgiven principal and interest amounts.

8. Whether the loan documents require a lump-sum payment of principal at maturity, otherwise known as a balloon loan.

9. In the case of a refinance transaction, the amount of cash the obligor received.

10. The number of months a buydown period would be in effect. A buydown period is when a lump sum payment is made to the creditor by the obligor or by a third party to reduce the amount of some or all of the obligor's periodic payments.
11. The date through which interest is paid with the current payment, which is the date from which interest will be calculated for the application of the next payment.
12. The number of days after which a servicer can stop advancing funds on a delinquent loan.
13. Amount of any junior mortgages on the property and if the loan in the pool is a junior loan, information on the senior loan such as origination date, amount, loan type, hybrid period, and negative amortization limit.
14. If the loan is an adjustable rate mortgage:
    a. the index on which the adjustable rate is based;
    b. the margin, which is the number of percentage points added to the index to establish the new rate;
    c. the fully indexed rate, which is the index rate plus the margin;
    d. if the interest rate is initially fixed for a period of time, the number of months between the first payment date and the first interest adjustment date;
    e. the maximum percentage by which a mortgage rate may increase or decrease, initially, at subsequent points in time, and over the lifetime of the loan;

f. the number of months between interest rate reset periods;

g. the number of days prior to an interest rate effective date which is used to determine the appropriate index rate or lookback;

h. the date of the next interest rate adjustment;

i. the method of rounding and the rounding percentage;

j. whether the loan is an option ARM, that is whether the obligor can choose payment options;

k. a code that describes the means of computing the lowest monthly payment available to the obligor after recast. When the loan is recast, a new minimum payment is calculated to fully amortize the loan over the remaining term of the loan.;

l. the initial minimum payment an obligor is required to make; and

m. whether the loan is convertible to a fixed interest rate.

15. Whether the loan is a home equity line of credit, or HELOC, and the related period in which the obligor may draw funds against the HELOC account.

With respect to each mortgage loan in the pool, the issuer would be required to disclose the information on the property securing the loan described below.

1. Geographic location of the property, designated by Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.

2. A code that describes the property type and occupancy status of the property.

3. Sales price.

4. The appraised value used to approve the loan and most recent appraised value, the property valuation method, date of valuation, valuation scores and types of scores.
5. Combined and original loan-to-value ratios and the calculation date.
6. If the obligor pledged financial assets to the lender instead of making a down payment, the total value of assets pledged as collateral for the loan at the time of origination.

If the loans in the pool relate to manufactured housing, the issuer would be required to disclose the information described below.

1. A code that describes the interest of others in the real estate.
2. A code that describes the community ownership structure.
3. The name of manufacturer and model name, the year the home was manufactured and whether it was constructed in accordance with the 1976 HUD Code.
4. Gross and net invoice price of the home.
5. Loan to invoice ratios, whether the loan was made by a lender related to the community, and whether the securitized property is considered chattel or real estate.
6. The source of the obligor's down payment.

With respect to each mortgage in the pool, the issuer would be required to disclose the information on the obligor described below.

1. Obligor and co-obligor's credit scores and types of scores.

2. Obligor and co-obligor's wage and other income and a code that describes the level of verification.
3. A code that describes the level of verification of assets of the obligor and co-obligor.
4. Obligor and co-obligor's length of employment, whether they are self-employed and a code that describes the level of verification.
5. The dollar amount of verified liquid/cash reserves after the closing of the mortgage loan.
6. The total number of properties owned by the obligor that currently secure mortgages.
7. The amount of the obligor's other monthly debt.
8. The obligor's debt to income ratio used by the originator to qualify the loan.
9. A code that describes the type of payment used to qualify the obligor for the loan, such as the payment under the starting interest rate, the first year cap rate, the interest only amount, the fully indexed rate or the minimum payment.
10. The percentage of down payment from obligor's own funds other than any gift or borrowed funds.
11. The number of obligors on the loan.
12. Any other monthly payment due on the property other than principal and interest.
13. The number of months since any obligor bankruptcy or foreclosure.
14. The obligor and co-obligor's wage income, other income and all income.

With regard to mortgage insurance, the issuer would be required to disclose the information below.

1. Whether mortgage insurance is required.
2. The name of the mortgage insurance company, coverage plan type, certificate number, and insurance coverage percentage.
3. Whether the insurance is lender or borrower paid.
4. If there is pool insurance, the name of pool insurance provider and pool insurance stop loss percentage.

Request for Comment

- Are all of the RMBS data points appropriate? Are there other data points that should be required for all RMBS issuers? Are any data points not necessary or overly burdensome to obtain? Please specify the proposed data points and provide a detailed explanation of the reasons why or why not.
- Some data points request the results of calculations, such as debt-to-income ratios. Can these ratios otherwise be calculated from data provided by the other asset-level data points? If so, can users of the information independently calculate these data points? And should we not require these data points to be included in the asset-level data file?
- Should we include a data point to require what effort an originator or sponsor made to see if there are other loans secured by the same property? If we were to code the response, what code descriptions should we provide?

- Are the proposed type of responses and coded responses appropriate? Are there additional codes that should be included? Please provide a detailed explanation of the reasons why or why not.
- What privacy concerns arise if we require issuers to disclose the sales price of the property, if any? Would rounding the sales price to the nearest thousandth alleviate privacy concerns? If not, what would be the appropriate rounding method? If we instead required the disclosure of sales price be provided by a coded range of dollar amounts, would that alleviate privacy concerns? What would be the appropriate ranges of dollar amounts? Would the above mentioned options have an effect on an investor's ability to analyze the asset-level data or use the waterfall computer program? If so, please be specific in your response. In what other ways could we require the disclosure of sales price so that investors receive useful information and also address any privacy concerns?

d) Commercial Mortgage-Backed Securities

We are proposing 61 data points for ABS backed by commercial mortgages. The data points we are proposing to require are primarily based on the definitions included in the CRE Finance Council Investor Reporting Package, current Regulation AB requirements and staff review of current disclosure. The CRE Finance Council disclosure package standardizes bond, loan and property level information for commercial mortgage-backed securities.[267] We are not proposing, however, to include every data point included in the CRE Finance Council reporting package. Some of the

[267] According to the CRE Finance Council, transaction disclosure should be updated and provided monthly. See http://www.crefc.org/.

data points already appear in the general section (Item 1), because we believe those data points would apply to all types of asset-backed securities. We did not include others because we did not believe the level of detail was necessary for investor analysis as we believe that the most important data points for CMBS are those that relate to the loan term and the property. With respect to each commercial mortgage loan in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point and related response is provided in Table 3 to the Appendix to this release.

1. A code that describes the loan structure, including the seniority of participated mortgage loan components.
2. The current remaining term of the loan.
3. A code that describes the payment method, the amount of the periodic principal and interest payment, and frequency of payment for the loan, frequency that the payment will be adjusted, and grace days allowed.
4. The number of properties that serve as mortgage collateral for the loan;
5. The hyper-amortizing date, which is the current anticipated repayment date after which principal and interest may amortize at an accelerated rate, and/or interest to the mortgagor increases substantially.
6. Whether the loan is interest only or requires a balloon payment.
7. Whether the obligor is subject to prepayment penalties, the effective date after which the lender allows prepayment of a loan, the date after which yield maintenance prepayment penalties are no longer effective and the date after which prepayment premiums are no longer effective.

8. If the loan permits negative amortization, the maximum percentage and amount of the original loan balance that can be added to the original loan balance as a result of negative amortization.

9. If the loan is an adjustable rate mortgage:

    a. the index on which the adjustable rate is based;

    b. the first rate adjustment date;

    c. the first payment adjustment date;

    d. the number of percentage points that are added to the current index rate to establish the new note rate each interest adjustment date,

    e. the maximum percentage by which a mortgage rate may increase or decrease, initially, at subsequent points in time, and over the lifetime of the loan;

    f. a code describing the frequency with which the periodic mortgage rate is reset and a code describing the frequency with which the periodic mortgage payment will be adjusted; and

    g. the number of days prior to an interest rate effective date which is used to determine the appropriate index rate or lookback.

10. Whether the loan had been modified from its terms at the time of origination.

The issuer also would be required to provide information on each of the properties collateralizing the loan. This would include:

1. The property name, geographic location, designated by zip code, as applicable, and the year that the property was built;

2. A code describing the current use of the property, including net rentable square feet of a property, number of units/beds/rooms, and percentage of rentable space occupied by tenants;
3. The valuation amount of the property as of a valuation date and source of valuation;
4. The total underwritten revenues from all sources for a property and total underwritten operating expenses (including real estate taxes, insurance, management fees, utilities, and repairs and maintenance);[268]
5. The date when the defeasance option becomes available. A defeasance option is when an obligor may substitute other income-producing property for the real property without pre-paying the existing loan;[269]
6. Net operating income and net cash flow, including a code describing how operating income and net cash flow were calculated (i.e., using the CMSA standard, using a definition in the pooling and servicing agreement, or using the underwriting method);
7. The ratio of underwritten net operating income to debt service, the ratio of underwritten net cash flow to debt service, and an indicator showing how the debt service coverage ratio was calculated;[270] and

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[268] For this purpose "underwritten" means the amount of revenues or expenses adjusted based on a number of assumptions made by the mortgage originator or seller. We believe issuers should include narrative disclosure about the assumptions used in the prospectus.

[269] See Mary Stuart Freydberg and Mary MacNeill,, "Defeasance by Design: Frequently Asked Questions," CMBS World, March 1999, available at http://www.cmsaglobal.org/cmbsworld/cmbsworld_toc.aspx?folderid=31374.

[270] For this purpose, "underwritten" means that the amount disclosed is adjusted based on a number of assumptions made by the mortgage originator or seller. We believe issuers should include narrative disclosure about the assumptions used in the prospectus. Such an indicator would consider whether the servicer allocates debt service only to properties where financial statements are received, whether all

8. The three largest tenants (based on square feet), including square feet leased by the tenant and lease expiration dates of the tenant.

We note that some of the data points that we are proposing to include in Schedule L are currently required on a loan-level basis under existing Item 1111(b)(9)(i) of Regulation AB.[271] Such items are described in the list above and relate to: the location and use of each property; net operating income and net cash flow information, as well as the components of net operating income and net cash flow, for each mortgaged property; current occupancy rates for each mortgaged property and the identity, square feet occupied by and lease expiration dates for the three largest tenants at each mortgaged property. Issuers of ABS backed by CMBS would be required to continue to provide the information required by Item 1111(b)(9)(i) in the prospectus in a narrative form.

Request for Comment

- Are all of the CMBS data points appropriate? Is there any reason not to incorporate any of the requirements for commercial mortgage-backed securities into Schedule L? Are there any additional fields we should include? Are there any changes we should make for specific types of commercial properties?
- Should we include the current Item 1111(b)(9)(i) asset-level disclosure requirement for CMBS in Schedule L, as proposed? Should we eliminate the

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properties are reported on one rolled up financial statement from the borrower, whether all financial statements were collected for all properties, whether no financial statements were received, whether not all properties received financial statements and the servicer leaves empty, or whether or not all properties received financial statements and the servicer allocates 100% of debt service to all properties where financial statements are received.

[271] Specifically, we are proposing to include the requirements of Item 1111(b)(9)(i)(A), (B), (C), and (D) in Schedule L.

requirement to provide the asset-level information in narrative form? If so, would any material information relating to a commercial mortgage be lost?

- We are proposing to require an indicator that shows how net operating income and net cash flow were calculated for commercial mortgages. The code options for this indicator would show whether these items were calculated using a CMSA standard, using a definition in the pooling and servicing agreement, or using an underwriting method. Are these appropriate codes? Are there any additional codes that should be included?
- We are proposing to require an indicator that shows how the debt service coverage ratio was calculated for commercial mortgages. The code options for this indicator would be: (1) Average- not all properties received financial statements, and the servicer allocates debt service only to properties where financial statements are received; (2) Consolidated – all properties reported on one "rolled up" financial statement from the borrower, (3) Full- all financial statements collected for all properties, (4) None Collected – no financial statements were received; (5) Partial – not all properties received financial statements and servicer to leave empty; and (6) "Worst Case" – not all properties received financial statements, and servicer allocates 100% of debt service to all properties where financial statements are received. Are these codes appropriate? Are there additional codes that should be included?
- We currently require disclosure of the three largest tenants that occupy the underlying property in the prospectus. Should we also require issuers to disclose whether the named tenants are affiliated with the obligor as a data

point in Schedule L and in narrative form in the prospectus? Should we require a description of the relation in narrative form?

- Should we continue to require Item 1111(b)(9)(i) data in the prospectus, as proposed, or is the proposed asset-level data sufficient?

e) Other Asset Classes

We are unaware of any other organization that has standardized data points for asset classes other than mortgages for investor reporting.[272] As we explain above, standardized data points provide disclosure to investors about the payment stream and amount of payments related to individual assets; make it possible for users to perform prepayment and credit analysis on an individual asset, and evaluate the collateral, if any, that secures the individual asset.[273] Consequently, in order to make the asset-level information useful to investors, we are proposing data points derived from the aggregate pool-level disclosure that is commonly provided in prospectuses for the following asset classes: automobile loans and leases; equipment loans and leases; student loans; floorplan financing; repackagings of corporate debt and resecuritizations. We are also proposing to add several data points related to obligor and co-obligor income, assets, employment, and credit scoring. These data points mirror the definitions proposed for RMBS in an effort to provide more robust disclosure about obligor credit quality. We solicit comment on all of our proposed asset specific data points and have specific questions on certain asset classes.

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272 We note that the ASF contemplates expanding Project RESTART to other major asset classes, such as student loans, credit cards and automobile securitizations. See American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009) at 29, available at http://www.americansecuritization.com/.

273 See Section III.A.1.b.

Request for Comment

- Are there any organizations that have produced standardized data definitions for other asset classes? If so, would these definitions be appropriate for the proposed asset specific data points?
- Are the asset specific data points appropriate? What other data points should be required by all issuers of that asset class? Please provide a detailed explanation of the reasons why or why not.

i) Automobiles

Asset-backed securities may be backed by a pool of automobile loans or automobile leases. We are proposing to require 31 additional data fields that relate to ABS backed by loans for the purchase of automobiles and 33 data fields that relate to ABS backed by automobile leases. With respect to each loan or lease in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 4 for automobile loans and Table 5 for automobile leases.

1. Whether payments are required monthly or a balloon payment is due;
2. Whether a form of subsidy was received by the borrower, such as an incentive or rebate;
3. Geographic location of the dealer by zip code;
4. The vehicle manufacturer, model, model year, vehicle type and whether it is new or used;
5. The vehicle value and source of vehicle value at the time of origination;
6. For leases, base residual value and source of residual value;

7. The obligor and co-obligor's credit scores and credit score type;
8. The obligor and co-obligor's wage and other income and a code that describes the level of verification;
9. A code that describes the level of verification of assets of the obligor and co-obligor;
10. The obligor and co-obligor's length of employment and a code that describes the level of verification; and
11. The geographic location of the obligor by Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.

Request for Comment

- Are all of the automobile data points appropriate? What other data points should be required by all issuers of ABS backed by automobile loans or leases? Please provide a detailed explanation of the reasons why or why not.
- For ABS backed by automobile leases, should we require a field indicating whether the lessor or lessee is responsible for selling the vehicle at the end of the lease? If so, please explain why.
- We are proposing to require an indicator for the source of the vehicle value. The code options for this indicator would be: (1) Invoice price; (2) Sales Price; (3) Kelly Blue Book; and (98) Other. Are these codes appropriate? Are there additional codes that should be included?
- We are proposing to require an indicator for the source of a vehicle's residual value. The code options for this indicator would be: (1) Black Book; (2)

Automotive Lease Guide; and (98) Other. Are these codes appropriate? Are there additional codes that should be included?

ii) Equipment

We are proposing to require five additional data fields that relate to ABS backed by equipment loans and eight that relate to equipment leases. With respect to each equipment loan or lease in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 6 for equipment loans and Table 7 for equipment leases.

1. The frequency of payments, such as whether payments are due monthly, quarterly, semiannually, or annually.
2. The type of equipment financed and whether it is new or used.
3. The obligor industry and geographic location as indicated by zip code.
4. For leases, whether the lease type is a true lease or a finance lease.
5. For leases, the residual value of the equipment and source of residual value.

Request for Comment

- Are all of the equipment data points appropriate? What other data points should be required by all issuers of ABS backed by equipment loans or leases? Please provide a detailed explanation of the reasons why or why not.
- Should we require data points on the obligor's ability to pay the equipment loan or lease? If so, please provide a detailed explanation of the types of data points and what code descriptions should be provided.

- Should we require a data point to disclose whether the equipment that serves as collateral is the subject of certain provisions of the US Bankruptcy Code? For instance, section 1110 of the Bankruptcy Code[274] applies to financiers of aircraft, aircraft engines, and other defined equipment. If so, please provide a detailed explanation of what the data point should be and what code descriptions should be provided.
- We are proposing to require an indicator for equipment type. The code options for this indicator would be: (1) Construction; (2) Furniture and Fixtures; (3) General Office Equipment/Copiers; (4) Industrial; (5) Maritime; (6) Printing Presses; (7) Technology; (8) Telecommunications; (9) Transportation; and (98) Other. Are these codes appropriate? Are there additional codes that should be included?
- We are proposing to require an indicator for the obligor industry. The code options for this indicator would be: (1) Agriculture and Resources; (2) Communications and Utilities; (3) Construction; (4) Distribution/Wholesale; (5) Electronics; (6) Financial Services; (7) Forestry and Fishing; (8) Healthcare; (9) Manufacturing; (10) Mining; (11) Printing and Publishing; (12) Public Administration; (13) Retail; (14) Services; (15) Transportation; and (98) Other. Are these codes appropriate? Is code "(15) Transportation" too broad? If so, what codes would be more useful? Are there additional codes that should be included?

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274 11 U.S.C. § 1110

- We are proposing to require an indicator for the source of the equipment residual value. The code options for this indicator would be: (1) Internal; (2) External Consultant; and (3) Other. Are these codes appropriate? Are there additional codes that should be included? Are there any published guides to equipment residual values?

iii) Student Loans

We are proposing to require 28 additional data fields that relate to ABS backed by student loans. With respect to each loan in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 8.

1. Whether payments on the loan are subsidized through a federal program.
2. A code describing the repayment terms and the current number of years in repayment.
3. The name of any guarantee agency.
4. The date the loan was disbursed to the obligor.
5. Whether the obligor payment status is in-school, grace period, deferral, forbearance or repayment.
6. Geographic location of the obligor by Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.
7. A code describing the type of school or program. Code options for this data point would be continuing education, graduate, K-12, medical, or undergraduate.

8. If the loan was not issued under a federally funded program, the following additional disclosure would be required:

    a. The obligor and co-obligor's credit scores and credit score type;

    b. The obligor and co-obligor's wage and other income and a code that describes the level of verification;

    c. A code that describes the level of verification of assets of the obligor and co-obligor; and

    d. The obligor and co-obligor's length of employment and a code that describes the level of verification.

Request for Comment

- Are all of the student loan data points appropriate? What other data points should be required by all issuers of ABS backed by student loans? Please provide a detailed explanation of the reasons why or why not.
- We are proposing to require an indicator for repayment type. The code options for this indicator would be: (1) Level; (2) Graduated Repayment; (3) Income-sensitive or (4) Interest Only Period. Are these codes appropriate? Are there additional codes that should be included?
- We are proposing to require an indicator for school type. The code options for this indicator would be: (1) Continuing Education; (2) Graduate; (3) K-12; (4) Medical; or (5) Undergraduate. Are these codes appropriate? Are there additional codes that should be included?

iv) Floorplan Financings

Asset-backed securities may be backed by a pool of floorplan receivables. Floorplan receivables are used by wholesalers and retailers to finance purchases of inventory, for instance, an automobile dealership will finance purchases of the vehicles available for sale in its inventory. Floorplan receivables are usually revolving in nature and are commonly structured as revolving asset master trusts. Payment terms may vary, but usually payment is due when the underlying collateral is sold. Generally, when new inventory is purchased, a new receivable is created; therefore, we are proposing that the asset-level data be provided for each receivable, instead of each account.

We are proposing to require six additional data fields that relate to ABS backed by floorplan financings. With respect to each receivable in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 9.

1. The account origination date.
2. The type of inventory product line.
3. Whether the property financed is new or used.
4. Information related to the obligor such as geographic location by zip code, and credit score and type.
5. If the issuing entity is structured as a master trust that has previously issued securities, the information required by Items 1 and 9 of Schedule L-D for assets that were part of the asset pool prior to the current offering.[275]

Request for Comment

[275] We believe prior performance information of pre-existing assets would be useful for investor analysis of the asset pool. If the information was previously reported, issuers would be able to incorporate by reference the previously filed Form 10-D.

- Since floorplan financings are usually structured as master trusts, we are proposing to require asset-level data based on each receivable in the pool. Should the data be provided by account? Which is more appropriate and why?
- Are all of the proposed floorplan financing data points appropriate? What other data points should be required by all issuers of ABS backed by floorplan financings? Please provide a detailed explanation of the reasons why or why not.
- We are proposing to require an indicator for product line type. The code options for this indicator would be: (1) Accounts Receivable;[276] (2) Consumer Electronics and Appliances; (3) Industrial; (4) Lawn and Garden; (5) Manufactured Housing; (6) Marine; (7) Motorcycles; (8) Musical Instruments; (9) Power Sports; (10) Recreational Vehicles; (11) Technology; (12) Transportation and (98) Other. Are these codes appropriate? Are there additional codes that should be included?
- Is our proposal to require the information in Item 1 and Item 9 of Schedule L-D for pre-existing assets in master trusts appropriate?

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276 With respect to accounts receivable, an originator generally makes loans that are secured by accounts receivable owed to the dealer, manufacturer, distributor or other commercial customer against which an extension of credit was made and, in limited cases, by other personal property, mortgages on real estate, assignments of certificates of deposit or letters of credit. The accounts receivable which are pledged to an originator as collateral may or may not be secured by collateral. In the case of a loan facility secured by accounts receivable, the lender usually has discretion as to whether to make advances to the borrower under that facility.

v) Corporate Debt

Asset-backed securities may be backed by corporate debt securities. Asset-backed securities backed by corporate debt securities are typically issued in smaller denominations than the underlying security and the ABS are registered under Section 12(b) of the Exchange Act for trading on an exchange. Additionally, a pooling and servicing agreement may also permit a servicer or trustee to invest cash collections in corporate debt instruments which may be securities under the Securities Act.[277] We are proposing nine additional data fields for ABS backed by corporate debt. We believe the data points in Item 1. General are appropriate because items such as origination date, maturity date, amortization term, etc. would also apply to corporate debt. A description of each proposed data point is provided in the Appendix to this release in Table 10.

1. Title of the underlying security or agreement, denomination, and currency.
2. The payment frequency of the security or agreement.
3. Whether the security or agreement is callable.
4. Name of trustee.
5. Underlying SEC file number and CIK number.
6. Whether the security is a zero-coupon, that is whether it bears interest by means of periodic payments or by means of purchase at a discount and full price repayment at maturity.

Request for Comment

[277] An asset pool of an issuing entity includes all other instruments provided as credit enhancement or which support the underlying assets of the pool. If those instruments are securities under the Securities Act, they must be registered or exempt from registration if included in the asset pool as provided in Securities Act Rule 190, regardless of their concentration in the pool. See Securities Act Rule 190(a) and (b). See also Section III.A.6.a. of the 2004 ABS Adopting Release.

- Should asset-level disclosure be required for ABS backed by corporate debt? Are all of the corporate debt data points appropriate? What other data points should be required by all issuers of ABS backed by corporate debt? Please provide a detailed explanation of the reasons why or why not.
- Should we require asset-level disclosure of credit enhancements related to the underlying security? If so, how would we define the data point(s) and the related responses?

vi) Resecuritizations

In a resecuritization ABS, the asset pool is comprised of one or more asset-backed securities. We are proposing that issuers provide the same Schedule L data as required for corporate debt-backed securities, for each asset-backed security in the asset pool because the same information about the underlying asset-backed security, such as the title of the security, payment frequency, whether it is callable, the name of trustee and the underlying SEC file number and CIK number would be useful to an investor. In addition, we are proposing that issuers provide Schedule L data for assets underlying those securities.[278] For instance, in an offering where the asset pool is comprised of several RMBS, then the data points in Item 1 and Item 10 of Schedule L would be required for every RMBS security in the asset pool, as well as the data points in Item 1 and Item 2 for each loan underlying each RMBS security. Also, under current rules, if the assets that will be securitized are themselves securities under the Securities Act, the offering of

[278] The waterfall computer program would also be required for each underlying security. See our proposed changes to Item 1113 (h) of Regulation AB discussed in Section III.B.1 below.

those securities must be registered or exempt from registration under the Securities Act, and all disclosures for a registered offering is required.[279]

Request for Comment

- Is our proposal for resecuritizations appropriate? What other data points should be required by all issuers of that asset class? Please provide a detailed explanation of the reasons why or why not.
- Should we require disclosure of the ratings of the resecuritized securities in Schedule L?
- Should we require Schedule L data for the asset pool only, *i.e.* only the data points in Item 1 and Item 9 of Schedule L?
- Would issuers of the resecuritization ABS be able to obtain the asset-level data for the pool of assets underlying the resecuritized ABS? Should we phase in the requirement? We note that Project RESTART recommends that issuers provide the loan-level reporting package for outstanding RMBS,[280] although we note that the ASF recommendation may only serve to provide information similar to our proposed requirements for periodic reports, and may not include all the information required at the time of an offering.

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[279] Due to the exposure created in the underlying instrument through the asset-backed offering, under current rules, information related to any underlying instrument is required to be disclosed in accordance with offering disclosure requirements of current Forms S-1 and S-3. For example, updated and current information includes updated pool data, static pool, risk factors, performance information, how the underlying securities were acquired, and whether and when the underlying securities experienced any trigger events or rating downgrades. As we stated in the 2004 ABS Adopting Release, not all items of disclosure required at the time of offering the resecuritization ABS are available through incorporation by reference of Exchange Act reports. See Section III.A.7. and footnote 193 of the 2004 ABS Adopting Release. Furthermore, under our proposal requiring one prospectus for each ABS offering, all of the information must be contained in the prospectus.

[280] See American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009) at 21, available at http://www.americansecuritization.com/.

2. Asset-Level Ongoing Reporting Requirements

In addition to asset-level information at the time of the offering, we are proposing to require asset-level performance information in a standardized format filed on EDGAR in periodic reports required under Sections 13 and 15(d) of the Exchange Act, including those required pursuant to the new undertaking to continue reporting described above. The proposed asset-level performance data in periodic reports would differ from information that would be required at the time of the offering. We believe that in periodic reports, some of the most important information focuses on whether an obligor is making payments as scheduled, the efforts by the servicer to collect amounts past due, and the losses that may pass on to the investors.

Currently, issuers report performance information in periodic reports on an aggregate basis; however, we believe that it would be most useful for investors to receive information regarding whether an individual obligor is making payments as scheduled, the efforts by the servicer to collect amounts past due, and the loss that may pass on to the investors on an asset-level basis. That way, an investor may use the asset-level information to conduct his or her own valuation of the credit quality of a particular asset and its effect on the pool throughout the life of the investment. We also believe that regulators could find this information useful. Like asset-level data at the time of the offering, we are proposing to require asset-level performance data to be filed on EDGAR in XML in order to facilitate data analysis. The proposed disclosure requirements are contained in proposed Item 1121(d) and Schedule L-D.

As we discussed earlier, in to order facilitate comparison of information across securities, we believe that asset-level data should be standardized, and some

organizations have already developed data points for ongoing reporting of information for registered and unregistered commercial mortgage-backed securities and residential mortgage-backed securities.[281] In our proposed periodic reporting requirements, we have utilized such standardization where feasible. Like our proposal for asset-level data at the time of the offering, our proposed periodic reporting requirements specify and define each item that must be disclosed for each asset in the pool. We are also proposing an instruction to Schedule L-D that will contain definitions for some of the terms that we use throughout the schedule. Attached at the end of this release we provide an appendix which contains a table of the proposed general item requirements as well as asset class specific item requirements. Each table lists the proposed item number, the title of the proposed data field, the proposed definition, the proposed response type and codes, if applicable, and proposed category of information. The proposed category of information designates the type of information we are proposing so that users will know when the data point is applicable.

Proposed Item 1121(d) and Schedule L-D disclosure would be required at the time of each Form 10-D. Periodic reports on Form 10-D are required to be filed within 15 days after each required distribution date on the asset-backed securities, as specified in the governing documents for such securities.[282] 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

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[281] Materials related to the CRE Finance Council Investor Reporting Package are available at: http://www.crefc.org/Industry_Standards/CMSA-Investor_Reporting_Package/CRE_Finance_Council_IRP/

. See American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009), available at http://www.americansecuritization.com/.

discussed in Section V.C.1. Similarly, the Schedule L data contained in proposed Item 1111A would need to be provided.

Request for Comment

- Are the definitions of terms in the proposed instruction to Schedule L appropriate? Are there any other terms that should be included in the instruction?
- Are the proposed coded responses contained in the attached tables appropriate? Does our approach to responses provide investors with meaningful disclosure while also addressing any privacy concerns? Please be specific in your response by commenting on specific proposed line items and codes.
- Is the proposed requirement to provide Schedule L-D data with Form 10-D appropriate? Should Schedule L-D data be required at any other time, such as daily or monthly for all asset classes? Please tell us why.

a) Proposed Disclosure Requirements

We are proposing that the same asset classes, subject to the requirement to provide asset-level data at the time of the offering, would also be required to provide the standardized data points enumerated in Schedule L-D. Like the proposed asset-level information at the time of the offering, we are proposing that most issuers must provide the 46 data points listed under Item 1. General of Schedule L-D. We believe these data points are generic and consistent across asset classes, and should also apply to any new

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282 See General Instruction A.2 to Form 10-D.

asset classes that may be included in a registered offering. In addition, we also propose asset class specific data points that will be discussed further below.

With respect to each asset in the pool, we are proposing to require the following disclosure with each Form 10-D. A description of the 46 data points is provided in Table 11 of the Appendix.

1. The unique asset number and a description of the type of number. The asset number and type of asset number should be the same values assigned at the time of the offering that would appear in Schedule L.
2. Whether the asset is designated to a particular collateral group.
3. The beginning and ending dates of the reporting period.
4. The actual total amount paid during the reporting period, the amount of interest collected, the amount of principal collected and other amounts collected.
5. Any other principal and interest adjustments.
6. The current asset balance and scheduled asset balance.
7. Amounts that were scheduled to be collected during the reporting period, which would be the scheduled payment amount, scheduled interest payment amount, and scheduled principal amount.
8. A code that describes the current delinquency status and current payment status.
9. A code that describes the payment history over the most recent 12 months.
10. The next due date, next interest rate and remaining term to maturity.
11. Information related to servicing which would be:

a. The current servicer and the dollar amount of the fee earned by the current servicer for administering the loan for the reporting period;

b. If the loan's servicing has been transferred, the effective date of the servicing transfer;

c. Any amounts advanced by the servicer during the reporting period, and the cumulative outstanding amount;

d. A code that describes the manner in which principal and/or interest are advanced by the servicer;

e. The date a servicer stopped advancing payment; and

f. Other fees earned by the servicer and other fees assessed by the servicer related to the asset.

12. Whether the asset terms have been modified.

13. Whether a notice to repurchase the asset has been received, whether the asset has been repurchased, the repurchase date, name of the repurchaser, and the reason for repurchase.

14. Whether the asset has been liquidated.

15. Whether the asset has been charged-off and the charged-off principal and interest amounts.

16. Whether the asset has been paid-off, and if so, whether any prepayment penalties were paid or waived. If waived, a code indicating the reason why.

Request for Comment

- Are the general data points appropriate for Form 10-D? What other data points would apply to all asset classes? Please provide a detailed explanation of the reasons why or why not.

b) Proposed Exemptions

We are proposing to exclude ABS backed by credit cards, charge cards and stranded costs from the requirement to provide ongoing asset-level data in periodic reports. Like the proposed asset-level data at the time of the offering, because of the volume of accounts in a credit card or charge card securitization we believe that granular asset-level information would not be as useful to investors and would be very costly for issuers, depending on the level of automation of the issuer's information processing and delivery system. For these asset classes, we are proposing that issuers provide grouped account data that we discuss in Section III.A.3. below. As explained earlier, because transition property is not a receivable, nor a pool of receivables, we do not propose asset-level data be provided for stranded cost ABS for periodic reports.

Request for Comment

- Is there any asset-level data that should be provided in periodic reports by credit card, charge card or stranded cost issuers? If so, please explain why.
- Is there any pool-level data that should be provided in periodic reports by credit card, charge card, or stranded cost issuers? Should any pool-level data be standardized for these asset classes? If so, please explain why. For instance, we request comment above about whether we should require issuers of ABS backed by credit cards and charge cards to provide specific types of

pool-level disclosure in a standardized manner at the time of an offering.[283] Should any of that pool-level information be required with each periodic report on Form 10-D? For instance, should we use the same distributional groups for account balance, account age, APR, credit available for purchase, types of products, and accounts under a debt management program?

- Are there any other asset classes that should be exempt from the asset-level disclosure requirement in periodic reports and why?

c) Residential Mortgage-Backed Securities

We are proposing 151 data points for periodic reports for ABS backed by residential mortgages. Similar to the RMBS data points we are proposing for Schedule L, much of the proposed data and definitions are based on fields developed by organizations doing work in the area of RMBS, as well as government agencies.[284] Many of the data points we are proposing relate to loan modifications and loss mitigation activities by the servicer. We describe the additional proposed data points below. A description of each proposed data point and related response is provided in Table 12 of the Appendix to this release.

1. Information related to delinquent loans, such as a code describing the reason for non-payment and codes describing the status of the non-payment;
2. If the loan is an adjustable rate mortgage, the rate at the next reset date, the next interest reset date, the payment at the next reset date, the next

283 See Section III. A.1.b.iv. above.

284 See Section III.A.1.c. above.

payment reset date, whether the loan is an option ARM, and whether the borrower exercised an option to convert an ARM loan to a fixed loan;

3. If the obligor has filed for bankruptcy:
   a. The date of filing and case number;
   b. The date on which the next payment is due under the terms of the bankruptcy plan;
   c. If the bankruptcy has been released, the code that describes the reason for the release and the date of the release;
   d. The actual due date of the loan had the bankruptcy not been filed; and
   e. Whether the debt was reaffirmed and whether the trustee handles post-petition payments.
4. With respect to delinquent loans, whether the servicer is pursuing loss mitigation and the type of loss mitigation with the loan, borrower or property;
5. Information related to loan modifications:
   a. The date of first payment due post modification;
   b. The loan balance as of the modification effective payment date;
   c. The amount added to the principal balance of the loan;
   d. Pre- and post-modification interest rates;
   e. Post-modification margin, which is the number of percentage points added to the index to establish the new rate;
   f. Pre- and post-modification principal and interest scheduled payment amount;

g. Post-modification interest rate ceilings and floors;

h. Pre- and post-modification initial and subsequent limitations on interest rate increases and decreases;

i. Pre- and post-modification limitations on payment amount increases and decreases;

j. Pre- and post-modification maturity dates;

k. The number of months of the interest reset period, pre- and post-modification;

l. Updated debt-to-income ratios used to qualify the modification;

m. Pre- and post-modification interest only period;

n. Cumulative and current forgiven interest and principal amounts;

o. The due date on which the next payment adjustment is scheduled to occur for an ARM loan;

p. Whether the loan remains an ARM loan post-modification;

q. Whether the terms of the modification agreement call for the interest rate to step up over time, the maximum interest rate to which the loan may step up and the date the maximum interest rate will be reached;

r. Cumulative and current principal amount deferred by the modification that are not subject to interest accrual as well as any amounts collected from the obligor during the current period;

s. Cumulative and current interest and fees deferred by the modification that are not subject to interest accrual as well as any amounts collected from the obligor during the current period;

t. The total amount of expenses that have been waived or forgiven and reimbursable to the servicer;

u. The total amount of escrow and corporate advances made by the servicer at the time of the modification. Corporate advances are amounts paid by the servicer which may include foreclosure expenses, attorney fees, bankruptcy fees, and insurance, among others;

v. The total amount of servicing fees for delinquent payments that has been advanced by the servicer at the time of the modification;

w. Whether the loan has been modified under the terms of the Home-Affordable Modification Plan (HAMP).[285] If so, information regarding participation end dates, amounts paid and payable under the program, whether the mortgage holder has or will receive the incentive amount under the program, and actual and scheduled balance of the loan plus any deferred amounts.

6. If a forbearance plan is in effect, the start date and end date of the plan. A forbearance plan is a period during which no payment or a payment amount less than the contractual obligation is required by the obligor;

7. If a repayment plan is in effect, the start and end date of the plan, and the date the obligor ceased complying with the terms of the plan. A repayment plan refers to a period during which an obligor has agreed to make monthly mortgage payments greater than the contractual installment in an effort to bring a delinquent loan current;

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[285] HAMP is a federal loan modification program. Further details are available at http://makinghomeaffordable.gov/ and https://www.hmpadmin.com/portal/index.html.

8. If the type of loss mitigation is Deed-In-Lieu, the date on which a title was transferred to the servicer pursuant to a deed-in-lieu-of-foreclosure arrangement. Deed-In-Lieu refers to the transfer of title from an obligor to the lender to satisfy the mortgage debt and avoid foreclosure;
9. If the type of loss mitigation is a short sale, the amount accepted for a short sale. Short sale refers to the process in which a servicer works with a delinquent obligor to sell the property prior to the foreclosure sale;
10. If the loan has exited loss mitigation efforts, whether the plan was completed or satisfied, cancelled or failed, or denied and the date of exit;
11. If the loan is in the foreclosure process:
    a. The date the loan was referred to a foreclosure attorney and the date on which foreclosure action was taken;
    b. The expected date of the foreclosure sale, the date set for the foreclosure sale by the court or the trustee, and the actual date it occurs;
    c. A code that describes the reason for delay in the foreclosure process;
    d. If state law provides for a period for confirmation, ratification, redemption or upset period, the date of the end of the period;
    e. The amount bid by the servicer at the foreclosure sale;[286]
    f. If the loan exited foreclosure, the date and the code that describes the reason the proceedings ended;

[286] The servicer will usually place an opening bid, on behalf of the issuing entity, at the foreclosure auction that is usually equal to the outstanding loan balance, interest accrued, and any additional fees and attorney fees associated with the trustee sale. If there are no bids higher than the opening bid, the property

g. If the property was sold to a third-party, the sale amount of the property;

h. In a judicial foreclosure state, if a judgment on the foreclosure has occurred, the date on which a court granted the judgment in favor of the creditor;

i. The date on which the publication of the trustee's sale information is published in the appropriate venue; and

j. The date on which the servicer sent a notice of intent to the obligor informing the obligor of the acceleration of the loan and pending initiation of foreclosure action.

12. If the property is now owned by the issuing entity due to an unsuccessful sale at the foreclosure auction, the asset is considered real estate owned (REO).[287] Information should be provided on the following:

a. The most recent listing date and price;

b. If an offer has been accepted, the amount and the date of acceptance;

c. The original list date and list price for the property;

d. If an REO sale has closed, the closing date, the gross proceeds, and the net proceeds;

e. The cumulative monthly and total loss amount passed on to the issuing entity;

f. Any amount recovered during the current period;

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will be owned by the issuing entity and be considered real estate owned (REO). This typically would occur because the market value of the property is less than the total amount owed on the loan.

287 Servicing agreements will usually require the servicer to promptly sell the property.

g. The start and end date of an eviction process, if applicable; and

h. If the loan exited REO during the current period, provide the date and a code describing the reason.

13. Information related to loss claims:

a. The unpaid principal balance at the time of liquidation;

b. Amounts advanced by the servicer and to be reimbursed such as interest, servicing fees, attorney fees, attorney costs, property taxes, property maintenance, insurance premiums, utility expenses, appraisal expenses, property inspections, any pre-securitization advances and other miscellaneous expenses;

c. If the loan is in REO, the amount of REO management fees;

d. The amount of the payment to the obligor or tenants in exchange for vacating the property; and

e. Any incentive payment to servicer for carrying out a deed-in-lieu or short sale.

14. Information related to loss recoveries:

a. The escrow balance and the suspense balance;

b. Proceeds collected from hazard claims, pool insurance, mortgage insurance, property tax refunds, and insurance premium refunds; and

c. The amount of any realized loss resulting from bankruptcy or special hazard.

15. If a mortgage insurance claim has been submitted to the primary mortgage insurance company for reimbursement, the following information would be required:

    a. The date the claim was filed and the date it was paid;

    b. The amount claimed and the amount paid;

    c. The date the claim was denied or rescinded; and

    d. If the property was conveyed to the insurance company, the date of conveyance.

Request for Comment

- Are all of the RMBS data points appropriate for periodic reports? What other data points should be required by all RMBS issuers? Are any data points not necessary or overly burdensome to obtain? Please provide a detailed explanation of the reasons why or why not. Some data points request the results of calculations, such as debt-to income ratios. Can those data points be calculated from information already provided by the other asset-level data points? If so, can users of the information independently calculate these data points? Should we not require these data points to be included in the asset-level data file for periodic reports?
- Should we add a data point to require the amount of any loss as a result of intentional misstatement, misrepresentation, or omission by an applicant or other interested parties, relied on by a lender or underwriter to provide funding for, to purchase, or to insure a mortgage loan? If so, how would the

issuer be able to verify the information? Is this information currently disclosed?

- Should we require updated information about the obligor, such as updated credit scoring information? If so, why? Would issuers be able to obtain updated credit scores?
- We are proposing several data points to capture activity specifically related to the HAMP program. Are more generic data points appropriate that would capture activity if other types of government programs are or become available? If so, please provide us with the data points that would be more appropriate and the related definition.
- We are proposing, in the case of a foreclosure, that registrants provide the expected date of the foreclosure sale, the date on which the foreclosure sale has been set by the court or the trustee, and the date on which the foreclosure sale occurs. Are all three data points necessary?
- We are proposing, in the case of a delayed foreclosure, that registrants provide a code describing the reason for the delay. Should we specify the number of days that would constitute a delay for this item requirement? If so, what would be the appropriate number of days and why?

d) Commercial Mortgage-Backed Securities

We are proposing to require 47 additional data points for periodic reports that relate to commercial mortgages. Similar to the proposed Schedule L data points for commercial mortgage-backed securities, the data points we are proposing to require below are primarily based on the definitions provided by the CMSA. With respect to

each commercial mortgage loan in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in Table 13 to the Appendix to this release.

1. The remaining term, number of properties that collateralize the loan and the current hyper-amortizing date. The hyper-amortizing date is the current anticipated repayment date, after which principal and interest may amortize at an accelerated rate, and/or interest to the mortgagor increases substantially.
2. If the loan is an adjustable rate mortgage, the rate at the next reset date, the next date the rate is scheduled to change, the amount of the payment at next reset, and next payment change date.
3. If the loan permits negative amortization, the cumulative deferred interest, and deferred interest collected.
4. A code describing any workout strategy.
5. Information related to modifications, such as the date of the last modification, a code that describes the type of loan modification, the new modified note rate, payment amount, maturity date and amortization period.
6. Information related to each property such as property name, geographic location, as represented by zip code, property type, net rentable square footage, number of units, year built, valuation amounts, physical occupancy, property status and a code that describes the defeasance status. A defeasance option is when an obligor may substitute other income-producing property for the real property without pre-paying the existing loan.
7. Financial information related to the properties including:

a. Financial reporting beginning and end dates;

b. Revenues, operating expenses, net operating income, and net cash flow;

c. A code describing how net operating income and net cash flow were calculated; and

d. The ratio of underwritten net operating income to debt service, the ratio of underwritten net cash flow to debt service and a code describing how the ratio was calculated.[288]

Request for Comment

- Are all of the CMBS data points for periodic reports appropriate? What other data points should be required by all CMBS issuers? Please provide a detailed explanation of the reasons why or why not.
- Should we require more data points relating to foreclosure in CMBS, like we propose for RMBS? If so, please be specific as to which data points should be required and why.
- We are proposing data points for information related to the properties collateralizing each asset in Item 3(d) of Schedule L-D because we note that issuers that currently provide the disclosure in accordance with the CMSA Investor Reporting Package provide property information on a periodic basis. Some of this information is the same disclosure that would have been provided at the time of the offering by proposed Schedule L. Is it appropriate

[288] For this purpose, "underwritten" means the adjusted amount based on a number of assumptions made by the mortgage originator or seller. We believe issuers will have had to include narrative disclosure about the assumptions used in the prospectus for the transaction.

to include all of the data points in proposed Item 3(d) with each Form 10-D filing? In particular, is it useful for investors to receive the Item 3(d)(1) Property name, Item 3(d)(2) Property geographic location, Item 3(d)(3) Property type and Item 3(d)(6) Year built with each Form 10-D filing? Please tell us why or why not.

e) Other Asset Classes

As discussed above, because we are unaware of any other organizations attempting to standardize data points for asset classes other than mortgages, we are proposing data points for periodic reports derived from the aggregate pool-level disclosure that is already provided in periodic reports for the following asset classes: automobile loans and leases; equipment loans and leases; student loans; and resecuritizations. We do not propose any asset specific data points related to repackagings of corporate debt for periodic reports. We believe the data points required under proposed Item 1. General of Schedule L-D will provide the appropriate asset-level performance disclosure for those assets to investors.

Request for Comment

- Should we propose asset specific data points related to repackaging of corporate debt for periodic reports? If so, what would those be and what would be the appropriate form of disclosure?

i) Automobiles

We are proposing to require five additional data fields for periodic reports that relate to ABS backed by automobiles loans and nine for ABS backed by automobile leases. With respect to each loan or lease in the pool, the issuer would be required to

disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 14 for automobile loans and Table 15 for automobile leases.

1. Whether a form of subsidy is received on the loan, such as an incentive or rebate.
2. Any recovery of amounts previously charged-off.
3. Whether the vehicle was repossessed and related proceeds and fees.
4. For automobile leases, the updated residual value, source of residual value, whether the lease has been terminated and the reason why, any excess wear and tear or mileage charges, sales proceeds of the vehicle, or extension of lease term.

Request for Comment

- Are all of the automobile data points appropriate for periodic reports? What other data points should be required by all issuers of ABS backed by automobile loans or leases? Please provide a detailed explanation of the reasons why or why not.
- We are proposing to require an indicator for the reason for automobile lease termination. The code options for this indicator would be: (1) Scheduled termination; (2) Early termination due to bankruptcy; (3) Involuntary repossession; (4) Voluntary repossession; (5) Insurance payoff; (6) Customer payoff; (7) Dealer purchase; and (98) Other. Are these codes appropriate? Are there additional codes that should be included?

ii) Equipment

We are proposing to require two additional data fields for periodic reports that relate to ABS backed by equipment loans and five that relate to equipment leases. With respect to each loan or lease in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 16 for equipment loans and Table 17 for equipment leases.

1. Liquidation proceeds and any recovery of amounts previously charged-off; and
2. For equipment leases, the updated residual value, source of residual value, and whether the lease has been terminated and the reason why.

Request for Comment

- Are all of the equipment data points appropriate for periodic reports? What other data points should be required by all issuers of ABS backed by equipment loans or leases? Please provide a detailed explanation of the reasons why or why not.
- We are proposing to require an indicator for the reason for equipment lease termination. The code options for this indicator would be: (1) Scheduled termination; (2) Early termination due to bankruptcy; (3) Involuntary repossession; (4) Voluntary repossession; (5) Insurance payoff; (6) Customer payoff; (7) Dealer purchase and (98) Other. Are these codes appropriate? Are there additional codes that should be included?

iii) Student Loans

We are proposing to require six additional data fields for periodic reports that relate to ABS backed by student loans. With respect to each loan in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 18.

1. A code that describes the current obligor payment status.
2. The amount of capitalized interest during the reporting period.
3. If there is activity related to any guarantor during the reporting period, principal and interest received from the guarantor, whether a claim is in process and the outcome of the claim.

Request for Comment

- Are all of the student loan data points appropriate for periodic reports? What other data points should be required by all issuers of ABS backed by student loans? Please provide a detailed explanation of the reasons why or why not.

iv) Floorplan Financings

We are proposing to require five additional data fields for periodic reports that relate to ABS backed by floorplan financings. With respect to each loan in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 19.

1. The liquidation proceeds and any recovery of amounts previously charged-off.
2. Updated credit score and type.

Request for Comment

- Are all of the proposed floorplan financing data points appropriate for periodic reports? What other data points should be required by all issuers of ABS backed by floorplan financings? Please provide a detailed explanation of the reasons why or why not.

v) Resecuritizations

As discussed earlier, at the time of the offering, we are proposing to require underlying asset-level data disclosure for resecuritization ABS.[289] Therefore, for periodic reporting, in addition to the asset-level data that would be required of the underlying securities as outlined in Item 1. General of Schedule L-D, we also propose that issuers of resecuritization ABS provide Schedule L-D data for the asset pool of the underlying securities. For example, if the ABS is comprised of several RMBS, then the data points in Item 1 of Schedule L-D would be required with respect to each RMBS security in the asset pool. In addition, the data points in Items 1 and 2 of Schedule L-D would be required for each loan underlying each RMBS security.[290] If the issuer of the underlying security suspends its reporting obligation and stops reporting, the issuer of the resecuritization ABS would still have to provide the required Schedule L-D data for each loan underlying each RMBS security because we believe that investors in the resecuritization ABS would need the underlying asset-level information to evaluate the performance of the resecuritization ABS.

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[289] Where the underlying securities were required to be registered pursuant to Rule 190 [17 CFR 230.190], the issuer of those underlying securities is subject to the requirements of Section 13(a) or 15(d) of the Exchange Act, as applicable.

[290] However, asset-level data would not be required if the asset class is exempt from the requirements of Item 1121(d) of Regulation AB. For instance, if the asset pool is comprised of stranded cost ABS, then

Request for Comment

- Is our proposal for asset-level reporting for resecuritizations appropriate?
- Would issuers of the resecuritization ABS be able to obtain the asset-level data for the pool of assets underlying the resecuritized ABS? Should we phase in the requirement? We note that Project RESTART recommends that issuers provide the loan-level reporting package for outstanding RMBS.[291]

3. Grouped Account Data for Credit Card Pools

As we discussed above, we are proposing to exclude ABS backed by credit cards[292] from the requirement to provide asset-level data because we believe that level of information would result in an overwhelming volume of data that may not be useful to investors and providing the data may be cost-prohibitive for issuers. However, as we also noted above, we believe that investors and market participants should have access to the information necessary to assess the credit quality of the assets underlying a securitization transaction at inception and over the life of the transaction. Instead of providing asset-level data, we are proposing that issuers of ABS backed by credit cards provide disclosure more granular than pool-level disclosure by creating "grouped account data." As we explain in more detail below, 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 our proposals for other asset classes discussed above, we are

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Schedule L-D for the underlying pool would not be required because they are exempt from the requirements of Item 1121(d).

[291] See American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009) at 21, available at http://www.americansecuritization.com/.

[292] For purposes of this discussion, we refer to both credit card and charge cards as "credit cards."

proposing to require the grouped account data be provided in XML and filed as an Asset Data File in order to facilitate data analysis.[293] Our proposal for grouped account data would be in addition to the disclosure currently required about the composition and characteristics of the pool of assets taken as a whole.

Request for Comment

- Is our proposal to require grouped account data disclosure with standardized groupings appropriate?
- Do investors in ABS backed by credit cards need enhanced information about assets, or are our current disclosure requirements sufficient?
- Is our proposal to require grouped account data in XML appropriate? Why or why not?

a) When Credit Card Pool Information Would be Required

Today we are proposing new Item 1111(i) and Schedule CC of Regulation AB that describe the standardized distributional groups and the information that would be provided for each group. Consistent with the proposed asset-level disclosure requirements for other asset classes, Schedule CC data would be an integral part of the prospectus, and in order to facilitate investor analysis prior to the time of sale, we are proposing to require issuers to provide Schedule CC data as of a recent practicable date that we define as the "measurement date" at the time of a Rule 424(h) prospectus and at the time of the final prospectus under Rule 424(b). Likewise, if issuers are required to report changes to the pool under Item 6.05 of Form 8-K, updated Schedule CC data

[293] See Section III.A.4.

would be required.[294] Updated Schedule CC would also be required if an issuer is required to report changes to the waterfall under proposed Item 6.07 to Form 8-K.[295] As we discuss in Section III.A.4, we are proposing a new Item 6.06 to Form 8-K for issuers to file the XML data file.

In addition, because credit card ABS are typically structured as master trusts, accounts may be added or withdrawn.[296] Unlike amortizing asset pools, the composition of the underlying asset pool varies over time and we believe investors and market participants would benefit from receiving information about the underlying asset pool as the pool evolves. Therefore, we are proposing that an updated Schedule CC be filed with each periodic report on Form 10-D.

Request for Comment

- Is the proposed requirement to provide Schedule CC data with the proposed Rule 424(h) prospectus, the final prospectus under 424(b) and for changes under Item 6.05 of Form 8-K appropriate?
- Is the proposed measurement date appropriate? Should we provide further guidance about what would be a recent practicable date for purposes of determining the measurement date? For example, should we specify that it be prepared as of a date that is five business days prior to filing?
- Would the proposed Schedule CC contained in the most recent Form 10-D provide investors with sufficiently current information at the time of making

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294 Under our proposed revisions to Item 6.05 of Form 8-K, a narrative description of the changes that were made to the asset pool, including the number of assets substituted or added to the asset pool, would be included in the body of the report.

295 See Section III.B. below.

296 See fn. 177 above and accompanying text.

an investment decision? In this regard, we note the result could be that the most recent Schedule CC data could be as old as 45 days.

- Is our proposal to require that updated Schedule CC data be provided with Form 10-D appropriate? Should Schedule CC data be required at any other time, such as daily, weekly or monthly? If so, please tell us when and why.
- Is our proposal to require that updated Schedule CC data be provided when changes to the waterfall are reported under proposed Item 6.07 appropriate? Please tell us why or why not.

b) Proposed Disclosure Requirements

We are proposing that issuers group the underlying pool into grouped account data lines. Proposed Schedule CC sets forth the standardized groups and the information requirements that would be required for credit card pools. Grouped account data lines are created by grouping the underlying accounts by several characteristics. We further designate the groupings for each characteristic. This way, investors may receive more granular information about the underlying asset pool in order to perform better analysis of future payments on the asset-backed securities.[297]

We are proposing that data be grouped by a combination of the following characteristics:

1. Credit score. If the credit score used is FICO, the proposed groupings would be: (1) less than 500; (2) 500-549; (3) 550-599; (4) 600-649; (5) 650-699; (6) 700-749; (7) 750-799; (8) 800 and over; and (9) unknown. We are proposing that issuers provide the most recent credit score

[297] We base our groupings on a comment letter received from an investor in response to the FDIC Securitization Proposal. See fn. 257 above.

available and accompanying disclosure would be required to explain the age of the credit score or the policy for updating the credit score from the time of account origination.[298] If the credit score used is not FICO, an issuer would designate similar groupings and provide explanatory disclosure. We are proposing a group of "unknown;" however, as we discuss above, registrants should be mindful of their responsibilities to provide all of the disclosures required in the prospectus and other reports.[299]

2. Number of Days Past Due. The proposed groupings would be accounts that are: (1) current; (2) less than 30 days; (3) 30-59 days; (4) 60-89 days; (5) 90-119 days; (6) 120-149 days; (7) 150-179 days; and (8) 180 days and over.[300]

3. Account age. The proposed groupings would be accounts that are: (1) less than 12 months; (2) 12 to 24 months; (3) 24 to 36 months; (4) 36 to 48 months; (5) 48 to 60 months; and (6) over 60 months.

4. State. The proposed groupings would be the top 10 states for aggregate account balance. The remaining accounts would be grouped into the category "other."

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298 See further discussion regarding explanatory disclosure for asset data files in Section III.A.4. and proposed Item 6.06(b) to Form 8-K.

299 See Securities Act Rule 409 [17 CFR 230.409] and Exchange Act Rule 12b-21 [17 CFR 240.12b-21].

300 See fn. 260 above. As we discuss above, our rules do not currently provide a definition of delinquent because of various delinquency policies across issuers. Instead of proposing to define delinquency, we believe disclosure of the number of days past due allows for analysis and comparability of the data.

5. Adjustable rate index. The proposed groupings for the adjustable rate indexes would be: (1) fixed; (2) prime; and (3) other.

In order to create a grouped account data line, each group based on each of these characteristics should be combined with all groups for all other characteristics. All possible combinations would result in 14,256 grouped account data lines. The table below illustrates how the distributional groups and the information requirements relate to each other. For example, grouped account data line 2 in the table below presents the information required by columns (b)(1) through (b)(5) by combining all the credit card accounts in the underlying pool that fall within the 500-549 credit score group (column (a)(1)), payments are less than 30 days past due (column (a)(2)), account age of 12 to 24 months (column (a)(3)), with obligors located in the state of Alabama (column (a)(4)), where the adjustable rate index is based on a floating percentage (column (a)(5)). For each grouped account data line, we are proposing that issuers provide the following information: the aggregate credit limit; aggregate account balance; number of accounts; weighted average annual percentage rate; and weighted average net annual percentage rate.[301]

	(a)(1)	(a)(2)	(a)(3)	(a)(4)	(a)(5)	(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)
Grouped Account Data Line number	Credit Score	Days payment is past due	Account Age	Top 10 State	Adjust-able Rate Index	Aggregate Credit Limit ($)	Aggregate Account Balance ($)	Number of Accounts (#)	Weighted Average APR (%)	Weighted Average Net APR (%)
1	less than 500	Current	Less than 12 months	AK	Fixed					
2	500-549	< 30 days	12-24 months	AL	Prime					
3	550-599	30-59 days	24-36 months	AR	Other					
4	600-649	60-89 days	36-48 months	AZ	Fixed					
5	650-699	90-119 days	48-60 months	CA	Prime					

[301] The weighted average net annual percentage rate would be the weighted average of the annual percentage rate less any servicing fees related to the account.

6	700-749	120-149 days	Over 60 months	CO	Other					
7	750-799	150-179 days	Less than 12 months	CT	Fixed					
8	800 and over	180+ days	12-24 months	DE	Prime					
9	less than 500	< 30 days	24-36 months	DC	Other					
10	500-549	30-59 days	36-48 months	FL	Fixed					
11	550-599	60-89 days	48-60 months	Other	Prime					
12	600-649	90-119 days	Over 60 months	AK	Other					
13	650-699	120-149 days	Less than 12 months	AL	Fixed					
14	700-749	150-179 days	12-24 months	AR	Prime					
15	750-799	180+ days	24-36 months	AZ	Other					
16	800 and over	Current	36-48 months	CA	Fixed					

Request for Comment

- Are the proposed standardized distributional groups appropriate? Are there any other distributional groups that we should specify? Are there any that should not be required?
- Would credit card ABS issuers be able to provide this information in this format on a cost-effective basis? Would it raise competitive concerns?
- We understand that most credit card ABS issuers currently provide disclosure about the FICO credit score distribution of the underlying pool. Rather than allowing the issuer to use a credit score that is not FICO, should we require that all issuers provide disclosure of FICO credit scores by distributional groups? Are there other types of credit scores with respect to which we should require disclosure by distributional group? If so, what would be the appropriate distributional groups?

- Should we provide a definition for delinquency? If so, how should it be defined?
- Are the distributional groups for adjustable rate index appropriate? Are there any other commonly used indexes that we should specify?
- Would issuers already have information about all of the states in order to prepare the groupings for the top 10 states by aggregate account balance and other? If so, should we require that issuers provide groupings by every state? Please tell us why or why not.
- Are the proposed informational requirements appropriate for the grouped account data (i.e., aggregate credit limit, aggregate account balance, number of accounts, weighted average APR and weighted average net APR)? What other types of information should issuers provide about their accounts in the grouped account data format?
- Are credit cards ever securitized using structures that are not master trusts? If so, should we require asset-level disclosure for non-master trust credit card ABS issuers because the pool would be fixed and contain a smaller number of accounts?

4. Asset Data File and XML

We are proposing to require asset-level information[302] and grouped account data (with respect to credit cards) related to an offering and ongoing periodic reporting be filed on EDGAR in XML (eXtensible Markup Language) as an asset data file. By proposing to require the asset-level data file in XML, a machine-readable language, we

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302 As defined in proposed Schedule L [17 CFR 229.1111A] and Schedule L-D [17 CFR 229.1121A].

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.

Asset-backed filers currently are required to file their registration statements, current and periodic reports in ASCII (American Standard Code for Information Interchange) or HTML (HyperText Markup Language).[303] Our electronic filing system also uses other formats for reporting related to corporate issuers, such as XML, to process reports of beneficial ownership of equity securities on Forms 3, 4, and 5 under Section 16(a) of the Exchange Act, [304] and a form of XML known as XBRL to provide financial statement data.[305] As we explained in the XBRL Adopting Release, electronic formats such as HTML and XML are open standards[306] that define or "tag" data using standard definitions. 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 HTML, the standardized tags enable Web browsers to present Web sites' embedded text and information in a predictable format so that they are human readable. In the case of XML and XBRL, software applications, such as databases, financial reporting systems, and spreadsheets recognize and process tagged information. For asset-backed issuers, we believe that XML is the appropriate format to provide

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303 Rule 301 under Regulation S-T [17 CFR 232.301] requires electronic filings to comply with the EDGAR Filer Manual, and Section 5.1 of the Filer Manual requires that electronic filings be in ASCII or HTML format. Rule 104 under Regulation S-T [17 CFR 232.104] permits filers to submit voluntarily as an adjunct to their official filings in ASCII or HTML unofficial PDF copies of filed documents.

304 15 U.S.C. 78p(a).

305 See Interactive Data to Improve Financial Reporting, Release No. 33-9002 (Feb. 10, 2009) ("the XBRL Adopting Release)

306 The term "open standard" is generally applied to technological specifications that are widely available to the public, royalty-free, at minimal or no cost.

standardized asset data disclosure. As we discuss earlier, 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. XBRL allows issuers to capture the rich complexity of financial information presented in accordance with U.S. GAAP.[307] In contrast, the proposed asset data file will present relatively simpler characteristics of the underlying loan, obligor, underwriting criteria and collateral among other items that are well suited for XML. We are proposing XML, rather than XBRL, because there are many commercial products that can be used with XML including parsers that would allow investors to insert data into a relational database for analysis, data extensions available in XBRL are not applicable to this data set, the nature of the repetitive data lends itself to an XML format and the schema could be easily updated.

We understand that most of this information is data collected at the time of origination and ongoing performance information is maintained on servicing systems. The CRE Finance Council (formerly CMSA) is already moving towards requiring issuers to provide its Investor Reporting Package in XML.[308] The use of XML will enable investors to use standard commercial off-the-shelf software for analysis of underlying

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307 As part of its process of developing proposed Accounting Standards Updates, the FASB identifies and seeks comment on proposed changes to tags in the U.S. GAAP XBRL Taxonomy. When the FASB publishes final Accounting Standards Updates, it includes in the final document proposed changes to the U.S. GAAP XBRL taxonomy as a result of the amendments in the Accounting Standards Update being issued. FASB Accounting Standards Updates, which include proposed updates to the U.S. GAAP XBRL taxonomy and are used to update the FASB Accounting Standards Codification. The FASB Accounting Standards Codification is available at www.fasb.org.

308 See CRE Finance Council Investor Reporting Package X Version 6.0 Working Exposure Draft #1" available at http://www.crefc.org/Industry_Standards/CMSA-Investor_Reporting_Package/CRE_Finance_Council_IRP/.

loan-level data.[309] This software may also permit investors to insert the data into a database to identify individual data points. Then the data can be aggregated, compared and analyzed. Data can also be subjected to further waterfall analysis. Since XML data can be visualized in internet browsers, investors can develop a style sheet if viewing data is important in their analysis.[310]

Prior to requiring the asset data file in XML, technical specifications that describe the schema, which would include each data point described in Schedules L, L-D, and CC are necessary.[311] Also, extension data would not be permitted in the asset-level data file because we believe it would defeat the purpose of standardizing the data elements.[312] Instead, we are proposing to include a limited number of "blank" data tags in our XML schema. In order to reduce complexity for users we are proposing to limit the number to ten blank data tags. These blank data tags would give issuers the ability to present additional asset-level data not required by proposed Schedule L or L-D. For example, if servicers were required to comply with a new modification program, and related tagged information would be material to investors, it may be appropriate to use a blank data tag. Additionally, if an issuer registers ABS backed by an asset class that has not been previously registered, so that no asset class specific schema exists at the time, that issuer could use the available blank data tags. Issuers, however, would need to provide a narrative explanation of the definitions or formulas for the additional tagged data and file

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309 Off-the-shelf software includes computer products that are ready-made and available for sale, lease, or license to the general public.

310 A style sheet is a text file that provides instructions for formatting and displaying the information in XML documents in a human-readable format.

311 A schema is a set of custom tags and attributes that defines the tagging structure for an XML document.

312 Extension data would allow issuers to add their own data elements to our defined data elements.

it as another exhibit on Form 8-K or Form 10-D.[313] Issuers could also file other explanatory disclosure regarding the asset-level data in an exhibit, if necessary.[314]

a) Filing the Asset Data File and EDGAR

We are proposing that the new asset data file in XML be filed as an exhibit to the filings. Therefore, we are proposing changes to Item 601 of Regulation S-K, Rules 11, 201, and 202 of Regulation S-T and Form 8-K to accommodate the filing of asset data files. We are proposing to define the XML file required by proposed Schedules L, L-D, and CC as an "Asset Data File" in Regulation S-T and make corresponding changes to Rule 101 of Regulation S-T mandating electronic submission.[315] As we discuss above, we are proposing that the asset data be filed as an exhibit to the appropriate Form 8-K (in the case of an offering) or to the appropriate Form 10-D (in the case of a periodic distribution report).[316] As we note above, we realize that registrants may want to provide investors with additional asset information not defined in Schedule L or L-D, or that issuers of new asset classes may want to provide investors with other data points. As such, we also propose an additional exhibit, an asset related document, for registrants to disclose the definitions or formulas for the additional data points or to provide further explanatory disclosure regarding the asset data file.[317]

We also propose to add Item 6.06 to Form 8-K. Regardless of whether the issuer is registering the offering on Form SF-1 or SF-3, we are proposing to require all asset data files to be filed on Form 8-K so that investors may easily locate asset-level data

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313 See proposed Item 601(b)(103)(i) of Regulation S-K.

314 See proposed Item 601(b)(103)(ii) of Regulation S-K.

315 See proposed definition to Rule 11 of Regulation S-T.

316 See proposed exhibit table in Item 601(a) of Regulation S-K.

317 See proposed Item 601(b)(103) of Regulation S-K.

disclosure on EDGAR. The proposed item explains that the asset data file must be filed with the Form 8-K on the same date of the filing of a prospectus filed in accordance with proposed Rule 424(h), a final prospectus meeting the requirements of section 10(a) of the Securities Act filed in accordance with Rule 424(b), and a report filed in accordance with Item 6.05 of Form 8-K (Securities Act Updating Disclosure). The proposed item also requires that any asset data related document[318] be filed at the same time the asset data file is filed on EDGAR. We have also included proposed instructions to Item 6.06 to refer to the proposed exhibit requirements in Item 601 of Regulation S-K and to the incorporation by reference item requirements on proposed Forms SF-1 and SF-3.

b) Hardship Exemptions

We are proposing a self-executing temporary hardship exemption for filing the asset data file; however, we are proposing to exclude the asset data file from the continuing hardship exemption. Rule 201 under Regulation S-T generally provides for a temporary hardship exemption from electronic submission of information, without staff or Commission action, when a filer experiences unanticipated technical difficulties that prevent timely preparation and submission of an electronic filing. The temporary hardship exemption permits the filer to initially submit the information in paper, but requires the filer to submit a confirming electronic copy of the information within six business days of filing the information in paper.[319] Failure to file the confirming electronic copy by the end of that period results in short form ineligibility. Because the disclosure requirement for an asset data file is inherently electronic, and the information would not be useful if provided in paper, we are proposing an alternative approach to the

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318 Id.

temporary hardship exemption. Under our proposal, if the registrant experiences unanticipated technical difficulties preventing the timely preparation and submission of an asset data file, a registrant will still be considered timely if the asset data is posted on a Web site on the same day it was due to be filed on EDGAR, the Web site address is specified in the required exhibit, a legend is provided in the appropriate exhibit claiming the hardship exemption, and the asset data file is filed on EDGAR within six business days. We believe that posting the asset data on a Web site is preferable to a paper filing in this circumstance. By requiring the asset data file posting on a Web site, investors would have access to the disclosures and would not experience any delay in accessing the asset data in XML format. Consistent with our current temporary accommodation rules, under our proposed accommodation, the asset data file must be filed on EDGAR within six business days and failure to file the asset data file within that period will result in the loss of Form SF-3 eligibility. We believe it is important that the disclosure be filed with the Commission on EDGAR to preserve continuous access to the information. As we discuss below, our experience with the temporary accommodation for static pool disclosure raises concern that access to the information on Web sites may be lost due to the distress in the market or the fact that certain sponsors may cease operations.[320]

We are proposing to exclude asset data files from the continuing hardship exemption under Rule 202 of Regulation S-T. Rule 202 generally allows a registrant to apply for a continuing hardship if it cannot file all or part of a filing without undue burden or expense. In contrast to the self-executing temporary hardship exemption

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

320 See Section III.E.4.

process, a filer may obtain a continuing hardship exemption only by submitting a written application, upon which the Commission staff must then act under delegated authority.

We do not believe a continuing hardship exemption is appropriate with respect to an asset data file because we believe the proposed asset data file would be an integral part of the prospectus and periodic performance reporting. We believe that, for ABS issuers, the information in machine readable format is generally already collected and stored on a servicer's systems. Therefore, we do not believe it would be appropriate for issuers to receive a continuing hardship exemption for the asset data file. We believe investors should receive all of the disclosures specified in Schedules L and L-D and in a format that will allow them to effectively utilize the information.[321]

c) Technical Specifications

We are proposing to add detailed information on submitting an asset data file to the EDGAR Technical Specification. As discussed above and as specified in the Appendix to this release, there are several data points contained in Schedule L and Schedule L-D that require issuers to provide a coded response. These codes would be enumerated in the EDGAR Technical Specification. We expect that the technical specifications would be available as early as possible prior to any required compliance date. The manual would be published on the SEC's Web site on the "Information for EDGAR Filers" webpage.[322]

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321 We recognize that our rules provide for a continuing hardship for registrants required to file Interactive Data Files in XBRL. Interactive Data Files in XBRL contain data that is already disclosed in the prospectus. In contrast, asset data files will contain disclosure that is not otherwise provided in the related prospectus or report. See the XBRL Adopting Release.

322 The Web site address is http://www.sec.gov/info/edgar.shtml.

Request for Comment

- Is it appropriate to require the asset data file in XML format? Does XML format most easily facilitate the analysis of the securities and their underlying assets for all market participants?
- In what format do issuers currently provide asset data information to investors (as may be required, for example, under transaction agreements)? Do any market participants currently provide asset data in accordance with a technical specification or schema commonly used across a particular asset class? If so, would our data points cause divergence from current practice? Please tell us which specific proposed data points would be of concern and why. How can we address those concerns? Is another format preferable, such as XBRL?
- Should we adopt the proposed changes to Item 601 of Regulation S-K, Regulation S-T and Form 8-K?
- We are not proposing changes to Rule 305 of Regulation S-T to exempt the asset data file from the restrictions on the number of characters per line that may be filed on EDGAR in order to prevent issuers from filing the tagged data in one continuous string. We believe the restriction on the number of characters per line will help preparers and validators with their review of the asset data file. Should we exempt the asset data file from Rule 305 of Regulation S-T? If so, why?
- Are the proposed blank data tags appropriate? Is ten blank data tags the appropriate number? Should the number be more or less? Would more blank data tags create undue complexity for investors? Are there other ways we

could provide for additional disclosure and have that disclosure be standardized?

- Is the proposed temporary hardship exemption, including the required Web site posting, appropriate? Should we allow a continuing hardship exemption for filing the asset data file on EDGAR?
- We propose to use existing submission types in order to enable filers to attach the asset data file as an exhibit. Tagging specifications that explain the requirements of the XML schema would be included in the proposed technical specifications. Are there other specifications that would be helpful that should be provided in the EDGAR Filer Manual for asset data files that are not currently included in other Technical Specifications? Please be specific in your response.
- Should we provide a transition period prior to the required compliance date that would allow filers to submit only test filings? Please be specific in your response.
- The technical specification will outline in detail the required format of each data point. Are there other validation checks that need to be in place to check compliance? Please be specific in your response.

4. Pool-Level Information

By at least 2006, an increasing number of residential mortgages were generated in the United States through loosened underwriting standards.[323] In addition, originators engaged in practices such as the bundling of non-traditional features into a single loan

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[323] The PWG March 2008 Report states that there was a dramatic weakening of underwriting standards for U.S. subprime mortgages, beginning in late 2004 and extending into early 2007.

product, known as "risk-layering."[324] The loosening of underwriting standards for subprime mortgages has been cited as one of the principal causes of the recent turmoil in the financial markets.[325] In addition, compliance with the disclosure guidelines set forth in our rules by some ABS issuers was not consistent.

Item 1111 of Regulation AB[326] outlines several aspects of the pool that the prospectus disclosure should cover.[327] Item 1111 explicitly provides that exceptions to origination criteria must be disclosed.[328] We are proposing revisions to the pool-level disclosure requirements in Item 1111 to further detail and clarify the type of disclosure that is required to be provided for ABS offerings with respect to deviations from disclosed underwriting standards. We also are proposing revisions related to the originator's diligence with respect to the information used to underwrite the assets, and the remedies related to the pool assets that are available to investors that are provided in underlying transaction agreements.

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[324] For a discussion of the increase in looser underwriting standards and risk layering practices, see, e.g., Speech by Federal Reserve Chairman Ben S. Bernanke At the Federal Reserve Bank of Chicago's 43rd Annual Conference on Bank Structure and Competition, Chicago, Illinois, available at http://www.federalreserve.gov/newsevents/speech/bernanke20070517a.htm; Report by the Global Joint Initiative of Securities Industry and Financial Markets Association, the American Securitization Forum, the European Securitisation Forum, and the Australian Securitisation Forum, "Restoring Confidence in the Securitization Markets," (Global Joint Initiative Report) Dec. 3, 2008, at 4; and United States Government Accountability Report to Congressional Requesters: Home Mortgages: Provisions in a 2007 Mortgage Reform Bill (H.R. 3915) Would Strengthen Borrower's Protections But Views on Their Long Term Impact Differ (July 2009) at 19, available at http://www.gao.gov/new.items/d09741.pdf.

[325] See The PWG March 2008 Report and The President's Working Group, Progress Update on March Policy Statement on Financial Market Developments, October 2008 (both reports noting that the breakdown in underwriting standards for subprime mortgages as one of a list of principal causes of the turmoil in the financial markets).

[326] 17 CFR 229.1111.

[327] Item 1111 requires this disclosure on the assets, as material, whether or not the sponsor is also the originator of the assets or the sponsor acts as an aggregator or consolidator of loans.

[328] Item 1111(a)(3) requires a description of the solicitation, credit-granting or underwriting criteria used to originate or purchase the pool assets, including, to the extent known, any changes in such criteria and the extent to which policies and criteria are or could be overridden.

First, we are proposing to amend Item 1111 to specify that disclosure regarding the underwriting of assets that deviate from the disclosed origination standards must be accompanied by specific data about the amount and characteristics of those assets that did not meet the disclosed standards. To the extent that disclosure is provided regarding compensating or other factors, if any, that were used to determine that the assets should be included in the pool, despite not having met the disclosed underwriting standards, the issuer would be required to specify the factors that were used and provide data on the amount of assets in the pool that are represented as meeting those factors. Thus, data would be required on the number of assets not meeting the underwriting criteria, the number of such assets meeting particular compensating factors (if those factors are disclosed), and the number of such assets not meeting such factors.

Second, we are proposing to require disclosure of what steps were undertaken by the originator or originators to verify the information used in the solicitation, credit-granting or underwriting of the pool assets.[329] Such information could include how the originator documented various criteria such as, for example, debt-to-income ratios, loan-to-value ratios or documentation type.[330] We believe that this information should provide helpful insight to investors regarding the underwriting of the pool assets.

Third, we are proposing amendments that would elicit more disclosure regarding certain remedies available to investors in the transaction agreements. As discussed above, most transaction agreements for ABS offerings contain representations and

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329 See proposed revision to Item 1111(a).

330 The requirement under this proposal to disclose these steps should not be confused with the due diligence defense against liability under Securities Act Section 11 (15 U.S.C. 77k) or the reasonable care defense against liability under Securities Act Section 12(a)(2) (15 U.S.C. 77l(a)(2)). Instead, our proposed amendment is designed to provide disclosure of information relating to the originator's diligence to verify the information used to underwrite the assets.

warranties by the sponsor or originator about the quality, legal compliance and other aspects of the pool assets. Typically, investors are entitled to recover through provisions that require the repurchase of assets from the securitized pool by an obligated party. The obligated party, typically the sponsor, would be obligated to repurchase the assets if the representations and warranties have been breached. Item 1111(e) currently requires summary disclosure regarding any representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction. The item also requires disclosure of the remedies available if those representations and warranties are breached, such as repurchase obligations. In addition, many transaction agreements may provide for the repurchase of assets if the servicer has modified the terms of an asset in the pool in a manner or to a degree that is prohibited under the transaction agreements.

To help ensure that issuers provide meaningful disclosure in an area that has become increasingly important for investors, we are proposing to replace Item 1108(c)(6) with a more detailed and specific disclosure requirement in Item 1111.[331] Item 1108(c)(6) currently requires disclosure to the extent material of any ability of the servicer to waive or modify any terms, fees, penalties or payments on the assets and the effect of any such ability, if material, on the potential cash flows from the assets. Our proposal would replace Item 1108(c)(6) with a more detailed and specific disclosure requirement in Item 1111. As proposed to be revised, Item 1111 would require a description of the provisions in the transaction agreements governing modification of the

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331 17 CFR 229.1108(c)(6).

assets. We also are proposing to require disclosure regarding how modification may affect cash flows from the assets or to the securities.

We also are proposing to require disclosure of whether or not a fraud representation is included among the representations and warranties. Under the proposal, the issuer would provide disclosure regarding whether a representation was made 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. We believe that it is important to highlight this representation to investors, although we do not intend to diminish the importance of other representations and warranties regarding the pool assets that are provided.

Existing Item 1111 requires the disclosure of statistical information about the pool in appropriate distributional groups or incremental ranges, among other things. The rule also requires that statistical information for each group or range also should be presented by material variables, such as average balance, weighted average coupon, average age and remaining term, average loan-to-value or similar ratio, and weighted average standardized credit score or other applicable measure of obligor credit quality.[332] Because we believe that existing Item 1111 calls for statistical information in the prospectus regarding an originator's "risk-layering practices" that demonstrates the manner and extent to which multiple non-traditional features of a loan are bundled into one instrument, issuers should already be providing this disclosure.[333] However, to the extent there is ambiguity or lack of clarity in Item 1111 regarding what disclosure with respect to risk-layering practices is required to be provided, we request comment on how

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[332] See also Section III.B.5.a. of the 2004 ABS Adopting Release.

to make changes to Regulation AB to require the appropriate disclosure on risk-layering practices.

Request for Comment

- Above we noted that disclosure regarding risk layering practices is required under existing Item 1111. Is the application of Item 1111 to risk-layering practices clear? Is there some way we can make Item 1111 clearer in that regard? Should we revise any other rule in that regard?
- Should we require, as proposed, disclosure on assets that deviate from the disclosed origination underwriting standards that must be accompanied by disclosure of specific data about the amount and characteristics of those assets that did not meet the standards? Should we require, as proposed, that if disclosure is provided regarding compensating or other factors, if any, that were used to determine that the assets should be included in the pool, despite not having met the disclosed underwriting standards, disclosure is required that would describe those factors and provide data on the amount of assets in the pool that are represented as meeting those factors and the amount of assets that do not meet those factors? Should we require any other disclosure with respect to exceptions to or deviations from disclosed origination underwriting standards? Should issuers be required to identify each exception loan by a loan identifier that will be disclosed in the proposed Schedule L discussed above?

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333 We believe that this would include risks relating to the geographic location of the property.

- Are the proposed amendments relating to disclosure concerning representations and warranties and modification provisions in the transaction agreements appropriate?
- Are there other kinds of disclosure relating to representations and warranties and enforcement mechanisms of those representations and warranties that should be required to be provided? If so, please describe in detail.
- A repurchase obligation also may be imposed under other circumstances.[334] Should the rules require prospectus disclosure of other types of repurchase obligations?
- We are proposing to require disclosure of whether the transaction agreements include a fraud representation. Is this appropriate? Are there other types of representations and warranties that the prospectus should highlight?
- Should we delete Item 1108(c)(6), as proposed? Is there any type of disclosure that will be omitted if we delete Item 1108(c)(6) in lieu of our proposed revision to Item 1111?

B. Flow of Funds

1. Waterfall Computer Program

We are proposing to require that most ABS issuers file a computer program that gives effect to the flow of funds, or "waterfall," provisions of the transaction. We are proposing that the computer program be filed on EDGAR in the form of downloadable source code in Python. Python, as we will discuss further below, is an open source

[334] For example, there may be obligation to repurchase a loan that goes into payment default within a short period of time after closing.

interpreted programming language.[335] Under our proposal, an investor would be able to download the source code for the waterfall computer program and run the program on the investor's own computer (properly configured with a Python interpreter).[336] The waterfall computer program would be required to allow use of the asset data files that we are also proposing today.[337] This proposed requirement is designed to make it easier for an investor to conduct a thorough investment analysis of the ABS offering at the time of its initial investment decision. In addition, an investor may monitor ongoing performance of purchased ABS by updating its investment analysis from time to time to reflect updated asset performance.[338] In this way, market participants would be able to conduct their own evaluations of ABS and may be less dependent on the analysis of third parties such as credit rating agencies.

The waterfall is a critical component of an ABS. Currently investors receive only a textual description of this information in the prospectus, which may make it difficult for them to perform a rigorous quantitative analysis of the ABS.[339] In a typical ABS, the

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335 Open source means that the source code is available to all users (as opposed to proprietary source code that can be viewed only by the owner/developers of the program). An interpreted programming language is one that requires an interpreter in the target computer for program execution. See Section III.B.1.d. below.

336 An interpreter is a programming language translator that translates and runs the program at the same time. It converts one program statement into machine language, executes it, and then proceeds to the next statement. This differs from regular executable programs that are presented to the computer as binary-coded instructions. Interpreted programs remain in the source language the programmer wrote it in, which is human readable text.

337 See Sections III.A.1., III.A.2. and III.A.3 above.

338 Updated asset performance data would be required under proposed Item 1121(d) and (e) for Regulation AB. See Sections III.A.2. and III.A.3.

339 See Item 1113 of Regulation AB [17 CFR 229.1113]. The waterfall computer program is a necessary but not a sufficient tool for carrying out quantitative analysis of an ABS. We recognize that investors will still have to build or acquire from a vendor other elements of a complete cash flow and valuation model. However, requiring the issuer to supply the waterfall computer program should make the investor's task easier, and is an appropriate subject of a filing requirement as it consists of information that is specific to the particular ABS being offered.

waterfall governs the application of cash collected on pool assets. Using the waterfall, cash collections are applied to distributions to the holders of various classes of ABS backed by the pool assets. Depending on the level of prepayments, defaults and losses-given-default[340] that occur on the pool assets, the waterfall may redirect the application of cash to or away from a particular class of securities; may allocate cash to a reserve account or require the release of reserve account cash; [341] may change the allocation of cash to the classes in an ABS transaction from sequential pay to pro rata pay, [342] and vice versa; or may accelerate or defer the application of principal prepayments to a particular tranche. As a result, the calculation of the probable amount and timing of cash distributions to an investor on a particular ABS, an essential element of valuing or pricing the security, can be complex.

Institutional sellers and buyers of ABS typically rely on computer simulation of the results of applying the cash flows on the pool assets to the waterfall under different interest rate, prepayment, default and loss-given-default assumptions to determine the likely amount and timing of cash distributions on, and therefore the value of, the ABS. A common approach to this task is to: (a) run many separate simulations, or projections, of the cash flows for the pool assets (using randomly generated assumed interest rates, prepayment speeds, default rates and loss-given-default rates – a simulation process referred to as the Monte Carlo method); (b) pass these simulated cash flows through the

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340 By losses-given-default we mean the amount of unrecovered principal on a defaulted asset after realization of all amounts available.

341 A reserve account is a form of internal credit enhancement created to cover losses on the pool assets.

342 Sequential pay means that from the inception of the transaction, a single designated class receives all available principal payments until it is retired; only then does a second designated class begin to receive principal; and so on. Pro rata pay means that all classes receive their proportionate shares of principal payments during the life of the securities.

waterfall structure of the ABS; and (c) observe the resulting cash flows for each separate ABS tranche. To conduct this analysis, a market participant requires:

- loan-level information, or grouped account data, about the assets, including such fields as their coupon rates, balances, loan-to-value ratios, maturity dates, and the borrowers' credit scores, among others;
- a computer program that calculates the contractual cash flows for each tranche of the ABS based on the presumed cash flows of the underlying pool assets;
- additional computer models that generate inputs for the computer simulation (such as interest rate, prepayment, loss and loss-given-default models); and
- a computer system that combines the three elements above into a model that allows investors to calculate the values of ABS tranches based on their own assumptions about the behavior of the underlying pool assets combined with the waterfall of the ABS, and the current state and performance of the underlying pool assets.

Without these tools, market participants must rely on third party vendors to provide quantitative analysis of the asset-backed security[343] or must rely on computational materials provided by the issuer, without the opportunity to test the model or vary the assumptions used by the issuer.[344]

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[343] Our proposed requirement to file the waterfall computer program is intended to have same functionality as a "deal" in a "deal library" that has been coded or programmed from an authoritative statement of the waterfall, such as a pooling and servicing agreement. Deal and deal library are terms used by commercial vendors of quantitative valuation analysis services and their customers. The process of coding or programming the waterfall for an ABS is referred to by vendors as "scripting" a deal.

[344] Computational materials contain statistical data displaying for a particular class of asset-backed securities the yield, average life, expected maturity, interest rate sensitivity, cash flow characteristics or other such information under specified prepayment interest rate, loss or related scenarios. See Item 1101(a) of Regulation AB [17 CFR 229.1101(a)] and Section III.C. of the 2004 ABS Adopting Release.

The ABS issuer or the underwriter generally will have a computer model of the waterfall. However, the issuer or underwriter currently has no obligation to share the computer model with actual or potential ABS investors. Because prospective investors in ABS typically do not have access to the ABS issuer's computer models, under current conditions, an investor must create its own computer program. It does this by taking the priority of payment rules stated in the trust agreement, pooling and servicing agreement, indenture, or other operative document for the ABS and described in the prospectus, converting the English language statement of those provisions into one or more algorithms, and then expressing the algorithms as computer code in a programming language. As a practical matter, it is often not possible to complete these steps before making an investment decision. This is particularly onerous for smaller institutional investors, for whom it may not be feasible to acquire the financial and technological expertise necessary to develop a computer program of the waterfall. Thus, investment decisions with respect to ABS may be made without the benefit of the investor performing its own quantitative valuation analysis. This may encourage undue reliance on the determinations of credit rating agencies. Further, there is the possibility that some investors will program the waterfall erroneously, leading to inaccurate ABS valuations.

We believe that the proposed requirement to file the waterfall computer program would convey information to investors in a form that is both more accurate and more useful to them for data analysis than a textual description of the waterfall. By running the waterfall computer program in combination with other internally-developed or commercially available vendor interest rate, prepayment, default and loss-given-default models, cash flow engines, or computational services, investors should be able to

promptly run cash flow simulations and generate present value estimates for ABS tranches. An investor should also be able to more effectively monitor the ongoing performance of the ABS by using the proposed updated asset-level performance information to be filed with each periodic distribution report on Form 10-D.

a) Proposed Disclosure Requirements

We are proposing to require, for offerings of asset-backed securities backed by most asset classes, that issuers file the waterfall computer program in the form of downloadable source code in the Python programming language.[345] We define the disclosure requirements of the waterfall computer program in proposed Item 1113(h)(1). We are proposing that the waterfall computer program give effect to the priority of payment provisions in the transaction agreements that determine the funds available for payments or distributions to the holders of each class of securities,[346] and each other person or account entitled to payments or distributions, from the pool assets, pool cash flows, credit enhancement or other support, and the timing and amount of such payments or distributions.[347]

Under the proposed requirement, the filed source code, when downloaded and run by an investor, must provide the user with the ability to programmatically input the user's own assumptions regarding the future performance and cash flows from the pool assets, including but not limited to assumptions about future interest rates, default rates, prepayment speeds, loss-given-default rates, and any other necessary assumptions

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345 When we refer to a waterfall computer program for an asset-backed security, we refer to the whole offering of asset-backed securities backed by a particular pool of assets; in other words, the deal, not to a single class or tranche of the deal.

346 For this purpose, a subclass or tranche would be a separate class.

347 See proposed Item 1113(h)(1)(i) of Regulation AB.

required to be described under Item 1113 of Regulation AB. The waterfall computer program must also allow the use of the proposed asset-level data file that will be filed at the time of the offering and on a periodic basis thereafter.[348]

We also propose to require that the waterfall computer program produce a programmatic output, in machine-readable form, of all resulting cash flows associated with the ABS, including the amount and timing of principal and interest payments payable or distributable to a holder of each class of securities, and each other person or account entitled to payments or distributions in connection with the securities, until the final legal maturity date, as a function of the inputs into the waterfall computer program.

We are also proposing an instruction to the item requirement to make clear that the provisions captured in the waterfall computer program should include, but not be limited to, provisions that set forth the priorities of payments or distributions (and any contingencies affecting such priorities) to the holders of each class of securities and any other persons or accounts entitled to payments or distributions, and any related provisions necessary to determine the quantitative results of such provisions (including certain provisions required to be described in Item 1113 of Regulation AB). Item 1113 of Regulation AB currently requires disclosure of a plain English description of the structure of the waterfall and we believe that the provisions given effect in the proposed waterfall computer program should largely be the same as those provisions required to be described under current Item 1113. But in the event that there are any provisions that are not required to be described under Item 1113 because they are not material to the description of the waterfall in the prospectus, but those provisions are used to determine

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[348] See proposed Items 1111A and 1121A of Regulation AB.

the value of the inputs to the waterfall computer program, the waterfall computer program would be required to give effect to the provisions by which those inputs are determined.

In addition, we are proposing to require that the issuer file as part of the waterfall computer program a sample expected output for each ABS tranche based on sample inputs provided by the issuer. By using the sample inputs to run the program, the investor will be able to confirm that the program is working correctly by matching the actual outputs produced against the sample expected output provided by the issuer.[349]

Lastly, so that investors may easily locate the waterfall computer program, we are proposing that the prospectus include a statement that the information provided in response to proposed Item 1113(h) is provided as a downloadable source code in the Python programming language filed on the SEC Web site. Issuers would also need to disclose the CIK and file number of the related filing.

b) Proposed Exemptions

We are proposing to exclude issuers of ABS backed by stranded costs from the requirement to provide the waterfall computer program. As we discuss above, we are not proposing to require such issuers to file an asset data file at the time of the offering or on a periodic basis,[350] and therefore, we do not believe investors would have the necessary inputs to run the waterfall computer program.

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349 We note that the sample inputs and outputs we propose to require are intended to confirm that the program is functioning, and would not serve to make any representations about the actual expected performance of the deal.

350 See Sections III.A.1.b.iii. and III.A.2.b.

c) When the Waterfall Computer Program Would be Required

Like the asset data file, the waterfall computer program would be an integral part of the prospectus so that issuers would be required to provide the waterfall computer program at the time of filing the Rule 424(h) prospectus as of the date of the filing. Similarly, as a prospectus requirement, the waterfall computer program would be filed with the final prospectus under Rule 424(b) as of the date of the filing.

In addition, we are proposing to require credit card master trusts to report changes to the waterfall computer program on Form 8-K and file the updated waterfall computer program as an exhibit to the report. Furthermore, we are also proposing to require that registrants provide updated Schedule CC grouped account data at the same time the updated waterfall computer program is filed so that investors may evaluate the effect of the change in the flow of funds using updated underlying pool information.

d) Filing the Waterfall Computer Program and Python

We are proposing that the waterfall computer program be filed as an exhibit in accordance with Item 6.07 of Form 8-K. The Form 8-K would then also be incorporated by reference into the registration statement. Therefore, we are proposing changes to Item 601 of Regulation S-K, Rules 101, 201, 202 and 305 of Regulation S-T, new Rule 314 of Regulation S-T and changes to Form 8-K to accommodate the filing of the waterfall computer program. We realize that registrants may want to provide more program functionality in the waterfall computer program than would be required by proposed Item 1113(h). For example, additional program functionality could include features designed to allow interoperability with other ABS quantitative analysis software. As such, we also

propose to permit the filing of an additional exhibit, a waterfall computer program related document, for registrants to disclose the additional program functionality.

We are proposing new Rule 314 of Regulation S-T to require that the waterfall computer program be written in the Python programming language and be filed as source code that is able to be downloaded and run on a local computer properly configured with a Python interpreter. As we note above, Python is an open source interpreted programming language. Open source means that the source code is available to all users (as opposed to proprietary source code that can be viewed only by the owner or developer of the program). An interpreted language is a programming language that requires an interpreter in the target computer for program execution.[351] We prohibit the inclusion of executable code in electronic submissions on EDGAR because of the computer security risks posed by accepting executable code for filing.[352] Executable code results from separately compiling a computer program prior to running it.[353] Since Python is an interpreted language that does not need to be compiled prior to running it, executable code would not need to be published on EDGAR, and we would not require EDGAR to establish facilities to host, run, or operate any computer program. The waterfall computer program source code would be required to be submitted as tagged XML data. The

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351 An interpreter is a programming language translator that translates and runs the program at the same time. It converts one program statement into machine language, executes it, and then proceeds to the next statement. This differs from regular executable programs that are presented to the computer as binary-coded instructions. Interpreted programs remain in the source language the programmer wrote it in, which is human readable text.

352 See Securities Act Rule 106 to Regulation S-T [17 CFR 239.106].

353 We define executable code in Rule 11 of Regulation S-T [17 CFR 239.11] as instructions to a computer to carry out operations that use features beyond the viewer's, reader's, or Internet browser's native ability to interpret and display HTML, PDF, and static graphic files. Such code may be in binary (machine language) or in script form. Executable code includes disruptive code.

EDGAR Technical Specification would contain detailed information on how to file the waterfall computer program.

Additionally, we are proposing a change to Rule 305 of Regulation S-T to exempt the waterfall computer program from number and character per line requirements on EDGAR.

e) Hardship Exemptions

We are proposing a self-executing temporary hardship exemption for filing the waterfall computer program; however, we are proposing to exclude the waterfall computer program from the continuing hardship exemption under Rule 202 of Regulation S-T.[354] We are proposing the same approach to the temporary hardship exemption for the waterfall computer program as we propose for the asset-level data file. Because the disclosure requirement for the waterfall computer program is inherently electronic, the information would not be useful if provided on paper. Under our proposal, if the registrant experiences unanticipated technical difficulties preventing the timely preparation and submission of the waterfall computer program, a registrant would be considered to have made a timely filing if the waterfall computer program is posted on a Web site on the same day it was due to be filed on EDGAR, the Web site address is specified in the required exhibit, a legend is provided in the appropriate exhibit claiming the hardship exemption, and the waterfall computer program is filed on EDGAR within six business days.

We are also proposing to exclude the waterfall computer program from the continuing hardship exemption under Rule 202 of Regulation S-T. This is the same

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354 We explain the hardship exemptions in further detail above in Section III.A.4.b.

approach for the waterfall computer program that we are proposing for asset-level data files. We do not believe a continuing hardship exemption is appropriate with respect to the waterfall computer program because, as we discuss above, the waterfall computer program will be an integral part of the prospectus. Therefore, we do not believe it would be appropriate for issuers to receive a continuing hardship exemption for the waterfall computer program.

Request for Comment

- Is it appropriate for us to require most ABS issuers to file the waterfall computer program? Is there an alternative form of required information filing that would be more useful to investors, subject to the limitation that executable code may not be filed on EDGAR?
- Should we require, as proposed, that the Rule 424(h) filing include the waterfall computer program?
- Does access to the waterfall computer program decrease the amount of time needed to analyze the information in a prospectus? If we adopt the waterfall computer program filing requirement, would less time be needed for investors to review transaction-specific information? If so, how much time would be needed after the waterfall computer program is filed? Four days? Two days? Does analysis of the waterfall computer program require more time than what we allow as proposed so that we should increase the time period for the Rule 424(h) filing?
- Is it appropriate to require issuers to submit the waterfall computer program in a single programming language, such as Python, to give investors the benefit

of a standardized process? If so, is Python the best choice or are there other open source programming language alternatives (such as PERL) that would be better suited for these purposes?

- Should more than one programming language be allowed? If so, which ones and why?
- Should we restrict ourselves to only open source programming languages or allow fully commercial or partly-commercial languages (such as C-Sharp or Java) to be used? If so, what factors should be considered?
- Are there other requirements we should impose on the possible computer programming languages that are used to satisfy this requirement, other than that such languages be open source and interpreted?
- Under our proposal, issuers would be required to file the waterfall computer program in the form of downloadable source code on EDGAR. Prior to filing, the code would not be tested by the Commission. Would downloading the code onto a local computer give rise to any significant risks for investors? If so, please identify those risks and what steps or measures we should take to address the risks, if any.
- Are the proposed input and output requirements for the waterfall computer program appropriate? If not, what type of output and tests should be required for the waterfall computer program? Should the outputs of the waterfall computer program be specified in detail by rule, or broadly defined to afford flexibility to ABS issuers?

- Should we require comments in the code that explain what each line does? Is this necessary given the narrative disclosure of the waterfall in the prospectus? If it is appropriate, are there any specific explanations we should require?
- Is it appropriate to exempt issuers of ABS backed by stranded costs from the requirement to provide a waterfall computer program? If not, what types of inputs would be necessary to run the waterfall computer program? How would issuers obtain these inputs?
- Is our proposal to require credit card master trusts to report changes to the waterfall computer program on Form 8-K and file the updated waterfall computer program as an exhibit appropriate? Would the flow of funds, and thus the waterfall computer program, change over time? If so, how and why would it change? Should we require the waterfall computer program be filed at any other time? Should we require it be filed with each Form 10-D?
- Is the proposed requirement to provide the waterfall computer program with the proposed Rule 424(h) prospectus as of the date of filing and a final prospectus under Rule 424(b) as of the date of filing appropriate? Should the waterfall computer program be required to be filed at any other time? If so, please tell us why. As we discuss above in Section II.B.1.a., under our proposal, for material changes in information, other than offering price, which would include material changes to the waterfall computer program, a new Rule 424(h) filing would be required as well as a new five business-day waiting period.

- Should we adopt the proposed changes to Item 601 of Regulation S-K and to Regulation S-T?
- Is the proposed temporary hardship exemption appropriate? Should we allow a continuing hardship exemption?
- We propose to use existing submission types in order to enable filers to attach the proposed waterfall computer program as an exhibit. Specifications that explain the requirements would be included in the EDGAR technical specifications. Are there other specifications that would be helpful that should be provided in the EDGAR Filer Manual for the waterfall computer program that are not currently included in other technical specifications? Please be specific in your response.
- Should we provide a transition period prior to the required compliance date that would allow filers to submit only test filings? Please be specific in your response.
- Is our proposal to permit the filing of an exhibit to disclose additional program functionality appropriate?
- Are there any impediments that issuers would face if they are required to file the waterfall computer program on EDGAR?

2. Presentation of the Narrative Description of the Waterfall

The information relating to the structure of the transaction pursuant to Item 1113 of Regulation AB may be used by investors to model the cash flows for the securities. In order to facilitate this modeling, we believe that such information should be easily accessible and in a useable format. We are proposing to revise Item 1100 of Regulation

AB[355] to require that the information detailing the flow of funds for the transaction (and related definitions of terms) be included in one location in the prospectus. We note that the waterfall computer program and the narrative description of the waterfall would need to be accurate and the accuracy of one would not compensate for inaccuracies in the other.

Request for Comment

- Is our proposal to require that the narrative description of the waterfall be presented in one location appropriate? Are there any reasons not to require this?

C. Transaction Parties

1. Identification of Originator

Existing Item 1110(a) of Regulation AB requires identification of originators apart from the sponsor or its affiliates only if the originator has originated, or expects to originate, 10% of more of the pool assets. The existing rule does not require identification of a non-affiliate that has originated less than 10% of the pool assets. In situations where much of the pool assets have been purchased from originators other than the sponsor, identification of originators is not required if each originator has originated less than 10% of the pool assets. This can result in very little, if any information about originators if there are multiple originators with less than 10% that make up a major part of the securitization. We believe that where the sponsor securitizes assets of a group of originators that are not affiliated with the sponsor, more disclosure regarding the originator of the assets is needed than is required under the current rules. Therefore, we are proposing that an originator would be required to be identified even if such originator

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355 17 CFR 229.1100.

has originated less than 10% of the pool assets if the cumulative amount of originated assets by parties other than the sponsor (or its affiliates) comprises more than 10% of the total pool assets.

Request for Comment

- Should we amend Item 1110 to require identification of originators even if no single originator comprises 10% or more of the pool? Is it appropriate to require identification of originators, as proposed, if the cumulative amount of originated assets by parties other than the sponsor (or its affiliates) comprises 10% or more of the total pool asset?
- Are the proposed revised thresholds for originator identification appropriate? Should they be different (e.g., 5%)?

2. Obligation to Repurchase Assets

We are proposing expanded disclosure regarding the obligations to repurchase assets. As discussed above, many transaction agreements underlying a securitization provide for the repurchase of pool assets by an obligated party upon breach of a representation and warranty related to the pool assets.[356] This obligated party could be the originator of the assets or, most typically, the sponsor of the securities – who could also function as the originator, depending on the transaction. Depending on the application of Section 15(d) to the issuer, ongoing reports filed by the issuer may provide

[356] As discussed in Section II.B.3.b. above, with respect to shelf eligibility, we are proposing that the pooling and servicing agreement contain a provision requiring the obligated party (i.e., representing/warranting party) to furnish an opinion or certificate from a qualified independent third party to the trustee that any loans that the trustee has asserted breached a representation or warranty and were not repurchased or replaced by the obligated party did not violate the representations and warranties contained in the pooling and servicing or other agreement. Neither this provision nor the proposed requirement regarding the disclosure of the obligation to repurchase assets would impose requirements on the substance of transaction agreements to include such repurchase obligations.

some information regarding assets that have been repurchased from the pool by the obligated party pursuant to transaction agreements.

a) History of Asset Repurchases

We are proposing to amend Item 1104 and Item 1110 to require disclosure of the amount, if material, of publicly securitized assets originated or sold by the sponsor or an identified originator (as identified under the specifications detailed below) that were the subject of a demand to repurchase or replace any of the assets for breach of the representation and warranties concerning the pool assets in the last three years pursuant to the transaction agreements.[357] We are proposing to require that such disclosure be provided on a pool by pool basis. The percentage of that amount that was not then repurchased or replaced by the obligated party (i.e., the sponsor and/or originator) also would be disclosed. Of those assets that were not then repurchased or replaced, we propose to require disclosure whether an opinion of a third party not affiliated with the obligated party had been furnished to the trustee that confirms that the assets did not violate a representation or warranty. This enhanced information about the originator or sponsor's history with assets they have originated or sold into public securitization vehicles should allow investors to better assess practices of the originator or the sponsor.

Under existing Item 1110(b), additional disclosure relating to an originator, such as the originator's experience in originating assets, is only required to be provided if the originator has originated or is expected to originate 20% or more of the assets ("20% originator"). This threshold for disclosure was adopted in 2004. Consistent with the

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[357] Although we are not proposing to require it, additional disclosure regarding the repurchase of assets could be provided.

existing threshold, the proposed disclosure requirement relating to the repurchase of assets would only be required if the originator is a 20% originator.

b) Financial Information Regarding Party Obligated to Repurchase Assets

In the events arising out of the financial crisis, the financial condition of the party obligated to repurchase assets pursuant to the transaction agreements underlying an asset-securitization became increasingly important to whether payments on asset-backed securities would be made.[358] Currently, there is no requirement for asset-backed issuers to disclose the financial condition of an originator unless some other financial disclosure threshold is also triggered such as the trigger for servicers.[359] We believe that there are situations where it is appropriate for financial information about certain obligated parties to be provided to ABS investors.

We are proposing to amend Item 1104 and Item 1110(b) to require financial information of the party obligated to repurchase a pool asset for breach of a representation and warranty pursuant to the transaction agreements. These requirements would be similar to the requirement regarding financial information of certain servicers. Under the proposal, information regarding the financial condition of a 20% originator would be required if there is a material risk that the financial condition could have a material impact on the origination of the originator's assets in the pool or on its ability to

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358 See testimony of Joseph Mason, "Transparency in Accounting: Proposed Changes to Accounting for Off-Balance Sheet Entities," Before the United States Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Securities, Insurance, and Investment (Sept. 18, 2008) (noting that representations and warranties have become a mechanism for subsidizing pool performance, so that no asset- or mortgage-backed security investor experiences losses – until the seller fails and is no longer able to support the pool).

359 For example, information regarding the servicer's financial condition is required under Item 1112 of Regulation AB to the extent that there is a material risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities.

comply with provisions relating to the repurchase obligations for those assets. Information regarding the sponsor's financial condition similarly would be required to the extent that there is a material risk that the financial condition could have a material impact on its ability to comply with the provisions relating to the repurchase obligations for those assets or otherwise materially impact the pool.

Request for Comment

- Is the proposed amendment requiring disclosure regarding amount of assets that were not repurchased appropriate? Should we also require, as proposed, disclosure of the percentage of that amount that was not then repurchased or replaced by the sponsor or 20% originator? Should we also, as proposed, require disclosure whether an opinion of a third party not affiliated with the obligated party had been furnished to the trustee that confirms that the assets that were not repurchased or replaced did not violate a representation or warranty?
- Would requiring this disclosure, as proposed, have the unintended consequence of incentivizing sponsors (who may want to put an asset back to an originator) or trustees to demand that originators repurchase assets in situations where that might not be required under the transaction agreements? If so, how should we address this?
- Should we also require disclosure of the percentage of assets that have been repurchased by a 20% originator or the sponsor?

- Should disclosure be required regarding demands to repurchase in the last three years, as proposed? Should the timeframe be different (e.g., one year, two years, four years, or five years)?
- Are there parties other than 20% originators or sponsors that may have a repurchase obligation under the transaction agreements for breach of the representations and warranties? If so, should similar disclosure about these parties be required?
- With regard to the requirement to disclose the financial condition of originators and sponsors, rather than add disclosure requirements to Item 1104 and Item 1110, should we expand the definition of significant obligor to incorporate the obligated party that is required to repurchase assets for breach of a representation or warranty? How should we revise Item 1112 for this purpose?
- Are the proposed amendments relating to disclosure of the financial condition of the obligated party appropriate? Should we specify further when disclosure of the financial condition would be required such as a certain level of financial concentration? If so, what should that level be? Should we require financial information about 20% originators and sponsors for other circumstances? Should we require financial information for 20% originators and sponsors for all securitizations?
- Should our disclosure requirements be consistent with existing thresholds (i.e., when the originator has originated 20% or more of the assets) for when disclosure relating to an originator is required? Should we instead require

disclosure of the proposed items for any originator required to be identified? Should we require disclosure of the proposed items for originators of more than ten percent of the assets?

- Are there other situations where we should require financial information? For instance, should we always require disclosure of financial information of all servicers and all sponsors? If so, should we require audited financial statements?

3. Economic Interest in the Transaction

As described in Section III.B.3.a. above, as a condition to shelf eligibility, we are proposing that the sponsor retain an economic interest in the transaction. Item 1103(a)(3)(i) of Regulation AB[360] currently requires disclosure of the classes of securities offered by the prospectus and any class of securities issued in the same transaction or residual or equity interests in the transaction that are not being offered by the prospectus.

We believe that information regarding the sponsor's, a servicer's[361] or a 20% originator's continuing interest in the pool assets is important to ABS investors, and we are proposing to expand our requirements in that regard. Specifically, we are proposing to revise Items 1104, 1108 and 1110 to require disclosure regarding the sponsor's, a servicer's or a 20% originator's interest retained in the transaction, including amount and nature of that interest.[362] Unlike current Item 1104, which requires a description of the

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360 17 CFR 229.1103(a)(3)(i).

361 Servicers will sometimes hold an interest in tranches or second liens, and investors have expressed concern relating to those interests. See, e.g., comment letter from the California Public Employees' Retirement System on the FDIC Securitization Proposal, available at http://www.fdic.gov/regulations/laws/federal/2010/10comAD55.html.

362 For example, if the originator has retained a portion of each tranche of the securitization, then disclosure regarding each amount retained for each tranche would be required.

sponsor's material roles and responsibilities in the securitization, the new disclosure requirements would further specify that disclosure relating to the interest retained in the transaction would be required. The information would be required for both shelf and other offerings. If any sponsor is retaining an interest pursuant to the shelf eligibility requirements, as proposed above,[363] the interest and its amount and scope would need to be clearly delineated in the prospectus that is contained in the registration statement.[364] If the offering is being registered on Form SF-1, we are proposing to require that the issuer provide clear disclosure that the sponsor is not required by law to retain any interest in the securities and may sell any interest initially retained at any time.

Request for Comment

- Is our proposed disclosure requirement relating to retained economic interest appropriate? Is there any additional information that would aid investors' analysis?
- Should we instead require disclosure of whether the sponsor has retained any interest in the securitization?
- Should we require, as proposed, disclosure that the sponsor is not required by law to retain any risk in the securities and may sell any interest initially retained at any time for any offering registered on Form SF-1?

4. Servicer

The definition of servicer in Item 1108 is a principles-based definition. An entity falls within the definition of servicer if it is responsible for the management or collection of the pool assets or making allocations or distributions to holders, regardless of the

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363 See Section II.B.3.a. above.

entity's title. Item 1108(b)(2) of Regulation AB[365] requires a detailed discussion in the prospectus of the servicer's experience in, and procedures for, the servicing function it will perform in the current transaction for assets of the type included in the current transaction.[366] This item also requires disclosure of information or factors related to the servicer that may be material to an analysis of the servicing of the assets.

While we are not proposing any changes to Item 1108(b)(2) at this time, the staff believes that application of this requirement has not been consistent among issuers, and therefore we believe it is appropriate to emphasize how this requirement applies. Item 1122 requires that the servicer assess its compliance with specified criteria and that a registered public accounting firm issue an attestation report on the party's assessment of compliance with the applicable servicing criteria. The reports and the compliance statement are required to be filed as an exhibit to Form 10-K. We believe that Item 1108(b)(2) requires disclosure of any material instances of noncompliance noted in the assessment or attestation reports that are required by Item 1122 or the servicer compliance statement that is required by Item 1123. In addition, the prospectus should also provide disclosure of any steps taken to remedy the noncompliance disclosed and the current status of those steps.

Request for Comment

- Are there any changes we should make to Item 1108(b)(2) to clarify what disclosure should be included?

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364 This information is also required by proposed General Instruction I.B.1(a) of Form SF-3.

365 17 CFR 229.1108(b)(2).

366 Item 1108 also requires a general discussion of the servicer's experience in servicing assets of any type.

- Item 1108(b)(4)[367] requires information regarding the servicers' financial condition to the extent there is a material risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the securities. Should we revise this requirement?
- For example, should we require financial statements or other financial information be provided with respect to the servicer in all asset-backed transactions, regardless of whether there is a material risk that servicing resulting from the financial condition could have a material impact on pool performance or performance of the securities? If the servicing function is divided among different unaffiliated parties, should disclosure of a servicer's financial statements depend on how much of the pool a servicer is servicing? What about a special servicer? Should we take into account any other considerations?
- If we revise our rules to specifically require servicer financial statements in all cases, how should the rules apply if the registration statement or offering prospectus contemplates a change in servicer soon after the offering is complete? In that situation, which servicer's financial statements should be required – the original servicer, the new servicer, or both?[368]

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367 17 CFR 229.1108(b)(4).

368 If there has been a change in servicer, Item 6.02 of Form 8-K requires that when a new servicer contemplated by Item 1108(a)(2) of Regulation AB has been appointed, the date the event occurred and circumstances surrounding the change of servicer must be provided. We remind issuers that a Form 8-K containing such disclosure is required to be filed even where the offering prospectus has indicated that the sponsor is only temporarily acting as the servicer and that a new servicer will replace the sponsor.

D. Prospectus Summary

Under our current rules, a prospectus summary should briefly highlight the material terms of the transaction, including an overview of the material characteristics of the asset pool.[369] However, we believe that summary disclosures in ABS prospectuses currently may not adequately highlight the material characteristics, including material risks, particular to the ABS being offered. Instead, the prospectuses often summarize metrics that are common to all securitizations of a particular asset class. For instance, under current practice, a prospectus summary related to an offering of securities backed by residential mortgages typically only includes common metrics such as the number, averages and ranges of common pool characteristics such as principal balances, interest rates, credit scores and loan to value. Other material characteristics of pool assets, however, typically are not highlighted, such as statistics regarding whether the loans in the asset pool were originated under various underwriting or origination programs, whether loans were underwritten as exceptions to the underwriting or origination programs, or whether the loans in the pool have been modified. We believe these types of statistics could be summarized by broad category on the basis of the underwriting program, type of exception or modification, but historically, this type of information has not been included.

We believe that the summary disclosures should be improved to include this information, which is among the most significant for investors. Accordingly, we are proposing a new instruction to Item 1103(a)(2) of Regulation AB[370] to clarify the summary disclosure requirements. Specifically, the proposed new provision would

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369 See Item 1103 of Regulation AB.

instruct issuers to provide statistical information regarding the types of underwriting or origination programs, exceptions to underwriting or origination criteria and, if applicable, modifications made to the pool assets after origination.

Request for Comment

- Is our proposed instruction to require summary statistical information regarding the types of underwriting or origination programs, exceptions to underwriting and origination criteria and, if applicable, modifications made to the pool assets after origination appropriate?
- Should we specify line item disclosure requirements for the summary section? If so, are the pool characteristics identified in the proposed new instruction appropriate? Would those characteristics be common across all asset classes, or only apply to a specific asset class?
- Are there other features of the transaction that we should specify must be disclosed in the summary?

E. Static Pool Information

When we adopted Regulation AB, we included the requirement to disclose static pool information with respect to prior securitized pools of the sponsor for the same asset class in the prospectus that is part of the registration statement if the information is material to the transaction. Static pool information indicates how the performance of groups, or "static pools" of assets, such as those originated at different intervals, are performing over time. By presenting comparisons between originations at similar points in the assets' lives, static pool data allows detection of patterns that may not be evident

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370 17 CFR 229.1103(a)(2).

from overall portfolio numbers and thus may reveal a more informative picture of material elements of portfolio performance and risk. In the 2004 ABS Adopting Release, we noted that the development of static pool information was an increasingly valuable tool in analyzing performance.[371]

Under Rule 312 of Regulation S-T, asset-backed issuers are permitted, but not required, to post the static pool information required by Item 1105 on an Internet Web site, rather than file the information with the prospectus on EDGAR. As long as certain conditions are met, the information provided on the Web site pursuant to Rule 312 is deemed to be part of the prospectus included in the registration statement. Rule 312 was adopted in 2004 as a temporary accommodation in response to comments received concerning the significant amount of statistical information that would be difficult to file electronically on EDGAR as it existed at the time and the difficulty for investors to use the information in that format. At the time, we were persuaded by commenters that a web-based approach might allow for the provision of the required information in a more efficient, dynamic and useful format than was currently feasible on the EDGAR system.[372] At the same time, we explained that we continued to believe that, at some point, for future transactions, the information should also be submitted to the Commission in some fashion, provided this would not result in investors not receiving the information in the form they have requested. We also explained that we were directing our staff to consult with the EDGAR contractor, EDGAR filing agents, issuers, investors and other market participants to consider how static pool information could be filed with

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371 See Section III.B.4. of the 2004 ABS Adopting Release.

372 See, e.g., Letters of ABA; ASF; Auto Group; BMA; Citigroup; JPMorganChase; NYCBA; and TMCC on Asset-Backed Securities, Release No. 33-8419 (May 3, 2004) [69 FR 26650] (the "2004 ABS Proposing Release").

the Commission in a cost-effective manner without undue burden or expense while still allowing issuers to provide the information in a desirable format.[373]

On October 19, 2009, we proposed to extend the temporary filing accommodation until December 31, 2010 so that the staff could continue to explore whether a filing mechanism for static pool information on EDGAR would be feasible.[374] In that release we solicited comments about current practice and potential alternatives for providing static pool disclosure that we will discuss below. On December 15, 2009, we adopted the proposed one-year extension.[375]

We now are proposing changes to Item 1105 seeking to provide greater transparency and comparability with respect to static pool disclosure. We also are proposing to repeal our temporary Web site accommodation for static pool disclosure. These proposed changes to Rule 312 would allow issuers to make filings on EDGAR in Portable Document Format (PDF).[376]

1. Disclosure Required

We are proposing revisions to the static pool disclosure requirement designed to increase clarity, transparency and comparability. Some of our proposals apply to all issuers, and some apply only to amortizing asset pools and not revolving asset master

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373 See Section III.B.4.b. of the 2004 ABS Adopting Release.

374 Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities, Release No. 33-9074 (Oct. 19, 2009) [74 FR 54767] (the "Static Pool Extension Proposing Release").

375 Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities, Release No. 33-9087 (Dec. 15, 2009) [74 FR 67812] (the "Static-Pool Extension Adopting Release").

376 Portable Document Format (PDF) is a file format created by Adobe Systems in 1993 for document exchange. PDF captures formatting information from a variety of desktop publishing applications, making it possible to send formatted documents and have them appear on the recipient's monitor or printer for free as they were intended. To view a file in PDF format, you need Adobe Reader, an application distributed by Adobe Systems.

trusts. Since adoption of Regulation AB, we have observed that static pool information provided by asset-backed issuers may vary greatly within the same asset class. Variations exist not only with regard to the type or categories of information disclosed, but also with the manner in which it is disclosed. As a result, static pool information between different sponsors has not necessarily been comparable, which reduces its value to investors. For example, some issuers of residential mortgage-backed securities provide a one-page graphical static pool presentation, while others present several hundred pages of distribution data for prior securitized pools on their Web site, making it difficult to determine which prior securitizations were most similar to the securities being offered.

Static pool information is required to the extent the information is material. In the 2004 ABS Adopting Release, we emphasized that in all instances information is required only if material for the particular asset class, sponsor or asset pool involved; disclosure for groups or factors that would not be material is not required. We continue to believe that it is appropriate not to exclude particular asset classes or transactions from the requirements in their entirety. While keeping this general approach, we believe there are ways, nevertheless, to make the static pool information more comparable and facilitate analysis of the information. By requiring issuers to file this information on EDGAR, we do not want to discourage issuers from providing granular data on their Web sites for investors to analyze. We believe that clear summaries and explanation complement the statistical data and allow investors to more easily evaluate material information. To address these concerns, we are proposing to amend our static pool disclosure requirement in several ways to enhance clarity, transparency and comparability. Our proposals cover

static pool information for all classes of assets and specific requirements for amortizing trusts.

First, we are proposing to amend Item 1105 to require narrative disclosure describing the static pool information presented. For example, for a pool of RMBS, the disclosure would note the number of assets, types of mortgages (e.g., conventional, home equity, Alt-A, etc.) and the number of loans that were exceptions to standardized underwriting criteria. We believe appropriate explanatory information should introduce the characteristics of the static pool. A brief snapshot of the static pool presented would provide investors with context in which to evaluate the information without sophisticated data analysis tools. We do not intend for this requirement to cause issuers to repeat the underlying static pool disclosure; rather the requirement would serve as a clear and brief introduction of the disclosure.

Second, we are proposing to require that issuers describe the methodology used in determining or calculating the characteristics and describe any terms or abbreviations used. Such a requirement would help investors ascertain whether calculations of terms are comparable across issuers. For example, a description of the method used to calculate the loan-to-value ratio could assist investors compare this information across different issuers.

Third, we are proposing to require a description of how the assets in the static pool differ from the pool assets underlying the securities being offered. Again, we believe that a clear and concise description of these differences would provide investors with context in which to evaluate the information without sophisticated data analysis tools.

Finally, if an issuer does not include static pool information or includes disclosure that is intended to serve as alternative static pool information, we are proposing to amend Item 1105(c) to require additional disclosure. As we explained in the 2004 ABS Adopting Release, we did not adopt line-item disclosure requirements for static pool information; however, we noted there may be instances where failure to provide static pool information would make the data that is presented misleading.[377] It is not always obvious why one issuer does not provide static pool information or provides alternative disclosure in lieu of such information, while another issuer within the same asset classes does provide the information. Under our proposal, issuers would be required to explain why they have not included static pool disclosure or why they have provided alternative information. We do not intend for issuers to explain why each of their static pool disclosure points differ from their competitors. However, we believe basic information about the issuer's approach to static pool disclosure would promote transparency and help investors place the disclosure in context.

2. Amortizing Asset Pools

We are proposing additional changes to the static pool disclosure requirements for amortizing asset pools. While the staff has previously noted that the static pool presentation should be governed by the general principles of materiality rather than a specific requirement in Regulation AB,[378] we are concerned that the inconsistency of

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[377] For example, for a pool with a material concentration of seasoned assets, disclosure of static pool data about the pool itself may be necessary depending on whether such data would reveal a trend or pattern concerning one or more elements of pool performance and risk that is material and not evident from data relating to asset performance otherwise presented and such omission makes the information presented misleading. See, e.g., Securities Act Rule 408; Securities Act Sections 11, 12(a)(2) and 17(a); Exchange Act Section 10(b); Exchange Act Rule 10b-5; and Exchange Act Rule 12b-20.

[378] Item 1105 states that static pool information, including static pool information regarding delinquencies, is required unless it is not material. As a result, the presentation of static pool information is governed by general principles of materiality and the requirements of Item 1105 and not the requirements

presentation for delinquencies across issuers within the same asset class has resulted in a lack of clarity and comparability. Accordingly, we are proposing to add an instruction to Item 1105(a)(3)(ii) to require the static pool information related to delinquencies and losses be presented in accordance with the guidelines outlined in Item 1100(b) for amortizing asset pools. Item 1100(b) requires that information be presented in a certain manner – for example, it requires that information regarding delinquency be presented in 30-day increments through the point that assets are written off or charged off as uncollectable. Because information regarding delinquencies and losses, such as number of accounts, dollar amount and percentage of pool, should already be collected in order to report under other Regulation AB item requirements,[379] we believe it should not be overly burdensome for issuers to provide this information, and we believe that static pool disclosure would be improved with this consistent approach.

We also are proposing to amend Item 1105(a)(3)(iv) to require graphical presentation of delinquency, losses and prepayments for amortizing asset pools. We believe many asset-backed issuers already provide graphical illustrations of their static pool data. Depending on the volume and the type of data provided, the static pool data can be difficult to analyze without the use of sophisticated data analysis tools. Static pool information is important for analyzing trends within a sponsor's program by comparing originations at similar points in the asset's lives. In the 2004 ABS Adopting Release, we encouraged issuers to present information in tables or graphs if doing so would aid in the understanding of the data, such as in the sections describing the transfer of the assets,

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of Item 1100(b). Regulation AB Interpretation No. 5.03 in SEC Division of Corporation Finance Manual of Publicly Available Telephone Interpretations.

[379] Item 1111(c) of Regulation AB would require presentation of delinquency in accordance with Item 1100(b).

flow of funds, servicing responsibilities, pool asset composition, and periodic performance information including delinquencies.[380] Static pool disclosure has emerged as another disclosure area where graphical presentation appears to be important for an investor's understanding of the overall disclosure. Presentation of the data in this fashion better allows the detection of patterns that may not be evident from overall portfolio numbers and may reveal a more informative picture of material elements of portfolio performance and risk. Given the wide range of information provided by sponsors of the same asset class, we believe that graphical presentation will provide a more useful snapshot of the underlying granular information. We are proposing to require delinquency, loss and prepayments as specific line item requirements because we believe those are material characteristics applicable across all asset classes and structures and would promote transparency and comparability across issuances by the same sponsor and across sponsors. Although not required by our proposal, we also encourage graphical presentation of any other material terms.

3. Revolving Asset Master Trusts

Other than our proposals discussed above intended to apply to all issuers of asset classes and structures, we are not proposing specific changes to the static pool disclosure framework for revolving asset master trusts. However, we would like to highlight two areas concerning static pool data and these issuers. First, a practice has developed among revolving asset master trust issuers to aggregate the static pool data in tables or a

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380 See Items 1100(b), 1107(h), 1108(a)(1), 1111, 1113(a)(2) and 1121(a) of Regulation AB. [17 CFR 229.1100(b), 1107(h), 1108(a)(1), 1111, 1113(a)(2) and 1121(a)]

graphical illustration. We believe this approach facilitates investor understanding and we encourage issuers to continue this practice.

Second, as we discuss above, we propose changes to the way static pool delinquency information would be reported for amortizing asset pools. For revolving master asset trusts, however, our rules provide a different approach for presenting static pool delinquency disclosure.[381] Commenters on the 2004 ABS Proposing Release argued there could be even more concerns about the "static" nature of the pool for these transaction structures due to changes in the master trust revolving asset pool over time and the relationship between the sponsor's retained portfolio or other securitized pools previously established by the sponsor and the master trust asset pool.[382] In response to these comments, additional incremental performance information based on asset age, or origination year, for the revolving asset pool in the master trust was adopted as an appropriate starting point. As we discussed in the 2004 ABS Adopting Release, this starting point allows an investor to distinguish performance of newer accounts comprising the master trust pool from those of more seasoned accounts.[383] Because the static pool disclosure requirement for master trusts is different from amortizing pools, we are not proposing changes to require that static pool information for revolving asset master trusts be provided in accordance with Item 1100(b) of Regulation AB. Furthermore, if our proposed amendments to Item 1121(b)(9) are adopted, all issuers, including revolving master trusts, would have to present delinquency and loss information in accordance with Item 1100(b) to satisfy the proposed periodic reporting

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381 17 CFR 229.1105(b).

382 See, e.g., comment letter from ASF.

383 See Section III.B.4.a.ii. of the 2004 ABS Adopting Release.

requirement.[384] Therefore, we believe that investors would receive continuing performance data on the master trust pool, similar to the static pool data provided to investors in amortizing asset pools, because revolving asset master trust registrants would continuously report delinquency, prepayment and loss information on the pool assets through periodic reporting on Form 10-D.

Request for Comment

- Should we adopt the changes to Item 1105 for all types of issuers (instead of only amortizing asset pools, as proposed) to require narrative disclosure of the static pool information presented, require the methodology used in determining or calculating the characteristics, and terms, and a description of how the assets in the static pool differ from the pool assets underlying the securities being offered? Would these changes help investors evaluate static pool data?
- Should we require all issuers to provide static pool data, whether or not material?
- Should static pool delinquency and loss information for amortizing asset pools be required to be presented in accordance with the standards in Item 1100(b)? If not, why not? Consistent with 1100(b), should delinquencies be presented through charge-off or some other shorter period of time?
- We are proposing to require graphical presentation of delinquency, losses and prepayments for amortizing asset pools. Is this appropriate? Should we also require graphical presentation for other specific characteristics? Should we require graphical presentation of static pool information for revolving asset master trusts?

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384 See our proposal to revise Item 1121(b)(9) discussed in Section V.A.

- Should we require that static pool delinquency and loss information for revolving asset master trusts be presented in accordance with the standards in Item 1100(b)? If so, please also explain why the same information would not be reported by the registrant on a periodic basis on Form 10-D.
- Should static pool data be required in an offering if there is an ongoing reporting requirement of asset-level data applicable to other pools of the sponsor of the same asset class? Would static pool data be informative even if there is an ongoing duty to report? How would we address issuers registered on Form SF-1 that are not required to provide ongoing information?
- Should revolving asset master trusts continue to use a different starting point for their static pool disclosure? Should we consider any other changes to the static pool requirement for revolving asset master trusts? If so, why? Are there other starting points more appropriate for other asset classes or structures? Should we require asset specific static pool data?
- Should we specify that issuers of ABS backed by credit cards and charge cards need to provide static pool disclosure of delinquencies, monthly payment rates and losses by both vintage origination year and by credit score?[385] Would it be useful for investors? Why or why not?
- Typically, ABS backed by dealer floorplan receivables are structured as revolving asset master trusts. Some do not appear to present static pool disclosure for revolving asset master trusts in the manner specified in Item 1105(b). Should we

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385 See e.g., Appendix A, Attachment IV of the MetLife FDIC Letter.

provide an alternative starting point for revolving asset master trusts backed by dealer floorplans? If so, why?

- Are there other changes we should make to the static pool disclosure requirement to make the information more useful and comparable across issuers?

4. Filing Static Pool Data

We are proposing to require all static pool information be filed on EDGAR by amending Rule 312 of Regulation S-T. We are also proposing to permit static pool disclosure to be filed on EDGAR in PDF format as an official filing.[386] As noted above, currently Rule 312 permits but does not require an asset-backed issuer to post the static pool information required by Item 1105 on an Internet Web site, rather than file the information with the prospectus on EDGAR, if certain conditions are met. Since the adoption of Rule 312 in December 2004, technological advances and expanded use of the internet have enabled the Commission to adopt additional rules incorporating electronic communications. The Commission continues to recognize that, in certain circumstances and under certain conditions, the Internet can present a cost-effective alternative or supplement to traditional disclosure methods.[387]

As discussed above, we extended Rule 312 until December 31, 2010 so that the staff could continue to explore whether a filing mechanism for static pool information on

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386 Currently, filers may submit documents on EDGAR in PDF format, however such documents are unofficial copies. See Rule 104 of Regulation S-T [17 CFR 232.104].

387 See, e.g., Internet Availability of Proxy Materials, Release No. 34-55146 (Jan. 22, 2007) [72 FR 4148] (adopting release for voluntary E-Proxy rules) and Internet Availability of Proxy Materials, Release No. 34-52926 (Dec. 8, 2005) [70 FR 74598] (proposing release for voluntary E-Proxy rules). See also Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Release No. 33-8998 (Jan. 13, 2009) [74 FR 4546] at Section III.A.4.c (adopting Item 11(g)(2) of Form N-1A under the Investment Company Act of 1940 which allows exchange-traded funds to provide premium/discount information on a Web site rather than in a prospectus or annual report) and SectionVI.B.1 of the Offering Reform Release (adopting "access equals delivery" model for final prospectus delivery).

EDGAR would be feasible. We received three comment letters to the Static Pool Extension Proposing Release that addressed the proposed extension.[388] Two commenters supported the extension. One of these commenters expressed a strong preference among both its issuer and investor members for web-based presentation of static pool information due to its efficiency, utility and effectiveness and the current lack of an adequate filing alternative.[389] The other commenter expressed its belief that the accommodation has been highly successful and of great value to investors.[390] A third commenter that did not support the extension believed that the Commission should require structured disclosure using an industry standard computer language.[391]

For the reasons discussed below, we continue to believe it is preferable to have the disclosure filed with the Commission on EDGAR, and we are proposing to permit as an alternative to ASCII or HTML that the static pool information could be filed as a PDF. Filing on EDGAR would preserve continuous access to the information if a Web site is not maintained, for example, due to distress in the market or if the sponsor ceases operations.[392]

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388 The public comments we received are available online at http://www.sec.gov/comments/s7-23-09/s72309.shtml.

389 See letter from the American Securitization Forum ("ASF").

390 See letter from the Committee on Federal Regulation of Securities and the Committee on Securitization and Structured Finance of the Section of Business law of the American Bar Association (the "ABA Committees").

391 See letter from Paul Wilkinson.

392 Rule 312 of Regulation S-T [17 CFR 232.312] currently requires that the static pool information remain posted on an unrestricted Web site free of charge for a period of not less than five years. The registrant has to retain all versions of the information provided on the Web site for a period of not less than five years. The corresponding undertaking makes clear that information provided on the Web site pursuant to Rule 312 is deemed to be part of the prospectus included in the registration statement. As we indicated in the 2004 ABS Adopting Release, if the conditions of Rule 312 are satisfied, then the information will be deemed to be part of the prospectus included in the registration statement and thus subject to all liability provisions applicable to prospectuses and registration statements, including Section 11 of the Securities Act. Section III.B.4.b. of the 2004 ABS Adopting Release.

In addition, filing the disclosure on EDGAR will ensure that the data provided at the time of each offering is preserved. Some issuers have used the same Web site to centralize static pool data as well as ongoing performance data for their prior securitized pools. In the case of static pool data, updating without indicating or preserving data delivered at the time of each offering makes it difficult to determine what material was part of the prospectus.[393] While we do not want to discourage issuers from providing updated information, we believe it is important to be able to identify which information was provided at the time of the offering. Requiring filing on EDGAR would address that concern.

We also note that most of the static pool information posted on the Web sites has been provided in PDF format. In response to the Regulation AB Proposing Release, commenters argued that a Web site-based approach could provide greater dynamic functionality and utility both for the ability of issuers to present the information and the ability of investors to access and analyze the information, including interactive facilities for organizing and viewing the information.[394] While we encourage issuers to provide the data on their Web sites so that investors may take advantage of those capabilities, we believe it should be filed on EDGAR to centralize and preserve the disclosure provided at the time of the offering. Instead, we are proposing to permit the information be filed on EDGAR in PDF as an official filing. Providing the information on EDGAR also would address the concern of providing a single place for investors to retrieve all information for the offering.

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[393] When we adopted Rule 312, we attempted to address this concern by requiring the registrant to indicate whether any changes or updates have been made.

We received comment at the time of the Static Pool Extension release that much of the information for prior securitized pools or the sponsor's portfolio would be similar from one transaction to the next, and a Web site would provide flexibility to allow the information to be presented in one place for multiple prospectuses, therefore, reducing the burdens of repeating the data for each prospectus.[395] However, we believe our proposal to require filing static pool disclosure on EDGAR will not pose a burden on issuers because, as we noted above, most issuers already provide static pool disclosure as PDF documents on their Web sites. And, as is the case today, our rules would allow incorporation by reference of previously filed disclosure into the prospectus for the related issuance.[396] Therefore, we are proposing to revise Rule 312 to remove the temporary accommodation set to expire on December 31, 2010 for asset-backed issuers to post the static pool information required by Item 1105 on an Internet Web site under conditions set forth in Regulation AB.

In addition, in lieu of providing the static pool information in the form of prospectus or in the prospectus for the offering, we are proposing to allow issuers to file the disclosure on Form 8-K and incorporate it by reference. In the prospectus, issuers would need to identify the Form or report on which the static information was filed by including the CIK number, file number and the date on which the static pool information was filed. We believe that this accommodation would allow more flexibility for issuers

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394 See, e.g., letters of ABA, ASF, AutoGroup, BMA, Citigroup, JPMorganChase, NYCBA, and TMCC on the 2004 ABS Proposing Release.

395 See letter from ASF received on Static Pool Extension Release.

396 See Instructions to proposed Forms SF-1 and SF-3. See also Item 10(d) of Regulation S-K (17 CFR 229.10(d)), Rule 303 of Regulation S-T (17 CFR 232.303), Rule 411 of Regulation C (17 CFR 230.411), and Rules 12b-23 and 12b-32 under the Exchange Act (17 CFR 240.12b-23 and 17 CFR 240.12b-32).

to provide static pool information and would allow users to easily search and locate static pool disclosure on EDGAR. Such information would be filed with the Form 8-K on the same date that the form of prospectus is required to be filed under proposed new Rule 424(h) and incorporated by reference into the prospectus. We are proposing to amend Form 8-K and Item 601 to add a new item requirement that would identify filings made to include static pool information.

Request for Comment

- Would our proposal to allow static pool data to be filed in PDF on EDGAR accommodate the interests of market participants? Would another format be more appropriate? What should we consider in adopting a format? What should we do in the interim? What format would provide the easiest way for users to search and find static pool on EDGAR?
- Could PDF documents be prepared in a way that would facilitate conversion of data into a useable format? We solicit comment as to whether some other format would be an appropriate method to file static pool data on EDGAR for all market participants. Would the data need to be tagged? If so, what would be the appropriate tagging?
- Are there any other changes we should consider making to Rule 312 of Regulation S-T?
- We are proposing to allow, but not require, registrants to file static pool information on Form 8-K and incorporate it by reference into the prospectus, in lieu of filing it in the prospectus. Is this accommodation appropriate? Should we instead require that all static pool disclosure be filed in the prospectus?

F. Exhibit Filing Requirements

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,[397] the indenture and related documents must be filed as an exhibit.[398] 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. 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.

These transaction agreements and other documents provide important information on the terms of the transactions, representations and warranties about the assets, servicing terms, and many other rights that would be material to an investor. As noted above, investors have expressed concerns regarding the timeliness of information in ABS offerings, and we believe that the information in the exhibits is an important part of the overall information package to investors. We are proposing to revise Item 1100(f) of Regulation AB to explicitly state that the exhibits filed with respect to an ABS offering registered on Form SF-3 must be on file and made part of the registration statement at the latest by the date the final prospectus is required to be filed pursuant to Rule 424.[399]

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[397] We stated that the management or administration agreement for the issuing entity also must be filed in addition to describing their material terms in the prospectus. See Section III.B.3.c of the 2004 ABS Adopting Release.

[398] See Sections III.A.3.b, III.B.3.c. and III.B.3.d of the 2004 ABS Adopting Release. Also, issuers are reminded that any attachments or schedules to an exhibit which is required to be filed pursuant to Item 601 of Regulation S-K must also be filed with the Commission.

[399] Finalized agreements at the time of the offering may be filed in preliminary form as provided by Instruction 1 to Item 601 of Regulation S-K. The filing requirement for an exhibit (other than opinions and

ABS shelf offerings were designed to mirror non-shelf offerings in terms of filing exhibits and final prospectuses. All exhibits to Form S-1 must be filed by the time of effectiveness. Consistent with these requirements, under our proposed amendments, exhibits must be on file by the date of filing the final prospectus, upon which a new effective date for the registration statement is triggered.[400]

Request for Comment

- Is our proposed amendment to Item 1100(f) appropriate? Is there any reason that exhibits to the registration statement could not be filed by time the final prospectus is required to be filed under Rule 424?
- Do investors need the complete exhibits sooner? Is it appropriate instead to require filing at the time of filing the Rule 424(h) filing? Could issuers satisfy such a requirement? Should a draft of each material agreement be required to be filed at that time if the final agreement is not available then?

G. Other Disclosure Requirements that Rely on Credit Ratings

Items 1112 and 1114 of Regulation AB require the disclosure of certain financial information regarding significant obligors of an asset pool and significant credit enhancement providers relating to a class of asset-backed securities. An instruction to Item 1112(b) provides that no financial information regarding a significant obligor, however, is required if the obligations of the significant obligor, as they relate to the pool

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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. Such exhibits may not be incorporated by reference into any subsequent filing made with the Commission. See Elimination of Certain Pricing Amendments and Revision of Prospectus Filing Procedures, Release No. 33-6714 (June 5, 1987) [52 FR 21252].

400 We note that this filing date will be after the time of sale of the security for purposes of Rule 159 and Securities Act Section 12(a)(2). The documents should be fully described in the prospectus because

assets, are backed by the full faith and credit of a foreign government and the pool assets are securities that are rated investment grade by an NRSRO.[401] Item 1114 of Regulation AB contains a similar instruction that relieves an issuer of the obligation to provide financial information when the obligations of the credit enhancement provider are backed by a foreign government and the enhancement provider has an investment grade rating.[402] Under both Items 1112 and 1114, to the extent that pool assets are not investment grade securities, information required by paragraph (5) of Schedule B of the Securities Act may be provided in lieu of the required financial information.[403]

In the 2008 Proposing Release, we proposed to revise Item 1112 and Item 1114 of Regulation AB to remove references to credit ratings.[404] We proposed to revise the instructions to these items so that exceptions based on investment grade ratings to the requirements of Items 1112 and 1114 of Regulation AB would no longer apply, and information required by paragraph (5) of Schedule B would be required in all situations when the obligations of a significant obligor are backed by the full faith and credit of a foreign government. We received one comment on the proposed change that supported the amendments, although the commenter noted its general opposition to the 2008 shelf eligibility proposals for ABS offerings.[405]

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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.

401 Instruction 2 to Item 1112(b) of Regulation AB [17 CFR 229.1112(b)].

402 Instruction 3 to Item 1114 [17 CFR 230.1114].

403 Paragraph 5 of Schedule B requires disclosure of three years of the issuer's receipts and expenditures classified by purpose in such detail and form as the Commission prescribes.

404 See Section II.B.4.c of the 2008 Proposing Release.

405 See comment letter from ASF.

We are proposing again to eliminate the exceptions based on investment grade ratings. We are not aware of any benchmark comparable to an investment grade rating here, and we continue to believe the information would be readily available and therefore the proposed change would not impose substantial costs or burdens to an ABS issuer. We believe that these changes are consistent with our revisions to eliminate ratings from the shelf eligibility criteria for asset-backed issuers.

Request for Comment

- Is it appropriate to require the information about foreign government issuers, even if their securities are rated investment grade, as proposed? Is there a different way to replace investment grade ratings in Items 1112 and 1114 of Regulation AB?
- Would the proposed change impose undue burdens on issuers?
- Would the disclosure be useful to investors?

IV. Definition of an Asset-Backed Security

As part of our effort to provide more timely and detailed disclosure regarding the pool assets to investors, we are proposing revisions to the Regulation AB definition of an asset-backed security. Currently, a security must meet the definition of an "asset-backed security" under Regulation AB[406] in order to utilize the disclosure requirements of Regulation AB and be eligible for shelf registration on Form S-3.[407] Prior to 2004, an "asset-backed security" was defined only for purposes of Form S-3 eligibility. In 2004, the Commission incorporated the basic definition of an "asset-backed security" from

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406 See Item 1101(c) of Regulation AB.

407 See General Instruction I.B.5 of Form S-3 and Item 1100 of Regulation AB.

Form S-3 into Regulation AB. This definition requires, among other things, that the security be primarily serviced by the cash flows of a discrete pool of assets.[408]

In the 2004 ABS Adopting Release, we noted that the definition of "asset-backed security" outlines the parameters for the types of securities that are appropriate for the alternate disclosure and regulatory regime provided by Regulation AB.[409] We also noted that the further a security deviates from the core purpose of the definition, the more acute the concerns, which include concerns regarding the sufficiency of disclosure to investors, are that the security should not be treated in the same way as other securities that meet the definition.[410] If a security does not meet the definition under Regulation AB, the offering may still be registered with the Commission on Form S-1. As noted in the 2004 ABS Adopting Release, the staff has worked with issuers offering structured securities outside the Regulation AB definition of an asset-backed security to develop appropriate disclosures under our regulations for such securities.[411]

A core principle of the Regulation AB definition of an asset-backed security is that the security is backed by a discrete pool of assets that by their terms convert into cash, with a general absence of active pool management. However, in response to commenters and previous staff interpretation, we adopted certain exceptions to the "discrete pool" requirement in the definition of asset-backed security to accommodate master trusts, prefunding periods, and revolving periods.[412] Based on our experience with the definition, we are concerned that pools that are not sufficiently developed at the

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408 See Item 1101(c).

409 See Section III.A.2.a of the 2004 ABS Adopting Release.

410 See id.

411 See Section III.A.2.a of the 2004 ABS Adopting Release.

412 See Item 1101(c)(3).

time of an offering to fit within the ABS disclosure regime may, nonetheless, qualify for ABS treatment, which may result in investors not receiving appropriate information about the securities being offered.[413] Consequently, we are proposing amendments to these exceptions to address these concerns. We believe that our proposals would restrict deviations from the discrete pool of assets requirements without substantially changing market practice.[414]

First, we are proposing to carve back the availability of the exceptions to the discrete pool requirement. We are proposing to amend the master trust exception for securities that are not backed by assets that arise out of revolving accounts.[415] Under the existing requirement, securitizations that are not backed by such revolving account assets – for example, mortgages – qualify for an exception from the discrete pool requirement of the definition of an asset-backed security. As a result, additional assets that are non-revolving can be added to the pool of assets backing all the securities issued by the master trust in connection with subsequent offerings of securities. While we do not believe that it is important to repeal the accommodations for revolving assets under Regulation AB, we also do not believe that there is a similar need to accommodate an exception to the discrete pool requirement for offerings backed by non-revolving assets. In light of concerns, which we have noted above, about sufficient disclosure about the pool assets, we are proposing to revise the definition of an asset-backed security to restrict the use of Regulation AB for master trust issuers backed by non-revolving assets.

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413 Issuers will also need to consider Rule 3a-7 under the Investment Company Act or other applicable exclusions under the Act. The changes we propose today to the definition of ABS in Regulation AB would not in and of themselves change the analysis under the Investment Company Act. As such, securities that would not meet the Regulation AB definition of ABS may be registered on Form S-1.

414 See fn. 418, 420 and 423 below.

415 See discussion of issuers that utilize master trust structures in Section II.C. above.

Under our proposed revision, if the master trust is not supported by assets arising out of revolving accounts, the securitization would no longer qualify for the exception.[416] We believe that it is appropriate to carve back on the expansion of the definition of an asset-backed security that was provided in 2004[417] so that investors have sufficient information relating to the pool assets.[418]

Second, we are proposing to limit further the number of years for revolving periods of non-revolving assets. The current provision allows the offering to contemplate a revolving period where cash flows from the pool assets may be used to acquire additional pool assets, provided, that for securities backed by non-revolving assets, the revolving period does not extend for more than three years from the date of issuance of the securities and the additional pool assets are of the same general character as the original pool assets.[419] We are proposing to reduce the permissible duration of the

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416 Some stranded cost securitizations are set up as a series trust or a master trust. As explained in the 2004 ABS Adopting Release, series trusts do not meet the definition of an asset-backed security under Item 1101(c) of Regulation AB. Under our proposed change to the master trust exception, a stranded cost securitization set up as master trust would not be able to issue securities using registration statements filed on Forms SF-1 or SF-3. However, if a stranded cost securitization is structured as a stand alone trust, then such securitization structure should meet the definition of an asset-backed security.

417 See 2004 ABS Adopting Release.

418 We are aware of only four issuers backed by non-revolving assets that utilize the master trust structure. Some issuers of ABS backed by mortgages originated in the United Kingdom structured as master trusts would not qualify for the exception from the definition of ABS, because the underlying mortgages would not be revolving in nature. Under our proposal, such structures would still be able to register transactions on Form S-1. Such sponsors would also be able to structure their ABS as stand-alone trusts. See Fitch Ratings Report "Masters of the House – A Review of UK RMBS Master Trusts", June 8, 2005 (noting that large prime mortgage lenders have preferred the master trust structure over the pass-through mechanism used by other UK RMBS issuers in, for example, buy-to-let and non-conforming markets, as the master trust structure allows for larger transactions)]. See Jennifer Hughes, MBS Market Reopens in Old Style, Financial Times, October 28, 2009 (noting that because new loans are added to the existing collateral pool when new bonds are issued, the performance statistics of the older loans are diluted by the new loans). See also Jennifer Hughes, Concern Over Mortgage Master Trusts, Financial Times, October 28, 2009 (noting difficulties with analyzing master trusts because the pool of loans backing the bonds is constantly changing).

419 See Item 1101(c)(3)(iii).

revolving period from three years to one year.[420] While we have not experienced problems with the use of this feature to date, we believe that a one-year revolving period limit would help to better ensure that investors have sufficient information about their securities by limiting the amount of time that assets may be added to the pool.

Third, we are proposing to decrease the limit on the amount of prefunding permitted by the prefunding exception to the discrete pool requirement. During prefunding periods, pool assets may be added within a specified period of time after the issuance of the asset-backed securities using a portion of the offering proceeds. Under the existing requirement, the amount of prefunding may not exceed 50% of the offering proceeds, or, in the case of master trusts, 50% of the aggregate principal balance of the total asset pool whose cash flows support the asset-backed securities.[421] We propose to lower this ceiling to 10% of the offering proceeds or, for master trusts, 10% of the aggregate principal balance of the total asset pool whose cash flows support the asset-backed securities.[422] We believe that the combination of shortening the revolving period and lowering the ceiling of prefunding, as proposed, should better align the offerings that use these features with our goal of maintaining the integrity of the discrete pool requirement in offerings that use these features, consistent with investor demand for more meaningful asset-level data.[423]

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420 We believe that currently the revolving period exception to the discrete pool requirement is not widely used in standalone amortizing trust structures. Based on staff review, we believe only a few issuers which have registered with the Commission have used a revolving period of more than one year.

421 Item 1101(c)(3)(ii).

422 A current report on Form 8-K would be required to be filed when additions to the pool are made, even if contemplated in the registration statement, as proposed.

423 Based on staff review, we believe that use of prefunding accounts is generally limited to select sponsors, approximately 25% or less of the principal balance or proceeds are set aside for prefunding and the prefunding period generally extends for approximately one year.

Requests for Comment

- Is the proposed revision relating to master trusts not backed by revolving account assets appropriate? Are there any asset classes or types of ABS issuers that would be excluded from the revised definition of an asset-backed security that should not be?
- Is it appropriate for ABS structured as master trusts that are backed by non-revolving accounts to register on S-1? How would existing and prospective investors be able to analyze the pool if it is constantly changing? Please be specific in your response.
- Is 10% the appropriate ceiling for the amount of permissible prefunding? Should that amount be higher (e.g., 20%, 30%, 40%), lower (e.g., five percent), or disallowed altogether under the definition of an asset-backed security? Under the existing definition, the duration of the prefunding period is limited to one year from the date of issuance of the asset-backed securities. Should the one-year limitation be shortened?
- Is the one-year permissible length of the revolving period for non-revolving assets, as proposed, the appropriate amount of time? Should the permissible length be a different amount of time (e.g., two years)? Should any other amendments be made to the allowance for revolving periods?

V. Exchange Act Reporting Proposals

A. Distribution Reports on Form 10-D

We are proposing to revise General Instruction C.3. of Exchange Act Form 10-D. The instruction provides that if information required by an Item has been previously

reported, the Form 10-D does not need to repeat the information.[424] Because information that is previously reported may relate to a different issuer from the issuer to which the report relates, such information may be difficult to locate, and therefore, we believe a clear reference to the location of the previously reported information should be provided in the Form 10-D.[425] We are proposing to amend Form 10-D to require disclosure of a reference to the Central Index Key number, file number and date of the previously reported information.

We also are proposing to add a new requirement to Item 1121 of Regulation AB to address concerns about the activities of parties obligated to repurchase assets for breach of a representation or warranty in declining trustee or investor demands to repurchase assets from the pool for a possible breach of a representation or warranty.[426] Under this proposed new item requirement, for the assets in the pool backing securities covered by the distribution report, the report would be required to contain disclosure relating to the amount of repurchase demands made of the obligated party during the period covered by this report for the assets in the pool of securities covered by this report.[427] This new item requirement would require disclosure of any demands made of the obligated party in the period covered by the report to repurchase the assets in the pool

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424 The term "previously reported" is defined in Exchange Act Rule 12b-2 (17 CFR 240.12b-2).

425 For instance, in the case of master trusts, Item 3 of Form 10-D requires disclosure of information related to the sales of securities backed by the same pool or issuing entity during the reporting period, regardless of whether the transaction is registered. Because the information regarding registered offerings of securities backed by the same pool would have been previously reported by the filing of a prospectus pursuant to Rule 424, no additional report regarding the issuances would be required on Form 10-D. The staff has observed, however, that because the information has been previously reported, no disclosure appears under this item. Thus, it was unclear whether no disclosure was provided because no issuances occurred, or because the information had been previously reported, and also it may not be clear to investors or other market participants how to locate the information.

426 See proposed Item 6A in Part II of Form 10-D.

427 See Section II.B.3.b. above.

backing the securities due to a breach in the representations and warranties concerning the pool assets as provided in the transaction agreements. This disclosure would include the percentage of that amount that was not then repurchased or replaced by the originator. Of those assets that were not then repurchased or replaced, we would require disclosure whether an opinion of a third party not affiliated with the obligated party had been furnished to the trustee that confirms that the assets did not violate a representation or warranty.

In addition, we are proposing to reverse our position for delinquency presentation in periodic reports. In the 2004 ABS Adopting Release, we stated that delinquency and loss information for the Form 10-D reporting period, like the other listed items in Item 1121(a) of Regulation AB, is based on materiality, and not on Item 1100(b) of Regulation AB.[428] Item 1100(b) outlines the minimum requirements for presenting historical delinquency and loss information, such as requiring delinquency experience be presented in 30 or 31 day increments, through the point that assets are written-off or charged-off as uncollectible.[429] Therefore, consistent with our efforts to standardize the disclosure across all ABS, we are proposing to add an instruction to Item 1121(a)(9) to provide pool-level disclosure in periodic reports in accordance with Item 1100(b) of Regulation AB.

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428 See fn. 477 of the 2004 ABS Adopting Release.

429 See Item 1100(b)(1) of Regulation AB.

Further, we are proposing to revise the cover page of the Form 10-D to include the name and phone number of the person to contact in connection with the filing. This information would assist the staff in its review of asset-backed filings.[430]

Request for Comment

- Should we amend, as proposed, Form 10-D to require disclosure of a reference to the Central Index Key number, file number and date of the previously reported information?
- Should we amend, as proposed, Item 1121 to require disclosure regarding the amount of repurchase demands made of the obligated party during the period covered by the report for the assets in the pool of securities covered by the report? Should we require, as proposed, disclosure regarding the percentage of those assets that were subject to a repurchase demand that were not repurchased? Should we also require, as proposed, disclosure whether an opinion of a third party not affiliated with the obligated party had been furnished to the trustee that confirms that the assets that were not repurchased or replaced did not violate a representation or warranty.
- Should we add, as proposed, an instruction to Item 1121(a)(9) to provide pool-level disclosure in periodic reports in accordance with Item 1100(b) of Regulation AB?
- Should we specify the format for reports on Form 10-D? Should we specify line items that issuers must disclose in order to meet the requirements in current Item 1121 of Regulation AB (e.g., disclosure of sources and uses of

[430] Issuers are also encouraged to provide the name and phone number of the outside attorney or other contact in accompanying correspondence to their reports on Form 10-K.

monthly cash flows, changes in asset pool balance from the beginning to the end of the reporting period)? For instance, in the case of a credit card master trust, should we specify line item disclosure for changes in the assets of the trust (e.g., beginning balance, amount of account additions, amount of accounts withdrawn, amounts collected, gross charge-offs, and ending balance)? [431]

B. Servicer's Assessment of Compliance with Servicing Criteria

The Form 10-K report of an asset-backed issuer is required to contain, among other things, an assessment of compliance with servicing criteria that is set forth in Item 1122 of Regulation AB[432] by each party participating in the servicing function.[433] The servicer's assessment is filed as an exhibit to the report, and the body of the Form 10-K report must also contain disclosure regarding material instances of non-compliance with servicing criteria.[434] In order to provide enhanced information regarding instances of non-compliance with servicing criteria with respect to the offering to which the report relates, including information on steps taken to address non-compliance, we are proposing to expand the disclosure required to be contained in the body of the Form 10-K. We are also proposing to codify certain staff positions with respect to the servicer's

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431 See e.g., Appendix A, Attachment III. of the MetLife FDIC Letter.

432 17 CFR 229.1122.

433 Exchange Act Rules 13a-18(b) and 15d-18(b) [17 CFR 240.13a-18(b) and 17 CFR 240.15d-18(b)] and Item 1122 of Regulation AB. Item 1122 of Regulation AB defines "a party participating in the servicing function" as any entity (e.g., master servicer, primary servicers, trustees) that is performing activities that address the criteria in paragraph (d) of this section, unless such entity's activities relate only to 5% or less of the pool assets. See Instruction 2 to Item 1122. For purposes of this discussion, we refer to the party that is required to provide a servicer's assessment as the "servicer."

434 See Item 1122(c) of Regulation AB. Item 1122 requires an assessment of compliance with servicing criteria exactly as set forth in Item 1122(d); the criteria cannot be modified. If the servicer's process differs from one or more of the criteria, then the servicer must disclose that it is not in compliance with those criteria.

assessment, as we believe codifying these positions will make them more transparent and readily available to the public.

A particular servicer may provide servicing for several asset-backed issuers that may not be related. As discussed in the 2004 ABS Adopting Release and in an instruction to Item 1122, the servicer's assessment is required to be made at the platform level,[435] which means the servicer's assessment should be made with respect to all asset-backed securities transactions involving the asserting party that are backed by assets of the type backing the asset-backed securities covered by the Form 10–K report.[436] Typically, one servicer's assessment relating to several issuers backed by the same type of assets will be filed as an exhibit to each of the issuers' Forms 10-K. Therefore, it may not be clear whether the asset-backed securities covered in the Form 10-K report may have been impacted by the material instance of non-compliance.

In order to elicit disclosure regarding the material instances of non-compliance with respect to the particular securities to which the Form 10-K report relates, we are proposing to require that, along with disclosure of material instances of noncompliance with servicing criteria, the body of the annual report also disclose whether the identified

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435 See Section III.D.7.c of the 2004 ABS Adopting Release. In contrast, the servicer's compliance statement under Item 1123 of Regulation AB which must be included in a Form 10-K report relates to the specific asset pool for the securitization that is covered by the Form 10-K. Thus, an instance of non-compliance that is not material to the servicer's platform would still need to be disclosed in the servicer's compliance statement under Item 1123 if the instance of non-compliance is material to the servicing of the specific asset pool covered by the report. Further, the issuer is required to disclose a known instance of noncompliance that is material to the asset pool in its Exchange Act reports. See the Division of Corporation Finance's Manual of Publicly Available Interpretations on Regulation AB and Related Rules, Interpretation 17.05.

436 See also Instruction 1 to Item 1122 (stating that if certain servicing criteria are not applicable to the asserting party based on the activities it performs with respect to asset-backed securities transactions taken as a whole involving such party and that are backed by the same asset type backing the class of asset-backed securities, the inapplicability of the criteria must be disclosed in that asserting party's and the related registered public accounting firm's reports).

instance of noncompliance involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10-K report.[437]

We are also proposing to require that the body of the annual report discuss any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for its activities made on a platform level. This disclosure would be required whether or not the instance of non-compliance involved the servicing of assets backing the securities covered in the particular Form 10-K. We believe that if a material instance of non-compliance exists at the platform level, investors should know whether any steps have been taken to remedy the material instance of non-compliance.

We also are proposing to codify certain staff positions issued by the Division of Corporation Finance relating to the servicer's assessment requirement, with some modification. First, we are proposing to codify a staff interpretation relating to aggregation and conveyance of information between a servicer and another party (who may also be a servicer for purposes of the servicer's assessment requirement). In the fulfillment of its duties as set forth in transaction agreements, a servicer will often provide information to another party. Such information conveyed is generated by a servicing activity that falls under a particular criterion in Item 1122(d). Likewise, the second servicer may use the information in a servicing activity that falls under a particular criterion in Item 1122(d). While the conveyance of information to another party is not explicitly contained in any of the criterion in Item 1122(d), the staff in the Division of Corporation Finance has taken the position that the accurate conveyance of

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[437] While some information about instances of non-compliance may also be required by Item 1123 of Regulation AB to be provided, because of the differences in the definition of servicer between Item 1122 and Item 1123, we believe that Item 1123 does not cover the same information that our proposed revision to Item 1122 would cover.

the information is part of the same servicing criterion under which the activity that generated the information is assessed.[438]

We are now proposing to codify the staff's interpretation; however, unlike the staff's position that the conveyance of the information is part of the same servicing criterion under which the activity that generated the information is assessed, we are proposing to add a new servicing criterion to Item 1122. This new criterion, as proposed,[439] would state that if information obtained in the course of duty is required by any party or parties in the transaction in order to complete their duties under the transaction agreements, the aggregation of such information, as applicable, is mathematically accurate and the information conveyed accurately reflects the information that was obtained. Any servicer that is responsible for either aggregation or conveyance of information should assess whether there are any instances of noncompliance with respect to such activities that should be reported under the proposed criteria. We are proposing a new criterion because we believe that a separate criterion for the accurate aggregation and conveyance of information to other parties would better elicit disclosure regarding a servicer's compliance with its duties.

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[438] See the Division of Corporation Finance's Manual of Publicly Available Interpretations on Regulation AB and Related Rules, Interpretation 11.03. According to the interpretation, the following example demonstrates how the position should be applied:

> For example, if Servicer A is responsible for administering the assets of the pool and passing along the aggregated information about the assets in the pool to Servicer B, and Servicer B is responsible for calculating the waterfall or preparing and filing the Exchange Act reports with that information, Servicer A's activity is assessed under Item 1122(d)(4). In addition to assessing Servicer A's maintenance of the records and other activities, this Item requires assessment of Servicer A's aggregation and conveyance of such information to Servicer B. If instead of aggregating the individual asset information, Servicer A conveys it un-aggregated, then Servicer B must include its own aggregation of the individual asset data in Servicer B's assessment of calculating the waterfall or preparing and filing Exchange Act reports.

In a publicly available telephone interpretation,[440] the staff explained that the platform for reporting purposes should not be artificially designed, but rather, it should mirror the actual servicing practices of the servicer. However, the staff also noted that if in the conduct of servicing the transactions, the servicer has made divisions in its servicing function by geographic locations or among separate computer systems, the servicer may take these factors into account in determining the platform for reporting purposes. Absent changes in circumstances such as a merger between servicers, we expect that the groupings of transactions included in a platform would remain constant from period to period. Also, if the servicer includes in its platform less than all of the transactions backed by the same asset type that it servicers, we expect a description of the scope of the platform would be included in a servicer's report submitted pursuant Item 1122.

We are proposing to codify these interpretations relating to the scope of the Item 1122 servicer's assessment in an instruction to Item 1122. The proposed instruction also states that the servicer's assessment should cover, except if disclosure is provided as required below, all asset-backed securities transactions involving such party and that are backed by the same asset type backing the class of asset-backed securities which are the subject of the Commission filing. The proposed instruction states that the servicer may take into account divisions among transactions that are consistent with the servicer's actual practices. However, if the servicer includes in its platform less than all of the transactions backed by the same asset type that it services, the proposed instruction

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439 See proposed Item 1122(d)(1)(v) of Regulation AB.

440 See the Division of Corporation Finance's Manual of Publicly Available Interpretations on Regulation AB and Related Rules, Interpretation 17.03.

provides that a description of the scope of the platform should be included in the servicer's assessment.

Request for Comment

- Would additional disclosure in the body of the Form 10-K as to whether the identified instance of noncompliance involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10-K report, as we are proposing to require, provide investors with meaningful additional disclosure that is not already covered by the existing requirements? Would the proposed requirement to disclose any steps taken to remedy the previously identified instances of noncompliance provide helpful information to investors?
- Should we, as proposed, add a separate criterion addressing the accurate aggregation and conveyance of information by one servicer to another party who must use the information in the performance of its duties? Would it be better not to add the criterion but instead revise Item 1122 to provide, similar to the staff's position, that accurate conveyance of the information is part of the same servicing criterion under which the activity that generated the information is assessed? Should timeliness of conveyance of this information also be included as part of the proposed servicing criterion?
- Should we codify prior staff interpretations relating to the scope of Item 1122 by adding the proposed instruction? Does the proposed instruction to Item 1122 reflect current servicer's practices? Do servicers conduct servicing in any ways different from what is contemplated in the proposed instruction?

C. Form 8-K

1. Item 6.05

Item 6.05 of Form 8-K[441] applies to asset-backed securities offerings registered on Form S-3 and, if our proposed amendments are adopted, will apply to offerings registered on Form SF-3. Under the existing item requirement, if any material pool characteristic of the actual asset pool at the time of issuance of the securities differs by five percent or more (other than as a result of the pool assets converting to cash in accordance with their terms) from the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424, the issuer must provide certain disclosure regarding the actual asset pool, such as that required by Item 1111 and 1112 of Regulation AB.

In light of the new requirements regarding asset-level disclosure, which reflect the significance of the composition of the assets, we are proposing to revise Item 6.05 of Form 8-K to require that the issuer file a current report with disclosure pursuant to Item 1111 and Item 1112 if any material pool characteristic of the actual asset pool at the time of issuance of the asset-backed securities differs by one percent or more from the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424 (other than as a result of the pool assets converting into cash in accordance with their terms). We believe that changes below one percent are likely de minimis changes. We believe that except for the assets acquired through prefunding, the assets of the pool underlying the securities should be set and described in the prospectus. For shelf offerings, much of this information would already be provided by means of the Rule 424(h) filing. We remind issuers that information about significant changes in pool asset

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441 17 CFR 249.308.

composition provided to an investor after the sale may not have been adequately conveyed at the time of sale for the purpose of Securities Act Rule 159.[442]

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.[443] In some transactions, the pooling and servicing agreement may provide for investments of cash collections and reserve funds in "eligible" or "permitted" investments.[444] However, even though investments of cash collections are contemplated at the time of the offering, the investment of cash collections and reserve funds may be a material change to the asset pool. Consequently, disclosure of the change would be required under Item 6.05 of Form 8-K.

Request for Comment

- Should we revise Item 6.05 of Form 8-K as proposed? Is 1% an appropriate threshold to trigger disclosure on Form 8-K? Should it be higher or lower such as 0.5% or 2%?
- Is the language for the proposed item appropriate?
- Should we also require, as proposed, a description of the changes to the asset pool?
- Should we provide by rule that changes in pool assets of more than 10% (or some other amount) from the description of the asset pool in the prospectus

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442 See fn. 87 above.

443 In addition, we are proposing to require that asset data files be included as an exhibit on the same date of the filing of an Item 6.05 Form 8-K. See proposed Item 6.06 of Form 8-K.

444 If those instruments are securities, they must be registered or exempt from registration as provided in Securities Act Rule 190. See Section III.a.1.e.v. and fn. 277 above.

filed pursuant to Rule 424 must be conveyed to investors for purposes of Rule 159?

- How often would ABS issuers cross the 1% threshold? We propose, above, to eliminate the current exception to the shelf eligibility condition that requires timely filing of an Item 6.05 Form 8-K. Is there a risk that pool assets may change by more than 1% without the sponsor being aware soon enough that an issuing entity has crossed this threshold in order to be able to comply with the shelf eligibility criteria, as proposed to be revised? If so, how should we address that risk while still providing incentive for timely compliance?

2. Change in Sponsor's Interest in the Securities

We are proposing to add a new item to require the filing of a Form 8-K to describe any material change in the sponsor's interest in the securities. Under this Item, a Form 8-K would be required to be filed if there is a material change in the sponsor's interest in the securities. We believe that such disclosure would assist an investor in monitoring the sponsor's interest in the securities, including its retention of risk in connection with the proposed shelf eligibility requirements discussed above. Under the proposal, the report on Form 8-K would be required to include disclosure of the amount of change in interest and a description of the sponsor's resulting interest in the transaction.

Request for Comment

- Should we require, as proposed, the issuer to file a Form 8-K if there is a material change in the sponsor's interest in the securities? Should we provide a quantitative measure for the trigger for disclosure on Form 8-K? For

example, should we require the filing of a Form 8-K if the sponsor's interest has changed by 1%, 5% or 10%?

- Is the proposed disclosure that would be required to be provided on Form 8-K appropriate? Would other types of disclosure provide more useful information for investors?
- Should we also require the issuer to file a Form 8-K if an originator's interest in the securities has changed? If such a requirement were adopted, what would be the costs of monitoring an originator's interest?
- Should we instead require that the issuer file a report each fiscal quarter that discloses the scope of the sponsor's interest in the securities as of a particular date? If so, what date should that be?

D. Central Index Key Numbers for Depositor, Sponsor and Issuing Entity

We are proposing amendments to make it easier for interested parties to locate the depositor's registration statement and periodic reports associated with a particular offering and information related to the sponsor of the offering. Currently, ABS offerings with a particular file number may be associated with a registration statement with a different file number. Further, Forms 8-K for ABS offerings may be filed under the depositor file number, making it difficult to track material for the related offering with only the information provided in the Form 8-K. In order to facilitate the ability of investors to find information that is filed on EDGAR relating to the depositor, the issuing entity and the sponsor more easily, we are proposing to require that the cover pages of registration statements on Form SF-1 and Form SF-3 include the CIK number of the

depositor, and if applicable, the CIK number of the sponsor.[445] We are also proposing to require that the cover pages of the Form 10-D, Form 10-K, and Form 8-K for ABS issuers include the CIK number of the depositor and of the issuing entity, and if applicable, the CIK number of the sponsor.

Request for Comment

- Should we require, as proposed, CIK numbers for the depositor, the issuing entity, and the sponsor (if applicable) on the cover pages of Forms 10-K, 10-D and 8-K for ABS issuers? Should we require, as proposed, CIK numbers for the depositor and the sponsor (if applicable) on the cover pages of proposed Forms SF-1 and SF-3?
- Are there any other changes we should make to the forms to make it easier to locate materials related to an ABS offering or ABS issuer?

VI. Privately-Issued Structured Finance Products

We are proposing significant revisions to the safe harbors for exempt offerings and resales of asset-backed securities. In the U.S., all CDO issuances have taken place in the private exempt markets. An offering of CDOs in the private market typically is a two-step process involving an exempt private sale by the issuer to one or more initial purchaser or purchasers[446] under Section 4(2) of the Securities Act[447] immediately followed by a private resale by the initial purchaser or purchasers to eligible investors

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445 See proposed revision to Item 1102(a) of Regulation AB.

446 The initial purchaser is typically a registered broker-dealer.

447 15 U.S.C. 77d(2). Section 4(2) provides an exemption from registration for transactions by an issuer not involving any public offering.

made in reliance on the Securities Act Rule 144A safe harbor.[448] In addition, while it may not be typically used in the private market for structured finance products, Rule 506[449] of Regulation D[450] provides any issuer, regardless of the type of security it issues, a safe harbor for the Section 4(2) private offering exemption from Securities Act registration.

Securitization in the private, unregistered market played a significant role in the financial crisis. In particular, the CDO market has been cited as central to the crisis.[451] While the CDO market comprised a large part of the capital market at the time of the financial crisis,[452] many have asserted that the lack of information about CDOs and other structured securities in the private market exacerbated the harm to investors and the markets as a whole during the financial crisis.[453] In addition, other market participants and regulators did not have access to important information about this significant

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448 See Guy Lander, U.S. Securities Law for International Financial Transactions and Capital Markets, Second Edition, (Eliot J. Katz et al. eds., 2nd ed., Thomson West 2005)(noting that "[t]ogether, Section 4(2) and Rule 144A, in effect, permit 'underwritten' private placements").

449 17 CFR 230.506.

450 17 CFR 230.501 through 230.508.

451 See the 2008 CRMPG III Report (noting that many of these securities were high-risk complex financial instruments that were not understood by investors), at 53, and Gillian Tett, Fools Gold (2009). See also the PWG March 2008 Report, at 9 (discussing subprime mortgages and the write-down of AAA-rated and super-senior tranches of CDOs as contributing factors to the financial crisis).

452 In 2005, worldwide CDO issuance exceeded $250 billion. See, e.g., Securities Industry and Financial Markets Association, "Global CDO Issuance Data," available at http://www.sifma.org/research/research.aspx?ID=10806. According to information that the staff has compiled from AB Alert, available at www.ABAlert.com, and SDC, U.S. issued Rule 144A offerings of asset-backed securities totaled approximately $200 billion in 2005 and $160 billion in 2006.

453 See the 2008 CRMPG III Report, at 53 (noting that lack of comprehension of CDOs by market participants resulted in the display of price depreciation and volatility far in excess of levels previously associated with comparably rated securities, causing both a collapse of confidence in a very broad range of structured product ratings and a collapse in liquidity for such products). See also the Turner Review, at 16 (describing CDOs and CDO squared as opaque).

component of the capital markets.[454] Further, the costs of information asymmetry for ABS issuances can differ significantly from those incurred in the issuances of most other securities. Asset-backed securities are issued by single purpose issuers whose only business purpose is holding financial assets and may involve numerous parties that participate in the chain of securitization (i.e., originator, sponsor, servicer, etc.). Thus, unlike the securities of other companies where information needed to value the securities might be able to be gleaned from a review of basic summary information and discussions with management, information about the assets and the parties in the securitization chain facilitates an understanding of the valuation of asset-backed securities. To address these concerns, we are proposing revisions relating to Rule 144A offerings of structured finance products and Rule 506 of Regulation D to provide for specific disclosures for private offerings of structured finance products, as well as additional public information about private structured finance products offerings conducted in reliance upon these safe harbors.

We acknowledge that the steps we are proposing to take in the private placement market are significant. We recognize that structured finance products issuers may conduct offerings in reliance on a statutory exemption under the Securities Act without seeking the safe harbor provided by Rule 506 of Regulation D or without representing

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[454] See testimony of Joseph Mason, "Hearing on the Role of Credit Rating Agencies In the Structured Finance Market," Before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services United States House of Representatives (Sept. 27, 2007) (proposing a resolution to information asymmetry for structured finance investments, including CDOs, by changing the manner in which information is gathered by accountants and regulators and disseminated to market participants by ratings agencies and markets). See also Anna Katherine Barnett-Hart, The Story of the CDO Market Meltdown: An Empirical Analysis, (Mar. 19, 2009) (discussing mis-rating of CDOs and failure of all market participants, from investment banks to hedge funds, to understand risk of CDOs) at 3, 40.

that the securities are eligible for sale under Rule 144A.[455] As a result, our proposed amendments to the safe harbors would not apply to these offerings, and as such, may not fully address the concerns we seek to address in all securitization transactions.

A. Rule 144A and Regulation D

We adopted Securities Act Rule 144A[456] in 1990.[457] The rule provides a safe harbor for a reseller of securities from being deemed an underwriter within the meaning of Sections 2(a)(11) and 4(1) of the Securities Act for the offer and sale of non-exchange listed securities to "qualified institutional buyers" (QIBs), as defined in Rule 144A. The Rule 144A safe harbor can be claimed only by persons other than the issuer. The safe harbor has been utilized to develop a private market for collateralized debt obligations and other asset-backed securities[458] that may not meet the definition of an asset-backed security under Regulation AB, and, therefore, are not eligible for the particularized regulation regime of Regulation AB.[459]

One condition of the Rule 144A safe harbor requires the issuer to provide the security holder or a prospective purchaser designated by the security holder, certain

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455 For example, we understand that asset-backed commercial paper is often sold in reliance on the private placement statutory exemption and the so-called Section "4(1-1/2)" exemption for private resales rather than the safe harbors provided under Rule 506 of Regulation D or Rule 144A.

456 17 CFR 230.144A.

457 See the Rule 144A Adopting Release.

458 For example, a vast majority of resecuritizations of real estate mortgage conduits, known as "Re-Remics," are offered through resales made in reliance on Rule 144A safe harbor. See Deloitte's Speaking of Securitization, "The Re-Remic Phenomenon" (June 2009), at 2.

459 Many CDOs do not meet the "discrete pool of assets" component of the Regulation AB definition of an asset-backed security because CDOs permit the active management of the assets for a period of time (e.g., five years), a component which is inconsistent with the principle set forth in Item 1101(c). Also, other structured products like synthetic securities do not meet the definition of an asset-backed security under Regulation AB. See Section III.A.2.a. of the 2004 ABS Adopting Release. In addition, actively-managed CDOs and issuers that offer synthetic securities generally do not meet the requirements of Rule 3a-7 under the Investment Company Act and typically rely on one of the private investment company exclusions under that Act. See fn. 39 above.

information relating to the issuer, which is required to be reasonably current in relation to the date of resale under the rule.[460] To satisfy the rule, the information must be provided upon the security holder's request, or the prospective purchaser must have received such information at or prior to the time of sale, upon the prospective purchaser's request to the security holder or issuer. In the original adopting release for Rule 144A, we noted that this condition had been proposed in response to commenters' concerns regarding the lack of available information about issuers in the exempted transaction.[461]

This information requirement in Rule 144A delineates the type of information that should be provided by corporate issuers.[462] However, there is no discussion in the text of the rule regarding the type of information that is required for ABS offerings. In the original adopting release for Rule 144A, we stated that the information requirements in Rule 144A with respect to asset-backed issuers require, "basic, material information concerning the structure of the securities and distributions thereon, the nature, performance and servicing of the assets supporting the securities, and any credit mechanism associated with the securities."[463] Under these requirements, purchasers of asset-backed securities in Rule 144A transactions may receive only a minimal amount of information about their investment.

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460 17 CFR 230.144A(d)(4).

461 See Section II.D. of the Rule 144A Adopting Release.

462 In particular, the holder or prospective purchaser should be provided with: a statement of the nature of the issuer's business and the products and services that it offers, the issuer's most recent balance sheet and profit and loss and retained earnings statements, and similar financial statements for the part of the two preceding fiscal years as the issuer has been in operation. See 17 CFR 230.144A(d)(4)(i). The rule also explains how the issuer's financial statements and other information could be presumed to be "reasonably current." See 17 CFR 230.144A(d)(4)(ii).

463 See Section II.D. of the Rule 144A Adopting Release.

Under the existing provisions in Regulation D, when the issuer sells securities in reliance on Rule 506 to a purchaser that is not an "accredited investor," as defined in Regulation D, an issuer must furnish information akin to what is required in a registration statement on Form S-1.[464] The prescribed information, however, need not be provided to a purchaser that is an accredited investor. Except for a few types of ABS, we believe that investors in privately issued asset-backed securities typically would qualify as accredited investors, and therefore, issuers would not be required to provide the prescribed information to them in order rely on Rule 506 of Regulation D for the sale of the securities. Thus, if an ABS issuer were to rely on Rule 506 of Regulation D for the sale of its securities, purchasers in the offering may receive only a minimal amount of information regarding the securities, though they may request the information that they desire.

B. Proposed Information Requirements for Structured Finance Products

1. General

In order to address concerns about the lack of information available to investors in the private markets for structured finance products, we are proposing amendments to our safe harbors and new related rules regarding the information that must be made available to investors in privately-issued asset-backed securities. In summary, we are proposing to:

- require that, in order for a reseller of a "structured finance product" to sell a security in reliance on Rule 144A, or in order for an issuer of a "structured finance product" to sell a security in reliance on Rule 506 of Regulation D:

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464 See Rule 502(b)(2) of Regulation D.

- the underlying transaction agreement for the securities must grant to purchasers, holders of the securities (or prospective purchasers designated by the holder) the right to obtain from the issuer of such securities the information, upon request, that would be required if the transaction were registered under the Securities Act and such ongoing information as would be required by Section 15(d) of the Exchange Act if the issuer were required to file reports under that section; and
- the issuer must represent that it will provide such information.

- conform the informational requirement of Securities Act Rule 144[465] to the above revisions; and
- add a new Securities Act rule that would require a structured finance product issuer that had represented and covenanted to provide information as proposed to be required by Rule 144, Rule 144A and Rule 506 of Regulation D to provide such information, upon request.

2. Application of Proposals

Our proposals would apply to a "structured finance product," which would be more broadly defined than 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. In addition to traditional "asset-backed securities," the proposed definition of "structured finance product" would cover:

- a synthetic asset-backed security; or

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465 17 CFR 230.144.

- a fixed-income or other security collateralized by any pool of self-liquidating financial assets, such as loans, leases, mortgages, and secured or unsecured receivables that entitles its holder to receive payments that depend on the cash flow from the assets -- including:
    - an asset-backed security as used in Item 1101(c) of Regulation AB (§229.1101(c));
    - a collateralized mortgage obligation;
    - a collateralized debt obligation;
    - a collateralized bond obligation;
    - a collateralized debt obligation of asset-backed securities;
    - a collateralized debt obligation of collateralized debt obligations; or
    - a security that at the time of the offering is commonly known as an asset-backed security or a structured finance product.[466]

We believe that the enumerated characteristics in our proposed definition generally distinguish structured finance products from other types of securities. This proposed definition of structured finance product would encompass certain managed asset-backed securities (where a manager is appointed and paid fees to make changes to the collateral or a referenced portfolio). In this proposed definition, there would be no

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[466] This proposed definition is based in part, on the definition of asset-backed security used in the Financial Industry Regulatory Authority (FINRA)'s proposal to designate asset-backed securities as eligible for Trade Reporting and Compliance Engine, the vehicle developed by FINRA to facilitate the mandatory reporting of over the counter secondary market transactions. See Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as modified by Amendment No. 1 Thereto, to Require the Reporting of Transactions in Asset-Backed Securities to TRACE, Release No. 34-61566 (Feb. 22, 2010)(release approving the rule change that would require the reporting of trading in asset-backed securities to TRACE). Our proposed definition provides some more specificity on the defining characteristics of a structured finance product and, unlike the FINRA proposed definition, includes a security that is commonly known at the time of the offering as an asset-backed security or a structured finance product.

requirement of a discrete pool of assets so as to include CDOs, which are typically managed for some period of time.[467]

3. Information Requirements

We are proposing to condition the safe harbors of Rule 144A and Rule 506 of Regulation D on a requirement that, if the securities offered or sold are structured finance products, an underlying transaction agreement (such as an indenture or servicing agreement) must contain a provision requiring the issuer to provide specified information to any purchaser (and also, in the case of Rule 144A, any security holder or prospective purchaser designated by the security holder).[468] Also, the issuer must represent that it will provide such information upon request. For securities to be eligible for resale under Rule 144A, we would require that an underlying transaction agreement grant any initial purchaser, any security holder or any prospective purchaser designated by a security holder the right to obtain from the issuer promptly, upon the request of the purchaser or security holder, information as would be required if the offering were registered on Form S-1 or 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

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467 We also believe that any residual tranche of the instrument would be included in the proposed definition. Asset-backed commercial paper is also covered in this definition.

468 In the original adopting release for Rule 144A, we stated that with respect to mortgage- or other asset- backed securities, since the servicer or trustee, on behalf of the trust or other legal entity, has title to the assets of the trust, they would be deemed to be the "issuer" for purposes of the information requirement in Rule 144A. In a no-action letter, the staff later explained that this language "was not intended in any way to cause the analysis of issuer status under the federal securities laws to be any different for privately placed mortgage-backed or asset-backed securities than public offerings of such securities" but "intended only to identify the party from whom the holder and a prospective purchaser designated by the holder must have the right to obtain the information about the securities and underlying asset pools of the limited purpose financial entity." See letter from the Division of Corporation Finance to Kutak Rock & Campbell (Nov. 29, 1990). While we recognize that the servicer or trustee would typically be the party that delivers information to security holders (or prospective purchasers), we intend for our proposed amendment to apply to an issuer of structured finance products (i.e., the depositor as it relates to the issuing entity), consistent with the definition of issuer in Securities Act Rule 191 for ABS purposes.

required to file reports under that section. For an offering made in reliance on Rule 506 of Regulation D, we would require that an underlying transaction agreement contain a provision granting any purchaser in the Rule 506 offering the right to obtain from the issuer promptly, upon the purchaser's request, information that would be required if the offering were registered on Form S-1 or Form SF-1 under the Securities Act.

The specific disclosure that would need to be provided to satisfy this condition would vary depending on the type of security offered. For an offering of structured finance products where the securities meet the Regulation AB definition of an asset-backed security, the disclosure requirements of Form SF-1 would apply. For offerings of structured finance products where the securities fall outside the Regulation AB definition, the requirements of Form S-1 would apply. In the latter case, the issuer would be required to provide information required under Regulation AB regarding the assets and parties as well as additional information required under Regulation S-K.[469] For a managed CDO offering, we would expect disclosure regarding the asset and collateral managers, including fees and related party transaction information, their objectives and strategies, any interest that they have retained in the transaction or underlying assets, and substitution, reinvestment and management parameters. For a synthetic CDO offering, we would expect, among other things, disclosure of the differences between the spreads on synthetic assets and the market prices for the assets, the process for obtaining the

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[469] See Section III.A.2.a of the 2004 ABS Adopting Release (discussing structured securities that do not meet the Regulation AB definition of an asset-backed security and noting "[d]epending on the structure of the transaction and the terms of the securities, some disclosure aspects of Regulation AB may be applicable, but aspects from the traditional disclosure regime also may be applicable. In some instances, a third approach might be more appropriate"). Material information that is required by Regulation S-K would be required but not all of the item requirements in Regulation S-K may be applicable to the issuer.

credit default swap or other synthetic assets, and the internal rate of return to equity if that was a consideration in the structuring of the transaction.

4. Proposed Rule 144 Revisions

In addition, we are proposing to revise Securities Act Rule 144. Rule 144 creates a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. One of the conditions of Rule 144 requires the availability of adequate current public information with respect to the issuer of the securities ("the current public information requirement"). This current public information requirement is only at issue if the seller who is relying on Rule 144 is an affiliate of the issuer.[470] Under Rule 144, affiliates of non-reporting companies may resell securities in reliance on the rule only after the securities have been held for at least one year after purchase and if certain conditions are met, including the current public information requirement.

We are proposing to revise the current public information requirement in Rule 144 for non-reporting issuers of structured finance products. If the securities are structured finance products, and the issuer of the securities is not subject to the reporting requirements of Section 13 or 15(d) of Exchange Act, then in order to satisfy the current public information requirement, two conditions must be satisfied. First, the underlying transaction agreement of the issuer must grant any purchaser, any security holder and any prospective purchaser of the securities designated by the holder the right to obtain, upon request of the purchaser or security holder, information that would be required if the

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470 See Revisions to Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates, Release No. 33-8813 (June 20, 1997)[72 FR 36822](adopting release shortening holding period and amending other Rule 144 conditions). Prior to 2007, non-affiliates of the issuer relying on the rule for the resale of securities were subject to the current public information requirement after holding the securities for one year. Since 2007, non-affiliates of a non-reporting issuer who satisfy a one-year holding period requirement are no longer required to comply as a condition to reliance on Rule 144 with the current public information requirement.

offering were registered on Form S-1 or 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 must have represented that it would provide such information to the purchaser, security holder, or prospective purchaser, upon request of the purchaser or security holder.

5. New Rule 192 of the Securities Act

We are proposing new Rule 192 to require an issuer of privately-issued structured finance products to provide, upon the investors' request, information as would be required if the transaction were registered (or ongoing information). If an issuer of structured finance products has represented and covenanted to provide such offering information in order to rely on Rule 506 of Regulation D or has represented and covenanted to provide both offering or ongoing information pursuant to the proposed new provision of Rule 144A or Rule 144, then the issuer must provide such information, upon request of the purchaser or security holder. Recent events have shown the importance of structured finance product issuers complying with a representation to provide initial and ongoing information to security holders and prospective purchasers.[471] In making investment decisions, ABS investors should be able to rely on the continued availability of information to themselves and prospective purchasers as a prophylactic measure against the possibility of fraud. Indeed, failure to provide such information upon request

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[471] See Gary Gorton, Slapped in the Face by the Invisible Hand: Banking and the Panic of 2007, May 9, 2009, prepared for the Federal Reserve Bank of Atlanta's 2009 Financial Markets Conference: Financial Innovation and Crisis (noting that at a crucial point in the financial crisis, lack of information regarding some securities greatly exacerbated the situation).

may constitute a fraud in the offer of securities.[472] Thus, the Commission could bring an enforcement action under this rule against an issuer that failed to provide the required information.

The obligation to provide information under proposed new Rule 192 would not be a condition of the Rule 144, Rule 144A, or Regulation D safe harbors. As proposed new conditions of the safe harbors for structured finance products, the underlying transaction agreements must contain the specified representations and covenants to provide information. If the issuer does not include the representation and covenant, it would have failed to satisfy the safe harbor and may not be entitled to the exemption under Sections 4(1) or 4(2), as applicable. If, on the other hand, the transaction agreements contain the representation and covenant but the issuer fails to provide, for example, some of the information to a security holder or prospective purchaser, upon their request, that failure, in and of itself, would not mean the conditions of the safe harbor would not have been met. We have concerns that a potential claim arising under Section 5 of the Securities Act may not be the appropriate remedy under these circumstances but believe it appropriate that there be regulatory consequences. Investors should nevertheless be able to take appropriate action under those transaction agreements regarding the provision of information and the Commission could bring an action for violation of Rule 192.

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[472] Securities Act Section 17(a) contains the general antifraud prohibitions applicable in the offer or sale of securities. In particular, Section 17(a)(3) (15 U.S.C. 77q(a)(3)) states that it shall be unlawful for any person in the offer or sale of any securities or any security-based swap agreement by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. The Supreme Court has held that Section 17(a)(3) does not require a finding of scienter. Aaron v. SEC, 446 U.S. 680 (1980).

Request for Comment

- We recognize that our proposals would impose significant changes to the existing requirements in the safe harbors for private offers, sales and resales of structured finance products, and we request comment on all aspects of our proposed approach. This will be the first time, for example, that we would require an undertaking to provide information to accredited investors as a condition to the safe harbor in Rule 506 of Regulation D, and the first time we would require an undertaking to provide such specific information to QIBs in Rule 144A transactions. While we recognize that the proposals may impose substantial additional requirements on ABS issuers in the private market, we believe that, if adopted, these proposals would help to provide needed transparency in the private markets for structured finance products. As a practical matter, how feasible will an exempt private offering be in light of the requirements? Is the rationale offered for distinguishing ABS from other securities for purposes of our proposal appropriate?
- We request comment on the proposed definition of "structured finance products" for purposes of our proposed revisions to Rule 144A, Regulation D and other rules. Is the proposed definition appropriate? Should other types of securities be included that are not included? Should any types of included securities not be?
- Is it appropriate to require, as proposed, that as a condition of Rule 144A, the transaction agreements contain a provision that would require an issuer of structured finance products to provide to investors promptly, upon investors' request, such information that would be required if the offering were registered on

Forms S-1 or SF-1 and any ongoing information regarding the securities as would be required by Section 15(d) of the Exchange Act if the issuer were required to file reports under that section? Is it appropriate to require, as proposed, the same requirement as a condition of Rule 506 of Regulation D for sales to accredited investors?

- Should we require instead that, as a condition of Rule 144A, issuers make the required information (both offering and ongoing information) available at all times, rather than only upon investor's request? Could an issuer, for example, be required to post the information on a password-protected website?
- Is new Rule 192 appropriate? Should we require, as a matter of federal securities law, that an issuer of structured finance products that has represented and covenanted to provide information pursuant to the safe harbors under Rule 144A, Regulation D, or Rule 144 provide such information?
- Should we provide more specificity in the rules covering what disclosure would be required to be provided? If so, what types of disclosure should we specifically require? Should the required disclosures differ by type of security? If so, in what way?
- Are our proposals with respect to ongoing information regarding the securities appropriate? Is there any reason that we should not require structured finance product issuers that utilize the safe harbors to comply with the proposed requirements for ongoing information?
- Is our proposed approach of requiring the transaction agreements to contain a provision requiring the issuer to provide information upon request appropriate?

Should we instead condition the availability of the safe harbors of Rule 144A and Regulation D on the actual provision of the information if the securities sold are structured finance products? Would that approach have a chilling effect on the private markets if not providing some of the information required under our revised rule might raise the possibility of a Section 5 violation, with the resultant rescission right under Section 12(a)(1)? If so, should we address that potential concern by providing that no failure to provide information as required solely under such a provision of Rule 144A would result in a loss of the safe harbor for purposes of Section 12(a)(1) liability as long as the other conditions of Rule 144A are satisfied and basic material information concerning the securities is provided, including information regarding the structure of the securities, distributions on the securities, nature, performance and servicing of the assets, and any credit enhancements? Such an approach would be designed to enable the Commission to bring an action, if appropriate, based on Section 5 if the required information were not provided while limiting litigation by a purchaser seeking to rescind the transaction to situations where there was a significant failure to provide basic information. By contrast, is it necessary or appropriate to rely on the possibility of a rescission right to foster compliance with the proposed information requirements?

- Are our proposed amendments to Rule 506 of Regulation D appropriate? Should we require, as proposed, that information regarding structured finance products be provided to any purchaser, regardless of whether the purchaser meets the definition of an accredited investor?

- Should our proposed conditions apply to offerings made pursuant to Rule 505, which are made under the Securities Act Section 3(b) exemption from registration rather than Section 4(2)? How likely would it be for issuers of structured finance products to conduct Rule 505 offerings?
- Instead of amending Rule 506, should we adopt a new Regulation D safe harbor just for structured finance products? Since it appears that issuers of structured finance products have relied on the statutory private placement exemption rather than Regulation D, would such a safe harbor be used?
- Even if there was not extensive use of Regulation D for private offerings of structured finance products, is it necessary or appropriate for us to amend Rule 506 of Regulation D, as proposed, in order to forestall potential future problems in the private markets for structured finance products?
- Is our proposed amendment to Rule 144 appropriate?
- As proposed, the revisions to Rule 144A, Regulation D and Rule 144 require that the underlying transaction agreement include a provision that the issuer provide information to investors upon request. Should we revise the requirement to provide that the servicer, collateral administrator or some other party provides the information?
- The proposed revisions to Rule 144A, Regulation D, and Rule 144 also require that the issuer represent that prescribed information would be provided to investors. Is the proposal appropriate?
- Would the proposed rule revisions provide investors and market participants with sufficient transparency regarding private sales of structured finance products?

Would additional or other requirements promote greater transparency? For example, should we make the safe harbors, such as Rule 144A, unavailable for offerings of structured finance products? Would this result in structured finance products being offered and sold in registered transactions, or in private transactions without the benefit of the safe harbor? Would a new safe harbor for private ABS offerings designed to make information available to investors and the market (e.g., a limited public offering exemption) be a more appropriate approach?

- The proposed amendments would have the effect of treating offers and sales in reliance on safe harbors substantially similar to public ones in terms of the relevant disclosure requirements. Is this appropriate? Why or why not? To what extent and in what way should our regulatory regime account for the nature of the investors (e.g., accredited investors and QIBs) who participate in private offerings? What would the impact be on the securitization market if offerings of ABS in reliance on the safe harbors were subject to the disclosure requirements that we propose?
- Should we address private resales of ABS outside of our safe harbors by interpreting the definition of "underwriter" for purposes of the statutory exemptions to include any sales of asset-backed securities where information that would be required in the registered context is not provided? Why or why not? Would doing so prevent issuers from engaging in transactions that are not subject to the proposed requirements by using a statutory exemption (and not the safe harbors) for the unregistered sale of asset-backed securities?

- To the extent we adopt the proposed changes to Rule 144A or Regulation D, we request comment on whether issuers of structured finance products would be more likely to sell such products outside the United States in reliance on the safe harbor provided by Regulation S[473] under the Securities Act. Should we adopt similar changes under Regulation S as we are proposing for Rule 144A and Regulation D to cover sales of structured finance products outside the United States? Are there any extra or special considerations relating to offshore sales of structured finance products that are different from considerations under Rule 144A and Regulation D that we should take into account in considering adopting similar changes under Regulation S?
- In order to facilitate unsolicited ratings in unregistered transactions, should we require that the issuer also provide information to an NRSRO if the rating agency intends to rate the security?
- Are there other disclosure approaches that would better satisfy the objectives we have identified? For example, should we require more targeted disclosures in private placements? Should we give issuers or investors other options for addressing issues in the ABS private market? If so, how? Should all asset classes be treated the same?

C. Notice of Initial Placement of Securities Eligible For Sale Under Rule 144A and Revisions to Form D

In light of the role that privately-issued structured finance products play in our capital markets and concerns raised by the lack of transparency in the private market, we also believe it is important to implement rules that will provide information to us and to

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473 17 CFR 230.901 et seq.

the markets at large about sales of structured finance products in the private markets. Consequently, we are proposing to require that a notice of an initial placement of structured finance products be filed with the Commission.

Form D[474] is the official notice of an offering of securities made without registration under the Securities Act in reliance on an exemption provided by Regulation D.[475] While Form D is not a condition to the availability of the Regulation D exemption, Rule 507[476] of Regulation D disqualifies an issuer from using a Regulation D exemption in the future if it has been enjoined by the court for violating the Regulation D provision that requires the filing of Form D. Form D serves an important data collection objective, among other things.[477] On February 27, 2008, we adopted changes to mandate the electronic filing of the form and to revise the form.[478] Currently, there is no such notice filing requirement for offerings made in reliance on Rule 144A.

We are proposing to require a notice of the offering to be filed with the Commission for the initial placement of structured finance products that are represented as eligible for resale under Rule 144A,. The notice would include information regarding major participants in the securitization, the date of the offering and initial sale, the type of securities being offered, the basic structure of the securitization, the assets in the

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474 17 CFR 239.500.

475 See Rule 503 of Regulation D [17 CFR 230.503].

476 17 CFR 230.507.

477 In Electronic Filing and Revision of Form D, Release No. 33-8891 (Feb. 6, 2008) [73 FR 10592], we noted that previous statements on Form D have suggested that, at the federal regulatory level, Form D filings serve both to collect data for use in the Commission's rulemaking efforts and for the enforcement of the federal securities laws, including enforcement of the exemptions in Regulation D. See Section I.A of Release No. 33-8891.

478 See id.

underlying pool, and the principal amount of the securities being offered. Like Form D, the notice would be required to be filed in XML tagged format.[479]

The notice would also provide that in submitting the notice, the issuer is undertaking to furnish the offering materials relating to the securities to the Commission upon written request. We also are proposing to add an amendment to Rule 30-1 of the Commission's Rules of General Organization to provide delegated authority to the Director of the Division of Corporation Finance to request information that the issuer would be required to undertake to provide to the Commission upon request. This proposed amendment to Rule 30-1 would also apply to the existing undertaking in Form D and provide the Director of the Division of Corporation Finance the authority to request information from issuers of structured finance products that file Form D.

This notice, which we are proposing to call Form 144A-SF,[480] would be signed by the issuer and filed with the Commission no later than 15 calendar days after the first sale of securities in the offering, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following such period. This timeframe is based on the current timeframe for filing a Form D. Similar to Form D, the Form 144A-SF notice requirement is not proposed to be a condition of the availability of the Rule 144A safe harbor. However, in light of the importance of this information, we are proposing to provide that if an issuer has failed to file Form 144A-SF, then Rule 144A will not be available for subsequent resales of newly issued structured finance products of the issuer or affiliates of the issuer.

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479 Similarly, filers submit Form D online through the Commission's EDGAR system, which stores the information in tagged format.

480 See proposed 17 CFR 239.144A.

Also similar to Form D, hardship exemptions in Regulation S-T would be unavailable to Form 144A-SF.[481] We believe that issuers should have access to the Internet and be able to file this notice within 15 calendar days after the first sale of securities in the offering (i.e. the initial placement of securities), as proposed. We also believe hardship exemptions should not be available for Form 144A-SF because of the relative ease of filing, the limited value of paper filings and the utility of a uniform, comprehensive database.

We also are proposing to amend Form D to collect the same information that we are proposing to require to be provided in proposed Form 144A-SF. Further, we are proposing to add a checkbox to Form D that would indicate if the issuer is offering or selling structured finance products.[482]

Request for Comment

- Is our proposal to require a notice of the initial placement of structured finance products that may be resold in reliance on Rule 144A appropriate?
- Instead of, or in addition to, a notice, should we require that the offering circular be filed? If we require that the offering circular be filed, should the filing be with the Commission on a non-public basis? Should it be made available to the public? If so, when should it be made public (e.g., immediately or after some period of time)? If it were made public, would there be any general solicitation concerns? If so, how should we address them?

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[481] We are proposing to amend Rules 201 and 202 of Regulation S-T to make the hardship exemptions unavailable to proposed Form 144A-SF.

[482] In order to better organize the information in Form D in light of these changes, we also are proposing to re-order the items in Form D.

- Should proposed Form 144A-SF be required to be filed, as proposed, in XML tagged format? Similar to Form D, should we provide a Web site page where issuers can submit directly to EDGAR the information required by Form 144A-SF, which would automatically tag the information that is delivered? Would issuers of structured finance products benefit from such a webpage?
- Are the items of information that are proposed to be required in proposed Form 144A-SF appropriate? Are there other items that are useful and should be required to be provided on proposed Form 144A-SF? Are there particular ways that these items should be required to be tagged?
- Should the Rule 144A safe harbor be conditioned on the filing of this notice, or is it better to require the notice separate from the conditions of the Rule 144A safe harbor, as proposed? Is our proposal relating to the consequences for failure to file the notice appropriate?
- Should we require the filing of proposed Form 144A-SF sooner than proposed (e.g., three or four business days from the date of first sale) or should we provide issuers with more time for filing the notice (e.g., 20 calendar days from the date of first sale)? Should we provide a hardship exemption for filing proposed Form 144A-SF, or is our proposal to make the hardship exemptions unavailable appropriate?
- Should we revise Form D, as proposed? Are the proposed revisions to Form D appropriate?
- Should we also adopt changes under Regulation S to require a notice of sales of ABS that are to be sold in reliance on that safe harbor, similar to the proposed

requirement under Rule 144A? Are there any extra or special considerations relating to offshore sales of structured finance products that are different from considerations under Rule 144A that we should take into account in considering adopting a similar filing requirement under Regulation S?

VII. Codification of Staff Interpretations Relating to Securities Act Registration

We also are proposing to codify certain staff positions relating to the registration of asset-backed securities. These codifications should simplify our rules by making these positions more transparent and readily available to the public.

A. Fee Requirements for Collateral Certificates or Special Units of Beneficial Interest

In some ABS transactions backed by auto leases, the auto leases and car titles are originated in the name of a separate trust to avoid the administrative expenses of retitling the physical property underlying the leases.[483] The separate trust will issue to the issuing entity for the asset-backed security a collateral certificate, often called a "special unit of beneficial interest" (SUBI). The issuing entity will then issue the asset-backed securities backed by the SUBI certificate.

Rule 190 governs the registration requirements for underlying securities of an asset securitization. Rule 190(c) provides that if the asset pool for the asset-backed securities includes a pool asset representing an interest in or the right to the payments or cash flows of another asset pool, then that pool asset is not considered an "underlying security" that must be registered in accordance with the other provisions in Rule 190 if certain conditions are met. These conditions are:

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[483] See also discussion of these types of transactions in Section III.A.2.c of the 2004 ABS Adopting Release and John Arnholz and Edward E. Gainor, Offerings of Asset-Backed Securities, Aspen Publishers (2008 Supplement), at §2.03[B].

- both the issuing entity for the asset-backed securities and the entity issuing the pool asset were established under the direction of the same sponsor and depositor;
- the pool asset is created solely to satisfy legal requirements or otherwise facilitate the structuring of the asset-backed securities transaction;
- the pool asset is not part of a scheme to evade registration or the requirements of Rule 190; and
- the pool asset is held by the issuing entity and is a part of the asset pool for the asset-backed securities.[484]

In a publicly available telephone interpretation, the staff has advised that the offer and sale of the collateral certificate or SUBI involved in asset-backed transactions must also be registered (along with the securities themselves).[485] However, the staff has advised that, if the collateral certificate or SUBI meets the requirements of Rule 190(c) of the Securities Act, no additional registration fee for the offering of the collateral certificates or SUBIs should be required.[486] We are proposing to codify the staff's positions in this respect in Rule 190 and Rule 457 under the Securities Act,[487] which relates to the computation of Securities Act registration fees. Under the proposed amendment to Rule 190, notwithstanding other provisions, if the pool assets for the asset-backed securities are collateral certificates or SUBIs, those collateral certificates or

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484 See 17 CFR 230.190(c). Rule 190(c) provides for the conditions in which an asset-backed issuer is not required to register a pool asset representing an interest in or the right to the payments or cash flows of another asset.

485 See Interpretation 13.01 of the Division's Manual of Publicly Available Interpretations on Regulation AB and Related Rules.

486 See id.

487 17 CFR 230.457.

SUBIs must be registered concurrently with the registration of the asset-backed securities.[488] Pursuant to the proposed revision to Rule 457, where the securities to be offered are collateral certificates or SUBIs underlying asset-backed securities which are being registered concurrently, no separate fee for the certificates or SUBIs will be payable.[489]

B. Incorporating by Reference Subsequently Filed Periodic Reports

Currently, the prospectus for an offering of securities registered on Form S-3 is required to incorporate by reference all subsequently filed periodic and other reports filed under Exchange Act Sections 13(a) and 15(d)[490] prior to the termination of the offering.[491] For corporate issuers, information regarding the issuer that is allowed to be omitted from the registration statement is made available through the Exchange Act reports.

With respect to asset-backed issuers, information filed with a current report on Form 8-K[492] prior to the termination of the offering would often be important to incorporate into the prospectus. For example, disclosure under Item 6.05 of Form 8-K may provide information regarding a change in the composition of the pool assets. However, the staff has previously noted that asset-backed issuers should not be required

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488 See proposed revision to Rule 190(c).

489 See proposed paragraph (s) to Rule 457.

490 15 U.S.C. 78m and 15 U.S.C. 28o.

491 See Item 12(b) of Form S-3.

492 17 CFR 249.308.

to incorporate information filed with their Form 10-D or Form 10-K[493] reports into the prospectus.[494]

We are proposing to codify in proposed Form SF-3 the staff's position regarding incorporation by reference of subsequently filed Exchange Act reports for offerings of asset-backed securities. Because, except for issuers that utilize master trust structures, the Form 10-D and Form 10-K that is filed prior to the termination of the offering is generally for a different ABS issuer than the ABS issuer that has filed the prospectus (even though the issuers are affiliated), Form 10-D and Form 10-K reports may not be relevant to asset-backed offering that is the subject of the prospectus. Thus, under the proposed codification, rather than state that all reports 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, the registration statement may, alternatively, state that all current reports on Form 8-K filed by the registrant pursuant to 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.[495]

Request for Comment

- Should we codify the above staff positions?
- Should we make any changes to the staff positions? For example, should we require master trust issuers to state that all Exchange Act reports subsequently

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493 17 CFR 249.312 and 17 CFR 249.310.

494 See Interpretation 15.02 of the Division's Manual of Publicly Available Interpretations on Regulation AB and Related Rules. The staff noted that the 2004 ABS Adopting Release noted that asset-backed issuers are required to incorporate by reference its Exchange Act reports only if the requirement is applicable. See chart in Section III.A.3.a of the Adopting Release.

filed by the registrant shall be deemed to be incorporated by reference into the prospectus rather allow them to incorporate by reference only Form 8-K?

- Should we revise any of the positions we are proposing to be codified? Does the proposed language in any of the codifications modify, or create an ambiguity that we should revise?

VIII. Transition Period

We are considering the appropriate timing for implementation of the proposals, if adopted. Because sponsors of asset securitizations typically are large issuers,[496] we preliminarily believe that a tiered approach to implementation based on size of the sponsor would not be appropriate for asset-backed issuers. We believe that some of our proposed amendments, including asset-level and data tagging requirements, may initially impose significant burdens on sponsors and originators as they adjust to the new requirements. This could include changes to how information relating to the pool assets is collected and disseminated to various parties along the chain of securitization. While we believe that compliance dates should not extend past a year after adoption of the new rules, we request that commenters provide input about feasible dates for implementation of the proposed amendments. We currently anticipate that, if adopted, the new and amended rules, including the proposed asset-level information requirements and the changes with respect to privately-issued asset-backed securities, would apply to asset-

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495 See proposed Item 11(b) of proposed Form SF-3.

496 See Section XIV below.

backed securities that are issued after the implementation date of the new requirements.[497]

Request for Comment

- 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)?
- 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 asset class of the securities?

IX. General Request for Comments

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.

X. 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).[498] The Commission is submitting these proposed amendments and proposed rules to the Office of Management and Budget (OMB) for review in accordance with the

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497 Thus, resecuritizations after the implementation date would be subject to the new requirements, regardless of whether issuance of underlying securities predates the implementation date.

498 44 U.S.C. 3501 et seq.

PRA.[499] 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:[500]

(1) "Form S-1" (OMB Control No. 3235-0065);

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

(3) "Form 10-K" (OMB Control No. 3235-0063);

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

(5) "Form 8-K" (OMB Control No. 3235-0288);

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

(7) "Regulation S-T" (OMB Control No. 3235-0424);

(8) "Form D" (OMB Control No. 3235-0076);

(9) "Form SF-1 (a proposed new collection of information);

(10) "Form SF-3 (a proposed new collection of information);

(11) "Asset Data File" (a proposed new collection of information);

(12) "Waterfall Computer Program" (a proposed new collection of information).

(13) "Form 144A-SF" (a proposed new collection of information); and

(14) "Privately-Issued Structured Finance Product Disclosure" (a proposed new collection of information).

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499 44 U.S.C. 3507(d) and 5 CFR 1320.11.

500 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 regulations and forms listed in Nos. 1 through 8 were adopted under the Securities Act and the Exchange Act and set forth the disclosure requirements for registration statements and periodic and current reports filed with respect to asset-backed securities and other types of securities to inform investors. Regulation S-T specifies the requirements that govern the submission of electronic documents. Form D is filed by issuers as a notice of sales without registration under the Securities Act based on the claim of an exemption under Regulation D of the Securities Act.

The regulations and forms listed in Nos. 9 through 14 are newly proposed collections of information under the Securities Act and Exchange Act. Form SF-1 and Form SF-3, if adopted, would represent the new registration forms for offerings of asset-backed securities, as defined in Item 1101(c) of Regulation AB. Form SF-3 would represent the registration form for offerings that meet certain shelf eligibility conditions and can be offered on a delayed basis under Rule 415. Form SF-1 would represent the registration forms for other asset-backed offerings. Asset Data File and Waterfall Computer Program are proposed new collections of information that would relate to the regulations and proposed new forms for asset-backed issuers under the Securities Act and Exchange Act that set forth certain disclosure requirements for registration statements and periodic and current reports for asset-backed issuers. Under the requirements, an asset-backed issuer would be required to submit to the Commission specified, tagged information on assets in the pool underlying the securities and a computer program that gives effect to the flow of funds or "waterfall" provisions of the transaction agreements. Form 144A-SF would represent a new notice requirement for certain offerings made in connection with the safe harbor provided in Rule 144A. Finally, Privately-Issued

Structured Finance Product Disclosure is the disclosure that issuers would be required to agree to provide to investors when an ABS issuer sells securities that are eligible for resale under the Rule 144A safe harbor or when an ABS issuer sells securities in reliance on the Regulation D safe harbor.

Compliance with the proposed amendments would be mandatory except that the amendments that would impose collection of information requirements on privately-issued structured finance products would only be required if the issuer is relying on the safe harbors to which those collection of information requirements relate. 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 estimates for each of the existing collections of information, except for Form 10-D, are based on an average of the time and cost incurred by all types of public companies, not just ABS issuers, to prepare a particular collection of information. 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.[501] When possible, we base our estimates on an average of the data that we have available for years 2004, 2005, 2006, 2007, 2008, and 2009. In some cases, our estimates for the number of asset-backed issuers that file Form 10-D with the Commission are based on an average of the number of ABS offerings in 2006, 2007, 2008, and 2009.[502]

1. Form S-3 and Form SF-3

Our current PRA burden estimate for Form S-3 is 236,959 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 an Exchange Act reporting history is not a condition for Form S-3 eligibility for ABS, ABS issuers using Form S-3 often must present all of the relevant disclosure in the registration statement rather than incorporate relevant disclosure by reference. Thus, 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 2009, we received an average of 99 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 our 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

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501 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).

502 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.

relating to shelf eligibility and new shelf procedures would cause a 10% movement in the number of filers (i.e., a decrease of ten registration statements) out of the shelf system due to the new requirements of risk retention and ongoing reporting for shelf registration eligibility.[503] On the other hand, we estimate the number of shelf registration statements for ABS issuers would increase by five as a result of the proposed elimination of base and supplement prospectuses for these issuers.[504] Thus, we estimate that the number of shelf registration statements will decrease by five altogether. Accordingly, we estimate that the proposals would cause a decrease of 99 ABS filings on Form S-3 and a corresponding number of 94 Form SF-3s filed annually.[505]

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.[506] 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.[507] In this release, we are proposing new and revised disclosure requirements for ABS issuers that if adopted, would be a cost to filing on Form SF-3.

We are proposing a significant new disclosure requirement that the issuer provide asset-level information for each of the assets in the underlying pool. Credit card ABS

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503 We calculated the decrease of ten Form SF-3s by multiplying the average number of Form S-3s filed (99) by 10 percent.

504 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.

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

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

issuers would be required to provide grouped asset data. Another new disclosure requirement would be the filing of a waterfall computer program that gives effect to the waterfall provisions of the transaction. For purposes of the PRA, we are including the costs relating to providing this disclosure on the assets in the estimate for our newly proposed collection of information entitled "Asset Data File." We are also including the costs related to the filing of the waterfall computer program as a separate collection of information, as discussed in the section below entitled "Waterfall Computer Program." We are also proposing some additional disclosure requirements that may impose some additional costs to ABS issuers with respect to registration statements.

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 1,350 hours to complete and file.[508] We estimate the total internal burden for Form SF-3 to be 31,725 hours and the total related professional costs to be $38,070,000.[509] This would result in a corresponding decrease in Form S-3 burden hours of 30,937.5 and $37,125,000 in professional costs.[510]

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

508 The total burden hours to file Form SF-3 are calculated by adding the existing burden hours of 1,250 that we estimate for Form S-3 and the incremental burden of 100 hours imposed by our proposals for a total of 1,350 total burden hours.

509 To calculate these values, we first multiply the total burden hours per Form SF-3 (1,350) by the number of Form SF-3s expected under the proposal (94), resulting in 126,900 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 31,725 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 $38,070,000.

510 To calculate these values, we first multiply the total burden hours per Form S-3 (1,250) by the average number of Form S-3s over the period 2004-2009 (99), resulting in 123,750 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 30,937.5 hours. We allocate the

2. Form S-1 and Form SF-1

We are proposing to move the requirements for asset-backed issuers into new forms that would be solely for the registration of asset-backed issuers. Proposed Form SF-1 would be the non-shelf equivalent form of existing Form S-1 under our proposal. As noted above, for purposes of our calculation, we estimate that the new proposals for shelf eligibility and new shelf procedures would cause small movement in the number of filers from the shelf system to the non-shelf system. For purposes of the PRA, we estimate three ABS issuers will move from the shelf system to the non-shelf system of proposed Form SF-1.[511] From 2004 through 2009, an average of four Form S-1s were filed annually by ABS issuers. Correspondingly, we estimate that the number of filings on Form SF-1 will be seven, which is the sum of the four average filings per year and the estimated incremental three filings from shelf to Form SF-1.

For ABS filings on Form S-1, we have used the same estimate of burden per response that we used for Form S-3, because the disclosures in both filings are similar.[512] Even under the proposals, the disclosures would continue to be similar for shelf registration statements and non-shelf registration statements. The burden for the proposed requirements for the asset data file and the waterfall computer program to be filed as exhibits to Form SF-1 are included in the newly proposed collections of information discussed below rather than in this section for Form SF-1. Thus, we estimate

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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 $37,125,000.

511 We estimate in the section above that the proposals relating to shelf eligibility and new shelf procedures would cause a ten percent movement in the number of filers out of the shelf system. We assume, for the purposes of our PRA estimates, that the other filers that do not move to Form SF-1 would utilize the private markets or offshore offerings for offerings of ABS.

512 See Section IV.B.2 of the 2004 ABS Proposing Release.

that an ABS Form SF-1 filing will impose an incremental burden of 100 hours per response, which is equal to the incremental burden to file Form SF-3. We estimate the total number of hours to prepare and file each Form SF-1 at 1,350, the total annual burden for the issuer at 2362.5 hours and added costs for professional expenses at $2,835,000.[513] This would result in a corresponding decrease in Form S-1 burden hours of 1,250 and $1,500,000 in professional costs.[514]

3. Form 10-K

The ongoing periodic and current reporting requirements applicable to operating companies differ substantially from the reporting that is most relevant to investors in asset-backed securities. For asset-backed issuers, in addition to a limited menu of Form 10-K disclosure items, the issuer must file a servicer compliance statement, a servicer's assessment of compliance with servicing criteria, and an attestation of an independent public accountant as exhibits to the Form 10-K.

One of our proposed ABS shelf eligibility conditions (i.e., criteria that must be met in order to be eligible to register ABS on Form SF-3) would require the issuer to undertake to file Exchange Act reports as long as non-affiliates hold any of its securities that were sold in registered transactions. Except for master trust issuers, the requirement to file Form 10-K for ABS issuers is typically suspended after the year of initial issuance

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513 The total burden hours to file Form SF-1 are calculated by adding the existing burden hours of 1,250 and the incremental burden of 100 hours imposed by our proposals for a total of 1,350 hours. To calculate the annual internal and external costs, we first multiply the total burden hours per Form SF-1 (1,350) by the number of Form SF-1s expected under the proposal (7), resulting in 9,450 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 2,363.5 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 $2,835,000.

514 To calculate these values, we first multiply the total burden hours per Form S-1 (1,250) by the average number of Form S-1s filed during 2004-2009 (4), resulting in 5,000 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 1,250 hours. We allocate the remaining

because the issuer has fewer than 300 security holders of record.[515] Therefore, the incremental impact to the number of Forms 10-K filed by ABS issuers would increase each year after the proposal is adopted by the number of ABS shelf offerings. The yearly average of ABS registered shelf offerings with the Commission over the period from 2004 to 2009 was 929.[516] In the first year after implementation, we use 958, which is the average number of all offerings over 2004-2009, as an estimate for the number of Forms 10-K we expect to receive. In the second year after implementation, we increase our estimate of the number of Forms 10-K expected by 929 to a total of 1,887. In the third year after implementation, the addition of another 929 brings the total to 2,817. The average number of Forms 10-K over three years would, therefore, be 1,887. As a result, for PRA purposes, we estimate an increase in Form 10-K filings of 929 filings.

We estimate that, for Exchange Act reports, 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour. In 2004, we estimated that 120 hours would be needed to complete and file a Form 10-K for an ABS issuer. We estimate that our proposals relating to Form 10-K would not increase the estimate for the time needed to complete and file Form 10-K for an ABS issuer.

However, our proposed amendments may have a limited impact on the preparation of Form 10-K for the sponsor of the ABS issuer, if the sponsor is a company that is required to report under the Exchange Act. Though we are not proposing changes

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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 $1,500,000.

515 See Exchange Act Section 15(d).

516 The 929 ABS registered shelf offerings is 97 percent of the average yearly number of ABS offerings from 2004 through 2009.

to Form 10-K disclosure requirements for sponsors, our proposals may impact the work that sponsors would have to do to disclose in their Form 10-K the securities they are required to hold as a result of the proposals and the investments they make to manage risks associated with the new requirements. We estimate that our proposals will cause an increase in the number of hours the sponsor will incur to prepare, review and file Form 10-K by 10 hours. From 2004 to 2009, the number of unique ABS sponsors was 343, for an average of 57 unique sponsors per year. Therefore, we estimate that, for PRA purposes, the total annual increase in the number of hours to prepare, review, and file Form 10-K would be 112,050.[517] We allocate 75% of those hours (84,038 hours) to internal burden and the remaining 25% to external costs totaling $11,205,000 using a rate of $400 per hour.

4. 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 have derived an estimate of the number of Form 10-Ds filed by registered ABS issuers using the average annual number of ABS registered offerings completed over the period 2004-2009.[518] The average over those years was 958 offerings annually.

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[517] The 112,050 total burden hours are calculated by adding the impact on ABS issuers, which equals 929 incremental Forms 10-K times 120 burden hours per filing, and the impact on sponsors of ABS issuers, which equals 57 sponsors times 10 incremental burden hours.

[518] Even though we adopted Form 10-D in 2004 and its implementation was not effective until 2006, we use the longer time period of 2004-2009 to match the years used for our estimate of the expected Form 10-Ks to be filed.

As discussed above, we are proposing to require, as a condition to shelf eligibility, an undertaking from the issuer that it will continue to file Exchange Act reports as long as non-affiliates hold any of its securities that were sold in registered transactions. As with the Form 10-K, we believe that our proposals would result in an increase in the number of Form 10-Ds filed. Except for master trust issuers, the requirement to file Form 10-D for ABS issuers is typically suspended after the year of initial issuance because the issuer has fewer than 300 security holders of record.[519] Therefore, the incremental impact to the number of Forms 10-D filed by ABS issuers would increase each year after the proposal is adopted by the number of ABS shelf offerings older than one year where any of its securities are held by non-affiliates. From 2004 to 2009, the yearly average of ABS registered shelf offerings filed with the Commission was 929.[520] Since Form 10-D is required on a periodic basis based on the distribution schedule of the security, we estimate the total number of Form 10-Ds filed in the first year after implementation to be 5,748.[521] In the second year after implementation, we increase our estimate of the number of Forms 10-D expected by 5,576 for a total of 11,324.[522] In the third year after implementation, the addition of another 5,576 brings the total to 16,899. The average number of Forms 10-D over three years would, therefore, be 11,324. Therefore, for PRA purposes, we estimate an increase in Form 10-D filings of 5,576 filings.

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519 See Exchange Act Section 15(d).

520 The 929 ABS registered shelf offerings is 97 percent of the average yearly number of ABS offerings from 2004 through 2009.

521 We are estimating that the number of Forms 10-D per year would be a multiple of six times the number of offerings per year (958) for a total of 5,748 Form 10-D filings per year. Different types of asset-backed securities have different distribution periods, and the Form 10-D is filed each distribution period. We derived the multiplier of six by comparing the number of Forms 10-D that have been filed since 2006 with the number of Forms 10-K (which are only required to be filed once a year) that have been filed.

In 2004, we estimated that it would take 30 hours to complete and file Form 10-D.[523] As discussed below, we are proposing to add asset-level disclosure requirements that relate to ongoing performance of the assets to the requirements of Form 10-D. For credit card ABS issuers, we are proposing to add to Form 10-D a requirement that such issuers provide grouped asset data. Those proposed requirements are included in our estimate of the asset-level disclosure collection of information requirements, as discussed below in the section entitled "Asset Data File." We believe that our other proposed revisions to Form 10-D would not increase the burden hours for the form. Therefore, we estimate that the total annual increase in the number of hours to prepare, review, and file Form 10-D would be 167,280.[524] We allocate 75% of those hours (125,460 hours) to internal burden and the remaining 25% to external costs totaling $16,728,000 using a rate of $400 per hour.

5. Form 8-K

Our current PRA estimate for Form 8-K is based on the use of the report to disclose the occurrence of certain defined reportable events, some of which are applicable to asset-backed securities.

The number of ABS issuers filing Form 8-Ks on an annual basis may be affected by our proposal to require an ABS issuer that wishes to be shelf-eligible to undertake to file Exchange Act reports on an ongoing basis. In addition, our proposal to revise existing Item 6.05 of Form 8-K, which currently requires disclosure for any change in the

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522 We calculate the incremental number of Forms 10-D by multiplying our previous estimate of 929 shelf offerings per year by our estimate of six Forms 10-D filed per offering for a total of 5,576 filings per year.

523 See the 2004 ABS Adopting Release.

524 The burden hours are calculated by multiplying 5,576 incremental Forms 10-D by the 30 burden hours required to complete the form for a total of 167,280 hours.

actual asset pool over five percent from the description in the prospectus, by instead requiring an ABS issuer to instead provide information for any change equal to or greater than one percent in the asset pool from the prospectus description, may lead to an increase of Form 8-K filings.[525] We are also proposing to add a requirement that the sponsor provide disclosure on Form 8-K for a material change in its interest in the transaction.[526]

In 2004, we estimated that the new items added to Form 8-K to address ABS disclosure would cause an increase of two reports on Form 8-K per ABS issuer per year.[527] We estimate that our proposals would cause an increase of 1.5 reports on Form 8-K per ABS issuer per year, or a total of approximately 1,437 additional reports per year.[528]

In 2004, we estimated that an average ABS issuer would spend about five hours completing the form.[529] We estimate that the average burden for the disclosure per Form 8-K would remain relatively the same. Accordingly, we estimate the total annual increase in the number of hours to prepare, review, and file Form 8-K would be 7,185, with 75% of those hours (5,389) allocated to internal burden and the remaining 25% allocated to external costs of $718,500 using a rate of $400 per hour.[530]

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525 Our estimate here does not include an increase that would result in filing Item 6.06 or Item 6.07 Forms 8-K which are instead included in the our burden estimate for the newly proposed collection of information requirements for asset-level data and the waterfall computer program.

526 See existing Item 6.03 of Form 8-K.

527 See 2004 ABS Adopting Release.

528 The number of ABS offerings is based on the average number of ABS deals issued annually over 2004 through 2009.

529 See 2004 ABS Adopting Release.

530 The total burden hours are calculated by multiplying the expected number of Form 8-K reports per year (1,437) times the estimated hours per filing (5) for a total of 7,185. Then, we allocate 75 percent of these hours to internal burden, resulting in 5,389 hours. We allocate the remaining 25 percent of the total

6. Regulation S-K and Regulation S-T

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. As noted above, Regulation S-T contains the requirements that govern the electronic submission of documents. In 2004, we noted that the collection of information requirements associated with Regulation S-K as it applies to ABS issuers are included in Form S-1, Form S-3, Form 10-K and Form 8-K. 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.[531]

The proposed changes would make revisions to Regulation S-K and Regulation S-T. The collection of information requirements, however, are reflected in the burden hours estimated for the various Securities Act and Exchange Act forms related to ABS issuers. The rules in Regulation S-K and Regulation S-T do not impose any separate burden. Consistent with historical practice, we have retained an estimate of one burden hour each to Regulation S-T and Regulation S-K for administrative convenience.

7. Asset Data File

This new collection of information corresponds to asset data file information requirements that we are proposing to add to proposed Form SF-1, proposed Form SF-3, Form 10-D, and Form 8-K. They would be required to appear in exhibits to these forms. Our proposed standard definitions for asset-level information are similar to, and in part based on, other standards that have been developed by the industry, such as those

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burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $718,500.

[531] See 2004 ABS Adopting Release.

developed under ASF's Project RESTART and those developed by the CRE Finance Council (formerly CMSA). These proposed standard definitions employ widely used metrics relating to asset-level information and, based on discussions with the industry, we believe that much of asset-level information may already be available for collection, although the format of such information may not be the one that we propose to require. We also believe that first year implementation costs may be much more significant than ongoing implementation costs.

An ABS issuer filing on proposed Form SF-1 or proposed Form SF-3 would be required to provide this new information. For the most part, this new information would be provided at the time that the newly proposed Rule 424(h) filing is required to be filed, at the time the final prospectus is required to be filed, and after there are certain changes to the pool, such as the substitution or addition of assets. Certain information would be required to be filed on an ongoing basis. We believe the information is currently available to the ABS issuer but additional time and expense will be involved in including the information in registration statements in the format that we are proposing.

The requirements are tailored by asset class. All asset classes except credit card receivables and stranded costs are required to provide asset-level information on each asset in the pool. Information relating to the performance of the assets would be required to be filed on an ongoing basis. Credit card ABS issuers would be required to provide grouped asset data, both at the time of securitization and on an ongoing basis. The grouped asset data could be incorporated by reference (from a previously filed Form 10-D).

We believe that the costs of implementation would include software costs, costs to tag the required data, costs of maintaining the required information, and costs of filing. The number of unique ABS sponsors over 2004-2009 was 343, for an average of 57 unique sponsors per year. We estimate that there are 10 unique sponsors of credit card securitizations over a three-year period (or three unique sponsors per year). We base our burden estimates for this collection of information on the assumption that most of the costs of implementation of the proposed asset-level data filing requirements would be incurred before the sponsor files its first asset-level data filing in compliance with the proposed rules. Because asset-backed issuers are currently required by Regulation AB to file pool-level information on the assets in the underlying pool,[532] we assume, for purposes of our PRA estimates, that much of the information that is required to be provided by the new disclosure requirements should be accessible from existing sponsor data systems.

Because of the number of fields involved, our estimates for the proposed asset-level requirements are based on EDGAR data on RMBS and CMBS issuers. We estimate that, for purposes of the PRA burden estimate for the asset-level disclosure requirements, approximately two percent of the proposed asset-level data fields that are required at the time of securitization and approximately two percent of the asset-level data fields that are required on an ongoing basis would require the sponsor to adjust its systems and procedures for collecting information on each asset. We estimate that, for purposes of an initial filing of asset-level information at the time of securitization, a sponsor would be required to expend at least 18 minutes for each item where adjustments must be made for

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[532] Also, some registered issuers may be providing asset-level information to investors, although such information is not standardized.

each asset in a pool. We estimate that an RMBS sponsor would incur a one-time setup cost for the initial filing of 3,194 hours to adjust its existing systems to provide the required information at the time of securitization for each asset in the initial filing, 86 hours for a CMBS sponsor, and 2,010 hours for a credit card receivables sponsor.[533] After a sponsor has made the necessary adjustments to its systems and after an initial filing of asset-level data has been made, we estimate that subsequent filings for asset-level data will take approximately ten hours to prepare, review, and file. For credit card ABS sponsors, grouped asset data may be incorporated by reference, as proposed, and therefore, we are not including additional costs for subsequent filings by a credit card master trust.

Similarly, we estimate that for purposes of an initial filing of asset-level ongoing information, a sponsor would be required to expend at least 18 minutes for each item where adjustments must be made for each asset in a pool. We estimate that an RMBS sponsor would incur a one-time set-up cost of 3,811 hours to adjust its existing systems to provide the required ongoing information for each asset in the initial filing, 92 hours for a CMBS sponsor, while a credit card receivables sponsor would not incur additional setup costs for ongoing information.[534] After a sponsor has made the necessary adjustments to

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[533] For RMBS and CMBS issuers, this is based on an average pool size for RMBS of 3,317 assets and an average pool size for CMBS of 165 assets and also includes ten hours for tagging and filing the required asset-level disclosure. Because we believe that the information that is required by the proposed grouped asset data requirement would be information that a credit card ABS sponsor already collects in its existing systems, we believe the initial set-up costs for a sponsor would not include expenses necessary to adjust systems to collect new information. However, a sponsor may expend some additional effort for other adjustments due to the requirement and therefore, we estimate that the initial filing of grouped asset data would require 2000 hours for a credit card ABS sponsor, plus an added ten hours for tagging and filing the information.

[534] For RMBS and CMBS issuers, this is based on an average pool size for RMBS of 3,317 assets and an average pool size for CMBS of 165 assets and also includes ten hours for tagging and filing the required asset-level disclosure. We do not believe that sponsors credit card receivables would incur additional setup

its systems in connection with the proposed rule and, after an initial filing of asset-level ongoing information has been made, we estimate that subsequent filings for asset-level ongoing information by a sponsor will take approximately ten hours to prepare, review, and file. We estimate that filings of grouped asset data for credit card ABS issuers would take approximately ten hours to prepare, review and file.

Based on the number of loans that may be securitized in a particular offering and the asset-level requirements for each of the asset classes, and the number of offerings for each of the asset classes, we estimate that the total annual burden hours for preparing, tagging and filing asset-level disclosure or grouped asset data at the time of securitization will be 151,368.[535] We allocate 25% of those hours (37,842.04) to internal burden hours for all ABS issuers and 75% of the hours to out-of pocket expenses for software consulting and filing agent costs at a rate of $250 per hour totaling $28,381,527.95. We estimate that the average annual hours for preparing, tagging and filing asset-level disclosure or grouped asset data on an ongoing basis with the Form 10-D will be 207,009 hours for all ABS issuers.[536] We allocated 75% of those hours (155,256.5 hours) to internal burden hours and 25% of those hours for out-of-pocket expenses for software

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costs for filing grouped asset data information on an ongoing basis since the information that is filed on an ongoing basis is the same information that is required at the time of securitization

[535] We apportion the burden according to the proportion of offerings in each asset class using the following asset classes: (1) CMBS, (2) Credit Cards, (3) RMBS and other. We believe that using the RMBS estimates to represent the burden for other asset classes offers a conservative burden estimate because of the number of data items necessary for RMBS. To calculate the proportions, we divide the average number of offerings per year for each asset class (79 for credit cards, 43 for CMBS, and 836 for RMBS or other asset classes) by the average number of offerings for all asset classes (958).

[536] Again, we apportion the burden according to the proportion of offerings in each asset class using the following asset classes: (1) CMBS, (2) Credit Cards, (3) RMBS and other. We believe that using the RMBS estimates to represent the burden for other asset classes offers a conservative burden estimate because of the number of data items necessary for RMBS. To calculate the proportions, we divide the average number of offerings per year for each asset class (79 for credit cards, 43 for CMBS, and 836 for RMBS or other asset classes) by the average number of offerings for all asset classes (958).

consulting and filing agent costs at a rate of $250 per hour totaling $12,938,042.83. Thus, we estimate the total annual incremental burden for the asset-level disclosure requirements or grouped asset data at 193,098.6 hours[537] and the added total amount of out-pocket expenses for software and filing agent costs at $41,319,570.78.[538]

8. Waterfall Computer Program

While the proposed requirement that ABS issuers file machine-readable computer code detailing the waterfall of the ABS securities issued would be a new collection of information, we believe issuers already produce such a code to structure the ABS deal. However, issuers would bear the costs of converting the code that they typically create into code that meets our proposed requirements. We believe that a substantial portion of those costs will be incurred for each sponsor at the time of implementation of the rule to set up mechanisms to convert the typical program used for waterfall purposes.

Some examples of the need for such mechanisms are: (i) waterfall programs written in languages not directly portable to Python that will have to be adapted to the Python language, (ii) code within the waterfall program that is not required by the rule or necessary for investors to use and understand the waterfall may need to be removed or adapted for the program to run as required by the rule, (iii) and additional functionality of the program, such as a user interface to input assumptions or to input the asset data file, not currently used by sponsors will have to be incorporated. We estimate that issuers will incur a one-time setup cost of 672 hours to create such mechanisms to meet this filing

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537 193,098.6 = 37,842.04 + 155,256.5

538 $41,319,570.78 = $28,381,527.95 + $12,938,042.83.

requirement.[539] Additionally, we estimate a two-hour burden at the time of filing for each ABS deal for which a waterfall program is required to be filed to verify that the mechanisms worked properly and that the program meets the requirements of the rule.

As noted above, the number of unique ABS sponsors over 2004-2009 was 343, for an average of 57 unique sponsors per year. Therefore, we estimate that it would take a total of 38,304 hours for ABS issuers to set up the mechanisms to file the waterfall computer program.[540] We allocate 25 percent of these hours (9,576 hours) to internal burden for all sponsors. For the remaining 75 percent of these hours (28,728 hours), we use an estimate of $250 per hour for the costs of computer programmers to derive an external cost of $7,182,000.[541]

The yearly burden at the time of filing for each deal is estimated to be 1,916 hours.[542] For PRA purposes we allocate 25% of these hours (479 hours) to internal burden hours and 75% for out-of-pocket expenses for professional costs totaling $574,800 using a rate of $400 per hour. Therefore, the total internal burden hours are 10,055 and the total external costs are $7,756,800.[543]

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539 The value of 672 hours for setup costs is based on staff experience and is calculated using an estimate of two computer programmers for two months, which equals 21 days per month times two employees times two months times eight hours per day.

540 The burden of 38,304 hours to set up mechanisms to file the waterfall program is calculated by multiplying the average number of unique sponsors (57) by the estimated set up hours per sponsor (672).

541 Multiplying the 28,728 external cost hours by the $250 per hour estimate results in the external cost of $7,182,000.

542 Multiplying the average number of ABS issues per year (958) by the burden hours at the time of filing each deal (2.0) results in 1,916 hours.

543 We sum the internal burden hours from setup of the waterfall code mechanisms (9,576) and the per-offering internal filing burden hours (479) to get the total internal burden of 10,055. The total external cost of $7,756,800 is calculated by adding the cost from setup ($7,182,000) and the cost from filing each waterfall at the time of offering ($574,800).

9. Form 144A-SF and Form D

Form 144A-SF is a new collection of information that would cover the notice of sales of asset-backed securities that would be required under the proposed revisions to Rule 144A. This notice would contain information related to major participants in the securitization, the date of the offering, the type of securities offered, the basic structure of the securitization and the principal amount of the securities offered. Over the period 2004-2009, the annual average number of Rule 144A ABS offerings was 716.[544]

We believe that the burden assigned to Form 144A-SF should reflect the cost of preparing the notice and the cost of filing the notice. We estimate that preparing, tagging, and filing the Form 144A-SF will require approximately 2.0 hours per response. Using the annual average of 716 Rule 144A offerings, the total burden hours equals 1,432. We allocate 25% as a burden to the seller and 75% as costs of counsel utilized for the preparation and filing of the form. Therefore, the incremental annual impact of Form 144A-SF will be 358 hours and $429,600 in professional costs using an hourly rate of $400.

Form D is an existing collection of information under the PRA. Form D is a notice of sales for offerings made under Regulation D. Currently, we estimate that the burden hours of Form D to be approximately 4.0 hours per response, of which one hour is borne internally and three hours are borne externally. Under the proposal, Form D would be revised to collect, in addition to the information that the form currently collects, the same information as proposed Form 144A-SF when filed in connection with an ABS

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[544] This is based on ABS issuance data from Asset-Backed Alert and information from Securities Data Corporation (SDC).

offering. We are aware of only one Form D filed for an ABS offering in 2009.[545] Thus, we believe that the change to this collection of information should be very small. For PRA purposes, we estimate that the Form D filing burden would not increase. Therefore, we continue to estimate that the burden hours for Form D will be 4.0 hours.

10. Privately-Issued Structured Finance Product Disclosure

This new collection of information relates to proposed disclosure requirements for structured finance product issuers that wish to take advantage of the safe harbors provided by Rule 144A, Regulation D and Rule 144. Under the proposed amendments, such issuers would be required to provide the purchaser or prospective purchaser with the same information that would be required if the offering were registered with the Commission. Some of the information that is required for registered offerings, we believe, is being provided to investors who purchase structured finance products in the private markets.[546] For purposes of the PRA, we are assuming that the hours that private structured finance product issuers expend to provide information to investors are approximately the same hours that would be required to prepare information in the registered context. Therefore, our estimate for this new collection of information will be based on the incremental costs that the proposed amendments in this release would include. Although information for a private ABS issuer is not required to be filed with the Commission, the cost of preparing such information should be relatively the same as

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[545] We believe typically private offerings of ABS are conducted pursuant to Section 4(2) of the Securities Act without reliance on the safe harbor of Regulation D and are followed by resale(s) of the securities in reliance on Rule 144A.

[546] Because of the lack of transparency in the private structured finance product market, we do not have estimates regarding the amount of information and completion time that a typical private structured finance product issuer will need in order to provide investors offering and ongoing information nor estimates of the cost of such information. As discussed below, we are requesting comment on this information.

the estimated burdens for preparing and filing information required in the registered context. We estimate that it will take approximately 300 hours per offering to prepare additional offering information that would be required under the proposed amendments. This is based on the incremental cost of the proposed amendments to ABS issuers that register their offerings with the Commission, along with the cost estimates for the asset data file that would be filed at the time of securitization and the waterfall computer program that we are proposing to require be filed for each ABS offering. Under our proposal, ABS issuers that relied on the safe harbors would be required to provide the same ongoing information that would be required in registered offerings. We estimate that it will take an issuer approximately 18 hours to complete a distribution report accompanied by asset-level and grouped asset data ongoing information for the distribution period. This is based on the incremental costs of providing Form 10-K, Form 10-D, and Form 8-K reports, which would comprise of the cost estimates for the asset data file that is required to be filed on an ongoing basis, as proposed.

As noted above, the average number of private offerings of ABS per year pursuant to Rule 144A over the period 2004-2009 was 716. Based on that number, we estimate an average number of 8,592 ongoing reports containing distribution information and ongoing asset data file information would be provided to investors each year,[547] and a total of 716 annual reports that would be provided to investors each year. Therefore, at the time of securitization, we estimate that the proposed collection of information will

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[547] This is based on an average number of such ongoing reports that we estimate private structured finance product issuers would provide to investors over the three years after implementation. Consistent with our estimates in the registered context, we estimate that issuers would provide such ongoing reports at a multiple of six times the number of offerings per year.

impose a total annual burden of 214,791 hours,[548] with 25% of the cost borne internally (53,698 hours) and the remainder of hours paid to outside professionals or software consulting and programming costs ($48,328,318).[549] For information that is provided on an ongoing basis, we estimate that the proposed collection of information will impose a total annual burden of 157,067 hours,[550] with 75% of the cost borne internally (117,800 hours) and the remainder paid to outside professionals or software consulting costs ($9,816,658).[551] Thus, the total estimate for internal burden hours is 171,498,[552] and the total estimate for outside costs is $58,144,976.[553]

11. 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 statements for asset-backed issuers. Below, the asset data file is annotated as "Asset Data," the waterfall computer formula is annotated as "WCP", and privately-issued structured-finance disclosure is annotated as "P-SF." Bracketed numbers indicate a decrease in the estimate.

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548 We calculate the total annual burden of 214,791 hours by multiplying the expected number of filings per year (716) times the burden hours per securitization filing (300).

549 We estimate that hours related to providing asset-level information and the waterfall computer program is allocated to software consulting or other labor costs ($22,621,125) at a cost of $250 per hour and hours related to providing other types of information is allocated to costs of outside professionals ($21,480,000) at a cost of $400 per hour.

550 We calculate the total annual burden of 157,067 hours by adding the total number of hours we believe it would take to provide ongoing asset-level information (18 hours*8,592 reports).

551 We estimate that hours relating to asset-level information paid to software consultants or other labor costs would be paid at cost of $250 per hour.

552 171,498 = 53,698 + 117,800

553 $58,144,976 = $9,816,658 + $48,328,318

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	1,966	236,959	[30,937.5]	206,021.5	284,350,500	[37,125,000]	247,225,500
S-1	1,168	1,164	242,360	[2,362.5]	239,997.5	290,832,000	[1,500,000]	289,332,000
SF-3	--	94	--	31,725	31,725	--	38,070,000	38,070,000
SF-1	--	7	--	2,362.5	2,362.5	--	2,835,000	2,835,000
10-K	13,545	14,474	21,337,939	84,038	21,421,971	2,845,058,500	11,205,000	2,856,263,500
10-D	10,000	15,576	225,000	125,460	350,460	30,000,000	16,728,000	46,728,000
8-K	115,795	117,232	493,436	5,389	498,825	54,212,000	718,500	54,871,500
Asset Data	--	16,534	--	193,099	193,099	--	41,319,571	41,319,571
WCP	--	958	--	10,055	10,055	--	7,756,800	7,756,800
D	25,000	25,000	100,000	--	100,000	30,000,000	--	30,000,000
144A-SF	--	716	--	358	358	--	429,600	429,600
P-SF	--	9,308	--	171,498	171,498	--	58,144,976	58,144,976

12. 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.[554] We also specifically request comment regarding:

- 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 on proposed Form SF-3;

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

- For all types of asset classes that are subject to the proposed asset level data requirements, the cost of adjusting the sponsor's systems to meet the proposed requirements and the cost of preparing, tagging, and filing the information; and
- For credit card ABS issuers, whether any grouped asset data proposed to be required is not currently collected on existing sponsors' systems and what are the costs of preparing, tagging and filing such grouped asset data at the time of securitization and on an ongoing basis;
- To what extent the proposals to require more information relating to sales of privately-issued structured finance products in reliance on certain safe harbors would increase the number of hours that issuers of such securities already expend in providing information to investors.

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.

XI. Benefit-Cost Analysis

A. Background

The proposed amendments to our regulations and forms for asset-backed securities relate to the offering process, disclosure and reporting requirements for these securities. We also are proposing amendments to safe harbor rules for exempt offerings and resales to require additional disclosure by ABS issuers. In this section, we examine the benefits and costs of our proposed rules in each of these areas. We request that commenters provide their views along with supporting data as to the benefits and costs of the proposed amendments.

First, we are proposing to revise shelf registration for ABS issuers and create new registration forms that would be applicable only to ABS offerings. Under the proposals, for ABS issuers that wish to register their offerings on a shelf basis, for offerings to be conducted after the shelf registration statement is effective, transaction-specific information relating to each offering of securities must be filed with the Commission at least five business days ahead of the first sale in the offering. We also are proposing to replace the existing shelf eligibility requirement that the securities must be investment grade rated by an NRSRO with alternate requirements. Instead of the investment grade ratings requirement, the following would be required for any offering off the shelf registration statement:

- the sponsor must retain a portion of each tranche of the securities sold in the offering, net of hedging and on an ongoing basis;
- the chief executive officer of the depositor must certify that the securitized assets backing the issue have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service any payments of the securities as described in the prospectus;
- the pooling and servicing agreement must contain a provision that would require third party review for assets that were not repurchased or replaced by an obligated party after being put back for breach of a representation or warranty; and
- the ABS issuer must undertake to file Exchange Act reports so long as non-affiliates of the depositor hold any of the issuer's securities sold in registered transactions.

We also are proposing to eliminate the exception from the 48-hour preliminary prospectus delivery requirement for ABS adopted in 2004 under Exchange Act 15c2-8(b), such that in connection with all issuances of ABS, regardless of whether the issuer has previously been required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act, or exempted from the reporting requirements by Section 12(h) of the Exchange Act, broker-dealers would be subject to the 48-hour preliminary prospectus delivery requirement. Further, we are proposing several revisions to enhance the disclosures made by asset-backed issuers in prospectuses and Exchange Act reports. For most asset classes, we are proposing to require information regarding each asset in the

pool in addition to the existing requirements relating to pool-level disclosures. Issuers of ABS backed by credit card receivables would be required to provide grouped asset data. This information would be provided according to standardized definitions and filed with the Commission in XML. In addition, we are proposing to require that ABS issuers file a computer program on EDGAR that gives effect to the flow of funds, or "waterfall," of the transaction. This computer program would be required to provide users with the ability to input the asset data file and other assumptions.

We also are proposing revisions to our disclosure requirements for ABS issuers that would require, among other things:

- additional information on exception loans;
- enhanced static pool disclosure;
- disclosure regarding the loans that were put back to the originator or sponsor for repurchase;
- additional information regarding an originator, including its interest in the securitization and, to the extent there is material risk that the financial condition of the originator could have a material impact on the origination of the originator's assets in the pool or on its ability to comply with provisions relating to the repurchase obligations for assets, its financial condition;
- additional information regarding a sponsor, including its interest in the securitization and, to the extent there is a material risk that the financial condition could have a material impact on its ability to comply with the provisions relating to the repurchase obligations for assets or otherwise materially impact the pool, its financial condition;

- a description of the standards in the pooling and servicing agreement for modifying the terms of the underlying assets;
- a statement whether the pooling and servicing agreement contains a fraud representation; and
- the description of the flow of funds in a single place in the prospectus.

We also are proposing revisions to the definition of an asset-backed security to further restrict the type of security that may be sold under the framework set forth in Regulation AB. While securities that do not meet the proposed definition may still be registered with the Commission, an issuer may need to provide additional disclosure regarding the securities and consider issues that are not contemplated by Regulation AB. We are proposing to limit the amount of prefunding accounts and revolving periods that may be utilized under the definition, and we are proposing to exclude master trusts that are backed by non-revolving assets (e.g., mortgages) from the definition.

We also address privately-issued structured finance products in our proposals. In order to foster additional transparency in the exempt securitization markets, we propose to require the issuer to agree to provide additional disclosure to the investor for any resale made under the Rule 144A safe harbor or offering under the Regulation D safe harbor. We also are proposing to amend the current public information requirement in Rule 144 to require that, in order to satisfy that requirement, in the case of a non-reporting ABS issuer, the issuer must agree to provide additional disclosure to the investor. In addition, we propose to require that the issuer file with the Commission a notice of the sales for the initial placement of securities that are to be sold under Rule 144A that provides basic information on the sale and a description of the securities sold.

B. Benefits

The proposed amendments are designed to increase investor protection by improving the disclosure and offering process of asset-backed securities, and thereby enhancing the transparency of the securitization market. This should result in an increase in investors' understanding of the underlying pool of assets.

In 2009, there were 87 registered ABS offerings as compared to 1,306 in 2004.[555] The market for securitized assets has suffered dramatically, in part due to the perception of inadequacies in the disclosure and transparency of the underlying pool of assets in the securitization process.[556] Securitization is a large component of borrowing and lending, which can benefit borrowers by lowering borrower costs.[557]

1. Securities Act Registration

The lack of time to adequately consider deal-specific information in an offering has been a longstanding concern of ABS investors, as discussed in the 2004 Adopting Release.[558] Based on our experience with the financial crisis, we continue to have concerns regarding the lack of time for investors to analyze asset-backed securities. By requiring that information about the specific offering be filed at least five business days before first sale, we seek to provide investors with the benefit of additional time to value and assess the issuance.

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555 This is based on data from Asset-Backed Alert and information from Securities Data Corporation.

556 See, e.g., Group of Thirty, Financial Reform: A Framework for Financial Stability (Jan. 15, 2009).

557 U.S. Securities and Exchange Commission, U.S. Department of Treasury, Congressional Budget Office and U.S. Small Business Administration, An Interagency Report: Developing a Secondary Market For Small Business Loans (August 1994), available at http://www.cbo.gov/doc.cfm?index=5013&type=0.

558 See fn. 174 above.

Unlike other types of securities, the payments on asset-backed securities primarily depend on the credit quality of the assets in the underlying pool. Each offering of asset-backed securities involves a new set of assets, which requires investment analysis to be done anew. Our proposal to require an issuer to file a form of preliminary prospectus at least five business days ahead of first sale seeks to give investors additional time to review offering documents without unduly burdening issuers.[559] We believe that this additional time will benefit investors by increasing their ability to assess an offering and to perform a better analysis of information provided by the parties to the securitization. This in turn should lead to better investment decisions.

We believe that investment grade credit ratings may no longer be an appropriate criterion for use as a shelf eligibility requirement for ABS.[560] In addition to promoting independent analysis, we believe that replacing investment grade ratings requirement for shelf eligibility conditions for ABS offerings would reduce the appearance that the Commission has placed an imprimatur on credit ratings.

Our proposed risk retention requirement for shelf-registration eligibility is aimed at better aligning the incentives of an ABS sponsor with those of investors. By doing so, risk retention provides investors with an assurance that the quality and characteristics of the underlying assets are consistent with the disclosures and representations of the sponsor. The proposed risk-retention requirement may also make it more likely that sponsors select assets of higher quality for the pool than they would have, absent the

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559 We are also proposing to repeal the exception for asset-backed securities from the 48-hour preliminary prospectus delivery requirement in Rule 15c2-8(b). The 48-hour preliminary prospectus delivery requirement would apply to all ABS issuers, including those exempted from the requirement to file reports pursuant to section 12(h) of the Exchange Act.

560 See Liz Rappaport and Serena Ng, "Credit Ratings Now Optional," Wall Street Journal, Oct. 29, 2009 (noting sales of bonds and structuring of complex securities without credit ratings).

requirement. Thus, although we do not believe that risk retention would result in only investment-grade ABS being shelf-registered, we do nonetheless consider it an appropriate partial replacement for the existing shelf eligibility condition that ABS have investment-grade rating.

We are proposing to require the sponsor to retain five percent of each tranche, net of hedging and on an ongoing basis. Spreading the sponsor's economic interest across all tranches evenly is designed to better address the overall risk assessment and quality of the entire offering rather than only aspects that relate to a specific tranche. Risk retention in the amount of five percent of a tranche is aimed at increasing alignment of incentives of transaction participants in securitizations that will in turn lead to better performing securities without placing an undue burden on issuers.

We note that our proposal only mandates the minimum amount of risk that the issuer is required to retain to have access to shelf registration. A sponsor may voluntarily retain an amount in a tranche greater than that required by our proposed requirement, which could alter the alignment in incentives between the sponsor and the investor.

We also are proposing that, in the case of revolving exposures, a sponsor can meet the risk retention requirement by retaining the originator's interest of not less than five percent. This is proposed to accommodate the special structure of revolving asset master trusts. For example, credit card ABS issuers already retain a seller's percentage that is equivalent to a portion of the pool.[561] Allowing an alternative to the proposed vertical slice requirement for these particular ABS sponsors would benefit investors by allowing

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[561] The originator's interest, also known as the "seller's interest," also may serve an additional function of absorbing seasonal fluctuations in credit card receivables balance. See Fitch IBCA, ABCs of Credit Card ABS, July 17, 1998; Federal Deposit Insurance Corporation, Manual on Credit Card ABS, available at http://www.fdic.gov/regulations/examinations/credit_card_securitization/.

incentive alignment aimed at achieving better quality assets to be compatible with the nature of revolving assets.

Requiring the sponsor to meet the risk retention condition rather than the originator may provide benefits to both originators and investors. We are aware that smaller originators may not have the resources to retain such risks. In addition, by not placing the requirement on originators, these institutions could have greater capital resources available to make loans which could ultimately benefit borrowers and financial systems as a whole. We are also aware that implementing an originator-based risk retention requirement would be difficult in a securitization involving multiple originators and may unnecessarily increase the cost of such securitizations.

We believe that our proposal requiring the pooling and servicing agreement or other governing document for an ABS shelf transaction to contain a provision that requires third party loan review of loans that are not repurchased or replaced by the originator after being put back because of a breach in a representation or warranty should strengthen the enforcement mechanisms surrounding representations and warranties for shelf transactions. ABS investors have expressed concerns with the integrity and enforceability of bargained-for contractual provisions in underlying transaction documents ABS offerings.[562] By requiring that the third party be unaffiliated, investors can be better assured that the opinion as to whether a representation and warranty has been breached is impartial. This requirement, which strengthens enforcement mechanisms of representations and warranties, should incentivize obligated parties to better consider the characteristics and quality of the assets underlying the securities,

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562 See fn. 131 and accompanying text.

making it an appropriate partial replacement for the existing shelf eligibility requirement that requires the securities to have an investment grade rating.

We believe our proposal to require a certification by the depositor's chief executive officer will focus the certifier on the transaction and the disclosure. Such certification should enhance investors' confidence in the securitization. We believe 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 making it an appropriate partial replacement the existing shelf requirement relating to investment grade ratings.

Under Section 15(d) of the Exchange Act, investors in most asset-backed securities may not receive ongoing reporting pursuant to the Act, as most ABS issuers may have less than 300 record holders. Given recent history, we believe ongoing reporting for ABS is important even if the number of holders is low.[563] Our proposal to require that the issuer in an ABS shelf offering undertake to file Exchange Act reports would provide investors with ongoing access to information. Although some issuers already provide ongoing information to investors pursuant to transaction agreement provisions, we believe that our requirements and the undertaking would impose greater discipline on issuers to provide such information and thereby provide further transparency for investors, especially when combined with the proposed loan level disclosure requirements. Investors would benefit from greater transparency on the continuing performance, composition and disposition of assets which can be used to evaluate both their investment as well as the performance of sponsors and originators.

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563 See the Committee on Capital Markets Regulation Financial Crisis Report, at 152-153.

2. Disclosure

We believe that the proposed requirements for asset-level disclosures in XML format and with standardized data definitions will benefit investors in several important ways. First, such required disclosures should reduce investors' cost of information production by reducing duplicative efforts on their part to gather such data on their own or purchase it through data intermediaries. Although some ABS issuers currently provide asset-level data to investors, this is not the case across all asset classes. For example, issuers of certain asset classes, such as credit card receivables, dealer floorplans or equipment loans, typically do not consistently provide asset-level information. As discussed in further detail below, we are proposing an exemption from the asset-level disclosure requirement for a few asset classes. We are unaware of any publicly available data standards for asset classes other than mortgage-backed securities and currently there is no mandatory requirement that issuers follow any of these standards for reporting to investors in asset-backed securities.[564] For the ABS offerings of asset classes that fall within our proposed requirement, our proposal seeks to provide investors with consistent and equal access to asset-level information.

We believe that requiring the asset-level disclosures in XML format-and utilizing standardized definitions of material loan, obligor, and collateral characteristics will further benefit investors. The machine-readable format should lower the cost of information processing, and the standardized definitions should increase comparability of information across issuers. Currently, one sponsor's use of a term in asset-level information may differ from another sponsor's use. For example, "reduced

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[564] See discussion in Section III.A.1. above.

documentation" may not have the same meaning from one sponsor to another or from one originator to another. The XML format that is proposed to be required, along with the utilization of standardized definitions, should allow issuers to provide investors with asset-level information in an immediately usable format. Investors could promptly download and input this information into software tools for analysis of the assets in the underlying pool and pricing of the asset-backed securities.

This process will be further aided by the proposed requirement to provide a programming language representation of the ABS waterfall, which we refer to as the waterfall computer program requirement. This is intended to benefit investors by facilitating their ability to run simulations of expected cash flows under different prepayment, loss and loss-given-default assumptions, while obtaining the full benefit of the loan-level data that we are proposing to require. Requiring the filing of a programming language representation of the waterfall will provide information about the terms of the securities to investors in a form they can readily use for computerized valuation methods of ABS. This will make more relevant information available to investors and allow them to make better-informed investment choices.

The proposal should eliminate the transaction costs for single institutional investors individually to script the waterfall provisions into a programming language representation. This should reduce some of the information asymmetry between the sponsor and a prospective investor that arises because the sponsor, as the person creating the contractual cash flows has access to a programming language representation of the waterfall, a necessary element of ABS valuation using computer simulations of security performance, at the time of the initial public offering, and the investor does not.

Asset-level data in easy to use format and accompanied by the waterfall computer program will likely improve investors' ability to conduct independent analysis and reduce their reliance on credit ratings. With usable information on the composition of the asset pool, investors can evaluate the sponsor's disclosed characteristics of the pool. This, in turn, will allow them not only to price the issue more efficiently but to evaluate the investment potential of the issue better. Indeed, there is some evidence that a major benefit of asset-level disclosure, and more specifically borrower-characteristics disclosure, is an ability to price ABS more accurately.[565] In addition, if asset-level data reduces investors' uncertainty about the composition of the asset pool, investors should be willing to pay higher prices for the security.[566] We believe that the proposed grouped asset data requirement applicable to credit cards ABS issuers offers benefits similar to that of the proposed asset-level data requirements.

We also are proposing to require asset-level disclosure be provided on an ongoing basis. Ongoing disclosure of asset-level information should encourage better monitoring of the security by investors and other market participants. Such information would be

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565 See Joshua Rosner, "Securitization: Taming the Wild West," in Roosevelt Institute, Make Markets be Markets (Mar. 3, 2010) at 77 (stating that "In order to accurately price securities, investors need timely loan-level information on the assets backing each deal"). See also Paul Bennett, Richard Peach, Stavros Peristiani, "How Much Mortgage Pool Information Do Investors Need?," The Journal of Fixed Income, June 2001, Vol. 11, No. 1, at 8-15.

566 Information uncertainty tends to increase credit spreads. Yu (2005) and Sengupta (1998) show that the cost of bond financing increases as the borrowing firm's accounting reports become less informative. Yu, F., "Accounting Transparency and the Term Structure of Credit Spreads," Journal of Financial Economics (2005) at 75, 53-84. Sengupta, P., "Corporate Disclosure Quality and the Cost of Debt," Accounting Review (1998) at 73, 459-474. Güntay and Hackbarth (2006) find that higher dispersion of analysts' forecasts is associated with significantly higher bond spreads. Güntay, L. and D. Hackbarth, "Corporate Bond Credit Spreads and Forecast Dispersion," working paper: Washington University – St. Louis (2006). Thompson and Vaz (1990) document that credit-rating agency disagreements on a firm's credit rating also widens bond credit spreads even after controlling for the firm's default risk. Thompson, G. R. and P. Vaz, "Dual Bond Ratings: A Test of the Certification Function of Rating Agencies," Financial Review (1990) at 25, 457-471. Finally, Wittenberg-Moerman (2007) documents that loan rates are higher for firms with higher bid-ask spreads on loans traded in the secondary

useful for tracking the performance of the assets, as well as an assessment of performance of the originator, sponsor, or servicer. This would allow investors to continue their independent analysis of the asset-backed securities rather than rely on NRSRO credit ratings to alert them of changes in the ABS risk-return profile.

Our proposed asset-level information requirements, notably, are tailored by asset class. We have taken under consideration situations in which the amount of asset- level disclosure would be too voluminous, or investors are unlikely to find such disclosure meaningful. We have decided to modify these requirements or not impose them at all, if they do not appear to justify the compliance costs imposed on issuers. For example, instead of asset-level information, we propose to require that issuers of ABS backed by credit card receivables provide grouped asset data. Such issuers will be required to disclose information on the assets in the underlying pool by grouping these assets into different combinations of standardized pool characteristics. Similarly, we believe that the potential costs of requiring issuers of stranded-costs ABS to provide asset-level disclosures would not justify the benefits, so we are not proposing to require such disclosures.[567]

Our proposed enhancements to pool-level disclosure are intended to help elicit important information in areas that became problematic in the recent financial crisis, such as with respect to exception loans. We also are proposing to amend the definition of an asset-backed security to further restrict the type of securities that may utilize the framework provided in Regulation AB. We believe that the restrictions on exceptions to

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market. Wittenberg-Moerman, Regina, "The Impact of Information Asymmetry on Debt Pricing and Maturity," working paper: The Wharton School, University of Pennsylvania (2007).

[567] See Sections III.A.1.b.iv and III.A.2.b above.

the discrete pool requirement of an asset-backed security benefits investors by maintaining the integrity of the discrete pool requirement and is consistent with investor demand for more meaningful asset-level data. Our proposed revisions to Item 6.05 of Form 8-K would require that issuers file a current report and provide pool information when there is a one percent or greater change in a material pool characteristic of the asset pool. These revisions to the rules, we believe, assist in closing existing gaps by which the asset pool composition could be changed significantly or without necessary accompanying disclosure. Investors will be able to evaluate the consequences of asset pool composition changes in order to determine the continuing suitability of the investment.

Certain of the proposed disclosure requirements should benefit investors by helping them to more easily and effectively assess the structure of the ABS transaction and the parties involved. For example, where assets have been put back to an originator or sponsor in the offering in the last three years and those assets have not been repurchased or replaced, we are proposing to require disclosure of the number of those assets that have not been repurchased or replaced. Similarly, disclosure on the originator's and sponsor's financial condition where material, as provided in the proposal, should benefit investors by allowing them to assess whether the condition of the originator or sponsor may have bearing on their ability to make payments relating to their repurchase obligations. Our proposed requirement relating to disclosure of a fraud representation in the transaction documents would allow an investor to consider the existence of the representation (or lack thereof) in making an investment decision. Finally, our proposed disclosure requirement relating to the originator's and sponsor's

interest in the securitization program, including risk retention, would allow an investor to better consider the incentive structure and other possible risks relating to such party.

We also have several proposals relating to the presentation of information in the prospectus for ABS offerings, including our proposal on the flow of funds, our proposal eliminating the use of a base prospectus and accompanying prospectus supplement, and our proposed revisions to the static pool information requirements. Through such proposals, we seek to improve the presentation of information in ABS offering materials, which may be unwieldy and contain duplicative disclosure, jargon or discussion inapplicable to the specific transaction at hand. These proposed revisions aim to facilitate more ready access to the information for investors and other market participants.

In addition, in coordination with the expiration of the temporary accommodation in Rule 312 allowing ABS issuers to file static pool information on an Internet Website, issuers would need to file static pool information with the Commission. We are proposing to permit that such information be filed in PDF format. Implementation of the requirement to file static pool information on EDGAR addresses concerns relating to the maintenance of websites and the presentation of static pool information while our proposal to allow issuers to file such information in PDF format would allow this disclosure to be provided to investors in an easy to read format.

3. Privately-Issued Structured Finance Products

Many ABS and similar structured finance products are offered and resold in reliance on the Rule 144A safe harbor.[568] Rule 144A is a safe harbor from being deemed an underwriter within the meaning of Sections 2(a)(11) and 4(1) of the Securities Act for

the resale of securities to qualified institutional buyers. Many of the types of asset-backed securities that caused significant concern in the financial crisis included securities that are typically sold in private transactions.[569] Our proposal to require more disclosure for privately-issued structured finance products are designed to provide investors in such securities, which can have complex incentive structures among various parties and whose valuation is dependent on an understanding of the assets in the underlying pool, with better information than they currently receive.

Our proposal to require a notice of sales for the initial placement of securities to be sold in reliance on Rule 144A, we believe, would improve transparency in the asset-backed securitization market. This notice could in turn help regulators with monitoring developments in the securitization market and determining whether future rulemaking or other actions with regard to asset-backed securities may be necessary. This notice could also have the additional benefit of supporting the Commission's efforts to enforce the federal securities laws relating to asset-backed securities. The items proposed to be added to Form D for asset-backed issuers would have similar benefits to the extent ABS issuers rely on Rule 506 of Regulation D.

C. Costs

Our proposals for asset-backed securities are designed to improve disclosure to ABS investors but would impose costs on ABS issuers and other participants in the chain of securitization in various ways. The proposals to revise shelf registration and to replace the investment grade ratings requirement for shelf eligibility would impose additional

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568 See, e.g., SEC Staff Report, "Enhancing Disclosure in the Mortgage-Backed Securities Markets," (Jan. 2003), available at http://www.sec.gov/news/studies/mortgagebacked.htm (noting that almost all private-label MBS that are not sold pursuant to a registration statement are sold in the 144A market).

569 See discussion in Section VI. above.

costs on ABS issuers offering securities through shelf registration. Sponsors of shelf registered issuers would also incur direct costs, as a result of the proposed risk retention shelf eligibility condition that would require the sponsor to retain and maintain five percent of each tranche, or, in the case of revolving assets, five percent of the pool.

Some of the proposed disclosure requirements refine existing disclosure requirements; however the proposal to require standardized asset-level information or grouped asset data and to provide a computerized program of the issue's waterfall are new disclosure requirements, and thus issuers would be required to incur additional costs to which they were previously not subject. Our proposals relating to the disclosure by privately-issued structured finance product issuers would impose additional costs on such issuers seeking to rely on certain regulatory safe harbors.

1. Securities Act Registration

The proposed requirement to file a form of preliminary prospectus at least five business days before the date of first sale and the proposed requirement that brokers deliver a preliminary prospectus 48 hours ahead of sale would require that issuers provide information to investors earlier in the process than is currently the case. During that period, issuers may be exposed 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.

The two methods to satisfy the risk retention shelf eligibility condition that we are proposing to allow for shelf eligibility may increase costs of securitization to sponsors. We note, however, if issuers find the cost of risk retention too high, ABS offerings could be registered without being subject to a risk retention requirement, as long as such

offerings are registered on proposed Form SF-1. For purposes of PRA analysis, we estimate the total movement out of the shelf registration system to be 10% of the current number of shelf offerings, although not all of this movement is estimated to move to proposed Form SF-1 and some may move to private markets.

We also note that the risk retention shelf eligibility condition may impact the risk management process of a sponsor. Some financial institutions are impacted through requirements to hold capital against the risk to which they are exposed, which would put them at a disadvantage to other institutions. Reserving capital for risk retention reduces the amount of funds available for lending which will increase a borrower's cost of funds. Any such reduction in lending capacity suffered by the ABS issuer may be passed through to the financial institution's investors and customers as a cost of the securitization process.

In addition, as we noted in our PRA estimates, while we are not imposing additional disclosure requirements for the Form 10-K for sponsors, they may incur some additional costs in preparing their annual reports in determining the impact of the required risk retention on their disclosure. We estimate, for purposes of the PRA, that sponsors will need an additional 10 hours to prepare their Form 10-K filings at a total cost of $2,500 per sponsor.[570]

Also, under our proposed shelf eligibility conditions, issuers in shelf registrations would be subject to additional costs of hiring a third party to review assets that have been

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570 This estimate is based on the estimated total burden hours of the amendments associated with the schedules and forms that would include the new disclosure, an assumed 75%/25% split of the burden hours between internal staff and external professionals with respect to proxy and information statements, an assumed 25%/75% split of the burden hours between internal staff and external professionals with respect to registration statements, and an hourly rate of $200 for internal staff time and $400 for external professionals.

put back to an obligated party, usually the sponsor or originator, for breach of the representation and warranties. Additionally, the value of these opinions is dependent on investors' perception of the expertise of the entity providing the opinion. This proposed shelf eligibility condition also might create incentives for originators or sponsors to agree to repurchase or replace assets that have been put back to them even in cases where these assets were not in breach. Under our proposals, ABS offerings that are shelf registered would be required to include a certification signed by the depositor's chief executive officer regarding the characteristics of the assets, which will impose some additional disclosure burden.

Our proposed shelf eligibility condition to require ABS issuers to undertake to file Exchange Act reports would also impose certain costs on ABS issuers on shelf. The Exchange Act reporting requirements for ABS issuers take into account existing reporting obligations to investors required under ABS transaction agreements. Many ABS transaction agreements contemplate continued reporting to investors, but those reports, while provided to investors, are not required to be filed if the issuer has suspended its Exchange Act reporting obligation. Because our proposal would require the issuers to undertake to file reports with the Commission, an ABS issuer registered on shelf would include additional costs to file ongoing information with the Commission. Certain types of asset-backed securities, such as ABS backed by credit cards, continue to issue securities backed by the same pool, and thus are required to continue to report on an ongoing basis, and thus would not incur additional costs as a result of the proposed amendments. Other asset-backed securities are exchange-listed and are subject to the reporting requirements of Section 12(b) of the Exchange Act, and thus our proposal

would not impose additional costs of them. We estimate in the PRA that the incremental cost of the proposed changes relating to Exchange Act reporting is $71,628,900.[571]

These proposed shelf eligibility conditions would replace, in part, the prior reliance on investment grade ratings as a condition for shelf eligibility. A potential cost of this substitution is that investors may incorrectly believe that these requirements are an indication that shelf registrations are, effectively, investment grade offers. Under the proposed requirements, securitizations would be eligible for shelf registration if they meet the rule's requirements regardless of their credit rating, which may or may not be investment grade.

The costs associated with both the shelf registration requirements and asset-level disclosures detailed above could be passed down the chain of securitization. If the market is much more concentrated at the sponsor level than at the originator level, sponsors may be able to pass on to originators some of the costs of our proposals. Originators could, in turn, pass some of these costs onto borrowers, although their ability to do so might be constrained by competition from non-securitizing lenders.

2. Disclosure

Although some issuers currently provide asset-level information, this is not a consistent practice across all issuers.[572] Our proposals to require disclosure of asset-level

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[571] This amount is calculated using the increases in burden hours for Form 10-K, Form 10-D, and Form 8-K from the PRA. We allocate 75% of these hours to issuer internal costs at a rate of $200 per hour and 25% to professional costs at a rate of $400 per hour.

[572] For example, CMBS issuers frequently provide loan-level information in accordance with industry standards. See fn. 224 above and accompanying text. RMBS issuers sometimes file loan-level mortgage schedules with the Commission or provide loan-level information to rating agencies. See, e.g., "Moody's Proposes Enhancements to Non-Prime RMBS Securitization," Structured Finance Special Report," Sept. 25, 2008. It is suggested that certain of the issuers of securities backed by auto loans provide loan-level information. See "S&P's Auto Loan-Level Model Enhances Understanding of Loss Performance," Structured Finance, available at http://www.vehiclefinanceconference.com/pdf/handout5.pdf.

information are designed to provide, investors with equal access to such information with certain exceptions discussed below. This will lead to additional costs being imposed on sponsors to compile and report asset-level data. As noted in the PRA, we estimate that it will cost issuers $79,939,291 to compile and report asset-level information.[573]

Where we believe individual asset-level disclosures would be overly burdensome and of little utility to investors, we are proposing to require less granular disclosures or no disclosures altogether. For instance, credit-card ABS are backed by millions of accounts. For this ABS class, asset-level disclosures likely would produce an overwhelming amount of data, which we believe would not be useful for investors. Thus, we are proposing that issuers of ABS backed by credit and charge card receivables provide information on the assets in the underlying pool grouped along specified standardized dimensions. Based on similar considerations, we propose to exclude from the required asset-level disclosures issuers of ABS backed by stranded costs.

Our proposed standard definitions for asset-level information are similar to, and in part based on, other standards that have been developed by the industry, such as those developed under ASF's Project RESTART or those developed by CRE Finance Council. Because these proposed standard definitions employ widely used metrics for asset-level information, we also believe that these standards should be similar to other standards used for reporting purposes, including the mortgage metrics that national banks and thrifts must provide to the Office of Comptroller of the Currency and the Office of Thrift Supervision.[574] To the extent that there are differences between standards on the same

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573 The dollar cost of $42,619,856.5 is calculated by multiplying 110,086.5 internal burden hours by $200 per hour for internal costs and then adding $20,602,562.5.

574 See OCC Press Release NR 2008-24, "OCC to Require Data from Large Bank Mortgage Servicers," February 29, 2008 and Letter to National Bank Mortgage Servicers dated February 29, 2008.

information, additional costs would be imposed on issuers and servicers to track the differences between one standard and another. Further, servicers may incur some costs in monitoring their compliance with servicing criteria and requirements under the servicing agreement with respect to reports on asset-level information.

Under the proposed requirements, issuers of ABS would be subject to additional ongoing asset-level or grouped asset disclosure requirements. Because we believe the information required already should be available, we do not expect significant increase in information gathering costs. However, we do believe that the costs discussed above of reconciling variable definitions, tagging required asset data and filing information with the Commission will be incurred in the process of continued reporting.[575] For purposes of our PRA analysis, we estimate that after the sponsor has incurred initial setup costs and after it has made its first filing, ongoing asset-level disclosure requirements would impose an additional cost of 10 burden hours per filing, which is equivalent to $2,125.[576]

The proposed requirements for asset data disclosure might have important implications for originators' ability to remain competitive and retain their lending market share. Once detailed data on borrower characteristics matched to loan terms becomes publicly available in XML format, a disclosing originator's competitors may be able to more easily infer its loan pricing model and might use the data to increase their own market share at the disclosing originator's expense. This may have an adverse impact on

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575 We note that the CRE Finance Council is now requiring that asset-level information for commercial mortgage-backed securities be provided in XML. See CRE Finance Council Investor Reporting Package x 6.0 Preliminary Exposure Draft #1, Jan. 1, 2009, available at http://www.crefc.org/. In this regard, issuers of commercial mortgage-backed securities may already be subject to the costs of XML data tagging.

576 We allocate 75% of the hours to issuer internal costs at a rate of $200 per hour and 25% to professional costs at a rate of $250 per hour.

the profitability of credit institutions that choose to securitize some of the credit they extend.

Disclosures about an originator's or a sponsor's refusal to repurchase or replace assets put back to them for breach of representations and warranties (as well as the proposed third party opinion shelf eligibility condition, as noted above) might create incentives for originators to agree to repurchase or replace such assets even in cases where these assets were not in breach. If investors regard such disclosures as indicative of a willingness to comply with representations and warranties in the future, then originators or sponsors might try to preserve their reputation by taking back assets even when they do not have to do so. This might create an incentive for sponsors and possibly trustees to ask for repurchase or replacement of poorly performing assets that represent no breach of representations or warranties.

The proposed requirement to provide a programming language representation of the waterfall computer program would facilitate the ability of ABS investors to meaningfully use the asset data disclosed by the ABS issuer at the time of the public offering and with the monthly or other periodical distribution reports on Form 10-D filed with the Commission. We believe that the sponsor of an ABS generally will have in its possession at the time of the public offering a representation in computer programming language of the waterfall. However, additional time and expense will be involved in filing this computer programming language as source code on EDGAR concurrently with the filing of the Rule 424 prospectus, as the waterfall computer program may have to be subjected to additional review before it is filed with the Commission. We are proposing to exempt issuers of offerings backed by stranded costs from the proposed requirement,

as they are not required to provide asset-level information under the proposal. As discussed in the PRA section, we believe that initial startup costs for preparing waterfall computer program for ABS would be approximately 672 burden hours per sponsor at a cost of $159,600.[577] Also in our PRA analysis, we estimate the ongoing costs associated with converting the waterfall computer program to the necessary format to be two hours per securitization, which equals $700.[578]

The asset data and waterfall computer program disclosure requirements might impose costs on entities other than the securitization participants. Making such information available to the public for free may adversely impact the business model of firms currently selling such information to investors. If waterfall formulas are available to investors free of charge, in program form, investors may face a reduced incentive to purchase existing products that provide essentially the same service.

Sponsors may face costs in addition to the initial and ongoing mechanical costs of waterfall preparation. Increased product transparency may reduce some effects of product complexity, potentially enabling investors to more accurately value securities. The resulting price transparency may place new constraints on sponsors' latitude in pricing the products, potentially lowering the profitability of bringing ABS to market.

Rating agencies may also face costs related to implementation of the waterfall computer program requirement. To the extent that rating agency analysis has served as a proxy, for some investors, for in-depth modeling, investors may rely less on this analysis

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577 To calculate the total dollar costs, we allocate 25% of these hours to issuer internal costs at a rate of $200 per hour and 75% to computer programmer costs at a rate of $250 per hour.

578 To calculate the total dollar costs, we allocated 25% of these hours to issuer internal costs at a rate of $200 per hour and 75% of outside professional costs at a rate of $400 per hour.

as a result of being more readily able to perform their own calculations, potentially on an automated basis.

We believe that our proposals to amend the discrete pool exception in the Regulation AB definition of an asset-backed security, for the most part, only carve back on outlier structures and should result in little cost to asset-backed issuers.[579] Our proposed revisions to the Regulation AB definition of an asset-backed security should be minimal, and, if adopted, a security that does not meet the new Regulation AB definition of an asset-backed security could still register with the Commission as long as additional, suitable disclosure is provided regarding the offering, the securities and transaction parties.

We note that our proposals to revise the pool-level information requirements and information requirements on originators and sponsors further refine the disclosure requirements rather than impose significant burdens, which is why we expect no material increase in compliance costs. Our proposal to eliminate the base prospectus and prospectus supplement format for ABS issuers may cause a small increase in the number of registration statements filed with the Commission and a corresponding increase in the cost to issuers to prepare and file such registration statements. In addition, this proposal and our proposal to require the filing of a post-effective amendment for additional structural features or credit enhancements could increase some compliance costs for ABS issuers. However, we believe that our proposal to allow ABS issuers to use a "pay-as-

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[579] We are aware of only four issuers backed by non-revolving assets that utilize the master trust structure. Based on staff review, we believe that use of prefunding accounts is generally limited to select sponsors, approximately 25 percent or less of the principal balance or proceeds are set aside for prefunding for those select sponsors, and the prefunding period in those cases generally extends for approximately one year. In addition, we believe that revolving periods are not widely used across asset classes or by standalone amortizing trust structures.

you-go" registration system for each offering would offset some of those costs by providing ABS issuers with greater flexibility that would improve the utility of shelf registration, increase efficiency and thereby ultimately reduce costs for issuers.

3. Privately-Issued Structured Finance Products

The costs of complying with the shelf registration requirements may make alternate offering mechanisms, such as private placements or exempt offerings more attractive. To improve investor protection in these types of offerings, our proposed regulations would give investors the right to obtain the same level of disclosure as required in a registered Form S-1 or proposed Form SF-1 offering (and ongoing information that would be required if the issuer were subject to Exchange Act reporting obligations) when sales are made in reliance on Rule 506 of Regulation D or resales are made in reliance on Rule 144A. We also are proposing to require that transaction agreements contain a provision by which the issuer promises and represents to provide this disclosure to investors and prospective purchasers upon request.

While the costs to implementing this new information requirement may be significant to ABS issuers, we believe that such costs are justified in light of the role that privately-placed issued ABS played in the financial crisis. We believe that the recent financial crisis exposed deficiencies in the information available about CDOs and other privately-issued structured finance products.[580] Not only does it appear that these instruments were not well understood by investors, but market participants and regulators did not have access to important information about this significant component of the

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580 See the 2008 CRMPG III Report, at 53.

capital markets.[581] We also recognize that the additional proposed requirements that would be imposed on issuers who wish to rely on the safe harbors may possibly result in changes in the number of ABS offerings and increased use of offshore ABS offerings. For purposes of PRA analysis, we estimate for that total annual number of internal burden hours that would be imposed by the proposed amendments is 171,498 hours, while the total annual external cost estimate is be $58,144,976.

We believe that costs of the proposed requirement that issuers file a notice of sales for the initial placement of securities to be sold in reliance on Rule 144A should be minimal. In addition, we are proposing to add disclosure requirements specific to ABS issuers to Form D. For purposes of PRA, we estimate that proposed requirement on issuers to file Form 144A-SF would take approximately two hours per response per year at a total dollar cost of $700.[582] For purposes of the PRA, the added requirements to Form D would not increase the current four- hour estimate for completing the form.

D. Request for Comment

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

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581 See testimony of Joseph Mason, "Hearing on the Role of Credit Rating Agencies In the Structured Finance Market," Before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services United States House of Representatives (Sept. 27, 2007) (proposing a resolution to information asymmetry for structured finance investments, including CDOs, thought changing the manner in which information is gathered by accountants and regulators and disseminated to market participants by ratings agencies and markets). See also Anna Katherine Barnett-Hart, "The Story of the CDO Market Meltdown: An Empirical Analysis" (Mar. 19, 2009) (discussing mis-rating of CDOs and failure of all market participants, from investment banks to hedge funds, to understand risk of CDOs) at 3, 40.

582 We allocate 25% of the hours to issuer internal costs at a rate of $200 per hour and 75% to professional costs at a rate of $400 per hour.

- Would the required risk retention threshold for shelf eligibility be overly burdensome on issuers? If yes, please provide both qualitative and quantitative information to support your position.
- How does the proposed level of risk retention for shelf eligibility differ from current industry standards?
- Are there other more cost-effective ways we can accommodate issuer practices with respect to risk retention in order lower overall costs without jeopardizing interest alignment?
- Who will bear the costs of the risk retention shelf eligibility condition? How would the proposed risk retention shelf eligibility condition impact borrowers?
- Would the proposed risk retention shelf eligibility condition impose costs in addition to those identified above, such as costs arising from systems changes and restructuring business practices to account for the new risk retention requirements?
- Are the cost estimates per ABS issuance estimated by the Commission in line with industry's expectations?
- Would these proposals affect originators by making publicly available asset data that makes it possible to infer their loan pricing model? Is it possible to quantify or mitigate such effects?
- Do you believe that the proposed disclosure requirements will impose costs on other market participants, including firms that currently provide asset-level data information and waterfall computer code for a fee?

- Do the proposed disclosure requirements strike an appropriate balance in requiring sufficient pool-level information? Do you believe that providing more pool-level information will affect investors' willingness to analyze the individual assets comprising the pool? If so, what might be the consequences of such an outcome?
- Are our estimates for costs of disclosing and tagging asset data file appropriate?
- What type of burden would the proposed waterfall computer program requirement would impose on ABS issuers? What is the magnitude of that burden?
- What are the costs of our proposal to require that more information be disclosed to the investor when a sale is made in reliance on the Rule 144A or Regulation D safe harbors? Are those costs justified by the benefits provided by the proposals?

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

Section 23(a) of the Exchange Act[583] 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[584] and Section 3(f)

583 15 U.S.C. 78w(a).

584 15 U.S.C. 77b(b).

of the Exchange Act[585] require the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. Below, we address these issues for each of the proposed, substantive changes to ABS offerings.

A. Shelf Registration Requirements

1. Risk Retention

The impact of our proposed shelf eligibility condition to require that issuers retain a certain amount of risk in each tranche of the securitization is similar to the existing regulations imposed by the EU. Under EU regulations, certain investing institutions may not hold a position in asset-backed securities unless the sponsor or originator agrees to retain a certain amount of the exposures in the securitization. Because the EU- and the U.S.-issued shelf registered ABS (which had comprised most of the publicly offered ABS market) would then have comparable risk retention features, our proposed shelf eligibility condition should not cause a reduction in U.S. competitiveness from the status quo that existed prior to the current EU regulations.

Risk retention may have the additional effect on capital adequacy for those issuers who are subject to the regulatory capital requirements. The risk retention requirement may put sponsors subject to regulatory capital requirements at a competitive disadvantage with those who are not.

In addition, we recognize that some issuers may not wish to retain risk and requiring those issuers to retain risk in order to conduct a shelf offering could reduce the

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585 15 U.S.C. 78c(f).

investment alternatives available to investors. Therefore, our proposal would allow an issuer to register an offering on proposed Form SF-1 without retaining risk. The tradeoff facing the issuer is that offers on proposed Form SF-1 would likely have a longer wait before being able to go to market, for instance possibly waiting for the registration statement to be declared effective for 60 to 90 days compared to five business days for the proposed revised shelf registration procedures. The amount of time in non-shelf registration is greater than that of shelf offerings in order to allow the Commission staff the ability to review and comment on the filing and give investors additional time to consider the issue and make a better informed investment decision. These features of our proposal could have the pro-competitive effect of providing more alternatives to issuers. Alternatively, some or all issuers could decide that registration is not an acceptable alternative, which could result in fewer alternatives for investors.

The proposed risk retention shelf eligibility condition promotes capital formation and efficiency by improving the alignment of sponsors' interest with that of investors. This could result in an allocation of capital to the most productive uses and lead to gains in overall economic efficiency.

2. Representations and Warranties in Pooling and Servicing Agreements

One of the problems in the ABS market that was highlighted during the financial crisis is the inability to efficiently enforce contractual provisions and unilateral modification of those ABS provisions. Our proposed ABS shelf eligibility condition relating to the representations and warranties stated in a pooling and servicing agreement promotes a better understanding of the enforceability of those representations and warranties. As a result, investors should have greater certainty and transparency about

the consequences of breaches of the representations and warranties. With respect to shelf offerings of ABS, all other things equal, this proposal is competitively neutral.

3. Depositor's Chief Executive Officer Certification

Our ABS shelf eligibility condition that the chief executive officer of the depositor certify that to his or her knowledge the assets have characteristics that provide a reasonable basis to believe that the underlying pool of assets will produce cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus promotes capital formation by providing investors in shelf offerings with additional assurance that the sponsor has performed the necessary evaluation of the underlying assets and this evaluation is consistent with the disclosure provided in the prospectus.

4. Ongoing Exchange Act Reporting

Our proposals would require that issuers of ABS using shelf registration provide ongoing Exchange Act reporting. We believe that this will promote both efficiency and capital formation by making information useful for monitoring and assessing the performance of both the assets and the sponsor available to investors and the markets in general. More public information on an ongoing basis should assist investors to make better informed decisions on how to allocate capital, and should promote allocational efficiency by enabling investors to better match their preferences for risk and return.

5. Eliminate Ratings Requirement

We propose to eliminate the current ABS shelf eligibility condition that relies on the ratings provided by an NRSRO. Our proposal, however, does not prohibit an investor from using a credit rating in its investment decision in an offering under a shelf

registration statement if they should find this information useful. Rather, we would be eliminating the reference to credit ratings in our rules in order to reduce the likelihood of undue reliance and remove the appearance of an imprimatur that such references may create. This is designed to decrease the appearance that we sanction the use of ratings over investor analysis in an investment decision. We believe that doing so promotes investor protection by reducing the possibility that our rules encourage investors to rely unduly on ratings[586] rather than conduct their own analysis of the securities. If the proposals are adopted, investors may still utilize ratings. It is also possible that ABS sponsors will continue to have their offerings rated. Even if ratings agencies see a decline in their business due to this regulation and other information being made available by sponsors, we believe that the benefits of the proposals would justify these potential indirect costs. The proposals provide an efficient means of assessing the quality and character of ABS shelf offerings, which thus would not impose a burden on competition.

B. Five-Business Day Filing and Prospectus Delivery Requirements

In the case of shelf registration, once the registration statement is effective, we are effectively proposing to increase the time that issuers are required to provide information about the offering from no minimum to at least five business days before first sale in the offering off the shelf. This additional time is designed to provide investors with additional time to analyze and understand the risk profile of the securities being offered

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586 In other recent actions, we have addressed significant issues relating to the credit ratings process by an NRSO, seeking to improve the transparency relating to ratings shopping, methodologies of rating the securities. See Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-61050 (Nov. 23, 2009); Credit Ratings Disclosure, Release No. 33-9070 (Oct. 7, 2009) [74 FR 53086]; Proposed Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-61051 (Nov. 23, 2009)[74 FR 63866].

and to make more informed and better investment decisions that will improve pricing efficiency, and should assist investors to make better informed decisions on how to allocate capital.

Our proposal to require brokers to provide investors with a preliminary prospectus at least 48 hours before confirmations are sent would apply to all registered ABS offerings, regardless of whether they are made under a shelf registration statement. Given that each ABS offering requires a consideration of new and different assets, we propose to treat ABS offerings in this regard similarly to any other initial public offering of securities. Because all registered ABS offerings will have the same requirement, this proposal is competitively neutral with respect to all public issuers.

C. Disclosure

As a result of the financial crisis and subsequent events, the market for securitized assets has suffered dramatically due, in part, to the recession, lower housing prices and increased consumer debt load—but also because of perceived problems in the securitization process that affected investors' willingness to participate in these issues. Increased transparency of the underlying assets is valuable because it provides better information that should allow the market to price these products more accurately. Greater disclosure should give investors better tools to evaluate the underlying assets and to determine whether or not to invest in the instrument and at what price. By doing so, the Commission intends to promote efficient capital allocation. Consequently, each of these regulations, described individually below, should provide the following:

- Productive efficiency: The underwriter and sponsor are in the best position to be the lowest cost providers of the loan level information that we are

proposing. Making such information available will reduce the amount of investor and third party research that is repetitive. Requiring that this data be easily machine-readable will allow parties to perform, at relatively low cost, larger scale analysis than now occurs.

- Allocational efficiency: Investors will be better able to match their risk/return preferences with ABS issues having the same risk return profile;
- Capital formation: Better disclosure should increase demand for these securities that will then be used to increase capital formation.[587]

We note that some of our proposals refine rules to provide investors with a better understanding of the offering, the transaction parties, or the material characteristics of the pool assets, including the underwriting of the assets. These proposals do not significantly change the framework that exists under our current rules for asset-backed securities.

1. Asset Data File and Waterfall Computer Program

Under our proposed asset-level disclosure requirements, issuers would be required to provide certain standardized information on each asset that is in the pool underlying the securities, or on standardized groupings in the case of credit card receivables. Such information would not only be required at the time of securitization but also on an ongoing basis. This should be an efficiency-enhancing requirement because issuers and

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[587] Indeed, this was the original motivation for the Securities Act of 1933 and the Securities Exchange Act of 1934. Investing had all but ceased in the Great Depression. The conceptual framework for these laws was that increased disclosure would promote ethical behavior in the securities industry leading to greater investor confidence leading, in turn, to more investment and capital formation. Revitalization of the securitization market through additional disclosure has also been espoused by others. See, e.g., Ralph Atkins and David Oakley, "Disclosure move aims to revive ABS market," Financial Times, May 17, 2009 (European Central Bank pushing for an increase in the amount of information that has to be disclosed about asset-backed securities as part of efforts to revive ABS market and encourage investors that have been deterred for lack of transparency in the market to buy asset-backed securities) and European Central Bank, Public consultation on the provision of ABS loan-level information in the Eurosystem collateral framework, available at http://www.ecb.int/paym/cons/previous/html/abs.en.html.

underwriters have ready access to the asset-level information that we propose be provided; consequently, the information will be publicized by the lowest cost provider. As evidence that this is not an onerous burden, some issuers already provide much of the information to investors (although such information is not standardized). Nonetheless, where we believe the costs in providing this information may not be justified in light of the limited benefit to investors and with consequent potentially negative effects on efficiency, competition and/or capital formation, we are proposing to exclude those issuers from the asset-level requirements, or, in the case of credit card ABS issuers, to modify the approach. Asset data file information requirements are proposed to be applied equally to shelf eligible and non-shelf eligible offerings alike, thus applying the burdens equally to all publicly offered ABS issuers.

As described in the Benefit-Cost section above, the proposed asset-level disclosure requirements are likely to increase competition in lending markets by making information more cheaply available. Large datasets of loan-level information on credit terms and borrower characteristics are now available--but often at a considerable cost to subscribers and with incomplete information for some mortgage originators of the loans in the underlying pool. The data can be used to reverse engineer an originator's lending strategy in general or loan-pricing model in particular. Such information can be used by lenders to compete more effectively and even more generally can lower barriers to entry into geographic or product lending markets. By making this information more cheaply available, small loan originators may have access in the future to data that only the larger institutions could afford. As such, the provision of this data will be pro-competitive in lending markets.

We are mindful that forced disclosure of detailed information may create disincentives for innovation. At the present time, however, asset-level data are sometimes available from third party vendors for a price. Consequently, there should be little incremental effect on innovation from our proposed disclosure requirement.

We expect that the proposed asset-level and waterfall-computer-program disclosure requirements may negatively impact the profitability of providers of similar information and products currently being marketed. If the individual-asset data and cash-flow generating code are available free of charge, investors will no longer have the incentive to purchase similar products from third party vendors. Thus, some data vendor product market share may be negatively impacted by our requirements. However, the free availability of this data could give rise to new products from third party vendors who will offer data analyses, data analysis services and even user software to process the data that has features absent from the proposed waterfall computer program requirement.

Our proposals should benefit consumers because, first, the same information will be available at lower cost than is now the case and, second, we expect to see innovations in information processing and delivery to provide insights to investors that may now be prohibitive.

2. Pay-As-You-Go Registration and Revisions to Registration Process

Some of our proposals are directed at the format and presentation in which information is provided to investors to facilitate analysis of offering materials and, thus, promote more efficient capital formation through greater understanding of ABS. For example, we propose to eliminate the base prospectus and prospectus supplement format for disclosure. We believe that this should significantly improve disclosure for investors.

While we acknowledge that the proposal may increase costs for issuers by increasing the number of registration statements that must be filed, our proposal to allow a "pay-as-you-go" registration system for ABS issuers should help to offset those costs and thereby improve efficiency for ABS issuers.

3. Restrictions on Use of Regulation AB

Part of our proposed changes would change the definition of an asset-backed security to restrict the types of structures that could be utilized under the Regulation AB framework. The proposed revisions should impact only a few offerings. Inasmuch as this is basically delineating the securities that are not suitable for the Regulation AB framework, this action does not significantly change the status quo and therefore has no effect on efficiency, competition and capital formation.

D. Safe Harbors for Privately-Issued Structured Finance Products

We also note that some of our changes to registered offerings of ABS may make alternate offering mechanisms, such as private placements or exempt offerings more attractive. We are proposing to revise our rules relating to offers and sales made in reliance on Rule 506 of Regulation D and resales made in reliance on Rule 144A to give the investors the right to obtain the same level of disclosure as required in a registered Form S-1 or proposed Form SF-1 offerings. This in turn may make offers and sales pursuant to Section 4(2) of the Securities Act or resales pursuant to so-called Section 4(1-½) more attractive to issuers. We think this will promote efficiency by bringing transparency to formerly opaque private structured finance product market, particular for CDOs and similar products.

E. Combined Effect of Proposals

If sponsors/issuers bear the costs discussed above, this could put private-label RMBS sponsors/issuers at further disadvantage relative to government sponsored enterprises [588] whose RMBS are exempt from SEC registration (e.g., Freddie Mac, Fannie Mae and Ginnie Mae). Increasing the costs of securitization may give a competitive advantage to residential mortgage originators who can securitize through government sponsored enterprises and may increase the cost of non-conforming loans to borrowers. Such GSEs are not required to disclose loan-level information and/or commit to the requirements of SEC registration. If the proposed costs are sufficiently high relative to the resulting benefits of these regulations to investors, originators could receive a better price from selling conforming loans to these agencies as opposed to private conduits, thus increasing the competitive advantage of GSEs. In addition, the better selling price of conforming loans to GSEs could adversely affect originators' incentives to underwrite non-conforming loans, since these cannot be securitized through GSEs. The combined effect might be a reduction in the number of assets available for securitization by non-GSE ABS issuers and could provide GSEs with greater market power at the expense of conforming loan lenders and non-conforming borrowers. We believe that to the extent the consideration of risk and return makes non-GSE more attractive than GSEs, this competitive advantage could be reduced.

In summary, taken together the proposed amendments to our regulations and forms on asset-backed securities are designed to improve investor protection, reduce the likelihood of undue reliance on ratings, and increase transparency to market participants.

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588 Ambrose, B. and W., Arthur (2002), "Measuring Potential GSE Funding Advantages," The Journal of Real Estate Finance & Economics, Vol. 25, No. 2; Passmore, W. (2005), "The GSE Implicit Subsidy and the Value of Government Ambiguity," REAL ESTATE ECONOMICS, Vol. 33, No. 3, at 465-486.

We believe that the proposals also would improve investors' confidence in asset-backed securities and help recovery in the ABS market with attendant positive effects on efficiency, competition and capital formation.

We request comment on our proposed amendments. We request comment on whether our proposals would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible. We also request comment on whether our proposed changes to Exchange Act Rule 15c2-8(b), the disclosure requirements and Exchange Act forms would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

XIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[589] 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

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

- any potential effect on competition, investment, or innovation.

XIV. 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[590] and Exchange Act Rule 0-10(a)[591] 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 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.[592] Accordingly, the Commission does not believe that the proposals, if adopted, would have a significant economic impact on a substantial number of small entities.

XV. 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 4, 5, 6, 7, 8, 10, 17(a), 19(a), and 28 of

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590 17 CFR 230.157.

591 17 CFR 240.0-10(a).

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

the Securities Act, Sections 10, 12, 13, 14, 15, 23(a), 35A and 36 of the Exchange Act, and Section 319[593] of the Trust Indenture Act.[594]

List of Subjects

17 CFR Parts 200, 229, 230, 232, 239, 240, 243 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 200 - ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

1. The authority citation for Part 200 Subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d–1, 78d–2, 78w, 78 ll(d), 78mm, 80a–37, 80b–11, and 7202, unless otherwise noted.

Sections 200.27 and 200.30–6 are also issued under 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77q, 77u, 78e, 78g, 78h, 78i, 78k, 78m, 78o, 78o–4, 78q, 78q–1, 78t–1, 78u, 77hhh, 77uuu, 80a–41, 80b–5, and 80b–9.

Section 200.30–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b) 78l, 78m, 78n, 78 o(d).

Section 200.30–3 is also issued under 15 U.S.C. 78b, 78d, 78f, 78k–1, 78q, 78s, and 78eee.

Section 200.30–5 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-20, 80a-24, 80a-29, 80b-3, 80b-4.

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593 15 U.S.C. 77sss.

594 15 U.S.C. 77aaa et. seq.

2. Amend § 200.30-1 by adding paragraph (a)(11) to read as follows:

§ 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(a) * * *

(11) To request materials from issuers as required to be furnished to the Commission, upon written request, pursuant to Form D (referenced in § 239.500 of this chapter) and Form 144A-SF (referenced in §239.144A of this chapter).

* * * * *

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

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

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

* * * * *

4. Amend §229.512 by:

a. Revising paragraph (a)(1)(iii)(B) by adding the phrase, ", Form SF-3(§239.45 of this chapter)" immediately after the phrase, "Form S-3(§239.13 of this chapter)";

b. Revising paragraph (a)(1)(iii)(C) by revising the phrase "on Form S-1 (§239.11 of this chapter) or Form S-3 (§239.13 of this chapter)" to read "Form SF-1 (§239.44 of this chapter) or Form SF-3 (§239.45 of this chapter)";

c. Adding paragraphs (a)(5)(iii) and (a)(7); and

d. Removing paragraph (l).

Added paragraph (a)(5)(iii) reads as follows:

§ 229.512 (Item 512) Undertakings.

(a) * * *

(5) * * *

(iii) If the registrant is relying on Rule 430D (§230.430D of this chapter):

(A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) and Rule 424(h) (§230.424(b)(3) and §230.424(h) of this chapter) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) (§230.424(b)(2), (b)(5), or (b)(7) of this chapter) as part of a registration statement in reliance on Rule 430D relating to an offering made pursuant to Rule 415(a)(1) (vii) (§230.415(a)(1) (vii) of this chapter) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430D, for liability purposes of

the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

* * * * *

(7) If the offering is registered on Form SF-3 (§239.45) and the registrant is relying on Rule 430D (§230.430D of this chapter):

(i) with respect to any offering of securities to file substantially all the information previously omitted from the prospectus filed as part of an effective registration statement in reliance on Rule 430D (§230.430D) except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price in accordance with Rule 424(h) (§230.424(h)); and

(ii) to file reports for each offering that is registered on Form SF-3 as would be required by Section 15(d) of the Exchange Act and the rules thereunder if the issuer were required to report under that section as long as non-affiliates of the depositor hold

any of the issuer's securities that were sold in registered transactions and provide disclosure in the prospectus that is filed as part of the registration statement that the registrant has undertaken to, and will, file with the Commission reports as would be required by Section 15(d) of the Exchange Act and the rules thereunder.

* * * * *

5. Amend §229.601 by:

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

b. Adding paragraph (b)(36); and

c. Adding paragraphs (b)(102) through (b)(106).

The revision and additions read as follows:

§ 229.601 Item 601. Exhibits.

(a) * * *

EXHIBIT TABLE

* * * * *

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
(1) Underwriting agreement	X	X	X	X	X	---	X	X	X	X	---	X	---	---	---
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	X	---	X	X	X	X	X	X	---	X	X
(3) (i) Articles of incorporation	X	---	X	X	X	---	X	X	---	X	X	X	X	X	X
(ii) Bylaws	X	---	X	X	X	---	X	X	---	X	X	X	X	X	X

(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X	---	---	---	---	---
(6) [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
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review	---	---	---	---	---	---	---	---	---	---	---	X	---	---	---
(8) Opinion re tax matters	X	X	X	X	X	---	X	X	X	X	---	---	---	---	---
(9) Voting trust agreement	X	---	---	---	X	---	X	X	---	X	X	---	---	---	X
(10) Material contracts	X	---	X	X	X	---	X	X	---	X	X	---	X	X	X
(11) Statement re computation of per share earnings	X	---	---	---	X	---	X	X	---	X	X	---	---	X	X
(12) Statements re computation of ratios	X	X	---	---	X	---	X	X	---	X	X	---	---	---	X
(13) Annual report to security holders, Form 10-Q or quarterly report to security holders[3]	---	---	---	---	X	---	---	---	---	---	---	---	---	---	X
(14) Code of Ethics												X	---		X
(15) Letter re unaudited interim financial information	X	X	---	---	X	X	X	X	X	X	---	---	---	X	---

(16) Letter re change in certifying accountant[4]	X	---	---	---	X	---	X	---	---	---	X	X	---	---	X
(17) Correspondence on departure of director	---	---	---	---	---	---	---	---	---	---	---	X	---	---	---
(18) Letter re change in accounting principles	---	---	---	---	---	---	---	---	---	---	---	---	---	X	X
(19) Report furnished to security holders	---	---	---	---	---	---	---	---	---	---	---	---	---	X	---
(20) Other documents or statements to security holders	---	---	---	---	---	---	---	---	---	---	---	X	---	---	---
(21) Subsidiaries of the registrant	X	---	X	X	X	---	X	X	---	X	X	---	---	---	X
(22) Published report regarding matters submitted to vote of security holders	---	---	---	---	---	---	---	---	---	---	---	---	X	X	X
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X	---	X[5]	X[5]	X[5]	X[5]
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	---	X	X
(25) Statement of eligibility of trustee	X	X	X	X	X	---	---	X	X	X	---	---	---	---	---
(26) Invitation for competitive bids	X	X	X	X	X	---	---	X	X	X	---	---	---	---	---
(27) through (30) [Reserved]															
(31) (i) Rule 13a-14(a)/15d-14(a) Certifications (ii) Rule 13a-14/15d-14 Certifications	---	---	---	---	---	---	---	---	---	---	---	---	---	X ---	X X
(32) Section 1350	---	---	---	---	---	---	---	---	---	---	---	---	---	X	X

Certifications[6]															
(33) Report on assessment of compliance with servicing criteria for asset-backed issuers	---	---	---	---	---	---	---	---	---	---	---	---	---	---	X
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities	---	---	---	---	---	---	---	---	---	---	---	---	---	---	X
(35) Servicer compliance statement	---	---	---	---	---	---	---	---	---	---	---	---	---	---	X
(36) Depositor Certification for shelf offerings of asset-backed securities	---	---	---	X	---	---	---	---	---	---	---	---	---	---	---
(36) 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
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(100) XBRL-Related Documents			---	---							X	X		X	X
(101) Interactive Data File	X	X	---	---	X	---	X	X	X	X	---	X	---	X	X
(102) Asset Data File	---	---	X	X	---	---	---	---	---	---	---	X	X	---	---
(103) Asset Related Documents	---	---	X	X	---	---	---	---	---	---	---	X	X	---	---
(104) Waterfall Computer Program	---	---	X	X	---	---	---	---	---	---	---	X	X	---	---
(105) Waterfall Computer Program Related Documents	---	---	X	X	---	---	---	---	---	---	---	X	X	---	---
(106) Static Pool PDF	---	---	X	X	---	---	---	---	---	---	---	X	---	---	---

(b) * * *

(36) Depositor 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.iii. of Form SF-3 (referenced in §239.45) exactly as set forth below:

Certification

I, [identify the certifying individual,] certify that:

1. To my knowledge, the securitized assets backing the issue have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service any payments of the securities as described in the prospectus; and

2. I have reviewed the prospectus and the necessary documents for this certification.

Date:_____

_____

[Signature]

_____

[Title]

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

* * * * *

(102) Asset Data File. An Asset Data File (as defined in §232.11 of this chapter) pursuant to, with respect to any registration statement on Form SF-1 (§239.44)

or Form SF-3 (§239.45), Items 1111(h) and 1111(i) (§ 229.1111(h) and 229.1111(i) of this chapter) or, with respect to any distribution report on Form 10-D, Item 1121(d) and 1121(e) (§ 229.1121(d) and 229.1121(e) of this chapter).

(103) Asset Related Documents.

(i) If a registrant includes other data points in the Asset Data File filed pursuant to (102) of this subparagraph, in addition to those required by Schedule L of Regulation AB (§229.1111A of this chapter), Schedule L-D of Regulation AB (§229.1121A of this chapter), or Schedule CC of Regulation AB (§229.1111B of this chapter), a document identifying and setting forth the definitions and formulas for each of those additional data points and the related tagged data.

(ii) A document setting forth, in reasonable detail other explanatory disclosure regarding the asset-level data file filed pursuant to (102) of this paragraph,

(104) Waterfall Computer Program. A Waterfall Computer Program as defined in Item 1113(h) of Regulation AB (§229.1113(h) of this chapter) filed pursuant to, with respect to any registration statement on Form SF-1 (§239.44) or Form SF-3 (§239.45), Item 1113(h) of Regulation AB (§229.1113(h) of this chapter).

(105) Waterfall Computer Program Related Documents.

If a registrant includes additional program functionality in the Waterfall Computer Program filed pursuant to (104) of this subparagraph, in addition to that required by Item 1113(h) of Regulation AB (§229.1113(h) of this chapter), a document identifying and setting forth in reasonable detail the additional program functionality.

(106) Static Pool. If not included in the prospectus, static pool disclosure as required by Item 1105 of Regulation AB (§229.1105 of this chapter).

* * * * *

6. Amend §229.1100 by:

a. Revising paragraph (f); and

b. Adding paragraph (g).

The revision and addition read 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 final 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). They must, however, be filed and made part of the registration statement at the latest by the date the final prospectus is required to be filed under Securities Act Rule 424 (§230.424 of this chapter).

(g) Presentation of flow of funds on the transaction. Provide information on the flow of funds in the transaction, as required in Item 1113 of Regulation AB, including any related definitions of terms, in one location in the prospectus.

7. Amend §229.1101 by:

a. Revising paragraph (c)(3)(i);

b. Revising the references to"50%" in paragraph (c)(3)(ii) in both places they appear to read "10%"; and

c. Revising the phrase "three years" in paragraph (c)(3)(iii) to read "one year"

The revision in paragraph (c)(3)(i) and the addition read as follows:

§ 229.1101 (Item 1101) Definitions

* * * * *

(c) * * *

(3) * * *

(i) Master trusts. The offering related to the securities contemplates adding additional assets to the pool that backs such securities in connection with future issuances of asset-backed securities backed by such pool, provided, however, that the securities are backed by receivables or other financial assets that arise under revolving accounts. Such offering also may contemplate additions to the asset pool, to the extent consistent with paragraphs (c)(3)(ii) and (c)(3)(iii) of this section, in connection with maintaining minimum pool balances in accordance with the transaction agreements.

* * * * *

8. Amend §229.1102 by revising paragraph (a) to read as follows:

§ 229.1102 (Item 1102) Forepart of registration statement and outside cover page of the prospectus.

* * * * *

(a) Identify the sponsor, the depositor and the issuing entity (if known). Such identifying information should include a Central Index Key number for the depositor and the issuing entity, and if applicable, the sponsor.

* * * * *

9. Amend §229.1103 by adding an instruction after paragraph (a)(2) to read as follows:

§ 229.1103 (Item 1103) Transaction summary and risk factors.

* * * * *

(a) * * *

(2) * * *

Instruction to Item 1103(a)(2). What is required is summary disclosure tailored to the particular asset pool backing the asset-backed securities. While the material characteristics will vary depending on the nature of the pool assets, summary disclosure may include, among other things, statistical information of: the types of underwriting or origination programs, exceptions to underwriting or origination criteria and, if applicable, modifications made to the pool assets after origination.

* * * * *

10. Amend §229.1104 by adding new paragraphs (e) and (f) to read as follows:

§ 229.1104 (Item 1104) Sponsors.

* * * * *

(e) Describe any interest that the sponsor has retained in the transaction, including amount and nature of that interest. If the offering is registered on Form SF-1 (§239.44), provide disclosure (if applicable) that the sponsor is not required by law to retain any interest in the securities and may sell any interest initially retained at any time.

(f) If the sponsor is required to repurchase or replace any asset for breach of a representation and warranty pursuant to the transaction agreements, provide the following information:

(1) On a pool by pool basis, the amount, if material, of the publicly securitized assets originated or sold by the sponsor that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets that

has been made in the prior three years pursuant to the transaction agreements. Provide the percentage of that amount that were not then repurchased or replaced by the sponsor. Of those assets that were not then repurchased or replaced, disclose whether an opinion of a third party not affiliated with the sponsor had been furnished to the trustee that confirms that the assets did not violate a representation or warranty.

(2) The sponsor's financial condition to the extent that there is a material risk that the financial condition could have a material impact on its ability to comply with the provisions relating to the repurchase obligations for those assets or otherwise materially impact the pool.

11. Amend §229.1105 by:

a. Revising the introductory text;

b. Revising paragraph (a)(3)(ii);

c. Adding new Instruction to 1105(a)(3)(ii);

d. Adding new paragraph (a)(3)(iv); and

e. Revising paragraph (c).

§ 229.1105 (Item 1105) Static pool information.

Describe the static pool information presented. Provide appropriate introductory and explanatory information to introduce the characteristics, the methodology used in determining or calculating the characteristics and any terms or abbreviations used. Include a description of how the static pool differs from the pool underlying the securities being offered. In addition to a narrative description, the static pool information should be presented graphically if doing so would aid in understanding.

(a) * * *

(3) * * *

(ii) Present delinquency, cumulative loss and prepayment data for each prior securitized pool or vintage origination year, as applicable, over the life of the prior securitized pool or vintage origination year. The most recent periodic increment for the data must be as of a date no later than 135 days after the date of first use of the prospectus.

Instruction to Item 1105(a)(3)(ii). Refer to Item 1100(b) of this Regulation AB for presentation of historical delinquency and loss information.

* * * * *

(iv) Provide graphical illustration of delinquencies, prepayments and losses for each prior securitized pool or by vintage origination year regarding originations or purchases by the sponsor, as applicable for that asset type.

* * * * *

(c) If the information that would otherwise be required by paragraph (a)(1), (a)(2) or (b) of this section is not material, but alternative static pool information would provide material disclosure, provide such alternative information instead. Similarly, information contemplated by paragraph (a)(1), (a)(2) or (b) of this section regarding a party or parties other than the sponsor may be provided in addition to or in lieu of such information regarding the sponsor if appropriate to provide material disclosure. In addition, provide other explanatory disclosure, including why alternative disclosure is being provided and explain the absence of any static pool information contemplated by paragraphs (a)(1), (a)(2) or (b) of this section, as applicable.

* * * * *

12. Amend §229.1106 by adding paragraph (d) to read as follows:

§ 229.1106 (Item 1106) Depositors.

* * * * *

(d) Any failure in the last year of an issuing entity established by the depositor or any affiliate of the depositor to file or file in a timely manner an Exchange Act report that was required either by rule or by virtue an undertaking pursuant to Item 512 of Regulation S-K (17 CFR 229.512).

13. Amend §229.1108 by:

a. Revising the phrase "(c) and (d)" in paragraph (a) to read "(c), (d), and (e)";

b. Removing paragraph (c)(6);

c. Redesignating paragraphs (c)(7) and (c)(8) as paragraphs (c)(6) and (c)(7); and

d. Adding paragraph (e).

New paragraph (e) reads as follows:

§ 229.1108 (Item 1108) Servicers.

* * * * *

(e) Describe any interest that the servicer has retained in the transaction, including amount and nature of that interest.

14. Amend §229.1110 by:

a. Revising paragraph (a);

b. Adding paragraph (b)(3); and

c. Adding paragraph (c).

The revision and additions read as follows:

§ 229.1110 (Item 1110) Originators.

(a) Identify any originator or group of affiliated originators, apart from the sponsor or its affiliates, provided, however, identification of an originator is not required if such originator has originated, or is expected to originate, less than 10% of the pool assets and the cumulative amount of originated assets by parties other than the sponsor (or its affiliates) comprises less than 10% of the total pool assets.

(b) * * *

(3) Describe any interest that the originator has retained in the transaction, including amount and nature of that interest.

(c) For any originator identified under paragraph (b), if such originator is required to repurchase or replace a pool asset for breach of a representation and warranty pursuant to the transaction agreements, provide the following information:

(1) On a pool by pool basis, the amount, if material, of the publicly securitized assets originated or sold by the originator that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets that has been made in the prior three years pursuant to the transaction agreements. Provide the percentage of that amount that were not then repurchased or replaced by the originator. Of those assets that were not then repurchased or replaced, disclose whether an opinion of a third party not affiliated with the originator had been furnished to the trustee that confirms that the assets did not violate the representations and warranties.

(2) The originator's financial condition to the extent that there is a material risk that the financial condition could have a material impact on the origination of the

originator's assets in the pool or on its ability to comply with the provisions relating to the repurchase obligations for those assets.

15. Amend §229.1111 by:

a. Revising paragraph (a)(3);

b. Redesignating paragraphs (a)(5) and (a)(6) and Instruction to Item 1111(a)(6) as paragraphs (a)(6) and (a)(7) and Instruction to Item 1111(a)(7);

c. Adding new paragraph (a)(5);

d. Revising paragraph (e); and

e. Adding paragraphs (h) and (i).

The addition and revisions read as follows:

§ 229.1111 (Item 1111) Pool assets.

(a) * * *

(3) A description of the solicitation, credit-granting or underwriting criteria used to originate or purchase the pool assets, including any changes in such criteria and the extent to which such policies and criteria are or could be overridden. Disclosure on the underwriting of assets that deviate from the disclosed criteria, must be accompanied by data on the amount and characteristics of those assets that did not meet the disclosed standards. If disclosure is provided regarding compensating or other factors, if any, that were used to determine that the those assets should be included in the pool, despite not having met the disclosed underwriting standards, describe those factors and provide data on the amount of assets in the pool that are represented as meeting those factors and the amount of assets that do not meet those factors.

* * * * *

(5) The steps undertaken by the originator to verify the information used in the solicitation, credit-granting or underwriting of the pool assets.

* * * * *

(e) Representations and warranties and modification provisions relating to the pool assets. Provide the following information:

(1) Representations and warranties.

(i) Summarize any representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction, and describe briefly the remedies available if those representations and warranties are breached, such as repurchase obligations.

(ii) Describe any representation and warranty relating to fraud in the origination of the assets. If none, so state.

(2) Modification provisions. Describe any provisions in the transaction agreements governing the modification of the terms of any asset, including how modification may effect cash flows from the assets or to the securities.

* * * * *

(h) Asset-level information. Provide asset-level information for each asset in the pool in a manner specified in Schedule L (§229.1111A). This subparagraph (h) does not apply to issuers of asset-backed securities backed primarily by receivables due on credit cards, charge cards or stranded costs. State in the prospectus that the information provided in response to this subparagraph and Schedule L is provided as a machine-

readable data file filed with the Securities and Exchange Commission on its website at www.sec.gov. Identify the CIK and file number.

(1) If the information is part of a prospectus filed with a registration statement on Form SF-1 (§239.44) or in accordance with Rule 424(h) (§230.424(h)), provide the information as of a measurement date, unless otherwise specified. For purposes of this subparagraph, the measurement date is a date designated by the registrant that is as recent as practicable.

(2) If the information is part of a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (§230.424(b)), provide the information as of the cut-off date as specified in the instruments governing the transaction (i.e., the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders).

(3) If the information is part of a report filed on Form 8-K (referenced in § 249.308) in accordance with Item 6.05, provide the information as of the cut-off date as specified in the instruments governing the transaction, unless otherwise specified.

(i) Credit card pool information. If the asset-backed securities are backed primarily by receivables due on credit cards or charge cards, provide the information for the underlying pool in a manner specified in Schedule CC (§229.1111B). State in the prospectus that the information provided in response to this subparagraph and Schedule CC is provided as a machine-readable data file filed with the Securities and Exchange Commission on its website at www.sec.gov. Identify the CIK of the issuer and file number.

(1) If the information is part of a prospectus filed in accordance with Rule 424(h) (§230.424(h)), or if the information is part of a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (§230.424(b)), provide the information as of a measurement date. Identify the measurement date in the prospectus. For purposes of this paragraph, the measurement date is a date designated by the registrant that is as recent as practicable.

(2) If the information is part of a report filed on Form 8-K (referenced in § 249.308) in accordance with Item 6.05, provide the information as of a measurement date.

16. Add §229.1111A to read as follows:

§229.1111A (Item 1111A) Asset-level information.

Schedule L

Note A. Submit the disclosures as an Asset Data File (as defined in §232.11 of this chapter) in the format required by the EDGAR Filer Manual. See Rule 301 of Regulation S-T (§232.301 of this chapter).

Instruction. The following definitions apply to the terms used in this schedule unless otherwise specified:

MI. Mortgage insurance.

Underwritten. The amount of revenues or expenses adjusted based on a number of assumptions made by the mortgage originator or seller.

Item 1. General. Provide the following data for each asset in the asset pool:

(a) Information related to the asset.

(1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

Instruction to Item 1(a)(1). Asset number types that will satisfy the requirements of this subparagraph may be generated by organizations such as CUSIP Global Services (CUSIP), the American Securitization Forum (ASF Universal Link) or MERS (Mortgage Identification Number); by the registrant; or by using the convention "[CIK number]-[Sequential asset number]".

(2) Asset number. Provide the unique ID number of the asset.

Instruction to Item 1(a)(2). The asset number should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13(a) or 15(d) of the Exchange Act.

(3) Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.

(4) Originator. Identify the name or MERS organization number of the originator entity. If the asset is a security, identify the name of the issuer.

(5) Origination date. Provide the date of asset origination. For revolving asset master trusts, provide the origination date of the receivable that will be added to the asset pool.

(6) Original asset amount. Indicate the dollar amount of the asset at the time of origination.

(7) Original asset term. Indicate the initial number of months between asset origination and the asset maturity date.

(8) Asset maturity date. Indicate the month and year in which the final payment on the asset is scheduled to be made.

(9) Original amortization term. Indicate the number of months in which the asset would be retired if the amortizing principal and interest payment were to be paid each month.

(10) Original interest rate. Provide the rate of interest at the time of origination of the asset.

(11) Interest type. Indicate whether the interest rate calculation method is simple or actuarial.

(12) Amortization type. Indicate whether the interest rate on the asset is fixed or adjustable.

(13) Original interest only term. Indicate the number of months in which the obligor is permitted to pay only interest on the asset.

(14) First payment date. Provide the date of the first scheduled payment.

(15) Primary servicer. Identify the name or MERS organization number of the entity that services or will have the right to service the asset.

(16) Servicing fee—percentage. If the servicing fee is based on a percentage, indicate the percentage of monthly servicing fee paid to all servicers as a percentage of the Original Contract Amount.

(17) Servicing fee—flat-dollar. If the servicing fee is based on a flat-dollar amount, indicate the monthly servicing fee paid to all servicers as a dollar amount.

(18) Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are to be advanced by the servicer.

(19) Defined underwriting indicator. Indicate yes or no whether the loan or asset was made as an exception to a defined and/or standardized set of underwriting criteria.

(20) Measurement date. The date the loan or asset-level data is provided in accordance with Item 1111(h)(1) of Regulation AB (§229.1111(h)(1)).

(b) Updated information as of the cut-off date.

(1) Cut-off date. Indicate the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders.

(2) Current asset balance. Indicate the outstanding principal balance of the asset as of the cut-off date.

(3) Current interest rate. Indicate the interest rate in effect on the asset as of the cut-off date.

(4) Current payment amount due. Indicate the next total payment due to be collected.

(5) Current delinquency status. Indicate the number of days the obligor is delinquent as determined by the governing transaction agreement.

(6) Number of days payment is past due. If an obligor has not made the full scheduled payment, indicate the number of days between the scheduled payment date and the cut-off date.

(7) Current payment status. Indicate the number of payments the obligor is past due as of the cut-off date. A payment is considered past due if it has not been received by the end of the day immediately preceding the next due date.

(8) Remaining term to maturity. Indicate the number of months between the cut-off date and the asset maturity date.

Item 2. Residential mortgages. If the asset pool contains residential mortgages, provide the following data for each loan in the asset pool:

(a) Information related to the loan.

(1) Loan purpose. Specify the code which describes the purpose of the loan.

(2) Lien position. Indicate the code that describes the lien position for the loan.

(3) Prepayment penalty indicator. Indicate yes or no as to whether the obligor is subject to prepayment penalties.

(4) Negative amortization indicator. Indicate yes or no as to whether the loan allows negative amortization.

(5) Mortgage modification indicator. Indicate yes or no as to whether the loan has been modified.

(6) Mortgage insurance requirement indicator. Indicate yes or no as to whether the mortgage insurance is or was required as a condition for originating the loan.

(7) Balloon indicator. Indicate yes or no as to whether the loan documents require a lump-sum payment of principal at maturity.

(8) Cash out amount. Provide the amount of cash the obligor will receive at the closing of the loan on a refinance transaction.

(9) Broker. Indicate yes or no as to whether a broker originated or was involved in the origination of the loan.

(10) Channel. Specify the code that describes the source from which the Issuer obtained the loan.

(11) NMLS loan originator number. Specify the National Mortgage License System registration number of the loan originator.

(12) NMLS loan origination company number. Specify the National Mortgage License System registration number of the company that originated the loan.

(13) Buy down period. Indicate the total number of months during which any buy down is in effect, representing the accumulation of all buy down periods.

(14) Interest paid through date. Provide the date through which interest is paid with the current payment, which is the effective date from which interest will be calculated for the application of the next payment.

(15) Loan delinquency advance days count. Indicate the number of days after which a servicer can stop advancing funds on a delinquent loan.

(16) Junior mortgage balance. For first mortgages with subordinate liens at the time of origination, provide the amount of the combined balance of the subordinate liens.

(17) Information related to junior liens. If the loan is not a first mortgage, provide the following additional information for each non-first mortgage:

(i) Senior loan amount(s). For non-first mortgages, provide the total amount of the balances of all associated senior mortgages at the time of origination of the subordinate lien.

(ii) Loan type of most senior lien. For non-first mortgages, indicate the code that describes the loan type of the first mortgage.

(iii) Hybrid period of most senior lien. For non-first mortgages where the associated first mortgage is a hybrid ARM, provide the number of months remaining in the initial fixed interest rate period for the first mortgage.

(iv) Negative amortization limit of most senior lien. For non-first mortgages where the associated first mortgage features negative amortization, indicate the negative amortization limit of the mortgage as a percentage of the original unpaid principal balance.

(v) Origination date of most senior lien. For non-first mortgages, provide the origination date of the associated first mortgage.

(18) Information related to ARMs. If the loan is an ARM, provide the following additional information for each loan:

(i) ARM index. Specify the code that describes the index on which an adjustable interest rate is based.

(ii) ARM margin. Indicate the number of percentage points that is added to the current index value to establish the new note rate at each interest rate adjustment date.

(iii) Fully indexed interest rate. Indicate the fully indexed interest rate.

(iv) Initial fixed rate period for hybrid ARM. If the interest rate is initially fixed for a period of time, indicate the number of months between the

first payment date of the mortgage and the first interest rate adjustment date.

(v) Initial interest rate decrease. Indicate the maximum percentage by which the mortgage note rate may decrease at the first interest rate adjustment date.

(vi) Initial interest rate increase. Indicate the maximum percentage by which the mortgage note rate may increase at the first interest rate adjustment date.

(vii) Index lookback. Provide the number of days prior to an interest rate effective date used to determine the appropriate index rate.

(viii) Subsequent interest rate reset period. Indicate the number of months between subsequent rate adjustments.

(ix) Lifetime rate ceiling. Indicate the percentage of the maximum interest rate that can be in effect during the life of the loan.

(x) Lifetime rate floor. Indicate the percentage of the minimum interest rate that can be in effect during the life of the loan.

(xi) Next adjustment date. Provide the next scheduled date on which the mortgage note rate adjusts.

(xii) Subsequent interest rate decrease. Provide the maximum percentage by which the interest rate may decrease at each rate adjustment date after the initial adjustment.

(xiii) Subsequent interest rate increase. Provide the maximum percentage by which the interest rate may increase at each rate adjustment date after the initial adjustment.

(xiv) Subsequent payment reset period. Indicate the number of months between payment adjustments after the first interest rate adjustment date.

(xv) ARM round indicator. Indicate the code that describes whether an adjusted interest rate is rounded to the next higher adjustable rate mortgage round factor, to the next lower round factor, or to the nearest round factor.

(xvi) ARM round percentage. Indicate the percentage to which an adjusted interest rate is to be rounded.

(xvii) Option ARM indicator. Indicate yes or no as to whether the loan is an Option ARM.

(xviii) Payment method after recast. Specify the code that describes the means of computing the lowest monthly payment available to the obligor after recast.

(xix) Initial minimum payment. Provide the amount of the initial minimum payment the obligor is permitted to make.

(xx) Convertible indicator. Indicate yes or no as to whether the obligor of the loan has an option to convert an adjustable interest rate to a fixed interest rate during a specified conversion window.

(xxi) HELOC indicator. Indicate yes or no as to whether the loan is a Home Equity Line of Credit (HELOC).

(xxii) HELOC draw period. Indicate the original maximum number of months during which the obligor may draw funds against the HELOC account.

(19) Information related to prepayment penalties. If the obligor is subject to prepayment penalties, provide the following additional information for each loan:

(i) Prepayment penalty calculation. Specify the code that describes the method for calculating the prepayment penalty for the loan.

(ii) Prepayment penalty type. Specify the code that describes the type of prepayment penalty.

(iii) Prepayment penalty total term. Provide the total number of months that the prepayment penalty may be in effect.

(20) Information related to negative amortization. If the loan allows for negative amortization, provide the following additional information for each loan:

(i) Negative amortization limit. Specify the maximum dollar amount of negative amortization that is allowed before it is required to recalculate the fully amortizing payment based on the new loan balance.

(ii) Initial negative amortization recast period. Indicate the number of months in which negative amortization is allowed.

(iii) Subsequent negative amortization recast period. Indicate the number of months after which the payment is required to recast after the first recast period.

(iv) Current negative amortization balance amount. Provide the amount of the current negative amortization balance accumulated.

(v) Initial fixed payment period. Indicate the number of months after the origination of the loan during which the payment is fixed.

(vi) Initial periodic payment cap. Indicate the maximum percentage by which a payment can change (increase or decrease) in the first period.

(vii) Subsequent periodic payment cap. Indicate the maximum percentage by which a payment can change (increase or decrease) in one period after the initial cap.

(viii) Initial minimum payment reset period. Provide the maximum number of months an obligor can initially pay the minimum payment before a new minimum payment is determined.

(ix) Subsequent minimum payment reset period. Provide the maximum number of months an obligor can pay the minimum payment before a new minimum payment is determined after the initial period.

(x) Current minimum payment. Provide the amount of current minimum payment.

(21) Information related to modifications. If the loan has been modified, provide information related to the most recent modification.

(i) Number of modifications. Provide the number of times that the loan has been modified.

(ii) Loan modification event type. Specify the code that describes the type of action that has modified the loan terms.

(iii) Loan modification effective date. Provide the date on which the modification of the loan has gone into effect.

(iv) Updated DTI (front-end). Provide the updated front-end DTI ratio, calculated by dividing the total monthly housing expense by total monthly income.

(v) Updated DTI (back-end). Provide the updated back-end DTI ratio, calculated by dividing the total monthly debt expense by the total monthly income.

(vi) Modification effective payment date. Indicate the date of the first payment due after the loan modification.

(vii) Total capitalized amount. Provide the amount added to the principal balance of a loan due to the modification.

(viii) Total deferred amount. Provide the deferred amount that is non-interest bearing.

(ix) Pre-modification interest rate. Provide the most recent scheduled interest rate preceding the Modification Effective Payment Date.

(x) Pre-modification principal and interest payment. Provide the most recent scheduled total principal and interest payment amount preceding the Modification Effective Payment Date.

(xi) Forgiven principal amount. Provide the total amount of all principal balance reductions as a result of loan modification over the life of the loan.

(xii) Forgiven interest amount. Provide the total amount of all interest forgiven as a result of loan modification over the life of the loan.

(b) Information related to the property.

(1) Geographic location. Specify the location of the property by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.

(2) Occupancy status. Specify the code that describes the property occupancy status.

(3) Sales price. Provide the negotiated price of a given property between the buyer and seller.

(4) Property type. Specify the code that describes the type of property that secures the loan.

(5) Original appraised property value. Provide the appraised value amount of the property used to approve the loan.

(6) Original property valuation type. Specify the code that describes the method by which the property value was reported at the time of underwriting.

(7) Original property valuation date. Specify the date on which the original property value was reported.

(8) Original automated valuation model (AVM) model name. Provide the code that indicates the name of the AVM model if an AVM was used to determine the original property valuation.

(9) Original AVM confidence score. Provide the confidence score presented on the AVM report of the original property value.

(10) Most recent property value. If an additional property valuation was obtained after the Original Appraised Property Value, provide the most recent property value.

(11) Most recent property valuation type. Specify the code that describes the method by which the Most Recent Property Value was reported.

(12) Most recent property valuation date. Specify the date on which the Most recent property value was reported.

(13) Most recent AVM model name. Provide the code indicating the name of the AVM model if an AVM was used to determine the most recent property value.

(14) Most recent AVM confidence score. Provide the confidence score presented on the AVM report of the most recent property value.

(15) Original combined loan-to-value (CLTV). Provide the ratio obtained by dividing the amount of all known outstanding mortgage liens on a property at origination by the lesser of the original appraised property value or the sales price.

(16) Original loan-to-value (LTV). Provide the ratio obtained by dividing the amount of the original mortgage loan at origination by the lesser of the original appraised property value or the sales price.

(17) LTV calculation date. Provide the date on which the LTV was calculated.

(18) Original pledged assets. If the obligor pledged financial assets to the lender instead of making a down payment, provide the total value of assets pledged as collateral for the loan at the time of origination.

(19) Information related to manufactured homes. If loans in the pool are collateralized by manufactured homes, provide the following additional information:

(i) Real estate interest. Indicate the code that describes the real estate interest of the property on which the manufactured home is situated.

(ii) Community ownership structure. If the manufactured home is situated in a community, specify the code that describes the ownership of the community.

(iii) Year of manufacture. Indicate the year in which the home was manufactured.

(iv) HUD code compliance indicator. Indicate yes or no as to whether the home was constructed in accordance with the 1976 HUD code.

(v) Gross manufacturer's invoice price. Provide the total amount that appears on the manufacturer's invoice of the home.

(vi) LTI (loan-to-invoice) gross. Provide the ratio of the loan amount divided by the gross manufacturer's invoice price.

(vii) Net manufacturer's invoice price. Provide the amount of the gross manufacturer's invoice price minus intangible costs, including: transportation, association, on-site setup, service, and warranty costs, taxes, dealer incentives, and other fees.

(viii) LTI (Net). Provide the ratio of the loan amount divided by the net manufacturer's invoice price.

(ix) Manufacturer name. Provide the name of the manufacturer of the subject property.

(x) Model name. Provide the model name of the subject property.

(xi) Down payment source. Indicate the code that describes the source of the down payment.

(xii) Community/related party lender indicator. Indicate the code describing whether the loan was made by the community owner, an affiliate of the community owner or the owner of the real estate upon which the collateral is located.

(xiii) Chattel indicator. Specify the code indicating whether the secured property is classified as chattel or real estate.

(c) Information related to the obligor.

(1) Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor.

(2) Obligor credit score. Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 2(c)(3).

(3) Obligor FICO score. If the obligor credit score type is FICO, provide the standardized FICO credit score of the obligor.

(4) Co-obligor credit score type. Specify the type of the standardized credit score used to evaluate the co-obligor.

(5) Co-obligor credit score. Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 2(c)(6).

(6) Co-obligor FICO score. Provide the standardized FICO credit score of the co-obligor.

(7) Obligor income verification level. Indicate the code describing the extent to which the obligor's income has been verified.

(8) Co-obligor income verification. Indicate the code describing the extent to which the co-obligor's income has been verified.

(9) Obligor employment verification. Indicate the code describing the extent to which the obligor's employment has been verified.

(10) Co-obligor employment verification. Indicate the code describing the extent to which the co-obligor's employment has been verified.

(11) Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.

(12) Co-obligor asset verification. Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.

(13) Liquid/cash reserves. Provide the dollar amount of remaining verified liquid assets after the close of the mortgage.

(14) Number of mortgaged properties. Provide the number of properties owned by the obligor that currently secure mortgage loans.

(15) Monthly debt. Provide the dollar amount of the aggregate monthly payment due on other debt of the obligor.

(16) Originator DTI. Provide the total debt to income ratio used by the originator to qualify the loan.

(17) Qualification method. Specify the code that describes type of mortgage payment used to qualify the obligor for the loan.

(18) Percentage of down payment from obligor own Funds. Provide the percentage of down payment from obligor own funds other than any gift or borrowed funds.

(19) Number of obligors. Indicate the number of obligors who are obligated to repay the mortgage note.

(20) Self-employment flag. Indicate whether the obligor is self-employed.

(21) Current other monthly payment. Provide the total amount per month of all payments pertaining to the subject property other than principal and interest.

(22) Length of employment: obligor. Provide the number of complete months of service with the obligor's current employer as of the origination date.

(23) Length of employment: co-obligor. Provide the number of complete months of service with the co-obligor's current employer as of the origination date.

(24) Months bankruptcy. Provide the number of months since any obligor was discharged from bankruptcy.

(25) Months foreclosure. If the obligor has directly or indirectly been obligated on any loan that resulted in foreclosure, provide the number of months since the foreclosure date.

(26) Obligor wage income. Provide the dollar amount per month of income associated with the obligor's employment.

(27) Co-obligor wage income. Provide the dollar amount per month of income associated with the co-obligor's employment.

(28) Obligor other income. Provide the dollar amount of the obligor's monthly income other than Obligor Wage Income.

(29) Co-obligor other income. Provide the dollar amount of the co-obligor's monthly income other than co-obligor wage income.

(30) All obligor wage income. Provide the monthly income of all obligors derived from employment.

(31) All obligor total income. Provide the monthly income of all obligors.

(d) Information related to mortgage insurance. If mortgage insurance is required on the mortgage, provide the following additional information:

(1) Mortgage insurance company name. Provide the name of the entity providing mortgage insurance for the loan.

(2) Mortgage insurance coverage. Indicate the percentage of mortgage insurance coverage obtained.

(3) Mortgage insurance obtainer. Specify the code that describes the party that paid for the mortgage insurance: the obligor, the lender, or others.

(4) Pool insurance company. Provide the name of the pool insurance provider.

(5) Pool insurance stop loss percent. Provide the aggregate amount that the pool insurance company will pay, calculated as a percentage of the pool balance.

(6) Mortgage insurance certificate number. Provide the number assigned to the individual loan by the mortgage insurance company.

(7) Mortgage insurance coverage plan type. Specify the code that describes coverage category of mortgage insurance applicable to the loan.

Item 3. Commercial mortgages. If the asset pool contains commercial mortgages, provide the following data for each loan in the asset pool:

(a) Information related to the loan.

(1) Lien position. Indicate the code that describes the lien position for the loan.

(2) Loan structure. Indicate the code that describes the type of loan structure including the seniority of participated mortgage loan components. The code relates to loan within securitization.

(3) Current remaining term. Provide the number of months until the earlier of the scheduled loan maturity or the current hyperamortizing date.

(4) Payment type. Indicate the code that describes the type or method of payment for a loan.

(5) Periodic principal and interest payment. Provide the total amount of principal and interest due on the loan in effect as of the closing date of the transaction.

(6) Payment Frequency. Indicate the code that describes the frequency mortgage loan payments are required to be made.

(7) Number of properties. Provide the current number of properties which serve as mortgage collateral for the loan.

(8) Grace days allowed. Provide the number of days after a mortgage payment is due in which the lender will not require a late payment charge in accordance with the loan documents. Does not include penalties associated with default interest.

(9) Current hyper-amortizing date. Provide the current anticipated repayment date, after which principal and interest may amortize at an accelerated rate, and/or interest expense to mortgagor increases substantially as per the loan documents.

(10) Interest only indicator. Indicate yes or no as to whether or not this is a loan for which scheduled interest only is payable, whether for a temporary basis or until the full loan balance is due.

(11) Balloon indicator. Indicate yes or no as to whether the loan documents require a lump-sum payment of principal at maturity.

(12) Prepayment penalty indicator. Indicate yes or no as to whether the obligor is subject to prepayment penalties.

(13) Negative amortization indicator. Indicate yes or no whether negative amortization (interest shortage) amounts are permitted to be added back to the unpaid principal balance of the loan if monthly payments should fall below the true amortized amount.

(14) Mortgage modification indicator. Indicate yes or no whether the loan has been modified.

(15) Information related to ARMs. If the loan is an ARM, provide the following additional information for each loan:

(i) ARM index. Specify the code that describes the index on which an adjustable interest rate is based.

(ii) First rate adjustment date. Provide the date on which the first interest rate adjustment becomes effective.

(iii) First payment adjustment date. Provide the date on which the first adjustment to the regular payment amount becomes effective (after the contribution/cut-off date).

(iv) ARM margin. Indicate the number of percentage points that is added to the current index value to establish the new note rate at each interest rate adjustment date.

(v) Lifetime rate ceiling. Indicate the percentage of the maximum interest rate that can be in effect during the life of the loan.

(vi) Lifetime rate floor. Indicate the percentage of the minimum interest rate that can be in effect during the life of the loan.

(vii) Periodic rate increase. Provide the maximum percentage the interest rate can increase from any period to the next.

(viii) Periodic rate decrease. Provide the maximum percentage the interest rate can decrease from any period to the next.

(ix) Periodic pay adjustment. Provide the maximum dollar amount the principal and interest constant can increase or decrease on any adjustment date.

(x) Periodic pay adjustment. Provide the maximum percentage amount the principal and interest constant can increase or decrease from any period to the next.

(xi) Rate reset frequency. Indicate the code describing the frequency which the periodic mortgage rate is reset due to an adjustment in the ARM index.

(xii) Pay reset frequency. Indicate the code describing the frequency which the periodic mortgage payment will be adjusted.

(xiii) Index look back. Provide the number of days prior to an interest rate adjustment effective date used to determine the appropriate index rate.

(16) Information related to prepayment penalties. If the obligor is subject to prepayment penalties, provide the following additional information for each loan:

(i) Prepayment lock-out end date. Provide the effective date after which the lender allows prepayment of a loan.

(ii) Yield maintenance end date. Provide the date after which yield maintenance prepayment penalties are no longer effective.

(iii) Prepayment premium end date. Provide the effective date after which prepayment premiums are no longer effective.

(17) Information related to negative amortization. If the loan allows for negative amortization, provide the following additional information for each loan:

(i) Maximum negative amortization allowed (% of original balance). Provide the maximum percentage of the original loan balance that can be added to the original loan balance as the result of negative amortization.

(ii) Maximum negative amortization allowed ($). Provide the maximum dollar amount of the original loan balance that can be added to the original loan balance as the result of negative amortization.

(b) Information related to the property. Provide the following information for each of the properties that collateralizes a loan identified above.

(1) Property name. Provide the name of the property which serves as mortgage collateral. If the property has been defeased, then populate with "defeased."

(2) Geographic location. Specify the location of the property by providing the zip code.

(3) Property type. Indicate the code that describes how the property is being used.

(4) Net rentable square feet. Provide the net rentable square feet area of a property.

(5) Number of units/beds/rooms. Provide the number of units/beds/rooms of a property.

(6) Year built. Provide the year that the property was built.

(7) Valuation amount. The valuation amount of the property as of the valuation date.

(8) Valuation source. Specify the code that identifies the source of the most recent property valuation.

(9) Valuation date. The date the valuation amount was determined.

(10) Physical occupancy. Provide the percentage of rentable space occupied by tenants. Should be derived from a rent roll or other document indicating occupancy.

(11) Revenue. Provide the total underwritten revenue amount from all sources for a property.

(12) Operating expenses. Provide the total underwritten operating expenses. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance.

(13) Defeasance option start date. Provide the date when the defeasance option becomes available.

(14) Net operating income. Provide the total underwritten revenues less total underwritten operating expenses prior to application of mortgage payments and capital items for all properties.

(15) Net cash flow. Provide the total underwritten revenue less the total underwritten operating expenses and capital costs.

(16) NOI/NCF indicator. Indicate the code that describes how net operating income and net cash flow were calculated.

(17) DSCR (NOI). Provide the ratio of underwritten net operating income to debt service.

(18) DSCR (NCF). Provide the ratio of underwritten net cash flow to debt service.

(19) DSCR indicator. Indicate the code that describes how DSCR was calculated.

(20) Largest tenant. Identify the tenant that leases the largest square feet of the property (based on the most recent annual lease rollover review).

(21) Square feet of largest tenant. Provide total square feet leased by the largest tenant.

(22) Lease expiration of largest tenant. Provide the date of lease expiration for the largest tenant.

(23) Second largest tenant. Identify the tenant that leases the second largest square feet of the property (based on the most recent annual lease rollover review).

(24) Square feet of second largest tenant. Provide total square feet leased by the second largest tenant.

(25) Lease expiration of second largest tenant. Provide the date of lease expiration for the second largest tenant.

(26) Third largest tenant. Identify the tenant that leases the third largest square feet of the property (based on the most recent annual lease rollover review).

(27) Square feet of third largest tenant. Provide total square feet leased by the third largest tenant.

(28) Lease expiration of third largest tenant. Provide the date of lease expiration for the third largest tenant.

Item 4. Automobile loans. If the asset pool contains vehicle loans, provide the following data for each loan in the asset pool:

(a) Information related to the loan.

(1) Payment type. Specify the code indicating whether payments are required monthly or if a balloon payment is due.

(2) Subvented. Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the buyer.

(b) Information related to the property.

(1) Geographic location of dealer. Provide the zip code of the originating dealer.

(2) Vehicle manufacturer. Provide the name of the manufacturer of the vehicle.

(3) Vehicle model. Provide the name of the model of the vehicle.

(4) New or used. Indicate whether the vehicle financed is new or used.

(5) Model year. Indicate the model year of the vehicle.

(6) Vehicle type. Indicate the code describing the vehicle type.

(7) Vehicle value. Indicate the value of the vehicle at the time of origination.

(8) Source of vehicle value. Specify the code that describes the source of the vehicle value.

(c) Information related to the obligor.

(1) Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor.

(2) Obligor credit score. Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 4(c)(3).

(3) Obligor FICO score. If the Obligor Credit Score Type is FICO, provide the standardized FICO credit score of the obligor.

(4) Co-Obligor credit score type. Specify the type of the standardized credit score used to evaluate the co-obligor.

(5) Co-Obligor credit score. Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 4(c)(6).

(6) Co-Obligor FICO score. Provide the standardized FICO credit score of the co-obligor.

(7) Obligor income verification level. Indicate the code describing the extent to which the obligor's income has been verified.

(8) Co-obligor income verification. Indicate the code describing the extent to which the co-obligor's income has been verified.

(9) Obligor employment verification. Indicate the code describing the extent to which the obligor's employment has been verified.

(10) Co-obligor employment verification. Indicate the code describing the extent to which the co-obligor's employment has been verified.

(11) Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.

(12) Co-obligor asset verification. Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.

(13) Length of employment: obligor. Provide the number of complete months of service with the obligor's current employer as of the origination date.

(14) Length of employment: co-obligor. Provide the number of complete months of service with the co-obligor's current employer as of the origination date.

(15) Obligor wage income. Provide the dollar amount per month of income associated with the obligor's employment.

(16) Co-obligor wage income. Provide the dollar amount per month of income associated with the co-obligor's employment.

(17) Obligor other income. Provide the dollar amount of the obligor's monthly income other than obligor wage income.

(18) Co-obligor other income. Provide the dollar amount of the co-obligor's monthly income other than Co-obligor wage income.

(19) All obligor wage income. Provide the monthly income of all obligors derived from employment.

(20) All obligor total income. Provide the monthly income of all obligors.

(21) Geographic location of obligor. Specify the location of the obligor by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.

Item 5. **Automobile leases.** If the asset pool contains automobile leases, provide the following data for each lease in the asset pool:

(a) Information related to the lease.

(1) Payment Type. Specify the code indicating whether payments are required monthly or if a balloon payment is due.

(2) Subvented. Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the obligor.

(b) Information related to the property.

(1) Geographic location of the dealer. Provide the zip code of the originating dealer.

(2) Vehicle manufacturer. Provide the name of the manufacturer of the vehicle.

(3) Vehicle model. Provide the name of the model of the vehicle.

(4) New or used. Indicate whether the vehicle financed is new or used.

(5) Model year. Indicate the model year of the vehicle.

(6) Vehicle type. Indicate code describing the vehicle type.

(7) Vehicle value. Provide the dollar value of the vehicle at the time of origination.

(8) Source of vehicle value. Specify the code that describes the source of the vehicle value.

(9) Base residual value. Provide the residual value of the vehicle at the time of origination.

(10) Source of base residual value. Specify the code that describes the source of the residual value.

(c) Information related to the obligor.

(1) Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor.

(2) Obligor credit score. Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 5(c)(3).

(3) Obligor FICO score. If the obligor credit score type is FICO, provide the standardized FICO credit score of the obligor.

(4) Co-obligor credit score type. Specify the type of the standardized credit score used to evaluate the co-obligor.

(5) Co-obligor credit score. Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 5(c)(6).

(6) Co-obligor FICO Score. Provide the standardized FICO credit score of the co-obligor.

(7) Obligor income verification level. Indicate the code describing the extent to which the obligor's income has been verified.

(8) Co-obligor income verification. Indicate the code describing the extent to which the co-obligor's income has been verified.

(9) Obligor employment verification. Indicate the code describing the extent to which the obligor's employment has been verified.

(10) Co-obligor employment verification. Indicate the code describing the extent to which the co-obligor's employment has been verified.

(11) Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.

(12) Co-obligor asset verification. Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.

(13) Length of employment: obligor. Provide the number of complete months of service with the obligor's current employer as of the origination date.

(14) Length of employment: Co-obligor. Provide the number of complete months of service with the co-obligor's current employer as of the origination date.

(15) Obligor wage income. Provide the dollar amount per month of income associated with the obligor's employment.

(16) Co-obligor wage income. Provide the dollar amount per month of income associated with the co-obligor's employment.

(17) Obligor other income. Provide the dollar amount of the obligor's monthly income other than obligor wage income.

(18) Co-obligor other income. Provide the dollar amount of the co-obligor's monthly income other than co-obligor wage income.

(19) All obligor wage income. Provide the monthly income of all obligors derived from employment.

(20) All obligor total income. Provide the monthly income of all obligors.

(21) Geographic location of obligor. Specify the location of the obligor by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.

Item 6. **Equipment loans.** If the asset pool contains equipment loans, provide the following data for each loan in the asset pool:

(a) Information related to the loan.

(1) Payment frequency. Specify the code that describes the payment frequency on the loan.

(b) Information related to the property.

(1) Equipment type. Indicate the code that describes the equipment type.

(2) New or used. Indicate whether the equipment financed is new or used.

(c) Information related to the obligor.

(1) Obligor industry. Indicate the code that describes the industry category of the obligor.

(2) Geographic location of obligor. Provide the zip code of the obligor.

Item 7. **Equipment leases.** If the asset pool contains equipment leases, provide the following data for each lease in the asset pool:

(a) Information related to the lease.

(1) Lease type. Indicate whether the lease is a true lease or a finance lease.

(2) Payment frequency. Indicate the code that describes the payment frequency on the lease.

(b) Information related to the property.

(1) Equipment type. Indicate the code that describes the equipment type.

(2) New or used. Indicate whether the equipment financed is new or used.

(3) Residual value. Provide the residual value of the equipment at the time of origination. For operating leases, provide the value of the asset at the end of its useful economic life (i.e., "salvage" or "scrap value").

(4) Source of residual value. Specify the code that describes the source of the residual value.

(c) Information related to the obligor.

(1) Obligor industry. Indicate the code that describes the industry category of the obligor.

(2) Geographic location of obligor. Provide the zip code of the obligor.

Item 8. **Student loans.** If the asset pool contains student loans, provide the following data for each loan in the asset pool:

(a) Information related to the loan.

(1) Subsidized. Indicate whether the loan is subsidized or unsubsidized.

(2) Repayment type. Indicate code that describes the type of loan repayment terms.

(3) Year in repayment. If the loan is in repayment, indicate the number of years the loan has been in repayment.

(4) Guarantee agency. Specify the name of the agency guaranteeing the loan.

(5) Disbursement date. Indicate the date the loan was disbursed to the obligor.

(b) Information related to the obligor.

(1) Current obligor payment status. Indicate the code describing whether the obligor payment status is in-school, grace period, deferral, forbearance or repayment.

(2) Geographic location of obligor. Provide the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable of the obligor.

(3) School type. Indicate code describing the type of school or program.

(c) Information about private student loans. If the loan was not issued under a federally funded program provide the following for each loan in the pool:

(1) Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor.

(2) Obligor credit score. Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 8(c)(3).

(3) Obligor FICO score. Provide the standardized FICO credit score of the obligor.

(4) Co-Obligor credit score type. Specify the type of the standardized credit score used to evaluate the co-obligor.

(5) Co-Obligor credit score. Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 8(c)(6).

(6) Co-Obligor FICO score. Provide the standardized credit score of the co-obligor.

(7) Obligor income verification level. Indicate the code describing the extent to which the obligor's income has been verified.

(8) Co-obligor income verification. Indicate the code describing the extent to which the co-obligor's income has been verified.

(9) Obligor employment verification. Indicate the code describing the extent to which the obligor's employment has been verified.

(10) Co-obligor employment verification. Indicate the code describing the extent to which the co-obligor's employment has been verified.

(11) Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.

(12) Co-obligor asset verification. Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.

(13) Length of employment: obligor. Provide the number of complete months of service with the obligor's current employer as of the origination date.

(14) Length of employment: Co-obligor. Provide the number of complete months of service with the co-obligor's current employer as of the origination date.

(15) Obligor wage income. Provide the dollar amount per month of income associated with the obligor's employment.

(16) Co-obligor wage Income. Provide the dollar amount per month of income associated with the co-obligor's employment.

(17) Obligor other income. Provide the dollar amount of the obligor's monthly income other than obligor wage income.

(18) Co-obligor other income. Provide the dollar amount of the co-obligor's monthly income other than co-obligor wage income.

(19) All obligor wage income. Provide the monthly income of all obligors derived from employment.

(20) All obligor total income. Provide the monthly income of all obligors.

Item 9. Floorplan financings. If the asset pool contains receivables arising from floorplan financings, provide the following data for each loan in the asset pool:

(a) Information related to the loan.

(1) Account origination date. Provide the date of account origination.

(b) Information related to the property.

(1) Product line. Indicate the code describing the type of inventory product line.

(2) New or used. Indicate whether the collateral securing the loan is new or used.

(c) Information related to the obligor.

(1) Credit score type. Specify the type of the standardized credit score used to evaluate the obligor.

(2) Credit score. Provide the standardized credit score of the obligor.

(3) Geographic location of obligor. Provide the zip code of the obligor.

(d) If the issuing entity is structured as a master trust that has previously issued securities, provide the information as required by Items 1 and 9 of Schedule L-D (§229.1121A) for assets that were part of the pool prior to the current offering.

Item 10. Corporate debt. If the registrant's pool assets include corporate debt securities of another issuer, provide the following data for each security in the asset pool:

(a) Title of underlying security. Specify the title of the underlying security.

(b) Denomination. Give the minimum denomination of the underlying security.

(c) Currency. Specify the currency of the underlying security.

(d) Trustee. Specify the name of the trustee.

(e) Underlying SEC file number. Specify the registration statement file number of the registration of the offer and sale of the underlying security.

(f) Underlying CIK number. Specify the CIK number of the issuer of the underlying security.

(g) Callable. Indicate whether the security is callable.

(h) Payment frequency. Indicate the code describing the frequency of payments that will be made on the underlying security or agreement.

(i) Zero Coupon indicator. Indicate yes or no as to whether an underlying security or agreement is interest bearing.

Item 11. Resecuritizations.

(a) If the registrant's pool assets include asset-backed securities of another issuer, provide the asset-level information as required by Item 9. Corporate Debt in this Schedule L.

(b) Provide asset-level information as specified in this Schedule L and Item 1111(h) (§229.1111(h)) for the assets backing those securities.

* * * * *

17. Add §229.1111B to read as follows:

§229.1111B (Item 1111B) Grouped account data for credit card pools.

Schedule CC

Note A. Submit the disclosures as an Asset Data File (as defined in §232.11 of this chapter) in the format required by the EDGAR Filer Manual. See Rule 301 of Regulation S-T (§232.301 of this chapter).

* * * * *

Provide the information regarding the underlying asset pool required by paragraph (b) in all specified combinations of distributional groups for each pool characteristic specified in paragraph (a) below. Designate a grouped account data line number to each individual combination of distributional groups.

(a) Distributional groups.

(1) Credit score. If the credit score is FICO, provide each of the following credit score distributional groups: (1) less than 500; (2) 500-549; (3) 550-599; (4) 600-649; (5) 650-699; (6) 700-749; (7) 750-799; (8) 800 and over; and (9) unknown.

(2) Number of days past due. Provide each of the following number of days past due distributional groups: (1) current; (2) less than 30 days; (3) 30-59 days; (4) 60-89 days; (5) 90-119 days; (6) 120-149 days; (7) 150-179 days; and (8) 180 days and over.

(3) Account age. Provide each of the following account age distributional groups: (1) less than 12 months; (2) 12 to 24 months; (3) 24 to 36 months; (4) 36 to 48 months; (5) 48 to 60 months; and (6) over 60 months.

(4) State. Provide the top 10 states for aggregate account balance. The remaining accounts should be grouped into the category "other."

(5) Adjustable rate index. Provide the following groups of bases for the adjustable rate indexes: (1) fixed; (2) prime; and (3) other.

(b) Information required. Provide the following information for each combination of distributional groups specified in paragraph (a):

(1) Aggregate credit limit. Provide the aggregate credit limit for all accounts included in each representative line.

(2) Aggregate account balance. Provide the aggregate account balance for all accounts included in each representative line.

(3) Number of accounts. Provide the total number of accounts included in each representative line.

(4) Weighted average APR. Provide the weighted average annual percentage rate (APR) of all accounts included in each representative line.

(5) Weighted average net APR. Provide the weighted average net annual percentage rate (APR) of all accounts included in each representative line.

Weighted average net APR is the weighted average APR less servicing fees.

Instruction. The table below illustrates how the distributional groups in paragraph (a) and the information requirements in paragraph (b) relate to each other. A single line, or "grouped account data" line should disclose the aggregate credit limit, aggregate account balance, number of accounts, weighted average APR and weighted average net coupon of the accounts that possess the multiple characteristics designated by that grouped account data line. The combination of all distributional groups should produce 14,256 grouped account data lines representing composition of the entire underlying asset pool. For example, grouped account data line 2 in the table below presents the information required by paragraph (b) by combining all the credit card accounts in the underlying pool that fall within the 500-549 credit score group, delinquency status of less than 30 days, account age of 12 to 24 months with obligors located in the state of Alabama, where the adjustable rate index is based on a floating percentage.

	(a)(1)	(a)(2)	(a)(3)	(a)(4)	(a)(5)	(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)
Grouped Account Data Line number	Credit Score	Days payment is past due	Account Age	Top 10 State	Adjust-able Rate Index	Aggregate Credit Limit ($)	Aggregate Account Balance ($)	Number of Accounts (#)	Weighted Average APR (%)	Weighted Average Net APR (%)
1	Less than 500	Current	Less than 12 months	AK	Fixed					
2	500-549	< 30 days	12-24 months	AL	Prime					
3	550-599	30-59 days	24-36 months	AR	Other					
4	600-649	60-89 days	36-48 months	AZ	Fixed					
5	650-699	90-119 days	48-60 months	CA	Prime					
6	700-749	120-149 days	Over 60 months	CO	Other					
7	750-799	150-179 days	Less than 12 months	CT	Fixed					
8	800 and over	180+ days	12-24 months	DE	Prime					

9	Less than 500	< 30 days	24-36 months	DC	Other					
10	500-549	30-59 days	36-48 months	FL	Fixed					
11	550-599	60-89 days	48-60 months	Other	Prime					
12	600-649	90-119 days	Over 60 months	AK	Other					
13	650-699	120-149 days	Less than 12 months	AL	Fixed					
14	700-749	150-179 days	12-24 months	AR	Prime					
15	750-799	180+ days	24-36 months	AZ	Other					
16	800 and over	Current	36-48 months	CA	Fixed					

18. Amend § 229.1112 by:

a. Removing Instruction 2 to Item 1112(b); and

b. Redesignating Instructions 3 and 4 to Items 1112(b) as Instructions 2 and 3 to Item 1112(b).

19. Amend § 229.1113 by adding paragraph (h) as follows:

§ 229.1113 (Item 1113) Structure of the transaction.

* * * * *

(h) Waterfall Computer Program. Provide a Waterfall Computer Program in the manner specified in Rule 314 of Regulation S-T (§232.314). This subparagraph (h) does not apply to issuers of asset-backed securities backed primarily by receivables due on stranded costs.

(1) For purposes of this paragraph, a Waterfall Computer Program shall mean a computer program that:

(i) gives effect to the provisions in the transaction agreements that set forth the rules by which the funds available for payments or distributions to the holders of each class of securities, and each other person or account entitled to payments or distributions,

from the pool assets, pool cash flows, credit enhancement or other support, and the timing and amount of such payments or distributions, are determined;

(ii) provides a user with the ability to programmatically input:

(A) the user's own assumptions regarding the future performance and cash flows coming from the pool assets underlying the asset-backed security, including but not limited to assumptions about future interest rates, default rates, prepayment speeds, loss-given-default rates, and any other assumptions required to be described pursuant to Section 229.1113; and

(B) the current state and performance of the pool assets underlying the asset-backed security by uploading directly into the computer program the initial XML-based Asset Data File (as defined in §232.11 of this chapter) and any subsequent monthly updates to that file; and

(iii) produces a programmatic output, in machine-readable form, of all resulting cash flows associated with the asset-backed security, including the amount and timing of principal and interest payments payable or distributable to a holder of each class of securities, and each other person or account entitled to payments or distributions in connection with the securities, until the final legal maturity date as a function of the inputs described in paragraph (h)(1)(ii) of this section.

Instruction: For purposes of this definition, the transaction agreement provisions that should be given effect to include, but are not limited to, any provisions setting forth the priorities of payments or distributions (and any contingencies affecting such priorities) to the holders of each class of securities and any other persons or accounts entitled to payments or distributions, and any related provisions necessary to determine the

quantitative results of such provisions (including without limitation the provisions required to be described in Item 1113(b), Item 1113(c), Item 1113(d), and items (2)-(4), (6), (7) and (9) of Item 1113(a)) .

(2) Provide a sample expected output for each class of securities in the asset-backed transaction. The sample should be based on the Asset Data File (as defined in 232.11 of this chapter) filed pursuant to Item 1111(h)(1) and filed with the Waterfall Computer Program. The sample should disclose the sample input assumptions used to generate the expected output.

(3) State in the prospectus that the information provided in response to this subparagraph (h) is provided as a downloadable source code for a computer program in the Python programming language filed with the Securities and Exchange Commission on its website at www.sec.gov. Identify the CIK and file number of the filing.

(4) File the Waterfall Computer Program as part of any prospectus filed in accordance with Rule 424(h) (§230.424(h)) or any final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (§230.424(b)). The Waterfall Computer Program shall give effect to the transaction provisions as of the date of such filing.

(5) With respect to a credit card master trust, file the Waterfall Computer Program in accordance with Item 6.07(b) of Form 8-K (§249.308). The Waterfall Computer Program shall give effect to the transaction provisions as of the date of such filing.

20. Amend § 229.1114 by:

a. Revising the heading for "Instructions to Item 1114:" to read "Instructions to Item 1114(b)";

b. Removing Instruction 3 to Item 1114; and

c. Redesignating Instructions 4 and 5 to Item 1114 as Instructions 3 and 4 to Item 1114.

21. Amend §229.1121 by:

a. Revising paragraph (a)(9); and

b. Adding paragraphs (c) (d) and (e).

The revision and additions read as follows:

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

* * * * *

(a) * * *

(9) Delinquency and loss information for the period. Refer to Item 1100(b) of this Regulation AB for presentation of historical delinquency and loss information.

* * * * *

(c) If the sponsor or an originator is required to repurchase or replace any of the pool assets for breach of a representation and warranty pursuant to the transaction agreements, provide the amount, if material, of the publicly securitized assets originated or sold by the obligor (i.e., the sponsor or the originator) that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets that has been made in the period covered by the report pursuant to the transaction agreements. Also provide the percentage of that amount that were not then repurchased or replaced by the obligor. Of those assets that were not then

repurchased or replaced, disclose whether an opinion of a third party not affiliated with the obligor had been furnished to the trustee that confirms that the assets did not violate the representations and warranties.

(d) Asset-level performance information. Provide asset-level performance information for each asset in the pool in a manner specified in Schedule L-D (§229.1121A). This subparagraph (d) does not apply to issuers of asset-backed securities backed primarily by receivables due on credit cards, charge cards or stranded costs. State in the report on Form 10-D that the information provided in response to this subparagraph and Schedule L-D is filed with the Securities and Exchange Commission as a machine readable data file on the Commission's website at www.sec.gov. Identify the CIK of the issuer and file number.

(e) Grouped account data for credit card pools. If the asset-backed securities are backed primarily by receivables due on credit cards or charge cards, provide the information for the underlying pool in a manner specified in Schedule CC (§229.1111B). State in the report on Form 10-D that the information provided in response to this subparagraph and Schedule CC is filed with the Securities and Exchange Commission as a machine-readable data file on the Commission's website at www.sec.gov. Identify the CIK of the issuer and file number.

22. Add §229.1121A to read as follows:

§229.1121A Asset-level performance information.

Schedule L-D

Note A. Submit the disclosures as an Asset Data File (as defined in §232.11 of this chapter) in the format required by the EDGAR Filer Manual. See Rule 301 of Regulation S-T (§232.301 of this chapter).

Instruction. The following definitions apply to the terms used in this schedule unless otherwise specified:

Debt service reduction. A modification of the terms of a loan resulting from a bankruptcy proceeding, such as a reduction of the amount of the monthly payment on the related mortgage loan.

Deficient valuation. A bankruptcy proceeding whereby the bankruptcy court may establish the value of the mortgaged property at an amount less than the then-outstanding principal balance of the mortgage loan secured by the mortgaged property or may reduce the outstanding principal balance of a mortgage loan.

FNMA. The Federal National Mortgage Association.

HAMP. The federal Home-Affordable Modification Plan program.

Underwritten. The amount of revenues or expenses adjusted based on a number of assumptions made by the mortgage originator or seller.

Item 1. General. Provide the following data for each asset in the asset pool:

(a) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(b) Asset number. Provide the unique ID number of the asset.

Instruction to Item 1(b). The asset number should be the same number that was previously used to identify the asset in Schedule L (§229.1111A).

(c) Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.

(d) Reporting period begin date. Specify the beginning date of the reporting period.

(e) Reporting period end date. Specify the servicer cut-off date for the reporting period.

(f) Activity during the reporting period.

(1) Total actual amount paid. Indicate the total payment (including all escrows) paid to the servicer during the reporting period.

(2) Actual interest paid. Indicate the amount of interest collected during the reporting period.

(3) Actual principal paid. Indicate the amount of principal collected during the reporting period.

(4) Actual other amounts paid. Indicate the total of any other amounts collected during the reporting period.

(5) Other principal adjustments. Indicate any other amounts that would cause the principal balance of the loan to be decreased or increased during the reporting period.

(6) Other interest adjustments. Indicate any unscheduled interest adjustments during the reporting period.

(7) Current asset balance. Indicate the outstanding principal balance of the asset as of the servicer cut-off date.

(8) Current scheduled asset balance. Indicate the scheduled principal balance of the asset as of the servicer cut-off date.

(9) Current scheduled payment amount. Indicate the total payment amount that was scheduled to be collected for this reporting period (including all fees and escrows).

(10) Current scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected for this reporting period.

(11) Current scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected for this reporting period.

(12) Current delinquency status. Indicate the number of days the obligor is delinquent as determined by the governing transaction agreement.

(13) Number of days payment is past due. If an obligor has not made the full scheduled payment, indicate the number of days between the scheduled payment date and the reporting period end date.

(14) Current payment status. Indicate the number of payments the obligor is past due as of the cut-off date.

(15) Pay history. Provide the coded string of values that describes the payment performance of the asset over the most recent 12 months.

(16) Next due date. For loans that have not been paid-off, indicate the date on which the next payment is due on the asset.

(17) Next interest rate. For loans that have not been paid-off, indicate the interest rate that is in effect as of the next scheduled remittance due to the investor.

(18) Remaining term to maturity. For loans that have not been paid-off, indicate the number of months between the cut-off date and the asset maturity date.

(g) Information related to servicing.

(1) Current servicing fee - amount. Indicate the dollar amount of the fee earned by the current servicer for administering the loan for this reporting period.

(2) Current servicer. Indicate the name or MERS organization number of the entity that currently services the asset.

(3) Servicing transfer received date. If a loan's servicing has been transferred, provide the effective date of the servicing transfer.

(4) Servicer advanced amount. If amounts were advanced by the servicer during the reporting period, specify the amount.

(5) Cumulative outstanding advanced amount. Specify the outstanding cumulative amount advanced by the servicer.

(6) Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are to be advanced by the servicer.

(7) Stop principal and interest advance date. Provide the first payment due date for which the servicer ceased advancing principal or interest.

(8) Other loan-level servicing fee(s) retained by servicer. Provide the amount of all other fees earned by loan administrators that reduce the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc).

(9) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the obligor.

(h) Modification indicator. Indicate yes or no whether the asset was modified from its original terms during the reporting period.

(i) Repurchase indicator. Indicate yes or no whether the asset has been repurchased from the pool. If the asset has been repurchased, provide the following additional information.

(1) Repurchase notice. Indicate yes or no whether a notice of repurchase has been received.

(2) Repurchase date. Indicate the date the asset was repurchased.

(3) Repurchaser. Specify the name of the repurchaser.

(4) Repurchase reason. Indicate the code that describes the reason for the repurchase.

(j) Liquidated indicator. Indicate yes or no whether the asset has been liquidated. An asset is considered liquidated if the related collateral has been sold or disposed, or if the asset has been charged-off in its entirety without realizing upon the collateral.

(k) Charge-off indicator. Indicate yes or no as to whether the asset has been charged-off. The asset is charged-off when it will be treated as a loss or expense because payment is unlikely.

(1) Charged-off principal amount. Specify the amount of uncollected principal charged-off.

(2) Charged-off interest amount. Specify the amount of uncollected interest charged-off.

(l) Information related to paid-off loans.

(1) Paid-in-full indicator. Indicate yes or no whether the asset is paid in full.

(2) Information related to prepayment penalties. If the obligor is subject to prepayment penalties, provide the following additional information for each loan:

(i) Pledged Prepayment Penalty Paid. Provide the total amount of the prepayment penalty that was collected from the obligor.

(ii) Pledged prepayment penalty waived. Provide the total amount of the prepayment penalty that was incurred by the obligor, but not collected by the servicer.

(iii) Reason for not collecting pledged prepayment penalty. Indicate the code that describes the reason that a prepayment penalty due from a borrower was not collected by the servicer.

Item 2. Residential mortgages. If the asset pool contains residential mortgages, provide the following data for each loan in the asset pool:

(a) Information related to delinquent loans.

(1) Non-pay reason. Indicate the code that describes the reason for loan delinquency.

(2) Non-pay status. Indicate the code that describes the delinquency status of the loan.

(3) Reporting action code. Further indicate the code that defines the default/delinquent status of the loan.

(b) Information related to ARMs. If the loan is an ARM, provide the following additional information for each loan:

(1) Rate at next reset. Provide the interest rate that will be used to determine the next scheduled interest payment.

(2) Next interest rate change date. Provide the next date that the note rate is scheduled to change.

(3) Payment at next reset. Provide the principal and interest payment due after the next scheduled interest rate change.

(4) Next payment change date. Provide the next date that the amount of scheduled principal and/or interest is scheduled to change.

(5) Option ARM indicator. Indicate yes or no whether the loan is an Option ARM.

(6) Exercised ARM conversion option indicator. Indicate yes or no whether the borrower exercised an option to convert an ARM loan to a fixed interest rate loan.

(c) Information related to bankruptcy. For obligors who have filed for bankruptcy, provide the following additional information:

(1) Bankruptcy file date. Provide the date on which the obligor filed for bankruptcy.

(2) Bankruptcy case number. Provide the case number assigned by the court to the bankruptcy filing.

(3) Post-petition due date. Provide the date on which the next payment is due under the terms of the bankruptcy plan.

(4) Bankruptcy release reason. If the bankruptcy has been released, indicate the code that describes the reason for the release.

(5) Bankruptcy release date. If the bankruptcy has been released, provide the date on which the loan was removed from bankruptcy as a result of dismissal, discharge, and/or the granting of a motion for relief.

(6) Contractual due date. Provide the actual due date of the loan payment had bankruptcy not been filed.

(7) Debt reaffirmed indicator. Indicate yes or no whether the obligor excluded this debt from the bankruptcy and reaffirmed the debt obligation.

(8) Trustee pays all indicator. Indicate yes or no whether post-petition payments are sent to the bankruptcy trustee by the obligor and then forwarded to the servicer by the trustee.

(d) Loss mitigation type indicator. Indicate the code that describes the type of loss mitigation the servicer is pursuing with the borrower, loan, or property.

(e) Information related to loan modifications.

(1) Modification effective payment date. Provide the date of first payment due post modification.

(2) Modification loan balance. Provide the loan balance as of modification effective payment date as reported on the modification documents.

(3) Total capitalized amount. Provide the amount added to the principal balance of the loan pursuant to a loan modification.

(4) Pre-modification interest (note) rate. Provide the scheduled interest rate of the loan immediately preceding the modification effective payment date -- or if servicer is no longer advancing principal and interest, the interest rate that would be in effect if the loan were current.

(5) Post-modification interest (note) rate. Provide the interest rate in effect as of the modification effective payment date.

(6) Post-modification margin. Provide the margin as of the modification effective payment date. The margin is the number of percentage points added to the interest rate index to establish the new rate.

(7) Pre-modification P&I payment. Provide the scheduled total principal and interest payment amount preceding the modification effective payment date -- or if servicer is no longer advancing principal and interest, the interest rate that would be in effect if the loan were current.

(8) Post-modification lifetime rate floor. Provide the minimum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life (after modification).

(9) Post-modification lifetime rate ceiling. Provide the maximum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life (after modification).

(10) Pre-modification initial interest rate decrease. Provide the maximum percentage by which the interest rate may adjust downward on the first interest rate adjustment date (prior to modification).

(11) Post-modification initial interest rate decrease. Provide the maximum percentage by which the interest rate may adjust downward on the first interest rate adjustment date (after modification).

(12) Pre-modification subsequent interest rate increase. Provide the maximum percentage increment by which the rate may adjust upward after the initial rate adjustment (prior to modification).

(13) Post-modification subsequent interest rate increase. Provide the maximum percentage increment by which the rate may adjust upward after the initial rate adjustment (after modification).

(14) Pre-modification payment cap. Provide the percentage value by which a payment may increase or decrease in one period (prior to modification).

(15) Post-modification payment cap. Provide the percentage value by which a payment may increase or decrease in one period (after modification).

(16) Post-modification principal and interest payment. Provide total principal and interest payment amount as of the modification effective payment date.

(17) Pre-modification maturity date. Provide the loan's original maturity date (or, if the loan has been modified before, the maturity date in effect immediately preceding the most recent modification effective payment date).

(18) Post-modification maturity date. Provide the loan's maturity date as of the modification effective payment date.

(19) Pre-modification interest reset period (if changed). Provide the number of months of the original interest reset period of the loan.

(20) Post-modification interest reset period (if changed). Provide the number of months of the interest reset period of the loan as of the modification effective payment date.

(21) Pre-modification next interest rate change date. Provide the next interest reset date under the original terms of the loan (one month prior to new payment due date).

(22) Post-modification next reset date. Provide the next interest reset date as of the modification effective payment date.

(23) Modification front-end DTI. Provide the front-end DTI ratio (total monthly housing expense divided by monthly income) used to qualify the modification.

(24) Income verification indicator. Indicate yes or no whether a transcript of tax return (received pursuant to the filing of IRS Form 4506-T) was obtained to corroborate modification front-end DTI (calculated using pay stubs, W-2s and/or CPA certified tax returns).

(25) Modification back-end DTI. Provide the back-end DTI ratio (total monthly debt divided by monthly income) used to qualify the modification.

(26) Pre-modification interest only term. Provide the number of months of the interest-only period prior to the modification effective payment date.

(27) Post-modification interest only term. Provide the number of months of the interest-only period as of the modification effective payment date.

(28) Post-modification balloon payment amount. Provide the new balloon payment amount due at maturity as a result of loan modification, not including deferred amounts.

(29) Forgiven principal amount (cumulative). Provide the sum total of all principal balance reductions as a result of loan modification over the life of the deal.

(30) Forgiven interest amount (cumulative). Provide the sum total of all interest incurred and forgiven as a result of loan modification over the life of the deal.

(31) Forgiven principal amount (current period). Provide the total principal balance reduction as a result of loan modification during the current period.

(32) Forgiven interest amount (current period). Provide the total gross interest forgiven as a result of loan modification during the current period.

(33) Modified next payment adjust date. Provide the due date on which the next payment adjustment is scheduled to occur for an ARM loan per the modification agreement.

(34) Modified ARM indicator. If the loan is remaining an ARM loan, indicate whether the loan's existing ARM parameters are changing per the modification agreement.

(35) Interest rate step tndicator. Indicate whether the terms of the modification agreement call for the interest rate to step up over time.

(36) Maximum future rate under step agreement. If the loan modification includes a step provision, provide the maximum interest rate to which the loan may step up.

(37) Date of maximum rate. If the loan modification includes a step provision, provide the date on which the maximum interest rate will be reached.

(38) Non-interest bearing principal deferred amount (current period). Provide the total amount of principal deferred (or forborne) by the modification that is not subject to interest accrual.

(39) Non-interest bearing principal deferred amount (cumulative balance). Provide the total amount of principal deferred by the modification that is not subject to interest accrual.

(40) Recovery of deferred principal (current period). Provide the amount of deferred principal collected from the obligor during the current period.

(41) Non-interest bearing deferred interest and fees Amount (current period). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual during the current period.

(42) Non-interest bearing deferred interest and fees amount (cumulative balance). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual.

(43) Recovery of deferred interest and fees (current period). Provide the amount of deferred interest and fees collected from the obligor during the current period.

(44) Forgiven non-principal and interest advances to be reimbursed by trust. Provide the total amount of expenses (including all escrow and corporate advances) that have been waived or forgiven by the servicer per the modification agreement reimbursable to the servicer pursuant to the terms of the transaction document. Corporate advances are amounts paid by the servicer which may include foreclosure expenses, attorney fees, bankruptcy fees, insurance, and so forth.

(45) Reimbursable modification escrow and corporate advances (capitalized). Provide the total amount of escrow and corporate advances made by the servicer as of the time of the loan modification. Corporate advances are amounts paid by the servicer which may include foreclosure expenses, attorney fees, bankruptcy fees, insurance, and so forth.

(46) Reimbursable modification servicing fee advances (capitalized). Provide the total amount of servicing fees for delinquent payments that has been advanced by the servicer at the time of the loan modification.

(47) HAMP Indicator. Indicate yes or no whether the loan was modified under the terms of the Home-Affordable Modification Plan (HAMP). If so, provide the following additional information:

(i) HAMP: Loan participation end date. Provide the date upon which the last principal and interest payment is due during the 60-month participation of the U. S. Treasury and FNMA in the loan modification.

(ii) HAMP: Loan modification incentive termination date. Provide the date upon which obligor participation in the program is terminated because the borrower has defaulted or redefaulted.

(iii) HAMP: Obligor pay-for-performance success payments. Provide the amount paid to the servicer from U.S. Treasury/FNMA that reduces the principal balance of the interest bearing portion of the loan as the obligor stays current after modification.

(iv) HAMP: Onetime bonus incentive eligibility. Indicate yes or no whether the loan qualifies for the one-time bonus incentive payment of $1,500.00 payable to the mortgage holder subject to certain de minimis constraints.

(v) HAMP: Onetime bonus incentive amount. Indicate whether mortgage holder has or will receive $1,500 paid to mortgage holders for modifications made while a borrower is still current on mortgage payments.

(vi) HAMP: Monthly payment reduction cost share. Provide the amount of the subsidized payment from Treasury/FNMA during the current period to reimburse the investor for one half of the cost of reducing the monthly payment from 38% to 31% Front-End DTI.

(vii) HAMP: Administrative fees associated with participating in the program. Provide the amount of the fees incurred by the servicer

while administering this program, as allowed by the governing documents with investors.

(viii) HAMP: Current asset balance including deferred amount. Provide the sum amount of the current asset balance plus only the principal portion of the deferred amount.

(ix) HAMP: Scheduled ending balance including deferred amount. Provide the sum amount of the current scheduled asset balance plus only the principal portion of the deferred amount.

(x) HAMP: Home price depreciation payments. Provide the amount payable to mortgage holders to partially offset probable losses from home price declines.

(f) Information related to forbearance or trial modification. If the type of loss mitigation is forbearance, provide the following additional information. A forbearance plan refers to a period during which either no payment or a payment amount less than the contractual obligation is required from the obligor. A trial modification refers to a temporary loan modification during which an obligor's application for a permanent loan modification is under evaluation.

(1) Forbearance plan or trial modification start date. Provide the date on which a forbearance plan or trial modification started.

(2) Forbearance plan or trial modification scheduled end date. Provide the date on which a forbearance plan or trial modification is scheduled to end.

(g) Information related to repayment plan. If the type of loss mitigation is a repayment plan, provide the following additional information. A repayment plan refers to a

period during which an obligor has agreed to make monthly mortgage payments greater than the contractual installment in an effort to bring a delinquent loan current.

(1) Repayment plan start date. Provide the date on which a repayment plan started.

(2) Repayment plan scheduled end date. Provide the date on which a repayment plan is scheduled to end.

(3) Repayment plan violated date. Provide the date on which the obligor ceased complying with the terms of a repayment plan.

(h) Deed-in-lieu date. If the type of loss mitigation is deed-in-lieu, provide the date on which a title was transferred to the servicer pursuant to a deed-in-lieu-of-foreclosure arrangement. Deed-in-lieu refers to the transfer of title from an obligor to the lender to satisfy the mortgage debt and avoid foreclosure.

(i) Short sale accepted offer amount. If the type of loss mitigation is short sale, provide the amount accepted for a short sale. Short Sale refers to the process in which a servicer works with a delinquent obligor to sell the property prior to the foreclosure sale.

(j) Information related to loss mitigation exit. If the loan has exited loss mitigation efforts during the reporting period, provide the following addition information:

(1) Loss mitigation exit date. Provide the date on which the servicer deems a loss mitigation effort to have ended.

(2) Loss mitigation exit code. Indicate the code that describes the reason the loss mitigation effort ended.

(k) Information related to loans in the foreclosure process.

(1) Attorney referral date. Provide the date on which the loan was referred to a foreclosure attorney.

(2) Date of first legal action. Provide the date on which legal foreclosure action was taken.

(3) Expected foreclosure sale date. Provide the expected date if known on which the foreclosure sale will take place.

(4) Foreclosure sale scheduled date. Provide the date on which the sale has been set to occur either by the court or Trustee.

(5) Foreclosure sale date. Provide the date on which a foreclosure sale occurs.

(6) Foreclosure delay reason. Indicate the code that describes the reason for delay within the foreclosure process.

(7) Sale valid date. If state law provides for a period for confirmation, ratification, redemption or upset period, provide the date of the end of the period.

(8) Foreclosure bid amount. Provide the amount bid by the servicer at the foreclosure sale.

(9) Foreclosure exit date. If the loan exited foreclosure during the current period or first available subsequent period, provide the date on which the loan exited foreclosure.

(10) Foreclosure exit reason. If the loan exited foreclosure during the current period or first available subsequent period, indicate the code that describes the reason the foreclosure proceeding ended.

(11) Third-party sale proceeds. If the reason for the end of foreclosure proceeding is third-party sale, provide the amount for which the property was sold.

(12) Judgment date. In a judicial foreclosure state, if a judgment on the foreclosure has occurred, provide the date on which a court granted the judgment in favor of the creditor.

(13) Publication date. Provide the date on which the publication of trustee's sale information is published in the appropriate venue.

(14) NOI date. If a notice of intent (NOI) has been sent, provide the date on which the servicer sent the NOI correspondence to the obligor informing the obligor of the acceleration of the loan and pending initiation of foreclosure action.

(l) Information related to REO. If the loan is REO, provide the following additional information. REO (Real Estate Owned) refers to property owned by a lender after an unsuccessful sale at a foreclosure auction.

(1) Most recent REO list date. Provide the most recent listing date for the REO.

(2) Most recent REO list price. Provide the amount of the current listing price for the REO.

(3) Accepted REO offer amount. If a REO offer has been accepted, provide the amount accepted for the REO sale.

(4) Accepted REO offer date. If a REO offer has been accepted, provide the date on which the REO sale amount was accepted.

(5) REO original list date. Provide the original list date for the REO property.

(6) REO original list price. Provide the amount of the original listing price for the REO.

(7) Actual REO sale closing date. If a REO sale is closed, provide the date of the closing of the REO sale.

(8) Gross liquidation proceeds. If a REO sale has closed, provide the gross amount due to the issuing entity as reported on line 420 of the HUD-1 settlement statement.

(9) Net sales proceeds. If a REO sale has closed, provide the net proceeds received from the escrow closing (before servicer reimbursement).

(10) Current monthly loss amount passed to issuing entity. Provide the cumulative loss amount passed through to the issuing entity during the current period, including subsequent loss adjustments and any forgiven principal as a result of a modification that is passed through to the issuing entity.

(11) Cumulative total loss amount passed to issuing entity. Provide the loss amount passed through to the issuing entity to date, including any forgiven principal as a result of a modification that is passed through to the issuing entity.

(12) Subsequent recovery amount. Provide the current period amount recovered subsequent to the initial gain/loss recognized at the time of liquidation.

(13) Eviction start date. If an eviction process has begun, provide the date on which the servicer initiates eviction of the obligor.

(14) Eviction completed date. If an eviction process has been completed, provide the date on which the court revoked legal possession of the property from the obligor.

(15) REO exit date. If a loan exited REO during the current period or first available subsequent period, provide the date on which the loan exited REO status.

(16) REO exit reason. If a loan exited REO during the current period or first available subsequent period, indicate the code that describes the reason the loan exited REO status.

(m) Information related to losses.

(1) Information related to loss claims.

(i) Interest advanced. Provide the amount of interest advanced that is reimbursed to the servicer.

(ii) UPB at liquidation. Provide the amount of actual unpaid principal balance (UPB) at the time of liquidation.

(iii) Servicing fees claimed. Provide the amount of accrued servicing fees (claimed at time of servicer reimbursement after liquidation).

(iv) Attorney fees claimed. Provide the amount of total attorney fees advanced by the servicer to be recovered (claimed at time of servicer reimbursement after liquidation).

(v) Attorney cost claimed. Provide the amount of total attorney cost advanced by the servicer to be recovered (claimed at time of servicer reimbursement after liquidation).

(vi) Property taxes claimed. Provide the amount of real property taxes advanced by the servicer to be recovered (claimed at time of servicer reimbursement after liquidation).

(vii) Property maintenance. Provide the amount of total property maintenances such as lawn care, trash removal, snow removal, etc., (claimed at time of servicer reimbursement after liquidation).

(viii) Insurance premiums claimed. Provide the amount of advances paid by the servicer for any type of insurance (claimed at time of servicer reimbursement after liquidation).

(ix) Utility expenses claimed. Provide the amount of utilities advanced paid by the servicer (claimed at time of servicer reimbursement after liquidation).

(x) Appraisals or BPO expenses claimed. Provide the amount of cost advanced by the servicer for appraisal and/or broker's professional opinion (BPO) expenses (claimed at time of servicer reimbursement after liquidation).

(xi) Property inspection expenses claimed. Provide the amount of cost advanced by the servicer for property inspection expenses (claimed at time of servicer reimbursement after liquidation).

(xii) Miscellaneous expenses claimed. Provide the amount of miscellaneous expenses advanced by the servicer that do not fit into any other category (claimed at time of servicer reimbursement after liquidation).

(xiii) Pre-securitization servicing advances claimed. Provide the amount of unreimbursed advances by the servicer prior to the securitization of the deal (claimed at time of servicer reimbursement after liquidation).

(xiv) REO management fees. If the loan is in REO, provide the amount of REO management fees (including auction fees).

(xv) Cash for keys/cash for deed. Provide the amount of the payment to the obligor or tenants in exchange for vacating the property, or the payment to the obligor to accelerate a deed-in-lieu process or complete a redemption period.

(xvi) Performance incentive fees. Provide the amount of payment to the servicer in exchange for carrying out a deed-in-lieu or short sale.

(2) Information related to loss recoveries.

(i) Positive escrow balance. Provide the amount of escrow balance at the time of loss claim (report only if positive).

(ii) Suspense balance. Provide the total dollar amount held in suspense at the time of liquidation.

(iii) Hazard claims proceeds. Provide the amount of hazard loss proceeds collected.

(iv) Pool insurance claim proceeds. Provide the amount of pool claim proceeds collected.

(v) Private mortgage insurance claim proceeds. Provide the amount of private mortgage insurance claim proceeds collected.

(vi) Property tax refunds. Provide the amount of property tax refunds collected.

(vii) Insurance refunds. Provide the amount of insurance premium refunds collected.

(3) Bankruptcy loss amount. Provide the amount of any realized loss resulting from a deficient valuation or debt service reduction.

(4) Special hazard loss amount. Provide the amount of any realized loss suffered by a mortgaged property that is classified as a special hazard in the governing documents.

(n) Information related to mortgage insurance claims. If a mortgage insurance claim (MI claim) has been submitted to the primary mortgage insurance company for reimbursement, provide the following additional information:

(1) MI claim filed date. Provide the date on which the servicer filed an MI claim.

(2) MI claim amount. Provide the amount of the MI claim filed by the servicer.

(3) MI paid date. If a MI claim has been paid, provide the date on which the MI company paid the MI claim.

(4) MI claim paid amount. If a MI claim has been decided, provide the amount of the claim paid by the MI company.

(5) MI claim denied/rescinded date. If a MI claim has been denied or rescinded, provide the final MI denial date after all servicer appeals.

(6) Marketable title transferred to MI date. If the deed of a property has been sent to the MI company, provide the date of actual title conveyance to the MI company.

Item 3. Commercial mortgages. If the asset pool contains commercial mortgages, also provide the following data for each asset in the asset pool:

(a) Information related to the loan.

(1) Current remaining term. Provide the number of months until the earlier of the scheduled loan maturity or the current hyper-amortizing date.

(2) Number of properties. Provide the current number of properties which serve as mortgage collateral for the loan.

(3) Current hyper-amortizing date. Provide the current anticipated repayment date, after which principal and interest may amortize at an accelerated rate, and/or interest expense to mortgagor increases substantially as per the loan documents.

(4) Information related to ARMs.

(i) Rate at next reset. Provide the annualized gross interest rate that will be used to determine the next scheduled interest payment.

(ii) Next interest rate change date. Provide the next date that the interest rate is scheduled to change.

(iii) Payment at next reset. Provide the principal and interest payment due after the next scheduled interest rate change.

(iv) Next payment change date. Provide the next date that the amount of scheduled principal and/or interest is scheduled to change.

(2) Negative amortization/deferred interest capitalized amount. Indicate the amount for the current reporting period that represents negative amortization or deferred interest that is added to the principal balance.

(i) Cumulative deferred interest. Indicate the cumulative deferred interest for the current and prior reporting cycles net of any deferred interest collected.

(ii) Deferred interest collected. Indicate the amount of deferred interest collected in the current reporting period.

(b) Workout strategy. Indicate the code that best describes the steps being taken to resolve the loan.

(c) Information related to modifications.

(1) Date of last modification. Provide the date of the most recent modification. A modification includes any material change to the loan documents.

(2) Modification code. Indicate the code that describes the type of loan modification.

(3) Modified note rate. Indicate the new initial interest rate (post-modification).

(4) Modified payment amount. Indicate the new initial principal and interest payment amount (post-modification).

(5) Modified maturity date.. Indicate the new maturity date of the loan (post-modification).

(6) Modified amortization period. Indicate the new amortization period in months (post-modification).

(d) Information related to the property. Provide the following information for each of the properties that collateralizes a loan identified above.

(1) Property name. Provide the name of the property which serves as mortgage collateral. If the property has been defeased, then populate with "defeased."

(2) Property geographic location. Provide the zip code of the location of the property.

(3) Property type. Indicate the code that describes how the property is being used.

(4) Net rentable square feet. Provide the net rentable square feet area of a property.

(5) Number of units/beds/rooms. Provide the number of units/beds/rooms of a property.

(6) Year built. Provide the year that the property was built.

(7) Valuation amount. The valuation amount of the property as of the valuation date.

(8) Valuation date. The date the valuation amount was determined.

(9) Physical occupancy. Provide the percentage of rentable space occupied by tenants. Should be derived from a rent roll or other document indicating occupancy.

(10) Property status. Specify the code that describes the status of the property.

(11) Defeasance status. Indicate the code that describes the defeasance status. A defeasance option is when an obligor may substitute other income-producing property for the real property without pre-paying the existing loan.

(12) Financial information related to the property. Provide the following information as of the most recent date available.

(i) Financial reporting begin date. Specify the beginning date of the financial information presented in response to this subparagraph.

(ii) Financial period reporting end date. Specify the ended date of the financial information presented in response to this subparagraph.

(iii) Revenue. Provide the total underwritten revenue from all sources for a property.

(iv) Operating expenses. Provide the total operating expenses. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance.

(v) Net operating income. Provide the total revenues less total underwritten operating expenses prior to application of mortgage payments and capital items for all properties.

(vi) Net cash flow. Provide the total revenue less the total operating expenses and capital costs.

(vii) NOI/NCF indicator. Indicate the code that best describes how net operating income and net cash flow were calculated.

(viii) DSCR (NOI). Provide the ratio of net operating income to debt service during the reporting period.

(ix) DSCR (NCF). Provide the ratio of net cash flow to debt service during the reporting period.

(x) DSCR indicator. Indicate the code that describes how the debt service coverage ratio was calculated.

(13) Largest tenant. Identify the tenant that leases the largest square feet of the property (based on the most recent annual lease rollover review).

(14) Square feet of largest tenant. Provide total square feet leased by the largest tenant.

(15) Lease expiration of largest tenant. Provide the date of lease expiration for the largest tenant.

(16) Second largest tenant. Identify the tenant that leases the second largest square feet of the property (based on the most recent annual lease rollover review).

(17) Square feet of second largest tenant. Provide total square feet leased by the second largest tenant.

(18) Lease expiration of second largest tenant. Provide the date of lease expiration for the second largest tenant.

(19) Third largest tenant. Identify the tenant that leases the third largest square feet of the property (based on the most recent annual lease rollover review).

(20) Square feet of third largest tenant. Provide total square feet leased by the third largest tenant.

(21) Lease expiration of third largest tenant. Provide the date of lease expiration for the third largest tenant.

Item 4. Automobile loans. If the asset pool contains vehicle loans, provide the following data for each loan in the asset pool:

(a) Subvented. Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the obligor.

(b) Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.

(c) Repossessed. Indicate yes or no whether the vehicle has been repossessed. If the vehicle has been repossessed, provide the following additional information:

(1) Repossession proceeds. Provide the total amount of proceeds received on disposition.

(2) Repossession fees. Provide the amount of fees paid in connection with the repossession and disposition of the vehicle.

Item 5. Automobile leases.

If the asset pool contains vehicle leases, provide the following data for each lease in the asset pool:

(a) Subvented. Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the obligor.

(b) Updated residual value. If the residual value of the vehicle was updated during the reporting period, provide the updated value.

(c) Source of updated residual value. Specify the code that describes the source of the residual value.

(d) Termination indicator. Specify the code that describes the reason why the lease was terminated.

(e) Excess wear and tear received. Specify the amount of excess wear and tear fees received upon return of the vehicle.

(f) Excess mileage received. Specify the amount of excess mileage fees received upon return of the vehicle.

(g) Sales proceeds. If the vehicle has been sold, specify the amount of proceeds received on sale of the vehicle.

(h) Lease term extension indicator. Indicate whether the lease term has been extended from the original term.

(i) Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.

Item 6. Equipment loans.

If the asset pool contains equipment loans, provide the following data for each loan in the asset pool:

(a) Liquidation proceeds. If the loan has been liquidated, specify the amount of proceeds received.

(b) Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.

Item 7. Equipment leases.

If the asset pool contains equipment leases, provide the following data for each lease in the asset pool:

(a) Updated residual value. If the residual value of the equipment was updated during the reporting period, provide the updated value.

(b) Source of updated residual value. Specify the code that describes the source of the residual value.

(c) Termination indicator. Specify the code that describes the reason why the lease was terminated.

(d) Liquidation proceeds. If the asset has been liquidated, specify the amount of proceeds received.

(e) Amounts recovered. If the asset was previously charged-off, specify any amounts received after charge-off.

Item 8. Student loans.

If the asset pool contains student loans, provide the following data for each loan in the asset pool:

(a) Current obligor payment status. Indicate the code describing whether the obligor payment status is in-school, grace period, deferral, forbearance or repayment.

(b) Capitalized interest. Specify the amount of interest accrued to be capitalized during the reporting period.

(c) If there is activity related to a guarantor, provide the following additional information:

(1) Principal collections from guarantor. Provide the amount of principal received from the guarantor during this reporting period.

(2) Interest claims received from guarantor. Provide the amount of interest claims received from guarantor during this reporting period.

(3) Claim in process. Indicate yes or no whether a claim is in process.

(4) Claim outcome. Indicate yes or no whether a claim has been rejected.

Item 9. Floorplan financings.

If the asset pool contains receivables arising from floorplan financings, provide the following data for each loan in the asset pool:

(a) Liquidation proceeds. If the loan has been liquidated, specify the amount of proceeds received.

(b) Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.

(c) Updated credit score information. Provide updated credit score information, if available.

(1) Credit score type. Specify the type of the standardized credit score used to evaluate the obligor.

(2) Most recent credit score. Provide the most recent credit score of the obligor.

(3) Most recent credit score date. Provide the date of the most recently obtained credit score of the obligor.

Item 10. Resecuritizations.

If the registrant's pool assets include asset-backed securities of another issuer, provide asset-level performance information as specified in this Schedule L-D and Item 1121(d) for the assets backing those securities.

23. Amend §229.1122 by:

a. Revising paragraph (c)(1);

b. Redesignating paragraph (c)(2) as paragraph (c)(3);

c. Adding new paragraph (c)(2);

d. Adding new paragraph (d)(1)(v);

e. Redesignating Instructions 1, 2 and 3 as Instructions 2, 3, and 4; and

f. Adding new Instruction 1 to Item 1122.

The revision and additions read as follows:

§ 229.1122 (Item 1122) Compliance with applicable servicing criteria.

* * * * *

(c) Additional disclosure for the Form 10–K report.

(1) If any party's report on assessment of compliance with servicing criteria required by paragraph (a) of this section, or related registered public accounting firm attestation report required by paragraph (b) of this section, identifies any material instance of noncompliance with the servicing criteria, identify the material instance of noncompliance in the report on Form 10–K. Also disclose whether the identified instance involved the servicing of the assets backing the asset-backed securities covered in this Form 10-K report.

(2) Discuss any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for its activities with respect to asset-backed securities transactions taken as a whole involving such party and that are backed by the same asset type backing the asset-backed securities.

* * * * *

(d) * * *

(1) * * *

(v) Aggregation of information is mathematically accurate and the information conveyed accurately reflects the information.

* * * * *

Instructions to Item 1122

1. The assessment should cover all asset-backed securities transactions involving such party and that are backed by the same asset type backing the class of asset-backed securities which are the subject of the Commission filing. The asserting party may take into account divisions among transactions that are consistent with actual practices. However, if the asserting party includes in its platform less than all of the transactions backed by the same asset type that it services, a description of the scope of the platform should be included in the assessment.

* * * * *

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

24. 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.

* * * * *

25. Amend §230.139a by

a. Replacing the phrase "General Instruction I.B.5 of Form S–3 (§239.13 of this chapter) ("S–3 ABS")" in the introductory text of the rule with the phrase "Form SF-3 (§239.13 of this chapter)("SF-3 ABS"); and

b. Replacing the phrase "S-3 ABS" with the phrase "SF-3 ABS" everywhere it appears in the rule.

26. Amend §230.144 by adding a sentence to the end of paragraph (c)(2) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(c) * * *

(2) Non-reporting issuers. * * * If the securities to be sold are structured finance products, as defined in Securities Act Rule 144A(a)(8)(§230.144A(a)(8)), then the following two conditions must be satisfied: (1) an underlying transaction agreement grants any purchaser, any security holder and a prospective purchaser designated by a security holder the right to obtain from the issuer promptly, upon request of the purchaser or holder, information as would be required if the offering were registered on Form S-1 or 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 report under that section; (2) an issuer must represent that it will provide such information to any purchaser, security holder, or prospective purchaser, upon request of the purchaser or holder.

* * * * *

27. Amend §230.144A by

a. Adding paragraph (a)(8);

b. Adding paragraph (d)(4) (iii); and

c. Adding paragraph (f).

The additions read as follows:

§ 230.144A Private resales of securities to institutions.

* * * * *

(a) * * *

(8) For purposes of this section, a "structured finance product" means

(i) a synthetic asset-backed security; or

(ii) a fixed-income or other security collateralized by any pool of self liquidating financial assets, such as loans, leases, mortgages, and secured or unsecured receivables, which entitles the security holders to receive payments that depend on the cash flow from the assets, including --

(A) an asset-backed security as used in Item 1101(c) of Regulation AB (§229.1101(c)),

(B) a collateralized mortgage obligation,

(C) a collateralized debt obligation,

(D) a collateralized bond obligation,

(E) a collateralized debt obligation of asset-backed securities,

(F) a collateralized debt obligation of collateralized debt obligations; or

(G) a security that at the time of the offering is commonly known as an asset-backed security or a structured finance product.

* * * * *

(d) * * *

(4) * * *

(iii) If the securities offered or sold are structured finance products, then the requirements of paragraph (i) shall be satisfied if:

(A) an underlying transaction agreement grants any initial purchaser, any security holder and a prospective purchaser designated by a security holder the right to obtain from the issuer promptly, upon request of the purchaser or holder, information as would be required if the offering were registered on Form S-1 or 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 report under that section;

(B) the issuer represents that it will provide such information that is required by paragraph (d)(4)(ii)(A) of this section, upon request of the purchaser or holder.

* * * * *

(f)(1) If the securities offered or sold are structured finance products, the issuer shall file with the Commission a notice of the initial placement of securities that are represented as eligible for resale in reliance on this rule containing the information required by Form 144A-SF (17 CFR 239.144A). The notice shall be signed by the issuer and filed no later than 15 calendar days after the first sale of securities in the offering, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date shall be the first business day following such period.

(2) If the issuer fails to file Form 144A-SF as required under paragraph (f)(1) of this section, then the exemption under this section will not be available for subsequent resales of newly issued structured finance products of the issuer or any affiliate of the issuer until the notice that was required to be filed has been filed with the Commission.

28. Amend §230.167 by revising the phrase "meeting the requirements of General Instruction I.B.5 of Form S–3 (§239.13 of this chapter) and registered under the Act on Form S–3 pursuant to §230.415" in paragraph (a) to read "registered on Form SF-3 pursuant to §230.415(a)(1)(vii)."

29. Amend §230.190 by:

a. Revising paragraph (b)(1);

b. Replacing the phrase "securities; and" in paragraph (b)(6) with "securities.";

c. Removing paragraph (b)(7);

d. Renumbering paragraph (c) as paragraph (c)(1) and paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) as paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(iv); and

e. Adding new paragraph (c)(2).

The revision to paragraph (b)(1) and new paragraph (c)(2) read as follows:

§ 230.190 Registration of underlying securities in asset-backed securities transactions.

* * * * *

(b) * * *

(1) If the offering of asset-backed securities is registered on Form SF-3 (§239.45) of this chapter), the offering of the underlying securities itself must be eligible to be registered under Form SF-3 (§239.45), Form S-3 (§239.13 of this chapter), or F-3 (§239.33 of this chapter) as a primary offering of such securities;

* * * * *

(c)(1) * * *

(2) Notwithstanding paragraph (c)(1), if the pool assets for the asset-backed securities are collateral certificates or special units of beneficial interests, those collateral certificates or special units of beneficial interests must be registered concurrently with the registration of the asset-backed securities. However, pursuant to Securities Act Rule 457(s) (§230.457(s) of this chapter) no separate registration fee for the certificates or special units of beneficial interest is required to be paid.

30. Add §230.192 to read as follows:

§ 230.192 Information relating to privately-issued structured finance products

(a) If an issuer of structured finance products (as defined in 17 CFR 230.144A(a)) has represented and covenanted to provide information pursuant to Rule 503(b)(3) of Regulation D (§230.503(b)(3) or has represented and covenanted to provide information pursuant to Rule 144A(d)(4)(iii) (§230.144A(d)(4)(iii)) or Rule 144(c)(2) (§230.144(c)(2)), then the issuer must provide such information, upon request of the purchaser or security holder.

(b) A failure to provide the information as required in paragraph (a) would constitute an engagement in a transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser of the securities.

31. 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 been declared effective previously, requirements as to proper form under this section will have been violated for:

(i) any offering of securities where the requirements of General Instructions I.A.1 and 2 of Form SF-3 have not been met as of the last day of the most recent fiscal quarter prior to the offering; or

(ii) for any offering of securities where the requirement of General Instruction I.A.4 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.

32. Amend §230.405 by replacing the phrase "or Rule 431 (§230.431);" in paragraph (1) of the definition of a free writing prospectus with the phrase "Rule 430D (§230.430D), or Rule 431(§230.431);".

33. Amend §230.415 by:

a. Revising paragraph (a)(1)(vii);

b. Revising paragraph (a)(1)(ix); and

c. Adding paragraph (a)(1)(xii).

The revision and addition read as follows:

§ 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(c) 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). In accordance with those instructions, with respect to each offering of securities, the chief executive officer of the depositor shall certify that that to his or her knowledge, the securitized assets backing the issue have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service any payments of the securities as described in the prospectus; and that he or she has reviewed the necessary prospectus and documents for this certification.

* * * * *

(ix) Securities, other than asset-backed securities (as defined in 17 CFR 229.1101), the offering of which will be commenced promptly, will be made on a continuous basis and may continue for a period in excess of 30 days from the date of initial effectiveness;

* * * * *

(xii) Asset-backed securities (as defined in 17 CFR 229.1101) which are to be offered and sold on a continuous basis if the offering is commenced promptly and being conducted on the condition that the consideration paid for such securities will be promptly refunded to the purchaser unless (A) all of the securities being offered are sold

at a specified price within a specified time, and (B) the total amount due to the seller is received by him by a specified date.

* * * * *

34. Amend §230.424 by:

a. Adding the phrase "or, in the case of asset-backed securities, Rule 430D (§230.430D)" after the phrase "in reliance on Rule 430B (§230.430B)" in paragraph (b)(2).

b. Revising the phrase "mortgage-related securities on a delayed basis under §230.415(a)(1)(vii) or asset-backed securities on a delayed basis under §230.415(a)(1)(x)" in the instruction after paragraph (b) to read "asset-backed securities on a delayed basis under §230.415(a)(1)(vii)"; and

c. Adding new paragraph (h).

The addition reads as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(h) Three copies of a form of prospectus relating to an offering of asset-backed securities on a delayed basis pursuant to §230.415(a)(1)(vii) that contains substantially all the information previously omitted from the prospectus, or substantially all the information except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price, filed as part of an effective registration statement as required by Rule 430D (§230.430D) shall be filed with

the Commission by a means reasonably calculated to result in filing at least five business days before the date of the first sale in the offering, or if used earlier, the second business day after first use.

Instruction to paragraph (h): The filing requirements of paragraph (h) do not apply if a filing is made solely to add fees pursuant to Securities Act Rule 457 (§230.457) and for no other purpose.

35. Amend §230.430B by replacing the phrase "Rule 415(a)(1)(vii) or (a)(1)(x) (§230.415(a)(1)(vii) or (a)(1)(x))" in paragraph (a) with the phrase "Rule 415(a)(1)(x) (§230.415(a)(1)(x))"; and deleting the next phrase "(a)(1)(vii) or" in paragraph (a).

36. Amend §230.430C by adding the phrase "or Rule 430D (§230.430D) directly after the phrase "in reliance on Rule 430B (§230.430B)".

37. Add §230.430D to read as follows:

§ 230.430D Prospectus in a registration statement after effective date for asset-backed securities offerings.

(a)(1) A form of prospectus filed as part of a registration statement for offerings of asset-backed securities pursuant to Rule 415(a)(1)(vii) (§230.415(a)(1)(vii)) may omit from the information required by the form to be in the prospectus information that is unknown or not reasonably available to the issuer pursuant to Rule 409 (§230.409), provided that with respect to each offering pursuant to such registration statement, the issuer has filed with the Commission substantially all the information previously omitted from the prospectus filed as part of an effective registration statement relating to each offering that is required to be in the prospectus (except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or

commissions to dealers, amount of proceeds or other matters dependent upon the offering price) at least five business days in advance of the first sale in the offering in accordance with Rule 424(h) (§230.424(h)).

(2) If a material change occurs in the information provided in accordance with paragraph (a)(1), other than price, five additional days before the first sale in the offering must elapse from the date information reflecting the change and containing substantially all the information required to be in the prospectus (except for the information with respect to offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price) is filed with the Commission pursuant to Rule 424(h) (§230.424(h)).
Such form of prospectus shall be deemed to have been filed as part of the registration statement for the purpose of section 7 of the Act.

(b) A form of prospectus filed as part of a registration statement that omits information in reliance upon paragraph (a) of this section meets the requirements of section 10 of the Act for the purpose of section 5(b)(1) thereof. This provision shall not limit the information required to be contained in a form of prospectus in order to meet the requirements of section 10(a) of the Act for the purposes of section 5(b)(2) thereof or exception (a) of section 2(a)(10) thereof.

(c) Information omitted from a form of prospectus in reliance on paragraph (a) of this section and is contained in a form of prospectus required to be filed with the Commission pursuant to Rule 424(b)(2) or (b)(5) must contain all of the information that is required to be included in the prospectus pursuant to the requirements of the registration statement.

(d) (1) Except as provided in paragraph (d)(2), information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section may be included subsequently in the prospectus that is part of a registration statement by:

(i) A post-effective amendment to the registration statement;

(ii) A form of prospectus filed pursuant to Rule 424(h) (§230.424(h));

(iii) A prospectus filed pursuant to Rule 424(b) (§230.424(b)); or

(iv) If the applicable form permits, including the information in the issuer's periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement in accordance with the applicable requirements, subject to the provisions of paragraph (h) of this section.

(2) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section that adds a new structural feature or credit enhancement must be included subsequently in the prospectus that is part of a registration statement by a post-effective amendment to the registration statement.

(e) (1) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section and contained in a form of prospectus required to be filed with the Commission pursuant to Rule 424(b), other than as provided in paragraph (f) of this section, shall be deemed part of and included in

the registration statement as of the date such form of filed prospectus is first used after effectiveness.

(2) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section and contained in a form of prospectus required to be filed with the Commission pursuant to Rule 424(h) shall be deemed part of and included in the registration statement as of the date such form of filed prospectus is filed with the Commission pursuant to Rule 424(h) or, if used earlier than the date of filing, the date it is first used after effectiveness.

(f)(1) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section, and is contained in a form of prospectus required to be filed with the Commission pursuant to Rule 424(b)(2) or (b)(5), shall be deemed to be part of and included in the registration statement on the earlier of the date such subsequent form of prospectus is first used or the date and time of the first contract of sale of securities in the offering to which such subsequent form of prospectus relates.

(2) The date on which a form of prospectus is deemed to be part of and included in the registration statement pursuant to paragraph (f)(1) of this section shall be deemed, for purposes of liability under section 11 of the Act of the issuer and any underwriter at the time only, to be a new effective date of the part of such registration statement relating to the securities to which such form of prospectus relates, such part of the registration statement consisting of all information included in the registration statement and any prospectus relating to the offering of such securities (including information relating to the offering in a prospectus already included in the registration

statement) as of such date and all information relating to the offering included in reports and materials incorporated by reference into such registration statement and prospectus as of such date, and in each case not modified or superseded pursuant to Rule 412 (§230.412). The offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) If a registration statement is amended to include or is deemed to include, through incorporation by reference or otherwise, except as otherwise provided in Rule 436 (§230.436), a report or opinion of any person made on such person's authority as an expert whose consent would be required under section 7 of the Act because of being named as having prepared or certified part of the registration statement, then for purposes of this section and for liability purposes under section 11 of the Act, the part of the registration statement for which liability against such person is asserted shall be considered as having become effective with respect to such person as of the time the report or opinion is deemed to be part of the registration statement and a consent required pursuant to section 7 of the Act has been provided as contemplated by section 11 of the Act.

(4) Except for an effective date resulting from the filing of a form of prospectus filed for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S-K (§229.512(a)(1)(ii) of this chapter), the date a form of prospectus is deemed part of and included in the registration statement pursuant to this paragraph shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) Any director (or person acting in such capacity) of the issuer;

(ii) Any person signing any report or document incorporated by reference into the registration statement, except for such a report or document incorporated by reference for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S–K (such person except for such reports being deemed not to be a person who signed the registration statement within the meaning of section 11(a) of the Act).

(5) The date a form of prospectus is deemed part of and included in the registration statement pursuant to paragraph (f)(2) of this section shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) Any accountant with respect to financial statements or other financial information contained in the registration statement as of a prior effective date and for which the accountant previously provided a consent to be named as required by section 7 of the Act, unless the form of prospectus contains new audited financial statements or other financial information as to which the accountant is an expert and for which a new consent is required pursuant to section 7 of the Act or Rule 436; and

(ii) Any other person whose report or opinion as an expert or counsel has, with their consent, previously been included in the registration statement as of a prior effective date, unless the form of prospectus contains a new report or opinion for which a new consent is required pursuant to section 7 of the Act or Rule 436.

(g) Notwithstanding paragraph (e) or (f) of this section or paragraph (a) of Rule 412, no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration

statement after the effective date of such registration statement or portion thereof in respect of an offering determined pursuant to this section will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(h) Where a form of prospectus filed pursuant to Rule 424(b) relating to an offering does not include disclosure of omitted information regarding the terms of the offering, the securities or the plan of distribution for the securities that are the subject of the form of prospectus, because such omitted information has been included in periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 incorporated or deemed incorporated by reference into the prospectus, the issuer shall file a form of prospectus identifying the periodic or current reports that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement that contain such omitted information. Such form of prospectus shall be required to be filed, depending on the nature of the incorporated information, pursuant to Rule 424(b)(2) or (b)(5).

(i) Issuers relying on this section shall furnish the undertakings required by Item 512(a) of Regulation S–K.

38. Amend §230.433 by

a. Revising the phrase "I.B.5, I.C., or I.D. thereof" in paragraph (b)(1)(i) to read "I.C., or I.D. thereof or on Form SF-3 (§239.45 of this chapter)"; and

b. Revising the phrase "Rule 430B or Rule 430C) (§230.430B or §230.430C)" in paragraph (c)(i) to read "Rule 430B, Rule 430C or Rule 430D)(§230.430B, §230.430C, or §230.430D)".

39. Amend §230.456 by adding paragraph (c) to read as follows:

§ 230.456 Date of filing; timing of fee payment.

* * * * *

(c)(1) Notwithstanding paragraph (a) of this section, an asset-backed issuer that registers asset-backed securities offerings on Form SF-3 (§239.45), may, but is not required to, defer payment of all or any part of the registration fee to the Commission required by section 6(b)(2) of the Act on the following conditions:

(i) If the issuer elects to defer payment of the registration fee, it shall pay the registration fees (pay-as-you-go registration fees) calculated in accordance with Rule 457(s) in advance of or in connection with an offering of securities from the registration statement at the time of filing the prospectus pursuant to Rule 424(h) for the offering; and

(ii) The issuer reflects the amount of the pay-as-you-go registration fee paid or to be paid in accordance with paragraph (c)(1)(i) of this section by updating the "Calculation of Registration Fee" table to indicate the class and aggregate offering price of securities offered and the amount of registration fee paid or to be paid in connection with the offering or offerings on the cover page of a prospectus filed pursuant to Rule 424(h).

40. Amend §230.457 by:

a. Adding paragraph (s); and

b. Adding paragraph (t).

The additions read as follows:

§ 230.457 Computation of fee.

* * * * *

(s) Where securities are asset-backed securities being offered pursuant to a registration statement on Form SF-3 (§239.45), the registration fee is to be calculated in accordance with this section. When the issuer elects to defer payment of the fees pursuant to Rule 456(c), the "Calculation of Registration Fee" table in the registration statement must indicate that the issuer is relying on Rule 456(c) but does not need to include the number of units of securities or the maximum aggregate offering price of any securities until the issuer updates the "Calculation of Registration Fee" table to reflect payment of the registration fee, including a pay-as-you-go registration fee in accordance with Rule 456(c). The registration fee shall be calculated based on the fee payment rate in effect on the date of the fee payment.

(t) Where the securities to be offered are collateral certificates or special unit of beneficial interest underlying asset-backed securities (as defined in §229.1101(c)) which are being registered concurrently, no separate fee for the certificates or special units of beneficial interest shall be payable.

41. Amend §230.501 by adding paragraph (i) to read as follows:

§ 230.501 Definitions and terms used in Regulation D.

* * * * *

(i) A "structured finance product" means

(1) a synthetic asset-backed security; or

(2) a fixed-income or other security collateralized by any pool of self liquidating financial assets, such as loans, leases, mortgages, and secured or unsecured receivables, which entitles the security holders to receive payments that depend on the cash flow from the assets, including --

(i) an asset-backed security as used in Item 1101(c) of Regulation AB (§229.1101(c));

(ii) a collateralized mortgage obligation;

(iii) a collateralized debt obligation;

(iv) a collateralized bond obligation;

(v) a collateralized debt obligation of asset-backed securities;

(vi) a collateralized debt obligation of collateralized debt obligations; or

(vii) a security that at the time of the offering is commonly known to the trade as an asset-backed security or a structured finance product.

42. Amend §230.502 by:

a. Revising paragraph (b)(1); and

b. Adding paragraph (b)(3).

The revision and addition read as follows:

§ 230.502 General conditions to be met.

* * * * *

(b)(1) When information must be furnished. If the issuer sells securities other than structured finance products under §230.505 or §230.506 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in paragraph (b)(2) of this section to such purchaser a reasonable time prior to sale. The issuer is not

required to furnish the information specified in paragraph (b)(2) of this section to purchasers when it sells securities under §230.504, or to any accredited investor. If the issuer sells structured finance products under §230.506, the issuer shall comply with the information requirements specified in paragraph (b)(3) of this section with respect to each purchaser a reasonable time prior to sale.

Note: When an issuer provides information to investors pursuant to paragraph (b)(1), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal securities laws.

* * * * *

(3) If the issuer sells securities that are structured finance products under §230.506, the following conditions apply:

(i) the underlying transaction agreement shall contain a provision that grants any purchaser in the offering the right to obtain from the issuer promptly, upon the purchaser's or security holder's request, information that would be required if the offering were registered on Form S-1 or Form SF-1 under the Securities Act; and

(ii) the issuer shall represent that such information required in paragraph (b)(3)(i) shall be provided to any purchaser in the offering, upon the purchaser's request.

* * * * *

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

43. The authority citation for Part 232 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 et seq.; and 18 U.S.C. 1350.

* * * * *

44. Amend §232.11 by adding a definition for "Asset Data File" in alphabetical order to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Asset Data File. The term Asset Data File means the machine-readable computer code that presents information in eXtensible Markup Language (XML) electronic format pursuant to, with respect to any registration statement on Form SF-1 (§239.44) or Form SF-3 (§239.45), Items 1111(h) and 1111(i) (§ 229.1111(h) and 229.1111(i) of this chapter) or, with respect to any distribution report on Form 10-D, Items 1121(d) and 1121(e) (§229.1121(d) and §229.1121(e) of this chapter).

* * * * *

45. Amend §232.101 by:

a. Adding paragraphs (a)(1)(xiv) and (a)(1)(v); and

b. Replacing the phrase "F–2 and F–3 (see §§239.12, 239.13, 239.16b, 239.32 and 239.33 of this chapter" in the note below paragraph (a) with the phrase "SF-3, F-2 and F-3 (see §§239.12, 239.13, 239.16b, 239.32, 239.33, and 239.45 of this chapter".

The addition reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xiv) Asset Data File (as defined in §232.11 of this chapter).

(xv) Waterfall Computer Program (as defined in §229.1113(h)(1) of this chapter).

* * * * *

46. Amend §232.201 by:

a. Revising introductory text to paragraph (a); and

b. Replacing the phrase "and F–3 (see §§239.12, 239.13, 239.16b, 239.32 and 239.33" in the Note 1 to paragraph (b) with the phrase "F-3, and SF-3 (see §§239.12, 239.13, 239.16b, 239.32, 239.33, and 239.45".

c. Adding paragraph (d).

The revision and addition read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA-1 (§ 249.100 of this chapter), a Form TA-2 (§ 249.102 of this chapter), a Form TA-W (§ 249.101 of this chapter), a Form D (§ 239.500 of this chapter), an Interactive Data File (§232.11 of this chapter), a Form 144A-SF (§ 239.144A of this chapter) an Asset Data File (as defined in §232.11 of this chapter), or a Waterfall Computer Program (as defined in §229.1113(h) of this chapter), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 269.10 and 274.404

of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

(d) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an Asset Data File (as defined in §232.11 of this chapter) or a Waterfall Computer Program (as defined in §229.1113(h) of this chapter), required pursuant to, with respect to any registration statement on Form SF-1 (§239.44 of this chapter) or Form SF-3 (§239.45 of this chapter), Items 1111(h) and 1111(i) (§ 229.1111(h) and 229.1111(i) of this chapter) or, with respect to any distribution report on Form 10-D, Item 1121(d) and Item 1121(e) (§ 229.1121(d) and 229.1121(e) of this chapter), the electronic filer still can timely satisfy the requirement to submit the Asset Data File or the Waterfall Computer Program in the following manner by:

(1) Posting on a website the Asset Data File or the Waterfall Computer Program unrestricted as to access and free of charge;

(2) Specifying the website address in the required exhibit for the Asset Data File or the Waterfall Computer Program;

(3) Providing the following legend in the required exhibit for the Asset Data File or the Waterfall Computer Program; and

IN ACCORDANCE WITH THE TEMPORARY HARDSHIP EXEMPTION PROVIDED BY RULE 201 OF REGULATION S-T, THE DATE BY WHICH THE ASSET DATA FILE OR THE COMPUTER

WATERFALL PROGRAM IS REQUIRED TO BE SUBMITTED HAS BEEN EXTENDED BY SIX BUSINESS DAYS.

(4) Submitting the required Asset Data File or the Waterfall Computer Program no later than six business days after the Asset Data File or the Waterfall Computer Program originally was required to be submitted.

47. Amend §232.202 by revising the phrase "or a Form D (§ 239.500 of this chapter)" in the introductory text to paragraph (a) to read "a Form D (§ 239.500 of this chapter), a Form 144A-SF (§ 239.144A of this chapter), or an Asset Data File (§232.11 of this chapter) or a Waterfall Computer Program (as defined in §229.1113(h) of this chapter),".

48. Amend §232.305 by revising paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

* * * * *

(b) Paragraph (a) of this section does not apply to HTML documents, Interactive Data Files (§232.11), XBRL-Related Documents (§232.11) or a Waterfall Computer Program (§229.1113(h)(1)).

49. Amend §232.312 by revising to read as follows:

§ 232.312 Accommodation for certain information in filings with respect to asset-backed securities.

For filings with respect to asset-backed securities, the information provided in response to Item 1105 of Regulation AB (§ 229.1105 of this chapter) may be filed on EDGAR as a Portable Document Format (PDF) document in the format required by the EDGAR Filer Manual. Notwithstanding Rule 104 of Regulation S-T (§ 232.104 of this chapter), the PDF document filed pursuant to this paragraph shall be an official filing.

50. Add §232.314 to read as follows:

§ 232.314 Waterfall Computer Program.

With respect to any registration statement on Form SF-1 (Section 239.44) or Form SF-3 (Section 239.45) relating to an offering of an asset-backed security that is required to comply with Item 1113(h) of Regulation AB, the Waterfall Computer Program (as defined in Item 1113(h)(1) of Regulation AB) must be written in the Python programming language and able to be downloaded and run on a local computer properly configured with a Python interpreter. The Waterfall Computer Program should be filed in the manner specified in the EDGAR Filer Manual.

PART 239 – FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

51. 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.

* * * * *

52. Amend §239.11 to read as follows:

§ 239.11 Form S–1, registration statement under the Securities Act of 1933.

This Form shall be used for the registration under the Securities Act of 1933 ("Securities Act") of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof or asset-backed securities, as defined in 17 CFR 230.1101.

53. Amend Form S-1 (referenced in §239.11) by revising General Instruction I. to read as follows:

Note: The text of Form S-1 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 S-1

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form S-1

This Form shall be used for the registration under the Securities Act of 1933 ("Securities Act") of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof or asset-backed securities, as defined in 17 CFR 230.1101.

* * * * *

54. Amend §239.13 by:

a. Deleting paragraph (a)(4);

b. Redesignating paragraphs (a)(5), (a)(6), (a)(7) and (a)(8) as paragraphs (a)(4), (a)(5), (a)(6), and (a)(7);

c. Revising paragraph (b)(5); and

d. Revising the phrase "(a)(2), (a)(3) and (a)(4)" in paragraph (e) to say "(a)(2) and (a)(3)".

The revision to paragraph (b)(5) reads as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(b) * * *

(5) This form shall not be used to register offerings of asset-backed securities, as defined in 17 CFR 230.1101.

* * * * *

55. Amend Form S-3 (referenced in §239.13) by:

a. Deleting General Instruction I.A.4;

b. Redesignating General Instructions I.A.5, I.A.6, I.A.7, and I.A.8 as General Instructions I.A.4, I.A.5, I.A.6, and I.A.7;

c. Revising General Instruction I.B.5;

d. Deleting the phrase "I.B.5," in General Instruction II.F; and

e. Deleting General Instruction V.

The revision reads as follows:

Note: The text of Form S-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 S-3

* * * * *

GENERAL INSTRUCTIONS

I. * * *

B. * * *

5. This form shall not be used to register offerings of asset-backed securities, as defined in 17 CFR 230.1101.

* * * * *

56. Add §239.44 to read as follows:

§ 239.44 Form SF–1, registration statement under the Securities Act of 1933 for offerings of asset-backed securities.

This form shall be used for registration under the Securities Act of 1933 of all offerings of asset-backed securities, as defined in 17 CFR 229.1101(c).

57. Add Form SF-1 (referenced in §239.44) to read as follows:

Note: The text of Form SF-1 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-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

_____

(Exact name of registrant as specified in its charter)

_____

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)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification Number)

_____

(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 this Form 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 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: [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) 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 registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: Specific details relating to the fee calculation shall be furnished in notes to the 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 table. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. 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 429 under the Securities Act.

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form SF-1

This Form shall be used for the registration under the Securities Act of 1933 ("Securities Act") of asset-backed securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof.

II. Application of General Rules and Regulations

A: Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C (17 CFR 230.400 to 230.494) thereunder. That Regulation contains general requirements regarding the preparation and filing of the registration statement.

B. Attention is directed to Regulation S-K and Regulation AB (17 CFR Part 229) for the requirements applicable to the content of registration statements under the Securities Act.

C. Terms used in this form have the same meaning as in Item 1101 of Regulation AB.

III. Registration of Additional Securities

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 and CIK number of the issuer, 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. Incorporation of Certain Information by Reference

A. All registrants that 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 10 of this Form.

B. Registrants may elect to file the information required by Item 1105 of Regulation AB (17 CFR 229.1105), Static Pool, 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 10 of this Form.

C. If a registrant is structured as a revolving asset master trust, and is required to provide the information required by Item 9(d) of Schedule L (17 CFR 229.1111A), Floorplan Financings, it may elect to provide it in accordance with Item 10 of this Form.

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; 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.

Item 8. Static Pool.

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

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 time of effectiveness 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.

(b)(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;

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

(v) the registrant's Web site address, including the uniform resource locator (URL) where the incorporated reports and other documents may be accessed.

Note to Item 10(b)(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-1 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.

1. 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.

58. Add §239.45 to read as follows:

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

This form shall be used for registration under the Securities Act of 1933 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 of 1933 ("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 Form SF-3 for registration under the Securities Act of securities offered in transactions paragraph (b) below:

(1) To the extent the sponsor, with respect to the depositor or an issuing entity previously established by the depositor or affiliate of the depositor, was required to retain risk with respect to a previous ABS offering involving the same asset class, pursuant to paragraph (b)(1)(i) below, at the time of filing this registration statement, such sponsor was holding the required risk.

(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)) 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 this Form required to comply with the transaction requirements in paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) with respect to a previous offering of 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 transaction agreements containing the provision that is required by paragraph (b)(1)(ii) below;

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

(iii) Such depositor and each such issuing entity must have filed all reports they had undertaken to file for the previous twelve months (or such shorter period that each such entity had undertaken to file reports) regarding such asset-backed securities as would be required under section 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) if they were subject to the reporting requirements of that section.

(3) The registrant has provided disclosure in the registration statement that it has met the registrant requirements of paragraphs (a)(1) and (a)(2) above.

(4) 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)) 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 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) 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) Offerings for cash where the following have been satisfied:

(i) Risk Retention. With respect to each offering of securities that is registered on this form:

(A) The sponsor or an affiliate of the sponsor retains a net economic interest in the securities offered in one of two the allowed methods described in paragraph (B) and provides disclosure in the prospectus that is filed as part of this registration statement relating to the interest that is retained.

(B) The sponsor or affiliate of the sponsor shall retain the economic interest described in paragraph (A) above in one of the following methods:

(1) Retention of a minimum of five percent of nominal amount of each of the tranches sold or transferred to investors, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate; or

(2) in the case of revolving asset master trusts, retention of the originator's interest of a minimum of five percent of the nominal amount of the securitized exposures, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate, provided that payments by the originator's interest are not less than five percent of payments by, collectively, the securities held by investors, at all times and in all cases.

Instruction to paragraph (b)(1)(i)(A): Net economic interest is measured at issuance of the securities with respect to (A) and at origination of the assets backing the securities with respect to (B) and shall be maintained as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in the offering.

(ii) Third Party Opinion Provision in Transaction Agreement. 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 any party that has provided representations and warranties relating to the pool assets and that is obligated to repurchase any noncompliant pool asset or substitute any noncompliant pool asset to furnish an opinion or certificate, furnished to the trustee at least each quarter, from a non-affiliated third party relating to any asset for which the trustee has asserted a breach of a representation or warranty and for which the asset was not repurchased or replaced by the obligated party on the basis of an assertion that the asset did not violate a representation or warranty contained in the pooling and servicing agreement or other transaction agreement.

(iii) 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 with respect to each offering of securities that is registered on this form.

(iv) Undertaking to file Exchange Act Reports. With respect to each offering of securities that is registered on this form, the registrant undertakes to file reports as would be required by Section 15(d) of the Exchange Act and the rules thereunder, if the registrant were subject to the reporting requirements of that section, in accordance with Item 512(a)(7)(ii) of Regulation S-K (§229.512(a)(7)(ii)) as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in registered transactions. This registration statement shall also provide disclosure in the prospectus that is filed as part of the registration statement that the registrant has undertaken to, and will, file with the Commission reports as would be required by Section 15(d) of the Exchange Act and the rules thereunder if the registrant were subject to the reporting requirements of that section.

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

(vi) 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 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 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 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 registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

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.

4. 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 securities offered in transactions specified in I.B. below:

1. To the extent the sponsor, with respect to the depositor or an issuing entity previously established by the depositor or affiliate of the depositor, was required to retain risk with respect to a previous ABS offering involving the same asset class, pursuant to General Instruction I.B.1(a) of this form, at the time of filing this registration statement, such sponsor was holding the required risk.
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)) 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 this Form required to comply with the transaction requirements in General Instructions

I.B.1(b), I.B.1(c), and I.B.1(d) of this form with respect to a previous offering of 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 transaction agreements containing the provision that is required by General Instruction I. B.1(b);

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

(c) Such depositor and each such issuing entity must have filed all reports they had undertaken to file for the previous twelve months (or such shorter period that each such entity had undertaken to file reports) regarding such asset-backed securities as would be required under section 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) if they were subject to the reporting requirements of that section.

3. The registrant has provided disclosure in the registration statement that it has met the registrant requirements of General Instruction I.A.1 and I.A.2 of Form SF-3.

4. 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)) 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 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 or each such entity had undertaken to file such materials, as applicable). 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) **Risk Retention.** With respect to each offering of securities that is registered on this form:

- The sponsor or an affiliate of the sponsor retains a net economic interest in the securities offered in one of two the allowed methods described in paragraph (B) and provides disclosure in the prospectus that is filed as part of this registration statement relating to the interest that is retained.
- The sponsor or affiliate of the sponsor shall retain the economic interest described in paragraph (A) above in one of the following methods:

(A) Retention of a minimum of five percent of nominal amount of each of the tranches sold or transferred to the investors, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate; or

(B) in the case of revolving asset master trusts, retention of the originator's interest of a minimum of five percent of the nominal amount of the securitized exposures, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate, provided that the

originator's interest and securities held by investors are collectively backed by the same pool of receivables, and payments of the originator's interest are not less than five percent of payments of the securities held by investors collectively.

Instruction to General Instruction I.B.1(a)(i): Net economic interest is measured at issuance of the securities with respect to (A) and at origination of the assets backing the securities with respect to (B) and shall be maintained as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in the offering.

(b) **Third Party Opinion Provision in Transaction Agreement.** 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 any party that has provided representations and warranties relating to the pool assets and that is obligated to repurchase any noncompliant pool asset or substitute any noncompliant pool asset to furnish an opinion or certificate, furnished to the trustee at least each quarter, from a non-affiliated third party relating to any asset for which the trustee has asserted a breach of a representation or warranty and for which the asset was not repurchased or replaced by the obligated party on the basis of an assertion that the asset did

not violate a representation or warranty contained in the pooling and servicing agreement or other transaction agreement.

(c) **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 with respect to each offering of securities that is registered on this form.

(d) **Undertaking to file Exchange Act Reports.** With respect to each offering of securities that is registered on this form, the registrant undertakes to file reports as would be required by Sections 13(a) or 15(d) of the Exchange Act and the rules thereunder if the registrant were subject to the reporting requirements of that section, in accordance with Item 512(a)(7)(ii) of Regulation S-K (§229.512(a)(7)(ii)) as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in registered transactions. This registration statement shall also provide disclosure in the prospectus that is filed as part of the registration statement that the registrant has undertaken to, and will, file with the Commission reports as would be required by Sections 13(a) or 15(d) of the Exchange Act and the rules thereunder if the registrant were subject to the reporting requirements of that section.

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

(f) **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 (17 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 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. 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, 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 8. 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.

Item 9. 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.

Item 10. Interests of Named Experts and Counsel.

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

Item 11. 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 12. 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 13. Other Expenses of Issuance and Distribution.

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

Item 14. Indemnification of Directors and Officers.

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

Item 15. 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 16. 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.

1. 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.

60. Add §239.46 to read as follows:

§239.144A Form 144A-SF, for notice of the initial placement of securities pursuant to §230.144A, paragraph (d)(5) of this chapter.

The notice shall be signed by the issuer of the securities and filed with the Commission no later than 15 calendar days after the first sale of securities in the initial placement of securities to be re-sold in reliance on Rule 144A (§230.144A), unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date shall be the first business day following such period.

61. Add Form 144A-SF (referenced in §239.144A) to read as follows:

Note: The text of Form 144A-SF does not, and this amendment will not, appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission
Washington, DC 20549

FORM 144A-SF

NOTICE OF THE INITIAL PLACEMENT OF STRUCTURED FINANCE PRODUCTS PURSUANT TO RULE 144A UNDER THE SECURITIES ACT OF 1933

Note: Intentional misstatements or omissions of fact constitute federal criminal violations. See 18 U.S.C. 1001.

General Instructions

In accordance with Rule 144A(d)(5), a notice of offering shall be filed for the initial placement of structured finance products, as defined in Rule 144A, to be sold in reliance on Rule 144A (17 CFR 230.144A). The notice shall be filed for the initial placement of the securities and not for subsequent resales of those securities. The notice shall be signed by the issuer of the securities and filed no later than 15 calendar days after the first sale of securities in the offering, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date shall be the first business day following such period.

Item 1. Identity of principal parties.

(a) Identify the issuer and provide the principal place of business and contact information for the issuer.

(b) Identify the sponsor for the offering and principal originators for the assets in the underlying pool, and servicer or collateral manager.

(c) Provide the CUSIP number for the issuance, if reasonably available.

Item 2. Information on type of security.

(a) Describe the type of securities being offered or sold.

(b) Provide a brief description of the structure of the securities, including the number of tranches in the securitization and whether any portion of the tranches are being retained by the sponsor or originator.

(c) Provide a brief description of the asset pool, including the types of assets included, and if the assets are securities, provide the issuer of the underlying securities.

Item 3. Information on offering.

(a) Provide the principal amount of the securities offered or sold in the initial placement.

(b) Disclose the date of the initial placement and the date of the initial resale of securities to be made in reliance on Securities Act Rule 144A (17 CFR 230.144A).

Signature and Submission

Terms of Submission: In submitting this notice, the undersigned undertakes to provide to the SEC upon written request the offering documents used in connection with the initial placement of securities.

_____
Issuer

_____
Name of Signer

_____
Signature

_____
Title

_____
Date

62. Amend §239.500 by:

a. Renumbering existing Item 9 as Item 4 and renumbering existing Items 4, 5, 6, 7, and 8, as Items 5, 6, 7, 8, and 9.

b. Revising Items 4 and 6;

c. Revising the instruction to Item 4;

d. Revising the instruction to Item 6; and

e. Replacing the reference to "Item 6" in the instruction to Item 13 to read "Item 7".

The revisions read as follows:

Note – The text of Form D (referenced in § 239.500) does not and this amendment will not appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM D
NOTICE OF EXEMPT OFFERING OF SECURITIES

* * * * *

1. Issuer's Identity

Name of Issuer _____

Previous Name(s) _____

Jurisdiction of Incorporation/Organization (dropdown or other list selection feature)

Entity Type (dropdown or other list selection feature)

Year of Incorporation/Organization (dropdown or other list selection feature to select year or "Yet to Be Formed")

* * * * *

4. Securities Offered

Type(s) of Security (select all that apply)
[ ] Equity
[ ] Debt
[ ] Option, Warrant or Other Right to Acquire Another Security
[ ] Security to be Acquired Upon Exercise of Option, Warrant or Other

Right to Acquire Security
[ ] Pooled Investment Fund Interests
[ ] Structured Finance Product
Check all that apply:
- ⊙ Interest-weighted
- ⊙ Principal-weighted
- ⊙ Interest Only
- ⊙ Principal Only
- ⊙ Planned Amortization
- ⊙ Companion Classes
- ⊙ Residual Interests
- ⊙ Subordinated Interests
- ⊙ Other [Specify: _____]

For issuers that specify "Structured Finance Products" in Item 4, also provide the following information:

Name of Sponsor _____
Name of Principal Originator(s) _____
Name of Servicer or Collateral Manager _____
CUSIP Number _____

[ ] Tenant-in-Common Securities
[ ] Mineral Property Securities
[ ] Other (Describe: _____)

6. Issuer Size or Other Characteristics

Revenue Range (for issuers that do not specify "Structured Finance Product" in response to Item 4 or "Hedge Fund" or "Other Investment Fund" in response to Item 5)

- ⊙ No Revenues
- ⊙ $1 - $1,000,000
- ⊙ $1,000,001 - $5,000,000
- ⊙ $5,000,001 - $25,000,000
- ⊙ $25,000,001 - $100,000,000
- ⊙ Over $100,000,000
- ⊙ Decline to Disclose
- ⊙ Not Applicable

Description of Transaction Structure and Asset Pool (for issuers that specify "Structured Finance Product" in response to Item 4)

Description of Transaction Structure: _____
Description of Asset Pool: _____

Aggregate Net Asset Value Range (for issuers that specify "Hedge Fund" or "Other Investment Fund" in response to Item 5)

- ⊙ No Aggregate Net Asset Value
- ⊙ $1 - $5,000,000
- ⊙ $5,000,001 - $25,000,000
- ⊙ $25,000,001 - $50,000,000
- ⊙ $50,000,001 - $100,000,000
- ⊙ Over $100,000,000
- ⊙ Decline to Disclose
- ⊙ Not Applicable

Instructions for Submitting Notice

* * * * *

Item-by-Item Instructions

* * * * *

4. **Securities Offered.** Select the appropriate type or types of securities offered as to which this notice is filed. If the securities are debt convertible into other securities, however, select "Debt" and any other appropriate types of securities except for "Equity." For purposes of this filing, use the ordinary dictionary and commonly understood meanings of these categories, except for the term "structured finance product," which is defined in Rule 501(a) of the Securities Act of 1933, 17 CFR 230.501(a). For instance, equity securities would be securities that represent proportional ownership in an issuer, such as ordinary common and preferred stock of corporations and partnership and limited liability company interests; debt securities would be securities representing money loaned to an issuer that must be repaid to the investor at a later date; pooled investment fund interests would be securities that represent ownership interests in a pooled or collective investment vehicle; tenant-in-common securities would be securities that include an undivided fractional interest in real property other than a mineral property; and mineral property securities would be securities that include an

undivided interest in an oil, gas or other mineral property. For issuers of structured finance products, identify the sponsor for the securities, the principal originators for the assets in the underlying pool, and the servicer or collateral manager and provide the CUSIP number for the securities.

* * * * *

6. Issuer Size or Other Characteristics.

- Revenue Range (for issuers that do not specify "Structured Finance Product" in response to Item 4 or "Hedge Fund" or "Other Investment Fund" in response to Item 5): Enter the revenue range of the issuer or of all the issuers together for the most recently completed fiscal year available, or, if not in existence for a fiscal year, revenue range to date. Domestic SEC reporting companies should state revenues in accordance with Regulation S-X under the Securities Exchange Act of 1934. Domestic non-reporting companies should state revenues in accordance with U.S. Generally Accepted Accounting Principles (GAAP). Foreign issuers should calculate revenues in U.S. dollars and state them in accordance with U.S. GAAP, home country GAAP or International Financial Reporting Standards. If the issuer(s) declines to disclose its revenue range, enter "Decline to Disclose." If the issuer's(s') business is intended to produce revenue but did not, enter "No Revenues." If the business is not intended to produce revenue (for example, the business seeks asset appreciation only), enter "Not Applicable."
- Description of Transaction Structure and Asset Pool (for issuers that specify "Structured Finance Product" in response to Item 4): Provide a brief

description of the structure of the securities offered, including the number of tranches in the securitization and whether any portion of the tranches are being retained by the sponsor or the originator. Provide a brief description of the asset pool, including the types of assets included, and if the assets are securities, provide the issuer of the underlying securities.

- Aggregate Net Asset Value (for issuers that specify "Hedge Fund" or "Other Investment Fund" in response to Item 5): Enter the aggregate net asset value range of the issuer or of all the issuers together as of the most recent practicable date. If the issuer(s) declines to disclose its aggregate net asset value range, enter "Decline to Disclose."

* * * * *

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

63. The authority citation for part 240 continues to read in part as follows:

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

* * * * *

64. Amend §240.15c2-8 by:

a. Revising the last sentence of paragraph (b); and

b. Deleting paragraph (j).

The revision reads as follows:

§ 240.15c2-8 Delivery of prospectus.

* * * * *

(b) * * * Provided, however, this paragraph (b) shall apply to all issuances of asset-backed securities (as defined in §229.1101 of this chapter) regardless of whether the issuer has previously been required to file reports pursuant to sections 13(a) or 15(d) of the Securities Exchange Act of 1934, or exempted from the requirement to file reports thereunder pursuant to section 12(h) of the Act.

65. Amend §240.15d-22 by revising the references to "415(a)(1)(x)" each time those references appear in the rule to read "415(a)(1)(vii)".

* * * * *

PART 243 -- REGULATION FD

66. The authority citation for part 243 continues to read as follows:

Authority: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a-29, unless otherwise noted.

* * * * *

67. Amend §243.103 by revising the phrase "and S-8 (17 CFR 239.16b)" to read ", S-8 (17 CFR 239.16b) and SF-3 (17 CFR 239.45)".

* * * * *

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

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

Authority: 15 U.S.C. 78a et seq., 7202, 7233, 7241, 7262, 7264, and 265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

69. Amend Form 8-K (referenced in § 249.308) by:

a. Adding a checkbox to the end of the cover page;

b. Revising General Instruction G.2.;

c. Revising Item 6.05 of the Form; and

d. Adding Items 6.06, 6.07, 6.08 and 6.09.

The revisions and additions read as follows:

Note: The text of Form 8-K 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 8-K

* * * * *

Indicate by check mark if the registrant is an asset-backed issuer that has undertaken to file this report pursuant to Item 512(a)(7)(ii) [ ]

GENERAL INSTRUCTIONS

* * * * *

G. Use of this Form by Asset-Backed Issuers.

2. Additional Disclosure for the Form 8-K Cover Page. Immediately after the name of the issuing entity on the cover page of the Form 8-K, as separate line items, identify the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter. Include a Central Index Key number for the depositor and the issuing entity, and if available, the sponsor.

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Item 6.05 Securities Act Updating Disclosure.

Regarding an offering of asset-backed securities registered on Form SF-3 (17 CFR 239.45), if any material pool characteristic of the actual asset pool at the time of issuance of the asset-backed securities (other than as a result of the pool assets converting into cash in accordance with their terms) differs by 1% or more from the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424 (17 CFR 230.424), disclose the information required by Items 1111 and 1112 of Regulation AB (17 CFR 229.1111 and 17 CFR 229.1112) regarding the characteristics of the actual asset pool. If applicable, also provide information required by Items 1108 and 1110 of Regulation AB (17 CFR 229.1108 and 17 CFR 229.1110) regarding any new servicers or originators that would be required to be disclosed under those items regarding the pool assets. Describe the changes that were made to the asset pool, including the number of assets substituted or added to the asset pool.

Instruction.

No report is required under this Item if substantially the same information is provided in a post-effective amendment to the Securities Act registration statement or in a subsequent prospectus filed pursuant to Securities Act Rule 424 (17 CFR 230.424).

Item 6.06 Asset-Level Data File and Related Documents

(a) Regarding an offering of asset-backed securities registered on Form SF-1 (17 CFR 239.44) or Form SF-3 (17 CFR 239.45), disclose the information required by Item 1111(h) (17 CFR 229.1111(h)) and Schedule L (17 CFR 229.1111A) of Regulation AB or Item 1111(i) (17 CFR 229.1111(i)) and Schedule CC (17 CFR 229.1111B) of Regulation AB. The disclosure must be filed as an Asset Data File (as defined in 17 CFR

232.11) as an exhibit with this report by the time of effectiveness of a registration statement on Form SF-1, on the same date of the filing of a form of prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(h)), a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)), and a report filed in accordance with Item 6.05 of this Form.

(b) With respect to a credit card master trust, if a Waterfall Computer Program is filed pursuant to Item 6.07(b) of this Form as an exhibit with this report, also provide the information required by Schedule CC (17 CFR 229.1111B) of Regulation AB. The disclosure must be filed as an Asset Data File (as defined in 17 CFR 232.11) as an exhibit with this report.

(c) Asset Related Documents.

(1) If a registrant includes other data points in the Asset Data File provided in paragraph (a) of this Item, in addition to those required by Schedule L of Regulation AB (17 CFR 229.1111A), disclose in reasonable detail the definitions and formulas for each of those additional data points. The document must be filed as an exhibit with this report on the same date of the filing of a prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(h)), a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)) and a report filed in accordance with Item 6.05 of this Form.

(2) If a registrant provides other explanatory disclosure regarding the Asset Data File filed pursuant to (a) of this paragraph, disclose in reasonable detail the additional information. The document must be filed as an exhibit with this report on the

same date of the filing of a prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(h)), a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)) and a report filed in accordance with Item 6.05 of this Form.

Instructions.

1. Refer to Item 601(b)(102) and (103) of Regulation S-K (17 CFR 229.601(b)(102) and (103)) regarding the filing of exhibits to this Item 6.06.

2. Refer to Item 10 of Form SF-1 (17 CFR 239.44) or Item 11 of Form SF-3 (17 CFR 239.45) regarding incorporation by reference.

Item 6.07 Waterfall Computer Program and Related Documents

(a) Regarding an offering of asset-backed securities registered on Form SF-1 (17 CFR 239.44) or Form SF-3 (17 CFR 239.45), disclose the information required by Item 1113(h) (17 CFR 229.1113(h)) of Regulation AB. The disclosure must be filed as a Waterfall Computer Program (as defined in 17 CFR 232.11) as an exhibit with this report by the time of effectiveness of a registration statement on Form SF-1, and on the filing date of any (i) form of prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(h)) or (ii) final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).

(b) With respect to a credit card master trust, if there is a change to the flow of funds that results in a change to the waterfall, disclose the information required by Item 1113(h) of Regulation AB. The disclosure must be filed as a Waterfall Computer

Program as an exhibit with this report. Also provide the Asset Data File required by Item 6.06(b) of this Form.

(c) Waterfall Computer Program Related Documents. If a registrant includes additional program functionality in the Waterfall Computer Program filed pursuant to (a) of this paragraph, identify and disclose in reasonable detail the additional program functionality. The document must be filed as an exhibit with this report on the same date of the filing of a prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(h)) or a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).

Instructions.

1. Refer to Item 601(b)(104) and (105) of Regulation S-K (17 CFR 229.601(b)(102) and (103)) regarding the filing of exhibits to this Item 6.07.

2. Refer to Item 10 of Form SF-1 (17 CFR 239.44) or Item 11 of Form SF-3 (17 CFR 239.45) regarding incorporation by reference.

Item 6.08 Static Pool

Regarding an offering of asset-backed securities registered on Form SF-1 (17 CFR 239.44) or Form SF-3 (17 CFR 239.45), in lieu of providing the static pool information as required by Item 1105 of Regulation AB (17 CFR 229.1105) in a form of prospectus or prospectus, an issuer may file the required information as an exhibit to this report. The static pool disclosure must be filed as an exhibit with this report by the time of effectiveness of a registration statement on Form SF-1, on the same date of the filing of a form of prospectus, as required by Rule 424(h) (17 CFR 230.424(h)) and a final

prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).

Instructions.

1. Refer to Item 601(b)(106) of Regulation S-K (17 CFR 229.601(b)(104)) regarding the filing of exhibits to this Item 6.08.

2. Refer to Item 10 of Form SF-1 (17 CFR 239.44) or Item 11 of Form SF-3 (17 CFR 239.45) regarding incorporation by reference.

Item 6.09 Change in Sponsor Interest in the Securities

If there is a material change in the sponsor's interest in the securities, explain the change, including the amount of change, and describe the sponsor's resulting interest in the transaction after the change.

* * * * *

70. Amend Form 10-K (referenced in § 249.310) by:

a. Adding a checkbox on the cover page before the paragraph that starts "Indicate by check mark whether the registrant (1) has filed all reports * * *"; and

b. Revising General Instruction J(2)(a).

The addition and revision read as follows:

Note: The text of Form 10-K 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 10-K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

J. Use of this Form by Asset-Backed Issuers.

(2) * * *

(a) Immediately after the name of the issuing entity on the cover page of the Form 10-K, as separate line items, the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter. Include a Central Index Key number for the depositor and the issuing entity, and if available, the sponsor.

* * * * *

FORM 10-K

* * * * *

Indicate by check mark if the registrant is an asset-backed issuer that has undertaken to file this report pursuant to Item 512(a)(7)(ii) [ ]

* * * * *

71. Amend Form 10-D (referenced in § 249.312) by:

a. Revising General Instruction C(3);

b. Revising the beginning of the cover page above the line that reads "(State or other jurisdiction of incorporation or organization of the issuing entity)";

c. Adding a checkbox to the cover page before the paragraph that starts "Indicate by check mark whether the registrant (1) has filed * * *";

d. Revising Item 1 in Part I; and

e. Adding Item 1A in Part II

The revisions and additions read as follows:

Note: The text of Form 10-D 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 10-D

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. Preparation of Report. * * *

(3) Any item which is inapplicable or to which the answer is negative may be omitted and no reference need be made in the report. If substantially the same information has been previously reported by the asset-backed issuer, an additional report of the information on this Form need not be made. Identify the Form or report on which the previously reported information was filed. Identifying information should include a Central Index Key number, file number and date of the previously reported information. The term "previously reported" is defined in Rule 12b-2 (17 CFR 240.12b-2).

* * * * *

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

FORM 10-D

ASSET-BACKED ISSUER
DISTRIBUTION REPORT PURSUANT TO SECTION 13 OR 15(d) OF

THE SECURITIES EXCHANGE ACT OF 1934

For the [identify distribution frequency (e.g., monthly/quarterly)] distribution period from _____, 20__ to _____, 20__

Commission File Number of issuing entity: _____
Central Index Key Number of issuing entity: _____

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

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)

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

* * * * *

Indicate by check mark if the registrant is an asset-backed issuer that has undertaken to file this report pursuant to Item 512(a)(7)(ii) [ ]

* * * * *

PART I – DISTRIBUTION INFORMATION

Item 1. Distribution and Pool Performance Information.

Provide the information required by Item 1121(a) and (b) of Regulation AB (17 CFR 229.1121(a) and (b)), and attach as an exhibit to this report the distribution report delivered to the trustee or security holders, as the case may be, pursuant to the transaction agreements for the distribution period covered by this report. Any information required by Item 1121(a) and (b) of Regulation AB that is provided in the attached distribution report need not be repeated in this report. However, taken together, the attached

distribution report and the information provided under this Item must contain the information required by Item 1121(a) and (b) of Regulation AB.

Item 1A. Asset Performance Information.

Provide the information required by Items 1121(d) and (e) of Regulation AB (17 CFR 229.1121(d) and (e)) as an exhibit.

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By the Commission.

Elizabeth M. Murphy
Secretary

April 7, 2010

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix

Table 1. Schedule L Item 1. General item requirements

Proposed Item Number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 1(a)(1)	Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.	Text	General information about the asset
Item 1(a)(2)	Asset number. Provide the unique ID number of the asset.	Number	General information about the asset
Item 1(a)(3)	Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.	Number	General information about the asset
Item 1(a)(4)	Originator. Identify the name or MERS organization number of the originator entity. If the asset is a security, identify the name of the issuer.	Text or Number	General information about the asset
Item 1(a)(5)	Origination date. Provide the date of asset origination. For revolving asset master trusts, provide the origination date of the receivable that will be added to the asset pool.	Month/Year	General information about the asset
Item 1(a)(6)	Original asset amount. Indicate the dollar amount of the asset at the time of origination.	Number	General information about the asset
Item 1(a)(7)	Original asset term. Indicate the initial number of months between asset origination and the asset maturity date.	Number	General information about the asset
Item 1(a)(8)	Asset maturity date. Indicate the month and year in which the final payment on the asset is scheduled to be made.	Month/Year	General information about the asset
Item 1(a)(9)	Original amortization term. Indicate the number of months in which the asset would be retired if the amortizing principal and interest payment were to be paid each month.	Number	General information about the asset
Item 1(a)(10)	Original interest rate. Provide the rate of interest at the time of origination of the asset.	%	General information about the asset
Item 1(a)(11)	Interest type. Indicate whether the interest rate calculation method is simple or actuarial.	1=Simple 2=Actuarial	General information about the asset
Item 1(a)(12)	Amortization type. Indicate whether the interest rate on the asset is fixed or adjustable.	1=Fixed 2=Adjustable	General information about the asset

Proposed Item Number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 1(a)(13)	Original interest only term. Indicate the number of months in which the obligor is permitted to pay only interest on the asset.	Number	General information about the asset
Item 1(a)(14)	First payment date. Provide the date of the first scheduled payment.	Date	General information about the asset
Item 1(a)(15)	Primary servicer. Identify the name or MERS organization number of the entity that services or will have the right to service the asset.	Text or Number	General information about the asset
Item 1(a)(16)	Servicing fee—percentage. If the servicing fee is based on a percentage, indicate the percentage of monthly servicing fee paid to all servicers as a percentage of the Original Contract Amount.	%	General information about the asset
Item 1(a)(17)	Servicing fee—flat-dollar. If the servicing fee is based on a flat-dollar amount, indicate the monthly servicing fee paid to all servicers as a dollar amount.	Number	General information about the asset
Item 1(a)(18)	Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are to be advanced by the servicer.	1=Scheduled interest, scheduled principal; 2=Actual interest, actual principal; 3=Scheduled interest, actual principal; 98=other 99=unknown	General information about the asset
Item 1(a)(19)	Defined underwriting indicator. Indicate yes or no whether the loan or asset made was an exception to a defined and/or standardized set of underwriting criteria.	1=Yes 2=No	General information about the asset
Item 1(a)(20)	Measurement date. The date the loan or asset-level data is provided in accordance with Item 1111(h)(1) of Regulation AB (§229.1111(h)(1)).	Date	General information about the asset
Item 1(b)(1)	Cut-off date. Indicate the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders.	Date	General information about the asset
Item 1(b)(2)	Current asset balance. Indicate the outstanding principal balance of the asset as of the cut-off date.	Number	Updating information about the asset as of the cut-off date
Item 1(b)(3)	Current interest rate. Indicate the interest rate in effect on the asset as of the cut-off date.	%	Updating information about the asset as of the cut-off date

Proposed Item Number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 1(b)(4)	Current payment amount due. Indicate the next total payment due to be collected.	Number	Updating information about the asset as of the cut-off date
Item 1(b)(5)	Current delinquency status. Indicate the number of days the obligor is delinquent as determined by the governing transaction agreement.	Number	Updating information about the asset as of the cut-off date
Item 1(b)(6)	Number of days payment is past due. If an obligor has not made the full scheduled payment, indicate the number of days between the scheduled payment date and the cut-off date.	Number	Updating information about the asset as of the cut-off date
Item 1(b)(7)	Current payment status. Indicate the number of payments the obligor is past due as of the cut-off date.	Number	Updating information about the asset as of the cut-off date
Item 1(b)(8)	Remaining term to maturity. Indicate the number of months between the cut-off date and the asset maturity date.	Number	Updating information about the asset as of the cut-off date

Table 2. Schedule L Item 2. Residential mortgages item requirements

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(a)(1)	Loan purpose. Specify the code which describes the purpose of the loan.	1=Cash out: Debt consolidation— Proceeds used to pay off existing loans other than loans secured by real estate. 2=Cash out: Home improvement/renovation 3=Cash out: Other/multi-purpose/unknown purpose 4=Limited cash-out (GSE definition) 5= Facilitate REO (repo financing for manufactured housing) 6= First time home purchase, as defined by American Recovery and Reinvestment Act of 2009 (Purchaser has not owned a principal residence in the past three years.) 7=Other-than-first-time home purchase 8=Rate/term refinance - lender initiated 9=Rate/term refinance - borrower initiated 10=Construction to permanent: A mortgage loan on completed construction under one mortgage or trust deed in which the completion certificate and the certificate of occupancy have been obtained. 11=assumption 98=other 99=unknown	General information about the residential mortgage
Item 2(a)(2)	Lien position. Indicate the code that describes the lien position for the loan.	1=First 2=Second 3=Third 98=other 99=unknown	General information about the residential mortgage
Item 2(a)(3)	Prepayment penalty indicator. Indicate yes or no as to whether the obligor is subject to prepayment penalties.	1 = Yes 2 = No	General information about the residential mortgage

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(a)(4)	Negative amortization indicator. Indicate yes or no as to whether the loan allows negative amortization.	1 = Yes 2 = No	General information about the residential mortgage
Item 2(a)(5)	Mortgage modification indicator. Indicate yes or no as to whether the loan has been modified.	1 = Yes 2 = No	General information about the residential mortgage
Item 2(a)(6)	Mortgage insurance requirement indicator. Indicate yes or no as to whether mortgage insurance is or was required as a condition for originating the loan.	1 = Yes 2 = No	General information about the residential mortgage
Item 2(a)(7)	Balloon indicator. Indicate yes or no as to whether the loan documents require a lump-sum payment of principal at maturity.	1 = Yes 2 = No	General information about the residential mortgage
Item 2(a)(8)	Cash out amount. Provide the amount of cash the obligor will receive at the closing of the loan on a refinance transaction.	Number	General information about the residential mortgage
Item 2(a)(9)	Broker. Indicate yes or no as to whether a broker originated or was involved in the origination of the loan.	1 = Yes 2 = No	General information about the residential mortgage

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(a)(10)	Channel. Specify the code that describes the source from which the issuer obtained the loan.	1=Retail 2=Broker 3=Correspondent bulk 4=Correspondent flow with delegated underwriting 5=Correspondent flow without delegated underwriting 98=other 99=unknown	General information about the residential mortgage
Item 2(a)(11)	NMLS loan originator number. Specify the National Mortgage License System registration number of the loan originator.	Number	General information about the residential mortgage
Item 2(a)(12)	NMLS company number. Specify the National Mortgage License System registration number of the company that originated the loan.	Number	General information about the residential mortgage
Item 2(a)(13)	Buy down period. Indicate the total number of months during which any buy down is in effect, representing the accumulation of all buy down periods.	Number	General information about the residential mortgage
Item 2(a)(14)	Interest paid through date. Provide the date through which interest is paid with the current payment, which is the effective date from which interest will be calculated for the application of the next payment.	Date	General information about the residential mortgage
Item 2(a)(15)	Loan delinquency advance days count. Indicate the number of days after which a servicer can stop advancing funds on a delinquent loan.	Number	General information about the residential mortgage

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(a)(16)	Junior mortgage balance. For first mortgages with subordinate liens at the time of origination, provide the amount of the combined balance of the subordinate liens.	Number	General information about the residential mortgage
Item 2(a)(17)(i)	Senior loan amount(s). For non-first mortgages, provide the total amount of the balances of all associated senior mortgages at the time of origination of the subordinate lien.	Number	Information about junior liens
Item 2(a)(17)(ii)	Loan type of most senior lien. For non-first mortgages, indicate the code that describes the loan type of the first mortgage.	Number	Information about junior liens
Item 2(a)(17)(iii)	Hybrid period of most senior lien. For non-first mortgages where the associated first mortgage is a hybrid ARM, provide the number of months remaining in the initial fixed interest rate period for the first mortgage.	Number	Information about junior liens
Item 2(a)(17)(iv)	Negative amortization limit of most senior lien. For non-first mortgages where the associated first mortgage features negative amortization, indicate the negative amortization limit of the mortgage as a percentage of the original unpaid principal balance.	%	Information about junior liens
Item 2(a)(17)(v)	Origination date of most senior lien. For non-first mortgages, provide the origination date of the associated first mortgage.	Month/Year	Information about junior liens

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 2(a)(18)(i)	ARM Index. Specify the code that describes the index on which an adjustable interest rate is based.	1=1 MONTH TREASURY (WEEKLY) 2=1 Year CMT Moving 12 Month Avg (MTA) 3=1 YEAR TREASURY (WEEKLY) 4=1 YR TREASURY (MONTHLY) 5=10 YEAR TREASURY (MONTHLY) 6=10 YEAR TREASURY (WEEKLY) 7=11TH DISTRICT COFI (MONTHLY) 8=11TH DISTRICT COFI (SEMI-ANNUAL) 9=2 YR TREASURY (MONTHLY) 10=2 YR TREASURY (WEEKLY) 11=3 MONTH TREASURY (MONTHLY) 12=3 MONTH TREASURY (WEEKLY) 13=3 MTH T-BILL AUCTION AVGDISCOUNT RATE (WEEKLY) 14=3 MTH TREASURY AUCTION AVG – INVESTMENT (WEEKLY) 15=3 YEAR TREASURY (WEEKLY) 16=3 YR TREASURY (MONTHLY) 17=5 YR TREASURY (MONTHLY) 18=5 YR TREASURY (WEEKLY) 19=6 MONTH US TREASURY (MONTHLY) 20=6 MONTH US TREASURY (WEEKLY) 21=6 MTH T-BILL AUCTION AVGDISCOUNT RATE (WEEKLY) 22=6 MTH TREASURY AUCTION AVG – INVESTMENT (WEEKLY) 23=7 YEAR TREASURY (WEEKLY) 24=CDs (secondary market) 6-month (weekly) 25=FEDERAL RESERVE "PRIME RATE" (MONTHLY) 26=FHLB Contract Mortgage Rate Prev.Occupied	27=FHLBB CONTRACT (MONTHLY) 28=FHLBB EFFECTIVE RATE (MONTHLY) 29=FHLBB MONTHLY NATIONAL AVG MEDIAN COFI (MONTHLY) 30=FHLBB NATIONAL COFI QUARTERLY AVG 31=FNMA 6 MONTH TREASURY (WEEKLY) 32=FSLIC MONTHLY NATIONAL AVG MEDIAN COFI (MONTHLY) 33=WSJ "PRIME RATE" (DAILY) 34=WSJ "PRIME RATE" (First Bus. Day) 35=WSJ 1 MONTH LIBOR (DAILY) 36=WSJ 1 MONTH LIBOR (First Business Day) 37=WSJ 1 MONTH LIBOR FIRST DAY OF THE MONTH 38=WSJ 1 MONTH LIBOR(on or after 25th) 39=WSJ 1 YEAR LIBOR (DAILY) 40=WSJ 1 YEAR LIBOR (First Business Day) 41=WSJ 3 MONTH LIBOR (DAILY) 42=WSJ 3 MONTH LIBOR(First Business Day) 43=WSJ 6 MONTH LIBOR (DAILY) 44=WSJ 6 MONTH LIBOR/30 L-B-DAYS (Monthly) 45=WSJ 6 month Libor WSJ-15th day 46=WSJ 6 MONTH LIBOR/Pub on 25th (Monthly) 47=WSJ 6-MONTH LIBOR (First Business Day) 48=3-Year CMT 49=5-Year CMT 50=7-Year CMT 98=Other 99=Unavailable	ARM Loans

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(a)(18)(ii)	ARM Margin. Indicate the number of percentage points that is added to the current index value to establish the new note rate at each interest rate adjustment date.	%	ARM Loans
Item 2(a)(18)(iii)	Fully indexed interest rate. Indicate the fully indexed interest rate	%	ARM Loans
Item 2(a)(18)(iv)	Initial fixed rate period for hybrid ARM. If the interest rate is initially fixed for a period of time, indicate the number of months between the first payment date of the mortgage and the first interest rate adjustment date.	Number	ARM Loans
Item 2(a)(18)(v)	Initial interest rate decrease. Indicate the maximum percentage by which the mortgage note rate may decrease at the first interest rate adjustment date.	%	ARM Loans
Item 2(a)(18)(vi)	Initial interest rate increase. Indicate the maximum percentage by which the mortgage note rate may increase at the first interest rate adjustment date.	%	ARM Loans
Item 2(a)(18)(vii)	Index lookback. Provide the number of days prior to an interest rate effective date used to determine the appropriate index rate.	Number	ARM Loans
Item 2(a)(18)(viii)	Subsequent interest rate reset period. Indicate the number of months between subsequent rate adjustments.	Number	ARM Loans

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(a)(18)(ix)	Lifetime rate ceiling. Indicate the percentage of the maximum interest rate that can be in effect during the life of the loan.	%	ARM Loans
Item 2(a)(18)(x)	Lifetime rate floor. Indicate the percentage of the minimum interest rate that can be in effect during the life of the loan.	%	ARM Loans
Item 2(a)(18)(xi)	Next adjustment date. Provide the next scheduled date on which the mortgage note rate adjusts.	Date	ARM Loans
Item 2(a)(18)(xii)	Subsequent interest rate decrease. Provide the maximum percentage by which the interest rate may decrease at each rate adjustment date after initial adjustment.	%	ARM Loans
Item 2(a)(18)(xiii)	Subsequent interest rate increase. Provide the maximum percentage by which the interest rate may increase at each rate adjustment date after the initial adjustment.	%	ARM Loans
Item 2(a)(18)(xiv)	Subsequent payment reset period. Indicate the number of months between payment adjustments after the first interest rate adjustment date.	Number	ARM Loans
Item 2(a)(18)(xv)	ARM round indicator. Indicate the code that describes whether an adjusted interest rate is rounded to the next higher adjustable rate mortgage round factor, to the next lower round factor, or to the nearest round factor.	0=No Rounding 1=Up 2=Down 3=Nearest 99=unknown	ARM Loans

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(a)(18)(xvi)	ARM round percentage. Indicate the percentage to which an adjusted interest rate is to be rounded.	%	ARM Loans
Item 2(a)(18)(xvii)	Option ARM indicator. Indicate yes or no as to whether the loan is an option ARM.	1 = Yes 2 = No	ARM Loans
Item 2(a)(18)(xviii)	Payment method after recast. Specify the code that describes the means of computing the lowest monthly payment available to the obligor after recast.	1=Fully amortizing 30 year 2=Fully amortizing 15 year 3=Fully amortizing 40 year 4=Interest-Only 5=Minimum Payment 6=unknown	ARM Loans
Item 2(a)(18)(xix)	Initial minimum payment. Provide the amount of the initial minimum payment the obligor is permitted to make.	Number	ARM Loans
Item 2(a)(18)(xx)	Convertible indicator. Indicate yes or no as to whether the obligor of the loan has an option to convert an adjustable interest rate to a fixed interest rate during a specified conversion window.	1 = Yes 2 = No	ARM Loans
Item 2(a)(18)(xxi)	HELOC indicator. Indicate yes or no as to whether the loan is a home equity line of credit (HELOC).	1 = Yes 2 = No	ARM Loans
Item 2(a)(18)(xxii)	HELOC draw period. Indicate the original maximum number of months during which the obligor may draw funds against the HELOC account.	Number	ARM Loans

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 2(a)(19)(i)	Prepayment penalty calculation. Specify the code that describes the method for calculating the prepayment penalty for the loan.	1=Lesser of 2% or 60 days interest 2=Lesser of 1% or 2 months interest 3 =Lesser of 1% or 3 months interest or remaining bal of 1st yr interest 4=Lesser of 1% or remaining bal of 1st yr Interest 5=Lesser of 3 mo interest or remaining bal of 1st yr interest 6=Lesser of 1% or 6 months interest 7=Lesser of 2% or 6 months interest 8=Lesser of 3% or 6 months interest 9=Greater of 1% or $100 10=60 days interest 11=1 months interest 12=2 months interest 13=3 months interest 14=5 months interest 15=6 months interest 16=12 months interest 17=24 months interest 18=36 months interest 19 60 months interest 20=1% 21=2% 22=3% 23=4% 24=5% 25=6% 26=1%, 1% 27=2%, 1% 28=2%, 2%	29=3%, 1% 30=3%, 2% 31=3%, 3% 32=4%, 3% 33=5%, 1% 34=5%, 2% 35=5%, 4% 36=5%, 5% 37=6%, 1% 38=1%, 1%, 1% 39=1%, 2%, 3% 40=2%, 2%, 2% 41=3%, 2%, 1% 42=3%, 3%, 1% 43=3%, 3%, 3% 44=5%, 3%, 1% 45=5%, 4%, 1% 46=5%, 4%, 3% 47=5%, 5%, 5% 48=4%, 3%, 2%, 1% 49=5%, 4%, 3%, 2% 50=5%, 4%, 3%, 2%, 1% 51=5%, 5%, 5%, 5%, 5% 52=10%, 7%, 3.5% 53=1%, 1%, 1%, 1%, 1% 54=2%, 2%, 2%, 2%, 2% 55=3%, 3%, 3%, 3%, 3% 56=3%, 2%, 1% or 6 months interest 98=Other 99=Unavailable	Prepayment Penalties

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(a)(19)(ii)	Prepayment penalty type. Specify the code that describes the type of prepayment penalty.	1=Hard: The prepayment penalty is incurred regardless of the reason the loan is prepaid in full. 2=Soft: The prepayment penalty is incurred only if the loan is prepaid in full due to a refinancing. 3=Hybrid: The prepayment penalty can be characterized as hard for a certain amount of time and as soft during another period. 99=unknown	Prepayment Penalties
Item 2(a)(19)(iii)	Prepayment penalty total term. Provide the total number of months that the prepayment penalty may be in effect.	Number	Prepayment Penalties
Item 2(a)(20)(i)	Negative amortization limit. Specify the maximum dollar amount of negative amortization that is allowed before it is required to recalculate the fully amortizing payment based on the new loan balance.	Number	Negative Amortization
Item 2(a)(20)(ii)	Initial negative amortization recast Period. Indicate the number of months in which negative amortization is allowed	Number	Negative Amortization
Item 2(a)(20)(iii)	Subsequent negative amortization recast period. Indicate the number of months after which the payment is required to recast after the first recast period.	Number	Negative Amortization
Item 2(a)(20)(iv)	Current negative amortization balance amount. Provide the amount of the current negative amortization balance accumulated.	Number	Negative Amortization
Item 2(a)(20)(v)	Initial fixed payment period. Indicate the number of months after the origination of the loan during which the payment is fixed.	Number	Negative Amortization

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(a)(20)(vi)	Initial periodic payment cap. Indicate the maximum percentage by which a payment can change (increase or decrease) in the first period.	%	Negative Amortization
Item 2(a)(20)(vii)	Subsequent periodic payment cap. Indicate the maximum percentage by which a payment can change (increase or decrease) in one period after the initial cap.	%	Negative Amortization
Item 2(a)(20)(viii)	Initial minimum payment reset period. Provide the maximum number of months an obligor can initially pay the minimum payment before a new minimum payment is determined.	Number	Negative Amortization
Item 2(a)(20)(ix)	Subsequent minimum payment reset Period. Provide the maximum number of months an obligor can pay the minimum payment before a new minimum payment is determined after the initial period.	Number	Negative Amortization
Item 2(a)(20)(x)	Current minimum payment. Provide the amount of current minimum payment.	Number	Negative Amortization
Item 2(a)(21)(i)	Number of modifications. Provide the number of times that the loan has been modified.	Number	Modification
Item 2(a)(21)(ii)	Loan modification event type. Specify the code that describes the type of action that has modified the loan terms	1= Capitalization-Fees or interest have been capitalized into the unpaid principal balance. 2=Change of Payment Frequency 3=Construction to permanent 4=Other	Modification
Item 2(a)(21)(iii)	Loan modification effective date. Provide the date on which the modification of the loan has gone into effect.	Month/Year	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(a)(21)(iv)	Updated DTI (front-end). Provide the updated front-end DTI ratio, calculated by dividing the total monthly housing expense by total monthly income.	%	Modification
Item 2(a)(20)(v)	Updated DTI (back-end). Provide the updated back-end DTI ratio, calculated by dividing the total monthly debt expense by the total monthly income.	%	Modification
Item 2(a)(20)(vi)	Modification effective payment date. Indicate the date of the first payment due after the loan modification.	Date	Modification
Item 2(a)(20)(vii)	Total capitalized amount. Provide the amount added to the principal balance of a loan due to the modification.	Number	Modification
Item 2(a)(20)(viii)	Total deferred amount. Provide the deferred amount that is non-interest bearing.	Number	Modification
Item 2(a)(20)(ix)	Pre-Modification Interest Rate. Provide the most recent scheduled interest rate preceding the Modification Effective Payment Date.	%	Modification
Item 2(a)(20)(x)	Pre-modification principal and interest payment. Provide the most recent scheduled total principal and interest payment amount preceding the modification effective payment date.	Number	Modification
Item 2(a)(20)(xi)	Forgiven Principal Amount. Provide the total amount of all principal balance reductions as a result of loan modification over the life of the loan.	Number	Modification
Item 2(a)(20)(xii)	Forgiven interest amount. Provide the total amount of all interest forgiven as a result of loan modification over the life of the loan.	Number	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(b)(1)	Geographic Location. Specify the location of the property by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.	Number Note: The U.S. Office of Management and Budget (OMB) establishes and maintains definitions of Metropolitan Statistical Areas, Micropolitan Statistical Areas, or Metropolitan Divisions. The most recent list of definitions are available in OMB Bulletin No. 09-01, "Update of Statistical Area Definitions and Guidance on Their Uses", November 2008.	General information about the property
Item 2(b)(2)	Occupancy status. Specify the code that describes the property occupancy status.	1=owner-occupied 2=second home 3=investment property 98=other 99=unavailable	General information about the property
Item 2(b)(3)	Sales price. Provide the negotiated price of a given property between the buyer and seller.	Number	General information about the property

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(b)(4)	Property type. Specify the code that describes the type of property that secures the loan.	1=Single family detached (non-PUD) 2=Co-op 3=Condo, low rise (4 or fewer stories) 4=Condo, high rise (5+ stories) 5=Condotel (as defined in Issuer's Underwriting Guidelines) 6=dPUD (PUD with "de minimus" monthly HOA dues 7=PUD (Only for use with Single-Family Detached Homes with PUD riders) 8=Townhouse (Do not report as "PUD") 9=Single-wide manufactured housing 10=Double-wide manufactured housing 11=Multi-wide manufactured housing 12=1 family attached 13=2 family 14=3 family 15=4 family 98=other 99=unavailable	General information about the property
Item 2(b)(5)	Original appraised property value. Provide the appraised value amount of the property used to approve the loan.	Number	General information about the property

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(b)(6)	Original property valuation type. Specify the code that describes the method by which the property value was reported at the time of underwriting.	1=Tax Assessment 2=Drive-By Form 704 3=URAR Form 1004, Form 70, Form 72, Form 1025, Form 1073, Form 465, Form 2090, Form 1004C, and Form, 70B (Form 1075 retired 11/1/2005) 4=Form 2070 and Form 2075 (Form 2065 retired 11/1/2005) 5=Form 2055, Form 1075, Form 466, and Form 2095 (Exterior Only) 6=Form 2055 (with Interior Inspection) 7=Automated Valuation Model (also indicate system code in field 127) 8=No Appraisal/Stated Value 9=Desk Review 10=BPO as-is 11=BPO quick sale 12=NADA/Yellow Book Value (for MH) 13=Land only (for Lot and MH) 14=Hold for other types of MH valuations 15=Case-Shiller/other index application 16=Form 1004MC 98=other 99=unavailable	General information about the property
Item 2(b)(7)	Original property valuation date. Specify the date on which the original property value was reported.	Date	General information about the property

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(b)(8)	Original automated valuation model (AVM) model name. Provide the code that indicates the name of the AVM model if an AVM was used to determine the original property valuation.	0=No AVM Used 1=HPA (FACL) 2=VP4 (FACL) 3=PASS (FACL) 4=PowerBase 6.0 (FACL) 5=HVE (Freddie Mac) 6=CASA (Fiserv) 7=APS (Fannie Mae) 8=iAVM (IntelliReal) 9=ValueFinder (LandSafe) 10=ValueSure (LPS) 11=SiteX Value (LPS) 12=CMV (MDAS) 13=ValueSmart (MDAS) 14=Real Assessment (Real Info) 15=i-Val (Real Info) 16=GeoCompVal (Real Info) 17=AVMax (RJ Peters) 18=VeroValue Preferred (Veros) 19=VeroValue (Veros) 20=VeroValue Advantage (Veros) 21=Other	General information about the property
Item 2(b)(9)	Original AVM confidence score. Provide the confidence score presented on the AVM report of the original property value	Number	General information about the property
Item 2(b)(10)	Most recent property value. If an additional property valuation was obtained after the original appraised property value, provide the most recent property value.	Number	General information about the property

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(b)(11)	Most recent property valuation type. Specify the code that describes the method by which the most recent property value was reported.	1=Tax Assessment 2=Drive-By Form 704 3=URAR Form 1004, Form 70, Form 72, Form 1025, Form 1073, Form 465, Form 2090, Form 1004C, and Form, 70B (Form 1075 retired 11/1/2005) 4=Form 2070 and Form 2075 (Form 2065 retired 11/1/2005) 5=Form 2055, Form 1075, Form 466, and Form 2095 (Exterior Only) 6=Form 2055 (with Interior Inspection) 7=Automated Valuation Model (also indicate system code in field 127) 8=No Appraisal/Stated Value 9=Desk Review 10=BPO as-is 11=BPO quick sale 12=NADA/Yellow Book Value (for MH) 13=Land Only (for Lot and MH) 14=Hold for other types of MH valuations 15=Case-Shiller/other index application 16=Form 1004MC 98=other 99=unavailable	General information about the property
Item 2(b)(12)	Most recent property valuation date. Specify the date on which the Most Recent Property Value was reported	Date	General information about the property

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(b)(13)	Most recent AVM model name. Provide the code indicating the name of the AVM model if an AVM was used to determine the most recent property value.	0=No AVM Used 1=HPA (FACL) 2=VP4 (FACL) 3=PASS (FACL) 4=PowerBase 6.0 (FACL) 5=HVE (Freddie Mac) 6=CASA (Fiserv) 7=APS (Fannie Mae) 8=iAVM (IntelliReal) 9=ValueFinder (LandSafe) 10=ValueSure (LPS) 11=SiteX Value (LPS) 12=CMV (MDAS) 13=ValueSmart (MDAS) 14=Real Assessment (Real Info) 15=i-Val (Real Info) 16=GeoCompVal (Real Info) 17=AVMax (RJ Peters) 18=VeroValue Preferred (Veros) 19=VeroValue (Veros) 20=VeroValue Advantage (Veros) 21=Other	General information about the property
Item 2(b)(14)	Most recent AVM confidence score. Provide the confidence score presented on the AVM report of the most recent property value.	Number	General information about the property
Item 2(b)(15)	Original combined loan-to-value (CLTV). Provide the ratio obtained by dividing the amount of all known outstanding mortgage liens on a property at origination by the lesser of the original appraised property value or the sales price.	%	General information about the property

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(b)(16)	Original loan-to-value (LTV). Provide the ratio obtained by dividing the amount of the original mortgage loan at origination by the lesser of the original appraised property value or the sales price.	%	General information about the property
Item 2(b)(17)	LTV calculation date. Provide the date on which the LTV was calculated.	Date	General information about the property
Item 2(b)(18)	Original Pledged Assets. If the obligor pledged financial assets to the lender instead of making a down payment, provide the total value of assets pledged as collateral for the loan at the time of origination.	Number	General information about the property
Item 2(b)(19)(i)	Real estate interest. Indicate the code that describes the real estate interest of the property on which the manufactured home is situated	1=Owned 2=Short-term lease 3=Long-term lease 99=unavailable	Manufactured Homes
Item 2(b)(19)(ii)	Community ownership structure. If the manufactured home is situated in a community, specify the code that describes the ownership of the community.	1=Public institutional 2= Public non-institutional 3=Private institutional 4=Private non-institutional 5=HOA-owned 6=Non-community 99=unavailable	Manufactured Homes
Item 2(b)(19)(iii)	Year of manufacture. Indicate the year in which the home was manufactured.	Year	Manufactured Homes
Item 2(b)(19)(iv)	HUD code compliance indicator. Indicate yes or no as to whether the home was constructed in accordance with the 1976 HUD code.	1=Yes 2=No 99=unavailable	Manufactured Homes

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(b)(19)(v)	Gross manufacturer's invoice price. Provide the total amount that appears on the manufacturer's invoice of the home.	Number	Manufactured Homes
Item 2(b)(19)(vi)	LTI (loan-to-invoice) gross. Provide the ratio of the loan amount divided by the gross manufacturer's invoice price.	%	Manufactured Homes
Item 2(b)(19)(vii)	Net manufacturer's invoice price. Provide the amount of the gross manufacturer's invoice price minus intangible costs, including: transportation, association, on-site setup, service, and warranty costs, taxes, dealer incentives, and other fees.	Number	Manufactured Homes
Item 2(b)(19)(viii)	LTI (Net). Provide the ratio of the loan amount divided by the net manufacturer's invoice price.	%	Manufactured Homes
Item 2(b)(19)(ix)	Manufacturer name. Provide the name of the manufacturer of the subject property.	Text	Manufactured Homes
Item 2(b)(19)(x)	Model name. Provide the model name of the subject property.	Text	Manufactured Homes
Item 2(b)(19)(xi)	Down payment source. Indicate the code that describes the source of the down payment.	1=Cash 2=Proceeds from trade in 3=Land in lieu 98=Other 99=unavailable	Manufactured Homes
Item 2(b)(19)(xii)	Community/related party lender indicator. Indicate the code describing whether the loan was made by the community owner, an affiliate of the community owner or the owner of the real estate upon which the collateral is located	1=Yes 2=No 99=unknown	Manufactured Homes

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(b)(19)(xiii)	Chattel indicator. Specify the code indicating whether the secured property is classified as chattel or real estate.	1=real estate 2=chattel	Manufactured Homes
Item 2(c)(1)	Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor.	Text	General information about the obligor
Item 2(c)(2)	Obligor credit score. Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 2(c)(3).	Text or Number	General information about the obligor
Item 2(c)(3)	Obligor FICO score. If the obligor credit score type is FICO, provide the standardized FICO credit score of the obligor.	1=up to 499 2=500-549 3=550-599 4=600-649 5=650-699 6=700-749 7=750-799 8=800+	General information about the obligor
Item 2(c)(4)	Co-obligor credit score type. Specify the type of the standardized credit score used to evaluate the co-obligor.	Text	General information about the obligor
Item 2(c)(5)	Co-obligor credit score. Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 2(c)(6).	Text or Number	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(c)(6)	Co-obligor FICO Score. Provide the standardized FICO credit score of the co-obligor.	1=up to 499 2=500-549 3=550-599 4=600-649 5=650-699 6=700-749 7=750-799 8=800+	General information about the obligor
Item 2(c)(7)	Obligor income verification level. Indicate the code describing the extent to which the obligor's income has been verified.	1=Not Stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified 5=Stated, "level 5" verified Level 4 income verification = Previous year W-2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W-2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(c)(8)	Co-obligor income verification. Indicate the code describing the extent to which the co-obligor's income has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified 5=Stated, "level 5" verified Level 4 income verification = Previous year W-2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W-2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	General information about the obligor
Item 2(c)(9)	Obligor employment verification. Indicate the code describing the extent to which the obligor's employment has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, level 3 verified Level 3 verified = Direct independent verification with a third party of the obligor's current employment.	General information about the obligor
Item 2(c)(10)	Co-obligor employment verification. Indicate the code describing the extent to which the co-obligor's employment has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, level 3 verified Level 3 verified = Direct independent verification with a third party of the obligor's current employment.	General information about the obligor
Item 2(c)(11)	Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 2(c)(12)	Co-obligor asset verification. Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).		General information about the obligor
Item 2(c)(13)	Liquid/cash reserves. Provide the dollar amount of remaining verified liquid assets after the close of the mortgage.	Number		General information about the obligor
Item 2(c)(14)	Number of mortgaged properties. Provide the number of properties owned by the obligor that currently secure mortgage loans.	Number		General information about the obligor
Item 2(c)(15)	Monthly debt. Provide the dollar amount of the aggregate monthly payment due on other debt of the obligor.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor
Item 2(c)(16)	Originator DTI. Provide the total debt to income ratio used by the originator to qualify the loan.	%		General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(c)(17)	Qualification method. Specify the code that describes type of mortgage payment used to qualify the obligor for the loan.	1=start rate 2=first year cap rate 3=interest only amount 4=fully indexed 5=minimum payment 98=other 99=unknown	General information about the obligor
Item 2(c)(18)	Percentage of down payment from obligor own funds. Provide the percentage of down payment from obligor own funds other than any gift or borrowed funds.	%	General information about the obligor
Item 2(c)(19)	Number of obligors. Indicate the number of obligors who are obligated to repay the mortgage note.	Number	General information about the obligor
Item 2(c)(20)	Self-employment flag. Indicate whether the obligor is self-employed.	1 = Yes 2 = No	General information about the obligor
Item 2(c)(21)	Current other monthly payment. Provide the total amount per month of all payments pertaining to the subject property other than principal and interest.	Number	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(c)(22)	Length of employment: obligor. Provide the number of complete months of service with the obligor's current employer as of the origination date.	1=0-6 months 2=7-12 months 3=13-18 months 4=19-24 months 5=25-36 months 6=37-60 months 7=61-120 months 8=121-240 months 9=greater than 240 months	General information about the obligor
Item 2(c)(23)	Length of employment: co-obligor. Provide the number of complete months of service with the co-obligor's current employer as of the origination date.	1=0-6 months 2=7-12 months 3=13-18 months 4=19-24 months 5=25-36 months 6=37-60 months 7=61-120 months 8=121-240 months 9=greater than 240 months	General information about the obligor
Item 2(c)(24)	Months bankruptcy. Provide the number of months since any obligor was discharged from bankruptcy.	Number	General information about the obligor
Item 2(c)(25)	Months foreclosure. If the obligor has directly or indirectly been obligated on any loan that resulted in foreclosure, provide the number of months since the foreclosure date.	Number	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 2(c)(26)	Obligor wage income. Provide the code that base describes the dollar amount per month of income associated with the obligor's employment.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor
Item 2(c)(27)	Co-obligor wage income. Provide the code that base describes the dollar amount per month of income associated with the co-obligor's employment.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 2(c)(28)	Obligor other income. Provide the dollar amount of the obligor's monthly income other than obligor wage income.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor
Item 2(c)(29)	Co-obligor other income. Provide the dollar amount of the co-obligor's monthly income other than co-obligor wage income.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 2(c)(30)	All obligor wage income. Provide the monthly income of all obligors derived from employment.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor
Item 2(c)(31)	All obligor total income. Provide the monthly income of all obligors.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor
Item 2(d)(1)	Mortgage insurance company name. Provide the name of the entity providing mortgage insurance for the loan.	Text		Mortgage Insurance
Item 2(d)(2)	Mortgage insurance coverage. Indicate the percentage of mortgage insurance coverage obtained.	%		Mortgage Insurance

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(d)(3)	Mortgage insurance obtainer. Specify the code that describes the party that paid for the mortgage insurance: the obligor, the lender, or others.	1=Borrower paid 2=Lender paid 99=unknown	Mortgage Insurance
Item 2(d)(4)	Pool insurance company. Provide the name of the pool insurance provider.	Text	Mortgage Insurance
Item 2(d)(5)	Pool insurance stop loss percent. Provide the aggregate amount that the pool insurance company will pay, calculated as a percentage of the pool balance.	Number	Mortgage Insurance
Item 2(d)(6)	Mortgage insurance certificate number. Provide the number assigned to the individual loan by the mortgage insurance company.	Number	Mortgage Insurance
Item 2(d)(7)	Mortgage insurance coverage plan type. Specify the code that describes coverage category of mortgage insurance applicable to the loan.	1=Loss limit cap 2=Pool 3=Risk sharing 4=Second layer 5=Standard primary	Mortgage Insurance

Table 1. Schedule L Item 3. Commercial mortgages item requirements

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(a)(1)	Lien position. Indicate the code that describes the lien position for the loan.	1 = 1 2 = 2 3 = 3 98 = other 99 = unknown	General information about the commercial mortgage
Item 3(a)(2)	Loan structure. Indicate the code that describes the type of loan structure including the seniority of participated mortgage loan components. The code relates to loan within securitization.	1 = Whole loan structure 2 = Participated mortgage loan with pari passu debt outside trust 3 = A Note; A/B Participation Structure 4 = B Note; A/B Participation Structure 5 = A Note; A/B/C Participation Structure 6 = B Note; A/B/C Participation Structure 7 = C Note; A/B/C Participation Structure 8 = Mezzanine Financing	General information about the commercial mortgage
Item 3(a)(3)	Current remaining term. Provide the number of months until the earlier of the scheduled loan maturity or the current hyperamortizing date.	Number	General information about the commercial mortgage
Item 3(a)(4)	Payment type. Indicate the code that describes the type or method of payment for a loan.	1 = fully amortizing 2 = amortizing balloon 3 = interest only/balloon 4 = interest only/amortizing 5 = interest only/amortizing/balloon 6 = principal only 7 = hyper – amortization 98 = other	General information about the commercial mortgage
Item 3(a)(5)	Periodic principal and interest payment. Provide the total amount of principal and interest due on the loan in effect as of the closing date of transaction.	%	General information about the commercial mortgage

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(a)(6)	Payment frequency. Indicate the code that describes the frequency mortgage loan payments are required to be made.	1 = monthly 2 = quarterly 3 = semi-annually 4 = annually 5 = daily	General information about the commercial mortgage
Item 3(a)(7)	Number of properties. Provide the current number of properties which serve as mortgage collateral for the loan.	Number	General information about the commercial mortgage
Item 3(a)(8)	Grace days allowed. Provide the number of days after a mortgage payment is due in which the lender will not require a late payment charge in accordance with the loan documents. Does not include penalties associated with default interest.	Number	General information about the commercial mortgage
Item 3(a)(9)	Current hyper-amortizing date. Provide the current anticipated repayment date, after which principal and interest may amortize at an accelerated rate, and/or interest expense to mortgagor increases substantially as per the loan documents.	Date	General information about the commercial mortgage
Item 3(a)(10)	Interest only indicator. Indicate yes or no as to whether or not this is a loan for which scheduled interest only is payable, whether for a temporary basis or until the full loan balance is due.	1=Yes 2=No	General information about the commercial mortgage
Item 3(a)(11)	Balloon indicator. Indicate yes or no as to whether the loan documents require a lump-sum payment of principal at maturity.	1=Yes 2=No	General information about the commercial mortgage
Item 3(a)(12)	Prepayment penalty indicator. Indicate yes or no as to whether the obligor is subject to prepayment penalties.	1=Yes 2=No	General information about the commercial mortgage

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(a)(13)	Negative amortization indicator. Indicate yes or no whether negative amortization (interest shortage) amounts are permitted to be added back to the unpaid principal balance of the loan if monthly payments should fall below the true amortized amount.	1=Yes 2=No	General information about the commercial mortgage
Item 3(a)(14)	Mortgage modification indicator. Indicate yes or no whether the loan has been modified.	1=Yes 2=No	General information about the commercial mortgage
Item 3(a)(15)(i)	ARM index. Specify the code that describes the index on which an adjustable interest rate is based	1 = 11 FHLB COFI (1 Month) 2 = 11 FHLB COFI (6 Month) 3 = 1 Year CMT Weekly Average Treasury 4 = 3 Year CMT Weekly Average Treasury 5 = 5 Year CMT Weekly Average Treasury 6 = Wall Street Journal Prime Rate 7 = 1 Month LIBOR 8 = 3 Month LIBOR 9 = 6 Month LIBOR 10 = National Mortgage Index Rate 98 = Other	ARM
Item 3(a)(15)(ii)	First rate adjustment date. Provide the date on which the first interest rate adjustment becomes effective.	Date	ARM
Item 3(a)(15)(iii)	First payment adjustment date. Provide the date on which the first adjustment to the regular payment amount becomes effective (after the contribution/cut-off date).	Date	ARM
Item 3(a)(15)(iv)	ARM margin. Indicate the number of percentage points that is added to the current index value to establish the new note rate at each interest rate adjustment date.	Number	ARM

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(a)(15)(v)	Liftetime rate ceiling. Indicate the percentage of the maximum interest rate that can be in effect during the life of the loan.	%	ARM
Item 3(a)(15)(vi)	Lifetime rate floor. Indicate the percentage of the minimum interest rate that can be in effect during the life of the loan.	%	ARM
Item 3(a)(15)(vii)	Periodic rate increase. Provide the maximum percentage the interest rate can increase from any period to the next.	%	ARM
Item 3(a)(15)(viii)	Periodic rate decrease. Provide the maximum percentage the interest rate can decrease from any period to the next.	%	ARM
Item 3(a)(15)(ix)	Periodic pay adjustment. Provide the maximum dollar amount the principal and interest constant can increase or decrease on any adjustment date.	%	ARM
Item 3(a)(15)(x)	Periodic pay adjustment. Provide the maximum percentage amount the principal and interest constant can increase or decrease from any period to the next.	%	ARM
Item 3(a)(15)(xi)	Rate reset frequency. Indicate the code describing the frequency which the periodic mortgage rate is reset due to an adjustment in the ARM index.	1 = Monthly 2 = Quarterly 3 = Semi-Annually 4 = Annually 5 = Daily	ARM

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(a)(15)(xii)	Pay reset frequency. Indicate the code describing the frequency which the periodic mortgage payment will be adjusted.	1 = Monthly 2 = Quarterly 3 = Semi-Annually 4 = Annually 5 = Daily	ARM
Item 3(a)(15)(xiii)	Index look back. Provide the number of days prior to an interest rate adjustment effective date used to determine the appropriate index rate.	Number	ARM
Item 3(a)(16)	Servicing fee – percentage. If the servicing fee is based on a percentage, indicate the percentage of monthly servicing fee paid to all servicers as a percentage of the original contract amount.	%	General information about the commercial mortgage
Item 3(a)(16)(i)	Prepayment lock-out end date. Provide the effective date after which the lender allows prepayment of a loan.	Date	Prepayment Premium
Item 3(a)(16)(ii)	Yield maintenance end date. Provide the date after which yield maintenance prepayment penalties are no longer effective.	Date	Prepayment Premium
Item 3(a)(16)(iii)	Prepayment premium end date. Provide the effective date after which prepayment premiums are no longer effective.	Date	Prepayment Premium
Item 3(a)(17)(i)	Maximum negative amortization allowed (% of original balance). Provide the maximum percentage of the original loan balance that can be added to the original loan balance as the result of negative amortization.	%	Negative Amortization

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(a)(17)(ii)	Maximum negative amortization allowed ($). Provide the maximum dollar amount of the original loan balance that can be added to the original loan balance as the result of negative amortization.	Amount	Negative Amortization
Item 3(b)(1)	Property name. Provide the name of the property which serves as mortgage collateral. If the property has been defeased, then populate with "defeased."	Text	General information about the commercial property
Item 3(b)(2)	Geographic location. Specify the location of the property by providing the zip code.	Number	General information about the commercial property
Item 3(b)(3)	Property type. Indicate the code that describes how the property is being used.	1 = Multifamily 2 = Retail 3 = HealthCare 4 = Industrial 5 = Warehouse 6 = Mobile home park 7 = Office 8 = Mixed use 9 = Lodging 10 = Self storage 11 = Securities 12 = Cooperative housing 98 = Other	General information about the commercial property
Item 3(b)(4)	Net rentable square feet. Provide the net rentable square feet area of a property.	Number	General information about the commercial property
Item 3(b)(5)	Number of units/beds/rooms. Provide the number of units/beds/rooms of a property.	Number	General information about the commercial property

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(b)(6)	Year built. Provide the year that the property was built.	Number	General information about the commercial property
Item 3(b)(7)	Valuation amount. The valuation amount of the property as of the valuation date.	Amount	General information about the commercial property
Item 3(b)(8)	Valuation source. Specify the code that identifies the source of the most recent property valuation.	1 = Broker's price option 2 = Certified MAI appraisal 3 = Non-certified MAI appraisal 4 = Master servicer estimate 5 = SS estimate 98 = Other	General information about the commercial property
Item 3(b)(9)	Valuation date. The date the valuation amount was determined.	Date	General information about the commercial property
Item 3(b)(10)	Physical occupancy. Provide the percentage of rentable space occupied by tenants. Should be derived from a rent roll or other document indication occupancy.	%	General information about the commercial property
Item 3(b)(11)	Revenue. Provide the total underwritten revenue amount from all sources for a property.	Amount	General information about the commercial property
Item 3(b)(12)	Operating expenses. Provide the total underwritten operation expenses. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance.	Amount	General information about the commercial property
Item 3(b)(13)	Defeasance option start date. Provide the date when the defeasance option becomes available. A defeasance option is when an obligor may substitute other income-producing property for the real property without pre-paying the existing loan.	Date	General information about the commercial property

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(b)(14)	Net operating income. Provide the total underwritten revenues less total underwritten operating expenses prior to application of mortgage payments and capital items for all properties.	Amount	General information about the commercial property
Item 3(b)(15)	Net cash flow. Provide the total underwritten operating expenses and capital costs.	Amount	General information about the commercial property
Item 3(b)(16)	NOI/NCF indicator. Indicate the code that describes how net operating income and net cash flow were calculated.	1 = Calculated using CMSA standard 2 = Calculated using a definition given in the PSA 3 = Calculated using the underwriting method 98 = Other	General information about the commercial property
Item 3(b)(17)	DSCR (NOI). Provide the ratio of underwritten net operating income to debt service.	%	General information about the commercial property
Item 3(b)(18)	DSCR (NCF). Provide the ratio of underwritten net cash flow to debt service.	Number	General information about the commercial property
Item 3(b)(19)	DSCR indicator. Indicate the code that describes how the debt service coverage ratio was calculated.	1 = Average - Not all properties received financial statements, servicer allocates debt service only to properties where financial statements are received. 2 = Consolidated - All properties reported on one "rolled up" financial statement from the borrower 3 = Full - All financial statements collected for all properties 4 = None Collected - No financial statements were received 5 = Partial - Not all properties received financial statements, servicer to leave empty 6 = "Worst Case" - Not all properties received financial statements, servicer allocates 100% of debt service to all properties where financial statements are received.	General information about the commercial property

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(b)(20)	Largest tenant. Identify the tenant that leases the largest square feet of the property (based on the most recent annual lease rollover review).	Name	General information about the commercial property
Item 3(b)(21)	Square feet of largest tenant. Provide total square feet leased by the large tenant	Number	General information about the commercial property
Item 3(b)(22)	Lease expiration of largest tenant. Provide the date of lease expiration for the largest tenant.	Date	General information about the commercial property
Item 3(b)(23)	Second largest tenant. Identify the tenant that leases the second largest square fee of the property (based on the most recent annual lease rollover review).	Name	General information about the commercial property
Item 3(b)(24)	Square fee of second largest tenant. Provide total square feet leased by the second largest tenant.	Number	General information about the commercial property
Item 3(b)(25)	Lease expiration of second largest tenant. Provide the date of lease expiration for the second largest tenant.	Date	General information about the commercial property
Item 3(b)(26)	Third largest tenant. Identify the tenant that leases the third largest square feet of the property (based on the most recent annual lease rollover review).	Text	General information about the commercial property
Item 3(b)(27)	Square feet of third largest tenant. Provide total square feet leased by the third largest tenant.	Number	General information about the commercial property
Item 3(b)(28)	Lease expiration of third largest tenant. Provide the date of lease expiration for the third largest tenant.	Date	General information about the commercial property

Table 4. Schedule L Item 4. Automobile loan item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 4(a)(1)	Payment type. Specify the code indicating whether payments are required monthly or if a balloon payment is due.	1 = Monthly 2 = Balloon 98 = Other	General information about the automobile loan
Item 4(a)(2)	Subvented. Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the buyer.	1=Yes 2 =No	General information about the automobile loan
Item 4(b)(1)	Geographic location of dealer. Provide the zip code of the originating dealer.	Number	General information about the automobile
Item 4(b)(2)	Vehicle manufacturer. Provide the name of the manufacturer of the vehicle.	Text	General information about the automobile
Item 4(b)(3)	Vehicle model. Provide the name of the model of the vehicle.	Text	General information about the automobile
Item 4(b)(4)	New or used. Indicate whether the vehicle financed is new or used.	1=New 2=Used	General information about the automobile
Item 4(b)(5)	Model year. Indicate the model year of the vehicle.	Year	General information about the automobile

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 4(b)(6)	Vehicle type. Indicate the code describing the vehicle type.	1=Full-size car 2=Full size van/truck 3=Full-size SUV 4=Mid-size SUV 5=Compact van/truck 6=Economy/compact car 7=Mid-size car 8=Sports car 9=Motorcycle 98=Other 99=Unknown	General information about the automobile
Item 4(b)(7)	Vehicle value. Indicate the value of the vehicle at the time of origination.	Number	General information about the automobile
Item 4(b)(8)	Source of vehicle value. Specify the code that describes the source of the vehicle value.	1 = Invoice price 2 = Sales price 3 = Kelly Blue Book 98 = Other	General information about the automobile
Item 4(c)(1)	Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor	Text	General information about the obligor
Item 4(c)(2)	Obligor credit score. Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 4(c)(3).	Text or Number	General information about the obligor
Item 4(c)(3)	Obligor FICO score. If the obligor credit score type is FICO, provide the standardized FICO credit score of the obligor.	1=up to 499 2=500-549 3=550-599 4=600-649 5=650-699 6=700-749 7=750-799 8=800+	General information about the obligor

Item 4(c)(4)	Co-obligor credit score type. Specify the type of the standardized credit score used to evaluate the co-obligor.	Name	General information about the obligor
Item 4(c)(5)	Co-obligor credit score. Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 4(c)(6).	Text or Number	General information about the obligor
Item 4(c)(6)	Co-obligor FICO score. Provide the standardized FICO credit score of the co-obligor.	1=up to 499 2=500-549 3=550-599 4=600-649 5=650-699 6=700-749 7=750-799 8=800+	General information about the obligor
Item 4(c)(7)	Obligor income verification level. Indicate the code describing the extent to which the obligor's income has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified 5=Stated, "level 5" verified Level 4 income verification = Previous year W-2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W-2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 4(c)(8)	Co-obligor income verification. Indicate the code describing the extent to which the co-obligor's income has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified 5=Stated, "level 5" verified Level 4 income verification = Previous year W-2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W-2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	General information about the obligor
Item 4(c)(9)	Obligor employment verification. Indicate the code describing the extent to which the obligor's employment has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, Level 3 verified Level 3 verified = Direct independent verification with a third party of the obligor's current employment.	General information about the obligor
Item 4(c)(10)	Co-obligor employment verification. Indicate the code describing the extent to which the co-obligor's employment has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, Level 3 verified Level 3 verified = Direct independent verification with a third party of the obligor's current employment.	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 4(c)(11)	Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	General information about the obligor
Item 4(c)(12)	Co-obligor asset verification. Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	General information about the obligor
Item 4(c)(13)	Length of employment: obligor. Provide the number of complete months of service with the obligor's current employer as of the origination date.	1=0-6 months 2=7-12 months 3=13-18 months 4=19-24 months 5=25-36 months 6=37-60 months 7=61-120 months 8=121-240 months 9=greater than 240 months	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 4(c)(14)	Length of employment: co-obligor. Provide the number of complete months of service with the co-obligor's current employer as of the origination date.	1=0-6 months 2=7-12 months 3=13-18 months 4=19-24 months 5=25-36 months 6=37-60 months 7=61-120 months 8=121-240 months 9=greater than 240 months		General information about the obligor
Item 4(c)(15)	Obligor wage income. Provide the dollar amount per month of income associated with the obligor's employment.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18= $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor
Item 4(c)(16)	Co-obligor wage income. Provide the dollar amount per month of income associated with the co-obligor's employment.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 4(c)(17)	Obligor other income. Provide the dollar amount of the obligor's monthly income other than obligor wage income.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor
Item 4(c)(18)	Co-obligor other income. Provide the dollar amount of the co-obligor's monthly income other than co-obligor wage income.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 4(c)(19)	All obligor wage income. Provide the monthly income of all obligors derived from employment.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor
Item 4(c)(20)	All obligor total income. Provide the monthly income of all obligors.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor
Item 4(c)(21)	Geographic location of obligor. Specify the location of the obligor by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.	Number Note: The U.S. Office of Management and Budget (OMB) establishes and maintains definitions of Metropolitan Statistical Areas, Micropolitan Statistical Areas, or Metropolitan Divisions. The most recent list of definitions are available in OMB Bulletin No. 09-01, "Update of Statistical Area Definitions and Guidance on Their Uses", November 2008.		General information about the obligor

Table 5. Schedule L Item 5. Automobile leases item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 5(a)(1)	Payment type. Specify the code indicating whether payments are required monthly or if a balloon payment is due.	1 = Monthly 2 = Balloon 98 = Other	General information about the automobile lease
Item 5(a)(2)	Subvented. Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the obligor.	1=Yes 2 =No	General information about the automobile lease
Item 5(b)(1)	Geographic location of dealer. Provide the zip code of the originating dealer.	Number	General information about the automobile
Item 5(b)(2)	Vehicle manufacturer. Provide the name of the manufacturer of the vehicle	Text	General information about the automobile
Item 5(b)(3)	Vehicle model. Provide the name of the model of the vehicle.	Text	General information about the automobile
Item 5(b)(4)	New or used. Indicate whether the vehicle financed is new or used.	1=New 2=Used	General information about the automobile
Item 5(b)(5)	Model year. Indicate the model year of the vehicle.	Date	General information about the automobile

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 5(b)(6)	Vehicle type. Indicate the code describing the vehicle type.	1=Full-size car 2=Full size van/truck 3=Full-size SUV 4=Mid-size SUV 5=Compact van/truck 6=Economy/compact car 7=Mid-size car 8=Sports car 9=Motorcycle 98=Other 99=Unknown	General information about the automobile
Item 5(b)(7)	Vehicle value. Indicate the value of the vehicle at the time of origination.	Number	General information about the automobile
Item 5(b)(8)	Source of vehicle value. Specify the code that describes the source of the vehicle value.	1 = Invoice price 2 = Sales price 3 = Kelly Blue Book 98 = Other	General information about the automobile
Item 5(b)(9)	Base residual value. Provide the residual value of the vehicle at the time of origination.	Number	General information about the automobile
Item 5(b)(10)	Source of base residual value. Specify the code that describes the source of the residual value	1 = Black Book 2 = Automotive lease guide 98 = Other	General information about the automobile
Item 5(c)(1)	Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor.	Text	General information about the obligor
Item 5(c)(2)	Obligor credit score. Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 5(c)(3).	Text or Number	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 5(c)(3)	Obligor FICO Score. If the obligor credit score type is FICO, provide the standardized FICO credit score of the obligor.	1=up to 499 2=500-549 3=550-599 4=600-649 5=650-699 6=700-749 7=750-799 8=800+	General information about the obligor
Item 5(c)(4)	Co-obligor credit score type. Specify the type of the standardized credit score used to evaluate the co-obligor.	Name	General information about the obligor
Item 5(c)(5)	Co-obligor credit score. Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 5(c)(6).	Text or Number	General information about the obligor
Item 5(c)(6)	Co-obligor FICO score. Provide the standardized FICO credit score of the co-obligor.	1=up to 499 2=500-549 3=550-599 4=600-649 5=650-699 6=700-749 7=750-799 8=800+	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 5(c)(7)	Obligor income verification level. Indicate the code describing the extent to which the obligor's income has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified 5=Stated, "level 5" verified Level 4 income verification = Previous year W-2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W-2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	General information about the obligor
Item 5(c)(8)	Co-obligor income verification. Indicate the code describing the extent to which the co-obligor's income has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified 5=Stated, "level 5" verified Level 4 income verification = Previous year W-2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W-2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 5(c)(9)	Obligor employment verification. Indicate the code describing the extent to which the obligor's employment has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, level 3 verified Level 3 verified = Direct independent verification with a third party of the obligor's current employment.	General information about the obligor
Item 5(c)(10)	Co-obligor employment verification. Indicate the code describing the extent to which the co-obligor's employment has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, Level 3 verified Level 3 verified = Direct independent verification with a third party of the obligor's current employment.	General information about the obligor
Item 5(c)(11)	Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	General information about the obligor
Item 5(c)(12)	Co-obligor asset verification. Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 5(c)(13)	Length of employment: obligor. Provide the number of complete months of service with the obligor's current employer as of the origination date.	1=0-6 months 2=7-12 months 3=13-18 months 4=19-24 months 5=25-36 months 6=37-60 months 7=61-120 months 8=121-240 months 9=greater than 240 months		General information about the obligor
Item 5(c)(14)	Length of employment: co-obligor. Provide the number of complete months of service with the co-obligor's current employer as of the origination date.	1=0-6 months 2=7-12 months 3=13-18 months 4=19-24 months 5=25-36 months 6=37-60 months 7=61-120 months 8=121-240 months 9=greater than 240 months		General information about the obligor
Item 5(c)(15)	Obligor wage income. Provide the dollar amount per month of income associated with the obligor's employment.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 5(c)(16)	Co-obligor wage income. Provide the dollar amount per month of income associated with the co-obligor's employment.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13=$7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor
Item 5(c)(17)	Obligor other income. Provide the dollar amount of the obligor's monthly income other than obligor wage income.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 5(c)(18)	Co-obligor other income. Provide the dollar amount of the co-obligors monthly income other than co-obligor wage income.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor
Item 5(c)(19)	All obligor wage income. Provide the monthly income of all obligors derived from employment.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 5(c)(20)	All obligor total income. Provide the monthly income of all obligors.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	General information about the obligor
Item 5(c)(21)	Geographic location of obligor. Specify the location of the obligor by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.	Number Note: The U.S. Office of Management and Budget (OMB) establishes and maintains definitions of Metropolitan Statistical Areas, Micropolitan Statistical Areas, or Metropolitan Divisions. The most recent list of definitions are available in OMB Bulletin No. 09-01, "Update of Statistical Area Definitions and Guidance on Their Uses", November 2008.		General information about the obligor

Table 6. Schedule L Item 6. Equipment loans item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 6(a)(1)	Payment frequency. Specify the code that describes the payment frequency on the loan.	1 = Monthly 2 = Quarterly 3 = Semi-Annually 4 = Annually 5 = Daily 6 = Irregular	General information about the equipment loan
Item 6(b)(1)	Equipment type. Indicate the code that describes the equipment type.	1 = Construction 2 = Furniture and fixtures 3 = General Office Equipment/Copiers 4 = Industrial 5 = Maritime 6 = Printing presses 7 = Technology 8 = Telecommunications 9 = Transportation 98 = Other	General information about the equipment
Item 6(b)(2)	New or used. Indicate whether the equipment financed is new or used.	1 = New 2 = Used	General information about the equipment

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 6(c)(1)	Obligor industry. Indicate the code that describes the industry category of the obligor.	1 = Agriculture and Resources 2 = Communication and Utilities 3 = Construction 4 = Distribution/wholesale 5 = Electronics 6 = Financial Services 7 = Forestry & Fishing 8 = Healthcare 9 = Manufacturing 10 = Mining 11 = Printing & Publishing 12 = Public Administration 13 = Retail 14 = Services 15 = Transportation 98 = Other	General information about the obligor
Item 6(c)(2)	Geographic location of obligor. Provide the zip code of the obligor.	Number	General information about the obligor

Table 7. Schedule L Item 7. Equipment leases item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 7(a)(1)	Lease type. Indicate whether the lease is a true lease or finance lease.	1 = True lease 2 = Finance lease	General information about the equipment lease
Item 7(a)(2)	Payment frequency. Indicate the code that describes the payment frequency on the lease.	1 = Monthly 2 = Quarterly 3 = Semi-annually 4 = Annually 5 = Daily 6 = Irregular	General information about the equipment lease
Item 7(b)(1)	Equipment type. Indicate the code that describes the equipment type.	1 = Construction 2 = Furniture and fixtures 3 = General office equipment/copiers 4 = Industrial 5 = Maritime 6 = Printing presses 7 = Technology 8 = Telecommunications 9 = Transportation 98 = Other	General information about the equipment
Item 7(b)(2)	New or used. Indicate whether the equipment financed is new or used.	1=New 2=Used	General information about the equipment
Item 7(b)(3)	Residual value. Provide the residual value of the equipment at the time of origination. For operating leases, provide the value of the asset at the end of its useful economic life (i.e., "salvage" or "scrap value").	Number	General information about the equipment

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 7(b)(4)	Source of residual value. Specify the code that describes the source of the residual value.	1 = Internal 2 = External 3 = Consultant 98 = Other	General information about the equipment
Item 7(c)(1)	Obligor industry. Indicate the code that describes the industry category of the obligor.	1 = Agriculture and resources 2 = Communication and utilities 3 = Construction 4 = Distribution/wholesale 5 = Electronics 6 = Financial services 7 = Forestry & fishing 8 = Healthcare 9 = Manufacturing 10 = Mining 11 = Printing & publishing 12 = Public administration 13 = Retail 14 = Services 15 = Transportation 98 = Other	General information about the obligor
Item 7(c)(2)	Geographic location of obligor. Provide the zip code of the obligor.	Number	General information about the obligor

Table 8. Schedule L Item 8. Student loans item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 8(a)(1)	Subsidized. Indicate whether the loan is subsidized or unsubsidized.	1 = Subsidized 2 = Unsubsidized	General information about the student loan
Item 8(a)(2)	Repayment type. Indicate the code that describes the type of loan repayment terms.	1 = Level 2 = Graduated repayment 3 = Income-sensitive 4 = Interest-only period	General information about the student loan
Item 8(a)(3)	Year in repayment. If the loan is in repayment, indicate the number of years the loan has been in repayment.	Number	General information about the student loan
Item 8(a)(4)	Guarantee agency. Specify the name of the agency guaranteeing the loan.	Text	General information about the student loan
Item 8(a)(5)	Disbursement date. Indicate the date the loan was disbursed to the obligor.	Month/Year	General information about the student loan
Item 8(b)(1)	Current obligor payment status. Indicate the code describing whether the obligor payment status is in-school, grace period, deferral, forbearance or repayment.	1 = In-school 2 = Grace period 3 = Deferral 4 = Forbearance 5 = Repayment	General information about the obligor
Item 8(b)(2)	Geographic location of obligor. Specify the location of the obligor by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.	Number Note: The U.S. Office of Management and Budget (OMB) establishes and maintains definitions of Metropolitan Statistical Areas, Micropolitan Statistical Areas, or Metropolitan Divisions. The most recent list of definitions are available in OMB Bulletin No. 09-01, "Update of Statistical Area Definitions and Guidance on Their Uses", November 2008.	General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 8(b)(3)	School type. Indicate code describing the type of school or program.	1 = Continuing Education 2 = Graduate 3 = K-12 4 = Medical 5 = Undergraduate 98 = Other	General information about the obligor
Item 8(c)(1)	Obligor credit score type. Specify the Type of the standardized credit score used to evaluate the obligor.	Text	Private Student Loans – General information about the obligor
Item 8(c)(2)	Obligor credit score. Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 8(c)(3).	Text or Number	Private Student Loans – General information about the obligor
Item 8(c)(3)	Obligor FICO score. Provide the standardized FICO credit score of the obligor.	1=up to 499 2=500-549 3=550-599 4=600-649 5=650-699 6=700-749 7=750-799 8=800+	Private Student Loans - General information about the obligor
Item 8(c)(4)	Co-obligor credit score type. Specify the type of the standardized credit score used to evaluate the co-obligor.	Text	Private Student Loans - General information about the obligor
Item 8(c)(5)	Co-obligor credit score. Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 8(c)(6).	Text or Number	Private Student Loans - General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 8(c)(6)	Co-obligor FICO score. Provide the standardized credit score of the co-obligor.	1=up to 499 2=500-549 3=550-599 4=600-649 5=650-699 6=700-749 7=750-799 8=800+	Private Student Loans - General information about the obligor
Item 8(c)(7)	Obligor income verification level. Indicate the code describing the extent to which the obligor's income has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified 5=Stated, "level 5" verified Level 4 income verification = Previous year W-2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W-2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	Private Student Loans - General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 8(c)(8)	Co-obligor income verification. Indicate the code describing the extent to which the co-obligor's income has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified 5=Stated, "level 5" verified Level 4 income verification = Previous year W-2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W-2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	Private Student Loans - General information about the obligor
Item 8(c)(9)	Obligor employment verification. Indicate the code describing the extent to which the obligor's employment has been verified..	1=Not stated, not verified 2=Stated, not verified 3=Stated, level 3 verified Level 3 verified = direct independent verification with a third party of the obligor's current employment.	Private Student Loans - General information about the obligor
Item 8(c)(10)	Co-obligor employment verification. Indicate the code describing the extent to which the co-obligor's employment has been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, level 3 verified Level 3 verified = direct independent verification with a third party of the obligor's current employment.	Private Student Loans - General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 8(c)(11)	Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.	1=Not stated, not verified 2=Stated, not verified 3=Stated, "partially" verified 4=Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	Private Student Loans - General information about the obligor
Item 8(c)(12)	Co-obligor asset verification. Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.	1=Not Stated, Not Verified 2=Stated, Not Verified 3=Stated, "Partially" Verified 4=Stated, "Level 4" Verified Level 4 Verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	Private Student Loans - General information about the obligor
Item 8(c)(13)	Length of employment: obligor. Provide the number of complete months of service with the obligor's current employer as of the origination date.	1=0-6 months 2=7-12 months 3=13-18 months 4=19-24 months 5=25-36 months 6=37-60 months 7=61-120 months 8=121-240 months 9=greater than 240 months	Private Student Loans - General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 8(c)(14)	Length of employment: co-obligor. Provide the number of complete months of service with the co-obligor's current employer as of the origination date.	1=0-6 months 2=7-12 months 3=13-18 months 4=19-24 months 5=25-36 months 6=37-60 months 7=61-120 months 8=121-240 months 9=greater than 240 months		Private Student Loans - General information about the obligor
Item 8(c)(15)	Obligor wage income. Provide the dollar amount per month of income associated with the obligor's employment.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	Private Student Loans - General information about the obligor
Item 8(c)(16)	Co-obligor wage income. Provide the dollar amount per month of income associate with the co-obligor's employment.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	Private Student Loans - General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 8(c)(17)	Obligor other income. Provide the dollar amount of the obligor's monthly income other than obligor wage income.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	Private Student Loans - General information about the obligor
Item 8(c)(18)	Co-obligor other income. Provide the dollar amount of the co-obligor's monthly income other than co-obligor wage income.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	Private Student Loans - General information about the obligor

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 8(c)(19)	All obligor wage income. Provide the monthly income of all obligors derived from employment.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	Private Student Loans - General information about the obligor
Item 8(c)(20)	All obligor total income. Provide the monthly income of all obligors.	1= less than $500 2= $500-$999 3= $1,000-$1,499 4= $1,500-$1,999 5= $2,000-$2,499 6= $2,500-$2,999 7= $3,000-$3,499 8= $3,500-$3,999 9= $4,000-$4,499 10= $4,500-$4,999 11= $5,000-$5,999 12= $6,000-$6,999	13= $7,000-$7,999 14= $8,000-$9,999 15= $10,000-$14,999 16= $15,000-$19,999 17= $20,000-$24,999 18 = $25,000-$29,999 19 = $30,000-$39,999 20 = $40,000-$49,999 21 = greater than $50,000	Private Student Loans - General information about the obligor

Table 9. Schedule L Item 9. Floorplan financing item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 9(a)(1)	Account origination date. Provide the date of account origination.	Date	General information about the account
Item 9(b)(1)	Product line. Indicate the code describing the type of inventory product line.	1 = Accounts receivable 2 = Consumer electronics & appliances 3 = Industrial 4 = Lawn & garden 5 = Manufactured housing 6 = Marine 7 = Motorcycles 8 = Musical Instruments 9 = Power sports 10 = Recreational vehicles 11 = Technology 12 = Transportation 98 = Other	General information about the collateral
Item 9(b)(2)	New or used. Indicate whether the collateral securing the loan is new or used.	1=New 2=Used	General information about the collateral
Item 9(c)(1)	Credit score type. Specify the type of the standardized credit score used to evaluate the obligor.	Text	General information about the obligor
Item 9(c)(2)	Credit score. Provide the standardized credit score of the obligor.	Text or Number	General information about the obligor
Item 9(c)(3)	Geographic location of obligor. Provide the zip code of the obligor.	Number	General information about the obligor

Table 10. Schedule L Item 10. Corporate debt item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 10(a)	Title of underlying security. Specify the title of the underlying security.	Text	General information about the underlying security
Item 10(b)	Denomination. Give the minimum denomination of the underlying security.	Number	General information about the underlying security
Item 10(c)	Currency. Specify the currency of the underlying security.	Text	General information about the underlying security
Item 10(d)	Trustee. Specify the name of the trustee.	Text	General information about the underlying security
Item 10(e)	Underlying SEC file number. Specify the registration statement file number of the registration of the offer and sale of the underlying security.	Number	General information about the underlying security
Item 10(f)	Underlying CIK number. Specify the CIK number of the issuer of the underlying security.	Number	General information about the underlying security
Item 10(g)	Callable. Indicate whether the security is callable.	1=Callable 2= Not Callable	General information about the underlying security
Item 10(h)	Payment frequency. Indicate the code describing the frequency of payments that will be made on the underlying security.	1 = Monthly 2 = Quarterly 3 = Semi-Annually 4 = Annually 5 = Daily 6 = Irregular	General information about the underlying security
Item 10(i)	Zero coupon indicator. Indicate yes or no as to whether an underlying security or agreement is interest bearing.	1 = Yes 2 = No	General information about the underlying security

Table 11. Schedule L-D Item 1. General

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 1(a)	Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.	Number	General Information
Item 1(b)	Asset number. Provide the unique ID number of the asset. Instruction to Item 1(b). The asset number should be the same number that was previously used to identify the asset in Schedule L (§229.1111A).	Number	General Information
Item 1(c)	Asset group number. For Structures with multiple collateral groups, indicate the collateral group number in which the asset falls.	Number	General Information
Item 1(d)	Reporting period begin date. Specify the beginning date of the reporting period.	Date	General Information
Item 1(e)	Reporting period end date. Specify the servicer cut-off date for the reporting period.	Date	General Information
Item 1(f)(1)	Total actual amount paid. Indicate the total payment (including all escrows) paid to the servicer during the reporting period.	Number	General Information
Item 1(f)(2)	Actual onterest paid. Indicate the amount of interest collected during the reporting period.	Number	General Information
Item 1(f)(3)	Actual principal paid. Indicate the amount of principle collected during the reporting period.	Number	General Information
Item 1(f)(4)	Actual other amounts paid. Indicate the total of any other amounts collected during the reporting period.	Number	General Information
Item 1(f)(5)	Other principal adjustments. Indicate any other amounts that would cause the principal balance of the loan to be decreased or increased during the reporting period.	Number	General Information

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 1(f)(6)	Other interest adjustments. Indicate any unscheduled interest adjustments during the reporting period	Number	General Information
Item 1(f)(7)	Current asset balance. Indicate the outstanding principal balance of the asset as of the servicer cut-off date.	Number	General Information
Item 1(f)(8)	Current scheduled asset balance. Indicate the scheduled principal balance of the asset as of the servicer cut-off date.	Number	General Information
Item 1(f)(9)	Current scheduled payment amount. Indicate the total payment amount that was scheduled to be collected for this reporting period (including all fees and escrows).	Number	General Information
Item 1(f)(10)	Current scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected for this reporting period.	Number	General Information
Item 1(f)(11)	Current scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected for this reporting period.	Number	General Information733
Item 1(f)(12)	Current delinquency status. Indicate the number of days the obligor is delinquent as determined by the governing transaction agreement.	Number	General Information
Item 1(f)(13)	Number of days payment is past due. If an obligor has not made the full scheduled payment, indicate the number of days between the scheduled payment date and the Reporting Period End Date.	Number	General Information
Item 1(f)(14)	Current payment status. Indicate the number of payments the obligor is past due as of the cut-off date.	Number	General Information

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 1(f)(15)	Pay history. Provide the coded string of values that describes the payment performance of the asset over the most recent 12 months.	0 = Current 1 = 30-59 Days 2 = 60-89 Days 3 = 90-119 Days 4 = 120 Days + 7 = Loan did not exist in period X = Unknown. The most recent month is located to the right. A sample entry could be "777723100000."	General Information
Item 1(f)(16)	Next due date. For loans that have not been paid off, indicate the date on which the next payment is due on the asset	Date	General Information
Item 1(f)(17)	Next interest rate. For loans that have not been paid-off, indicate the interest rate that is in effect as of the next scheduled remittance due to the investor.	%	General Information
Item 1(f)(18)	Remaining term to maturity. For loans that have not been paid-off, indicate the number of months between the cut-off date and the asset maturity date.	Number	General Information
Item 1(g)(1)	Current servicing fee-amount. Indicate the dollar amount of the fee earned by the current servicer for administering the loan for this reporting period.	Number	General Information
Item 1(g)(2)	Current servicer. Indicate the name or MERS organization number of the entity that currently services the asset.	Text or Number	General Information
Item 1(g)(3)	Servicing transfer received date. If a loan's servicing has been transferred, provide the effective date of the servicing transfer.	Date	General Information
Item 1(g)(4)	Servicer advanced amount. If amounts were advanced by the servicer during the reporting period, specify the amount.	Number	General Information

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 1(g)(5)	Cumulative outstanding advance amount. Specify the outstanding cumulative amount advanced by the servicer.	Number	General Information
Item 1(g)(6)	Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are to be advanced by the servicer.	1=scheduled interest, scheduled principal; 2=actual interest, actual principal; 3=scheduled interest, actual principal; 98=other 99=unknown	General Information
Item 1(g)(7)	Stop principal and interest advance date. Provide the first payment due date for which the servicer ceased advancing principal or interest.	Date	General Information
Item 1(g)(8)	Other loan-level servicing fee(s) retained by servicer. Provide the amount of all other fees earned by loan administrators that reduce the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc).	Number	General Information
Item 1(g)(9)	Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the obligor.	Number	General Information
Item 1(h)	Modification indicator. Indicates yes or no whether the asset was modified from its original terms during the reporting period.	1=Yes 2=No	General Information
Item 1(i)	Repurchase indicator. Indicate yes or no whether the asset has been repurchased from the pool. If the asset has been repurchased, provide the following additional information.	1=Yes 2=No	General Information
Item 1(i)(1)	Repurchase notice. Indicate yes or no whether a notice of repurchase has been received.	1=Yes 2=No	General Information

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 1(i)(2)	Repurchase date. Indicate the date the asset was repurchased.	Date	General Information
Item 1(i)(3)	Repurchaser. Specify the name of the repurchaser.	Text	General Information
Item 1(i)(4)	Repurchase reason. Indicate the code that describes the reason for the repurchase.	Text	General Information
Item 1(j)	Liquidated indicator. Indicate yes or no as to whether the asset has been liquidated. An asset is considered liquidated if the related collateral has been sold or disposed, or if the asset has been charged-off in its entirety without realizing upon the collateral	1=Yes 2=No	General Information
Item 1(k)	Charge-off indicator. Indicate yes or no as to whether the asset has been charged-off. The asset is charged-off when it will be treated as a loss or expense because payment is unlikely.	1=Yes 2=No	General Information
Item 1(k)(1)	Charged-off principal amount. Specify the amount of uncollected principal charged-off.	Number	General Information
Item 1(k)(2)	Charged-off interest amount. Specify the amount of uncollected interest charged-off	Number	General Information
Item 1(l)(1)	Paid-in-full indicator. Indicate yes or no whether the asset is paid in full.	1=Yes 2=No	General Information
Item 1(l)(2)(i)	Pledged prepayment penalty paid. Provide the total amount of the prepayment penalty that was collected from the obligor.	Number	Prepayment Penalties
Item 1 (l)(2)(ii)	Pledged prepayment penalty waived. Provide the total amount of the prepayment penalty that was incurred by the obligor, but not collected by the servicer.	Number	Prepayment Penalties

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 1(l)(2)(iii)	Reason for not collecting pledge prepayment penalty. Indicate the code that describes the reason that a prepayment penalty due from a borrower was not collect by the servicer.	1 = Hardship 2 = State Parameters 3 = Facilitate Loss Mitigation 4 = Proof of Sale 5 = Payoff after Breach 98 = Other 99 = Unknown	Prepayment Penalties

Table 12. Schedule L-D Item 2. Residential Mortgages item requirements

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 2(a)(1)	Non-pay reason. Indicate the code that describes the reason for loan delinquency.	1 = Death of principal borrower 2 = Illness of principal borrower - delinquency is attributable to a prolonged illness that keeps the principal borrower from working and generating income. 3 = Illness of borrower's family member - delinquency is attributable to the principal borrower's having incurred extraordinary expenses as the result of the illness of a family member (or having taken on the sole responsibility for repayment of the mortgage debt as the result of the co-borrower's illness). 4 = Death of borrower's family member - delinquency is attributable to the principal borrower's having incurred extraordinary expenses as the result of the death of a family member (or having taken on the sole responsibility for repayment of the mortgage debt as the result of the co-borrower's death).the mortgage debt, etc. 5 = Marital difficulties - delinquency is attributable to problems associated with a separation or divorce, such as a dispute over ownership of the property, a decision not to make payments until the divorce settlement is finalized, a reduction in the income available to repay.	6 = Curtailment of income - delinquency is attributable to a reduction in the borrower's income, such as a garnishment of wages, a change to a lower paying job, reduced commissions or overtime pay, loss of a part-time job, etc. 7 = Excessive obligations - delinquency is attributable to the borrower's having incurred excessive debts (either in a single instance or as a matter of habit) that prevent him or her from making payments on both those debts and the mortgage debt. 8 = Abandonment of property - delinquency is attributable to the borrower's having abandoned the property for reason(s) that are not known by the servicer (because the servicer has not been able to locate the borrower). 9 = Distant employment transfer - delinquency is attributable to the principal borrower's being transferred or relocated to a distant job location and incurring additional expenses for moving and housing in the new location, which affects his or her ability to pay both those expenses and the mortgage debt.	Delinquent loans

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 2(a)(1) (continued)	Non-pay reason. Indicate the code that describes the reason for loan delinquency.. (continued)	10 = Property problem - delinquency is attributable to the condition of the improvements on the property (substandard construction, expensive and extensive repairs needed, subsidence of sinkholes on property, impaired rights of ingress and egress, etc.) or the borrower's dissatisfaction with the property or the neighborhood. 11 = Inability to sell property - delinquency is attributable to the borrower's having difficulty in selling the property. 12 = Inability to rent property - delinquency is attributable to the borrower's needing rental income to make the mortgage payments and having difficulty in finding a tenant for a one-family investment property or for one or more of the units in a one-family to four family property. 13 = Military service - delinquency is attributable to the principal borrower's having entered active duty status and his or her military pay not being sufficient to enable the continued payment of the existing mortgage debt. 14 = Unemployment - delinquency is attributable to a reduction in income resulting from the principal borrower's having lost his or her job.	15 = Business failure - delinquency is attributable to a self-employed principal borrower's having a reduction in income and/or having excessive obligations that are the direct result of the failure of his or her business to remain a viable entity or, at least, to generate sufficient profit that the borrower can rely on to meet his or her personal obligations. 16 = Casualty loss - delinquency is attributable to the borrower's having incurred a sudden, unexpected property loss as the result of an accident, fire, storm, theft, earthquake, etc. 17 = Energy-environment costs - the delinquency is attributable to the borrower's having incurred excessive energy-related costs or costs associated with the removal of environmental hazards in, on, or near the property. 18 = Servicing problems - the delinquency is attributable to the borrower's being dissatisfied with the way the mortgage servicer is servicing the loan or with the fact that servicing of the loan has been transferred to a new servicer.	Delinquent loans

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 2(a)(1) (continued)	Non-pay reason. Indicate the code that describes the reason for loan delinquency. (continued)	19 = Payment adjustment - the delinquency is attributable to the borrower's being unable to make a new payment that resulted from an increase related to a scheduled payment change for a graduated-payment or adjustable-rate mortgage; increased monthly escrow accruals that are needed to pay higher taxes, insurance premiums, or special assessments; or the spreading of the amount needed to repay an escrow shortage over the next year. 20= Payment dispute - the delinquency is attributable to a disagreement between the borrower and the mortgage servicer about the amount of the mortgage payment, the acceptance of a partial payment, or the application of previous payments that results in the borrower's refusal to make the payment(s) until the dispute is resolved. 21 = Transfer of ownership pending - the delinquency is attributable to the borrower's having agreed to sell the property and deciding not to make any additional payments.	22 = Fraud the delinquency is attributable to a legal dispute arising out of an alleged fraudulent or illegal action that occurred in connection with the origination of the mortgage (or later) 23 = Unable to contact borrower - the delinquency cannot be ascertained because the borrower cannot be located or has not responded to the servicer's inquiries. 24 = Incarceration - the delinquency is attributable to the principal borrower's having been jailed or imprisoned (regardless of whether he or she is still incarcerated). 98 = Other 99 = Unknown	Delinquent loans

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 2(a)(2)	Non-pay status. Indicate the code that describes the delinquency status of the loan.	9 = Forbearance - the servicer has authorized a temporary suspension of payments or has agreed to accept periodic payments of less than the borrower's scheduled monthly payment, periodic payments at different intervals, etc., to give the borrower additional time and a means for bringing the mortgage current by repaying all delinquent installments. 12 = Repayment plan - the servicer has an agreement with the borrower for the acceptance of regularly scheduled monthly mortgage payments plus an additional amount over a prescribed number of months to bring the mortgage loan current. 17 = Pre-foreclosure sale - the servicer plans to pursue a preforeclosure sale (a payoff of less than the full amount of our indebtedness) to avoid the expenses of foreclosure proceedings. 24 = Drug seizure - the Department of Justice (or any other state or federal agency) has decided to seize (or has seized) a property under the forfeiture provision of the Controlled Substances Act. 26 = Refinance - the servicer is aware that the borrower is pursuing an arrangement whereby the existing first mortgage will be refinanced (paid off).	27 = Assumption - the servicer is working with the borrower to sell the property by permitting the purchaser to pay the delinquent installments and assume the outstanding debt in order to avoid a foreclosure. 28 = Modification - the servicer is working with the borrower to renegotiate the terms of the mortgage in order to avoid foreclosure. 29 = Charge-off - use this code to indicate that it is not in best interest to pursue collection efforts or legal actions against the borrower (because of a reduced value for the property, a low outstanding mortgage balance, or the presence of certain environmental hazards on the property). 30 = Third-party sale - use this code to indicate that an authorized foreclosure bid equal to the total debt secured by a property (or fair market value, if the mortgage insurer approves) and a successful third-party bidder was awarded the property at the foreclosure sale.	Delinquent loans

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 2(a)(2) (continued)	Non-pay status. Indicate the code that describes the delinquency status of the loan. (continued)	31 = Probate - Use this code to indicate that the servicer cannot pursue (or complete) foreclosure action because proceedings required to verify a deceased borrower's will are in process. 32 = Military indulgence - the servicer has granted a delinquent service member forbearance or foreclosure proceedings have been stayed under the provisions of the Servicemembers Civil Relief Act or any similar state law. 42 = Delinquent, no action - the loan is 90 + days delinquent, but the servicer has not taken legal action or initiated loss mitigation. 43 = Foreclosure - the servicer has referred the case to an attorney to take legal action to acquire the property through a foreclosure sale. 44 = Deed-in-lieu –the servicer was authorized to accept a voluntary conveyance of the property instead of initiating foreclosure proceedings. 49 = Assignment - mortgage is in the process of being assigned to the insurer or guarantor. 59 = Chapter 12 bankruptcy - the borrower has filed for bankruptcy under Chapter 12 of the Federal Bankruptcy Act.	61 = Second lien considerations - use this code for a second mortgage to indicate that the servicer is evaluating the advantages and disadvantages of pursuing a foreclosure action or recommending that the debt be charged off. 62 = Veterans affairs-"no-bid" - use this code to indicate that the Department of Veterans Affairs refused to establish an "upset price" to be bid at the foreclosure sale for a VA-guaranteed mortgage that the servicer had referred for foreclosure. 63 = Veterans affairs – refund - use this code to indicate that the Department of Veterans Affairs has requested information about a VA-guaranteed mortgage the servicer referred for foreclosure, in order to reach a decision about whether to accept an assignment for purposes of refunding the mortgage to avoid foreclosure. 64 = Veterans affairs—buydown - Use this code to indicate that a cash contribution was agreed to be made to reduce the outstanding indebtedness of a VA-guaranteed mortgage for which the Department of Veterans Affairs failed to establish an "upset price" bid for the foreclosure sale, in order to get the VA to reconsider its decision about establishing an "upset price."	Delinquent loans

Proposed Item number	Proposed Title and Definition	Proposed Response		Proposed Category of Information
Item 2(a)(2) (continued)	Non-pay status. Indicate the code that describes the delinquency status of the loan. (continued)	65 = Chapter 7 bankruptcy - the borrower has filed for bankruptcy under Chapter 7 of the Federal Bankruptcy Act 66 = Chapter 11 bankruptcy - the borrower has filed for bankruptcy under Chapter 11 of the Federal Bankruptcy Act.	67 = Chapter 13 bankruptcy - the borrower has filed for bankruptcy under Chapter 13 of the Federal Bankruptcy Act. 98 = Other 99 = Unknown	Delinquent loans
Item 2(a)(3)	Reporting action code. Further indicate the code that defines the default/delinquent status of the loan.	3 = Modifiable ARM 7 = No action 8 = Relief provision 10 = Loan approved for loss mitigation 11 = Money judgment 15 = Bankruptcy/litigation 13 = Inactivation 14 = Substitution 30 = Referred for foreclosure 60 = Payoff 65 = Repurchase 70 = A property that was secured by an uninsured conventional mortgage has been acquired by foreclosure, when a property that was secured by a VA mortgage cannot be conveyed to VA because the VA refused to specify a bid amount, or when an RHS mortgage serviced under the special servicing option has been acquired by foreclosure. (The servicer also should use Action Code 70 to report its repurchase of an acquired property after submission of the REOgram, if the mortgage has not already been removed from our LASER records.) 71 = A property has been condemned or acquired by a third party. 72 = A property has been acquired by foreclosure and is pending conveyance to FHA, VA, or the MI.		Delinquent loans

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(b)(1)	Rate at next reset. Provide the interest rate that will be used to determine the next scheduled interest payment.	%	ARM
Item 2(b)(2)	Next interest rate change date. Provide the next date that the note rate is scheduled to change.	Date	ARM
Item 2(b)(3)	Payment at next reset. Provide the principal and interest payment due after the next scheduled interest rate change.	Number	ARM
Item 2(b)(4)	Next payment change date. Provide the next date that the amount of scheduled principal and/or interest is scheduled to change.	Date	ARM
Item 2(b)(5)	Option ARM indicator. Indicate yes or no whether the loan is an option ARM.	1 = Yes 2 = No	ARM
Item 2(b)(6)	Exercised ARM conversion option Indicator. Indicate yes or no whether the borrower exercised an option to convert an ARM loan to a fixed interest rate loan.	1 = Yes 2 = No	ARM
Item 2(c)(1)	Bankruptcy file date. Provide the date on which the obligor filed for bankruptcy.	Date	Bankruptcy
Item 2(c)(2)	Bankruptcy case number. Provide the case number assigned by the court to the bankruptcy filing.	Number	Bankruptcy
Item 2(c)(3)	Post-petition due date. Provide the date on which the next payment is due under the terms of the bankruptcy plan.	Date	Bankruptcy

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(c)(4)	Bankruptcy release reason. If the bankruptcy has been released, indicate the code that describes the reason for the release.	1 = Discharge 2 = Dismissal 3 = Relief of Stay 99 = Unknown	Bankruptcy
Item 2(c)(5)	Bankruptcy release date. If the bankruptcy has been released, provide the date on which the loan was removed from bankruptcy as a result of dismissal, discharge, and/or the granting of a motion for relief.	Date	Bankruptcy
Item 2(c)(6)	Contractual due date. Provide the actual due date of the loan payment had bankruptcy not been filed.	Date	Bankruptcy
Item 2(c)(7)	Debt reaffirmed indicator. Indicate yes or no whether the obligor excluded this debt from the bankruptcy and reaffirmed the debt obligation.	1 = Yes 2 = No	Bankruptcy
Item 2(c)(8)	Trustee pays all indicator. Indicate yes or no whether post-petition payments are sent to the bankruptcy trustee by the obligor and then forwarded to the servicer by the trustee.	1 = Yes 2 = No	Bankruptcy

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(d)	Loss mitigation type indicator. Indicate the code that describes the type of loss mitigation the servicer is pursuing with the borrower, loan, or property.	1 = Not in loss mitigation 2 = Short payoff 3 = Short sale 4 = Deed-in-lieu 5 = Modification 6 = Repayment plan 7 = Write-off consideration 8 = First review 9 = Forbearance 10 = Trial modification 98 = Other 99 = Unknown	General Information
Item 2(e)(1)	Modification effective payment Date. Provide the date of first payment due post modification.	Date	Modification
Item 2(e)(2)	Modification loan balance. Provide the loan balance as of Modification Effective Payment Date as reported on the Modification documents.	Number	Modification
Item 2(e)(3)	Total capitalized amount. Provide the amount added to the principal balance of the loan pursuant to a loan modification.	Number	Modification
Item 2(e)(4)	Pre-modification interest (note) rate. Provide the scheduled interest rate of the loan immediately preceding the modification effective payment date -- or if servicer is no longer advancing principal and interest, the interest rate that would be in effect if the loan were current.	%	Modification
Item 2(e)(5)	Post-modification interest (note) rate. Provide the interest rate in effect as of the modification effective payment date.	%	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(e)(6)	Post-modification margin. Provide the margin as of the modification effective payment date. The margin is the number of percentage points added to the index to establish the new rate.	Number	Modification
Item 2(e)(7)	Pre-modification P&I payment. Provide the scheduled total principal and interest payment amount preceding the modification effective payment date -- or if servicer is no longer advancing principal and interest, the interest rate that would be in effect if the loan were current.	Number	Modification
Item 2(e)(8)	Post-modification lifetime rate floor. Provide the minimum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life (after modification).	%	Modification
Item 2(e)(9)	Post-modification lifetime rate ceiling. Provide the maximum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life (after modification).	%	Modification
Item 2(e)(10)	Pre-modification initial interest rate decrease. Provide the maximum percentage by which the interest rate may adjust downward on the first interest rate adjustment date (prior to modification).	%	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(e)(11)	Post-modification initial interest rate decrease. Provide the maximum percentage by which the interest rate may adjust downward on the first interest rate adjustment date (after modification).	%	Modification
Item 2(e)(12)	Pre-modification subsequent interest rate increase. Provide the maximum percentage increment by which the rate may adjust upward after the initial rate adjustment (prior to modification).	%	Modification
Item 2(e)(13)	Post-modification subsequent interest rate increase. Provide the maximum percentage increment by which the rate may adjust upward after the initial rate adjustment (after modification).	%	Modification
Item 2(e)(14)	Pre-modification payment cap. Provide the percentage value by which a payment may increase or decrease in one period (prior to modification).	%	Modification
Item 2(e)(15)	Post-modification payment cap. Provide the percentage value by which a payment may increase or decrease in one period (after modification).	%	Modification
Item 2(e)(16)	Post-modification principal and interest payment. Provide total Principal and Interest Payment amount as of the Modification Effective Payment Date.	Number	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(e)(17)	Pre-modification maturity date. Provide the loan's original maturity date (or, if the loan has been modified before, the maturity date in effect immediately preceding the most recent modification effective payment date).	Date	Modification
Item 2(e)(18)	Post-modification maturity date. Provide the loan's maturity date as of the modification effective payment date.	Date	Modification
Item 2(e)(19)	Pre-modification interest reset period (if changed). Provide the number of months of the original interest reset period of the loan.	Number	Modification
Item 2(e)(20)	Post-modification interest reset period (if changed). Provide the number of months of the interest reset period of the loan as of the modification effective payment date.	Number	Modification
Item 2(e)(21)	Pre-modification next interest rate change date. Provide the next interest reset date under the original terms of the loan (one month prior to new payment due date).	Date	Modification
Item 2(e)(22)	Post-modification next reset date. Provide the next interest reset date as of the modification effective payment date.	Date	Modification
Item 2(e)(23)	Modification front-end DTI. Provide the front-end DTI ratio (total monthly housing expense divided by monthly income) used to qualify the modification.	%	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(e)(24)	Income verification indicator. Indicate yes or no whether a Transcript of Tax Return (received pursuant to the filing of IRS Form 4506-T) was obtained to corroborate Modification Front-end DTI (calculated using pay stubs, W-2s and/or CPA certified tax returns).	1 = Yes 2 = No	Modification
Item 2(e)(25)	Modification back-end DTI. Provide the back-end DTI ratio (total monthly debt divided by monthly income) used to qualify the modification.	%	Modification
Item 2(e)(26)	Pre-modification interest only term. Provide the number of months of the interest-only period prior to the Modification Effective Payment Date.	Number	Modification
Item 2(e)(27)	Post-modification interest only term. Provide the number of months of the interest-only period as of the modification effective payment date.	Number	Modification
Item 2(e)(28)	Post-modification balloon payment amount. Provide the new balloon payment amount due at maturity as a result of loan modification, not including deferred amounts.	Number	Modification
Item 2(e)(29)	Forgiven principal amount (cumulative). Provide the sum total of all principal balance reductions as a result of loan modification over the life of the deal.	Number	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(e)(30)	Forgiven interest amount (cumulative). Provide the sum total of all interest incurred and forgiven as a result of loan modification over the life of the deal.	Number	Modification
Item 2(e)(31)	Forgiven principal amount (current period). Provide the total principal balance reduction as a result of loan modification during the current period.	Number	Modification
Item 2(e)(32)	Forgiven interest amount (current period). Provide the total gross interest forgiven as a result of loan modification during the current period.	Number	Modification
Item 2(e)(33)	Modified next payment adjust date. Provide the due date on which the next payment adjustment is scheduled to occur for an ARM loan per the modification agreement.	Date	Modification
Item 2(e)(34)	Modified ARM indicator. If the loan is remaining an ARM loan, indicate whether the loan's existing ARM parameters are changing per the modification agreement.	1 = Yes 2 = No 99 = Unknown	Modification
Item 2(e)(35)	Interest rate step indicator. Indicate whether the terms of the modification agreement call for the interest rate to step up over time.	1 = Yes 2 = No 99 = Unknown	Modification
Item 2(e)(36)	Maximum future rate under step agreement. If the loan modification includes a step provision, provide the maximum interest rate to which the loan may step up.	%	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(e)(37)	Date of maximum rate. If the loan modification includes a step provision, provide the date on which the maximum interest rate will be reached.	Date	Modification
Item 2(e)(38)	Non-interest bearing principal deferred amount (current period). Provide the total amount of principal deferred (or forborne) by the modification that is not subject to interest accrual.	Number	Modification
Item 2(e)(39)	Non-interest bearing principal deferred amount (cumulative balance). Provide the total amount of principal deferred by the modification that is not subject to interest accrual.	Number	Modification
Item 2(e)(40)	Recovery of deferred principal (current period). Provide the amount of deferred principal collected from the obligor during the current period.	Number	Modification
Item 2(e)(41)	Non-interest bearing deferred interest and fees amount (current period). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual during the current period.	Number	Modification
Item 2(e)(42)	Non-interest bearing deferred interest and fees amount (cumulative balance). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual.	Number	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(e)(43)	Recovery of deferred interest and fees (current period). Provide the amount of deferred interest and fees collected from the obligor during the current period.	Number	Modification
Item 2(e)(44)	Forgiven non-principal and interest advances to be reimbursed by trust. Provide the total amount of expenses (including all escrow and corporate advances) that have been waived or forgiven by the servicer per the modification agreement reimbursable to the servicer pursuant to the terms of the transaction document. Corporate advances are amounts paid by the servicer which may include foreclosure expenses, attorney fees, bankruptcy fees, insurance, and so forth.	Number	Modification
Item 2(e)(45)	Reimbursable modification escrow and corporate advances (capitalized). Provide the total amount of escrow and corporate advances made by the servicer as of the time of the loan modification. Corporate advances are amounts paid by the servicer which may include foreclosure expenses, attorney fees, bankruptcy fees, insurance, and so forth.	Number	Modification
Item 2(e)(46)	Reimbursable modification servicing fee advances (capitalized). Provide the total amount of servicing fees for delinquent payments that has been advanced by the servicer at the time of the loan modification.	Number	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(e)(47)	HAMP indicator. Indicate yes or no whether the loan was modified under the terms of the Home-Affordable Modification Plan (HAMP).	1 = Yes 2 = No	Modification
Item 2(e)(47)(i)	HAMP: Loan participation end date. Provide the date upon which the last principal and interest payment is due during the 60-month participation of the U. S. Treasury and FNMA in the loan modification.	Date	Modification
Item 2(e)(47)(ii)	HAMP: Loan modification incentive termination date. Provide the date upon which obligor participation in the program is terminated because the borrower has defaulted or redefaulted.	Date	Modification
Item 2(e)(47)(iii)	HAMP: Obligor pay-for-performance success payments. Provide the amount paid to the servicer from U.S. Treasury/FNMA that reduces the principal balance of the interest bearing portion of the loan as the obligor stays current after modification.	Number	Modification
Item 2(e)(47)(iv)	HAMP: Onetime bonus incentive eligibility. Indicate yes or no whether the loan qualifies for the one-time bonus incentive payment of $1,500.00 payable to the mortgage holder subject to certain de minimis constraints.	1 = Yes 2 = No	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(e)(47)(v)	HAMP: Onetime bonus incentive amount. Indicate whether mortgage holder has or will receive $1,500 paid to mortgage holders for modifications made while a borrower is still current on mortgage payments.	Number	Modification
Item 2(e)(47)(vi)	HAMP: Monthly payment reduction cost share. Provide the amount of the subsidized payment from Treasury/FNMA during the current period to reimburse the investor for one half of the cost of reducing the monthly payment from 38% to 31% front-end DTI.	Number	Modification
Item 2(e)(47)(vii)	HAMP: Administrative fees associated with participating in the program. Provide the amount of the fees incurred by the servicer while administering this program, as allowed by the governing documents with investors.	Number	Modification
Item 2(e)(47)(viii)	HAMP: current asset balance including deferred amount. Provide the sum amount of the current asset balance plus only the principal portion of the deferred amount.	Number	Modification
Item 2(e)(47)(ix)	HAMP: Scheduled ending balance including deferred amount. Provide the sum amount of the scheduled ending balance field already supplied on the file plus only the principal portion of the deferred amount.	Number	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(e)(47)(x)	HAMP: Home price depreciation payments. Provide the amount payable to mortgage holders to partially offset probable losses from home price declines.	Number	Modification
Item 2(f)(1)	Forbearance plan or trial modification start date. Provide the date on which a Forbearance Plan or Trial Modification started.	Date	Loss mitigation - Forbearance
Item 2(f)(2)	Forbearance plan or trial modification scheduled end date. Provide the date on which a forbearance plan or trial modification is scheduled to end.	Date	Loss mitigation - Forbearance
Item 2(g)(1)	Repayment plan start date. Provide the date on which a repayment plan started.	Date	Loss mitigation – Repayment Plan
Item 2(g)(2)	Repayment plan scheduled end date. Provide the date on which a repayment plan is scheduled to end.	Date	Loss mitigation – Repayment Plan
Item 2(g)(3)	Repayment plan violated date. Provide the date on which the obligor ceased complying with the terms of a repayment plan.	Date	Loss mitigation – Repayment Plan
Item 2(h)	Deed-in-lieu date. If the type of loss mitigation is deed-in-lieu, provide the date on which a title was transferred to the servicer pursuant to a deed-in-lieu-of-foreclosure arrangement. Deed-in-lieu refers to the transfer of title from an obligor to the lender to satisfy the mortgage debt and avoid foreclosure.	Date	Loss mitigation – Deed-in-Lieu

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(i)	Short sale accepted offer amount. If the type of loss mitigation is short sale, provide the amount accepted for a short sale. Short Sale refers to the process in which a servicer works with a delinquent obligor to sell the property prior to the foreclosure sale.	Amount	Loss mitigation – Short Sale
Item 2(j)	Information related to loss mitigation exit. If the loan has exited loss mitigation efforts during the reporting period, provide the following addition information:	Text	Loss mitigation - Exit
Item 2(j)(1)	Loss mitigation exit date. Provide the date on which the servicer deems a loss mitigation effort to have ended.	Date	Loss mitigation – Exit
Item 2(j)(2)	Loss mitigation exit code. Indicate the code that describes the reason the loss mitigation effort ended.	1 = Completed/satisfied 2 = Cancelled/failed 3 = Denied 99 = Unknown.	Loss mitigation - Exit
Item 2(k)(1)	Attorney referral date. Provide the date on which the loan was referred to a foreclosure attorney.	Date	Foreclosure
Item 2(k)(2)	Date of first legal action. Provide the date on which legal foreclosure action was taken.	Date	Foreclosure
Item 2(k)(3)	Expected foreclosure sale date. Provide the expected date if known on which the foreclosure sale will take place.	Date	Foreclosure
Item 2(k)(4)	Foreclosure sale scheduled date. Provide the date on which the sale has been set to occur either by the court or Trustee.	Date	Foreclosure

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(k)(5)	Foreclosure sale date. Provide the date on which a foreclosure sale occurs.	Date	Foreclosure
Item 2(k)(6)	Foreclosure delay reason. Indicate the code that describes the reason for delay within the foreclosure process.	1 = No delay 2 = Loss mitigation delay 3 = BK delay 4 = Title/document delay 5 = Contestation delay 6 = Court/procedural delay 7 = Loss mitigation/servicer delay 8 = Statutory moratorium 9 = Disaster relief/other 10 = Relief Act 99 = Unavailable	Foreclosure
Item 2(k)(7)	Sale valid date. If state law provides for a period for confirmation, ratification, redemption or upset period, provide the date of the end of the period.	Date	Foreclosure
Item 2(k)(8)	Foreclosure bid amount. Provide the amount bid by the servicer at the foreclosure sale.	Number	Foreclosure
Item 2(k)(9)	Foreclosure exit date. If the loan exited foreclosure during the current period or first available subsequent period, provide the date on which the loan exited foreclosure.	Date	Foreclosure

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(k)(10)	Foreclosure exit reason. If the loan exited foreclosure during the current period or first available subsequent period, indicate the code that describes the reason the foreclosure proceeding ended.	1 = Third-party sale 2 = REO 3 = Loss mitigation 4 = Bankruptcy 5 = Reinstatement 6 = Charge-off 7 = Paid in full 8 = Foreclosure started in error 9 = Redeemed 99 = Unknown	Foreclosure
Item 2(k)(11)	Third-party sale proceeds. If the reason for the end of foreclosure proceeding is third-party sale, provide the amount for which the property was sold.	Number	Foreclosure
Item 2(k)(12)	Judgment date. In a judicial foreclosure state, if a judgment on the foreclosure has occurred, provide the date on which a court granted the judgment in favor of the creditor.	Date	Foreclosure
Item 2(k)(13)	Publication date. Provide the date on which the publication of trustee's sale information is published in the appropriate venue.	Date	Foreclosure
Item 2(k)(14)	NOI Date. If a notice of intent (NOI) has been sent, provide the date on which the Servicer sent the NOI correspondence to the obligor informing the obligor of the acceleration of the loan and pending initiation of foreclosure action.	Date	Foreclosure
Item 2(l)(1)	Most recent REO list date. Provide the most recent listing date for the REO.	Date	REO

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(l)(2)	Most recent REO list price. Provide the amount of the current listing price for the REO.	Number	REO
Item 2(l)(3)	Accepted REO offer amount. If a REO offer has been accepted, provide the amount accepted for the REO sale.	Number	REO
Item 2(l)(4)	Accepted REO offer date. If a REO offer has been accepted, provide the date on which the REO sale amount was accepted.	Date	REO
Item 2(l)(5)	REO Original list date. Provide the original list date for the REO property.	Date	REO
Item 2(l)(6)	REO Original list price. Provide the amount of the original listing price for the REO.	Number	REO
Item 2(l)(7)	Actual REO sale closing date. If a REO sale is closed, provide the date of the closing of the REO sale.	Date	REO
Item 2(l)(8)	Gross liquidation proceeds. If a REO sale has closed, provide the gross amount due to the issuing entity as reported on Line 420 of the HUD-1 settlement statement.	Number	REO
Item 2(l)(9)	Net sales proceeds. If a REO sale has closed, provide the net proceeds received from the escrow closing (before servicer reimbursement).	Number	REO

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(l)(10)	Current monthly loss amount passed to issuing entity. Provide the cumulative loss amount passed through to the issuing entity during the current period, including subsequent loss adjustments and any forgiven principal as a result of a modification that is passed through to the issuing entity.	Number	REO
Item 2(l)(11)	Cumulative total loss amount passed to issuing entity. Provide the loss amount passed through to the issuing entity to date, including any forgiven principal as a result of a modification that is passed through to the issuing entity.	Number	REO
Item 2(l)(12)	Subsequent recovery amount. Provide the current period amount recovered subsequent to the initial gain/loss recognized at the time of liquidation.	Number	REO
Item 2(l)(13)	Eviction start date. If an eviction process has begun, provide the date on which the servicer initiates eviction of the obligor.	Date	REO
Item 2(l)(14)	Eviction completed date. If an eviction process has been completed, provide the date on which the court revoked legal possession of the property from the obligor.	Date	REO
Item 2(l)(15)	REO exit date. If a loan exited REO during the current period or first available subsequent period, provide the date on which the loan exited REO status.	Date	REO

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(l)(16)	REO exit reason. If a loan exited REO during the current period or first available subsequent period, indicate the code that describes the reason the loan exited REO status.	1 = REO Sale Completed 2 = Bankruptcy 3 = Loss Mitigation 4 = Litigation 5 = Rescinded 99 = Unknown	REO
Item 2(m)(1)(i)	Interest advanced. Provide the amount of interest advanced that is reimbursed to the servicer.	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(ii)	UPB at liquidation. Provide the amount of actual unpaid principal balance (UPB) at the time of liquidation.	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(iii)	Servicing fees claimed. Provide the amount of accrued servicing fees (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(iv)	Attorney fees claimed. Provide the amount of total attorney fees advanced by the servicer to be recovered (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(v)	Attorney cost claimed. Provide the amount of total attorney cost advanced by the servicer to be recovered (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(vi)	Property taxes claimed. Provide the amount of real property taxes advanced by the servicer to be recovered (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(m)(1)(vii)	Property maintenance. Provide the amount of total property maintenances such as lawn care, trash removal, snow removal, etc., (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(viii)	Insurance premiums claimed. Provide the amount of advances paid by the servicer for any type of insurance (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(ix)	Utility expenses claimed. Provide the amount of utilities advanced paid by the servicer (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(x)	Appraisals or BPO expenses claimed. Provide the amount of cost advanced by the servicer for appraisal and/or broker's professional opinion (BPO) expenses (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(xi)	Property inspection expenses claimed. Provide the amount of cost advanced by the servicer for property inspection expenses (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(xii)	Miscellaneous expenses claimed. Provide the amount of miscellaneous expenses advanced by the servicer that do not fit into any other category (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(m)(1)(xiii)	Pre-securitization servicing advances claimed. Provide the amount of unreimbursed advances by the servicer prior to the securitization of the deal (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(xiv)	REO management fees. If the loan is in REO, provide the amount of REO management fees (including auction fees).	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(xv)	Cash for keys/cash for deed. Provide the amount of the payment to the obligor or tenants in exchange for vacating the property, or the payment to the obligor to accelerate a deed-in-lieu process or complete a redemption period.	Number	Loss Claims on Liquidated Loans
Item 2(m)(1)(xvi)	Performance incentive fees. Provide the amount of payment to the servicer in exchange for carrying out a deed-in-lieu or short sale.	Number	Loss Claims on Liquidated Loans
Item 2(m)(2)(i)	Positive escrow balance. Provide the amount of escrow balance at the time of loss claim (report only if positive).	Number	Loss Recovery on Liquidated Loans
Item 2(m)(2)(ii)	Suspense balance. Provide the total dollar amount held in suspense at the time of liquidation.	Number	Loss Recovery on Liquidated Loans
Item 2(m)(2)(iii)	Hazard claims proceeds. Provide the amount of hazard loss proceeds collected.	Number	Loss Recovery on Liquidated Loans
Item 2(m)(2)(iv)	Pool insurance claim proceeds. Provide the amount of pool claim proceeds collected.	Number	Loss Recovery on Liquidated Loans

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(m)(2)(v)	Private mortgage insurance claim proceeds. Provide the amount of private mortgage insurance claim proceeds collected.	Number	Loss Recovery on Liquidated Loans
Item 2(m)(2)(vi)	Property tax refunds. Provide the amount of property tax refunds collected.	Number	Loss Recovery on Liquidated Loans
Item 2(m)(2)(vii)	Insurance refunds. Provide the amount of insurance premium refunds collected.	Number	Loss Recovery on Liquidated Loans
Item 2(m)(3)	Bankruptcy loss amount. Provide the amount of any Realized Loss resulting from a deficient valuation or debt service reduction.	Number	Loss Recovery on Liquidated Loans
Item 2(m)(4)	Special hazard loss amount. Provide the amount of any realized loss suffered by a mortgaged property that is classified as a special hazard in the governing documents.	Number	Loss Recovery on Liquidated Loans
Item 2(n)(1)	MI claim filed date. Provide the date on which the servicer filed an MI claim.	Date	Mortgage Insurance Claims
Item 2(n)(2)	MI claim amount. Provide the amount of the MI claim filed by the servicer.	Number	Mortgage Insurance Claims
Item 2(n)(3)	MI paid date. If a MI claim has been paid, provide the date on which the MI company paid the MI claim.	Date	Mortgage Insurance Claims
Item 2(n)(4)	MI claim paid amount. If a MI claim has been decided, provide the amount of the claim paid by the MI company.	Number	Mortgage Insurance Claims
Item 2(n)(5)	MI claim denied/rescinded date. If a MI claim has been denied or rescinded, provide the final MI denial date after all servicer appeals.	Date	Mortgage Insurance Claims

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 2(n)(6)	Marketable title transferred to MI date. If the deed of a property has been sent to the MI company, provide the date of actual title conveyance to the MI company.	Date	Mortgage Insurance Claims

Table 13. Schedule L-D Item 3. Commercial mortgages item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(a)(1)	Current remaining term. Provide the current number of properties which serve as mortgage collateral for the loan.	Number	General Information
Item 3(a)(2)	Number of properties. Provide the current number of properties which serve as mortgage collateral for the loan.	Number	General Information
Item 3(a)(3)	Current hyper-amortizing date. Provide the current anticipated repayment date, after which principal and interest may amortize at an accelerated rate, and/or interest expense to mortgagor increases substantially as per the loan documents.	Date	ARM
Item 3(a)(4)(i)	Rate at next reset. Provide the annualized gross interest rate that will be used to determine the next scheduled interest payment.	%	ARM
Item 3(a)(4)(ii)	Next interest rate change date. Provide the next date that the interest rate is scheduled to change.	Date	ARM
Item 3(a)(4)(iii)	Payment at next reset. Provide the principal and interest payment due after the next scheduled interest rate change.	Number	ARM
Item 3(a)(4)(iv)	Next payment change date. Provide the next date that the amount of scheduled principal and/or interest is scheduled to change.	Date	ARM
Item 3(a)(5)	Negative amortization/deferred interest capitalized amount. Indicate the amount for the current reporting period that represents negative amortization or deferred interest that is added to the principal balance.	Number	Negative Amortization
Item 3(a)(5)(i)	Cumulative deferred interest. Indicate the cumulative deferred interest for the current and prior reporting cycles net of any deferred interest collected.	Number	Negative Amortization

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(a)(5)(ii)	Deferred interest collected. Indicate the amount of deferred interest collected in the current reporting period.	Number	Negative Amortization
Item 3(b)	Workout strategy. Indicate the code that best describes the steps being taken to resolve the loan.	1=Modification 2=Foreclosure 3=Bankruptcy 4=Extension 5=Note sale 6=DPO 7=REO 8=Resolved 9=Pending return to master servicer 10=Deed-in-lieu of foreclosure 11=Full payoff 12=Reps and warranties 13=To be determined 98=Other	Loss Mitigation
Item 3(c)(1)	Date of last modification. Provide the date of the most recent modification. A modification includes any material change to the loan document.	Date	Modification
Item 3(c)(2)	Modification note rate. Indicate the new initial interest rate (post-modification).	%	Modification
Item 3(c)(3)	Rate at next reset. Provide the annualized gross interest rate that will be used to determine the next scheduled interest payment.	%	Modification
Item 3(c)(4)	Modified payment amount. Indicate the new initial principal and interest payment amount (post-modification).	Number	Modification
Item 3(c)(5)	Modified maturity date. Indicate the new maturity date of the loan (post modification).	Date	Modification
Item 3(c)(6)	Modified amortization period. Indicate the new amortization period in months (post-modification).	Date	Modification

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(d)(1)	Property name. Provide the name of the property which serves as mortgage collateral. If the property has been defeased, then populate with "defeased."	Text	General Information
Item 3(d)(2)	Property geographic location. Provide the zip code the location of the property.	Number	General Information
Item 3(d)(3)	Property Type. Indicate the code that describes how the property is being used.	1 = Multifamily 2 = Retail 3 = HealthCare 4 = Industrial 5 = Warehouse 6 = Mobile home park 7 = Office 8 = Mixed use 9 = Lodging 10 = Self storage 11 = Securities 12 = Cooperative housing 98 = Other	General Information
Item 3(d)(4)	Net rentable square feet. Provide the net rentable square feet area of a property.	Number	General Information
Item 3(d)(5)	Number of units/beds/rooms. Provide the number of units/beds/rooms of a property.	Number	General Information
Item 3(d)(6)	Year built. Provide the year that the property was built.	Number	General Information
Item 3(d)(7)	Valuation amount. The valuation amount of the property as of the valuation date.	Number	General Information
Item 3(d)(8)	Valuation date. The date the valuation amount was determined.	Date	General Information
Item 3(d)(9)	Physical occupancy. Provide the percentage of rentable space occupied by tenants. Should be derived from a rent roll or other document indicating occupancy.	%	General Information

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(d)(10)	Property status. Specify the code that describes the status of the property.	1=In foreclosure 2=REO 3=Defeased 4=Partial release 5=Substituted 6=Same as at contribution	General Information
Item 3(d)(11)	Defeasance status. Indicate the code that describes the defeasance status. A defeasance option is when an obligor may substitute other income-producing property for the real property without pre-paying the existing loan.	1=Portion of loan previously defeased 2=Full defeasance 3=No defeasance occurred 4=Defeasance not allowable	General Information
Item 3(d)(12)(i)	Financial reporting begin date. Specify the beginning date of the financial information presented in response to this subparagraph.	Date	General Information
Item 3(d)(12)(ii)	Financial period reporting end date. Specify the ended date of the financial information presented in response to this subparagraph.	Date	General Information
Item 3(d)(12)(iii)	Revenue. Provide the total underwritten revenue from all sources for a property.	Number	General Information
Item 3(d)(12)(iv)	Operating expenses. Provide the total operating expenses. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance.	Number	General Information
Item 3(d)(12)(v)	Net operating income. Provide the total revenues less total underwritten operating expenses prior to application of mortgage payments and capital items for all properties.	Number	General Information
Item 3(d)(12)(vi)	Net cash flow. Provide the total revenue less the total operating expenses and capital costs.	Number	General Information
Item 3(d)(12)(vii)	NOI/NCF indicator. Indicate the code that best describes how net operating income and net cash flow were calculated.	1=Calculated using CMSA Standard 2=Calculated using a definition given in the pooling and servicing agreement 3=Calculated using the underwriting method	General Information

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(d)(12)(viii)	DSCR (NOI). Provide the ratio of net operating income to debt service during the reporting period.	Number	General Information
Item 3(d)(12)(ix)	DSCR (NCF). Provide the ratio of net cash flow to debt service during the reporting period.	Number	General Information
Item 3(d)(12)(x)	DSCR indicator. Indicate the code that describes how the debt service coverage ratio was calculated.	1 = Average - Not all properties received financials, servicer allocates debt service only to properties where financial statements are received. 2 = Consolidated - All properties reported on one "rolled up" financial statement from the borrower 3 = Full - All financial statements collected for all properties 4 = None collected - No financials were received 5 = Partial - Not all properties received financial statements, servicer to leave empty 6 = "Worst Case" - Not all properties received financial statements, servicer allocates 100% of debt service to all properties where financial statements are received.	General Information
Item 3(d)(13)	Largest tenant. Identify the tenant that leases the largest square feet of the property (based on the most recent annual lease rollover review).	Text	General Information
Item 3(d)(14)	Square feet of largest tenant. Provide total square feet lease by the largest tenant.	Number	General Information
Item 3(d)(15)	Lease expiration of largest tenant. Provide the date of lease expiration for the largest tenant.	Date	General Information
Item 3(d)(16)	Second largest tenant. Identify the tenant that leases the second largest square feet of the property (based on the most recent annual lease rollover review).	Text	General Information

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 3(d)(17)	Square feet of second largest tenant. Provide total square feet leased by the second largest tenant.	Number	General Information
Item 3(d)(18)	Lease expiration of second largest tenant. Provide the date of lease expiration for the second largest tenant.	Date	General Information
Item 3(d)(19)	Third largest tenant. Identify the tenant that lease the third largest square feet of the property (based on the most recent annual lease rollover review).	Text	General Information
Item 3(d)(20)	Square feet of third largest tenant. Provide total square feet leased by the third largest tenant.	Amount	General Information
Item 3(d)(21)	Lease expiration of third largest tenant. Provide the date of lease expiration for the third largest tenant.	Date	General Information

Table 14. Schedule L-D Item 4. Automobile loan item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 4(a)	Subvented. Indicate yes or no as the whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the obligor.	1=Yes 2=No	General Information
Item 4(b)	Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.	Number	General Information
Item 4(c)	Repossessed. Indicate yes or no whether the vehicle has been repossessed. If the vehicle has been repossessed, provide the following additional information.	1=Yes 2=No	General Information
Item 4(c)(1)	Repossession proceeds. Provide the total amount of proceeds received on disposition.	Number	Repossession
Item 4(c)(2)	Repossession fees. Provide the amount of fees paid in connection with the repossession and disposition of the vehicle.	Number	Repossession

Table 15. Schedule L-D Item 5. Automobile lease item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 5(a)	Subvented. Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financial for the obligor.	1=Yes 2=No	General Information
Item 5(b)	Updated residual value. If the residual value of the vehicle was updated during the reporting period, provide the updated value.	Number	General Information
Item 5(c)	Source of update residual value. Specify the code that describes the source of the residual value.	1 = Black Book 2 = Automotive lease guide 98 = Other	General Information
Item 5(d)	Termination indicator. Specify the code that describes the reason why the lease was terminated.	1 = Scheduled termination 2 = Early termination due to bankruptcy 3 = Involuntary repossession 4 = Voluntary repossession 5 = Insurance payoff 6 = Customer payoff 7 = Dealer purchase 98 = Other	Termination
Item 5(e)	Excess wear and tear received. Specify the amount of excess wear and tear fees received upon return of the vehicle.	Number	Termination
Item 5(f)	Excess mileage received. Specify the amount of excess mileage fees received upon return of the vehicle.	Number	Termination
Item 5(g)	Sales proceeds. If the vehicle has been sold, specify the amount of the proceeds received on sale of the vehicle.	Number	Termination
Item 5(h)	Lease term extension indicator. Indicate whether the lease term has been extended from the original term.	1=Yes 2=No	General Information
Item 5(i)	Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.	Number	Losses

Table 16. Schedule L-D Item 6. Equipment loan item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 6(a)	Liquidation proceeds. If the loan has been liquidated. Specify the amount of proceeds received.	Number	Liquidated Asset
Item 6(b)	Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.	Number	Charged-off

Table 17. Schedule L-D Item 7. Equipment lease item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 7(a)	Updated residual value. If the residual value of the equipment was updated during the reporting period, provide the updated value.	Number	General Information
Item 7(b)	Source of updated residual value. Specify the code that describes the source of the residual value.	1 = Internal 2 = External consultant 3 = Other	General Information
Item 7(c)	Termination indicator. Specify the code that describes the reason why the lease was terminated	1 = Scheduled termination 2 = Early termination due to bankruptcy 3 = Involuntary repossession 4 = Voluntary repossession 5 – Insurance payoff 6 = Customer payoff 7 = Dealer purchase 98 = Other	General Information
Item 7(d)	Liquidation proceeds. If the asset has been liquidated, specify the amount of proceeds received.	Number	Liquidated Asset
Item 7(e)	Amounts recovered. If the asset was previously charged-off, specify any amounts received after charge-off.	Number	Liquidated Asset

Table 18. Schedule L-D Item 8. Student loan item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 8(a)	Current obligor payment status. Indicate the code describing whether the obligor payment status is in-school, grace period, deferral, forbearance or repayment.	1 = In-school 2 = Grace period 3 = Deferral 4 = Forbearance 5 = Repayment	General Information
Item 8(b)	Capitalized interest. Specify the amount of interest accrued to be capitalized during the reporting period.	Number	General Information
Item 8(c)(1)	Principal collections from guarantor. Provide the amount of principal received from the guarantor during this reporting period.	Number	Guarantor Information
Item 8(c)(2)	Interest claims received from guarantor. Provide the amount of interest claims received from guarantor during this reporting period.	Number	Guarantor Information
Item 8(c)(3)	Claim in process. Indicate yes or no whether a claim is in process.	1=Yes 2=No	Guarantor Information
Item 8(c)(4)	Claim outcome. Indicate yes or no whether a claim has been rejected.	1=Yes 2=No	Guarantor Information

Table 19. Schedule L-D Item 9. Floorplan financing item requirements.

Proposed Item number	Proposed Title and Definition	Proposed Response	Proposed Category of Information
Item 9(a)	Liquidation proceeds. If the loan has been liquidated, specify the amount of proceeds received.	Number	Liquidated Asset
Item 9(b)	Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.	Number	Liquidated Asset
Item 9(c)(1)	Credit score type. Specify the type of the standardized credit score used to evaluate the obligor.	Text	General Information
Item 9(c)(2)	Most recent credit score. Provide the most recent credit score of the obligor.	Text or Number	General Information
Item 9(c)(3)	Most recent credit score date. Provide the date of the most recently obtained credit score of the obligor.	Date	General Information

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61897 / April 13, 2010

Administrative Proceeding File No. 3-12678

In the Matter of	
Haidar Capital Management, LLC, Haidar Capital Advisors, LLC, and Said N. Haidar,	Notice of Proposed Plan of Distribution and Opportunity for Comment
Respondents.	

Notice is hereby given, pursuant to Rule 1103 of the Securities and Exchange Commission's ("Commission") Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. §201.1103, that the Division of Enforcement has filed with the Commission the proposed plan ("Distribution Plan") for the distribution of monies in *In the Matter of Haidar Capital Management, LLC, et al.* The Commission issued an Order Instituting Public Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order pursuant to Section 8A of the Securities Act of 1933, Sections 203(e) and (f) of the Investment Advisers Act of 1940, and Sections 9(b) and (d) of the Investment Company Act of 1940 as to the Respondents, Administrative Proceeding File No. 3-12678 on July 6, 2007 (Securities Act Rel. No. 8820) (the "Order").

OPPORTUNITY FOR COMMENT

Pursuant to this Notice, all interested parties are advised that they may obtain a copy of the Distribution Plan from the Commission's public website, http://www.sec.gov, or by submitting a written request to Stephen Webster, Assistant Regional Director, United States Securities and Exchange Commission, 801 Cherry Street, 19th Floor, Fort Worth, Texas, 76102. Further, all persons desiring to comment on the Distribution Plan may submit their comments, in writing, no later than thirty days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission's Internet comment form (http://www.sec.gov/litigation/admin.shtml); or
3. by sending an e-mail to rule-comments@sec.gov.

Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Number 3-12678" in the subject line. Comments received will be available to the public. Persons should only submit information that they wish to make publicly available.

THE DISTRIBUTION PLAN

The Distribution Plan provides for distribution of disgorgement in the amount of $3,300,000, prejudgment interest in the amount of $1,180,000, and penalty in the amount of $100,000, paid by the Respondents. The proposed plan provides for distribution of the monies among the mutual funds that had marketing arrangements with the Respondents that are the subject of the Order during the period from April 2001 through September 2003; or, in the case of mutual funds that have been merged into other mutual funds, to their successors in interest. Accordingly, the funds are not being distributed according to a claims-made process.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61896 / April 13, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 3014 / April 13, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13859

In the Matter of

HABERMAN MANAGEMENT CORP.
HABERMAN VALUE FUND, L.P.
ROSS L. HABERMAN

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e), 203(f) and 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), against Ross L. Haberman ("Haberman"), Haberman Management Corp. ("HMC") and Haberman Value Fund, L.P. ("HVF") (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the

purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

1. Haberman owns and controls HMC and is the general partner of HVF. From at least January 2004 to March 2009, Haberman misrepresented the true beneficial owner of certain accounts in connection with several conversions of bank ownership. In order to participate in financial institutions' conversions from being mutually owned to a stock form of ownership, Haberman maintained bank accounts and certificates of deposits at more than two hundred institutions around the country. He opened and maintained several dozen of these accounts in his own name but deposited HVF's assets in those accounts. When several of those financial institutions converted from mutual to stock ownership, Haberman falsely represented to those institutions that he would be the beneficial owner of the stock when in fact HVF was to be the beneficial owner, or he misrepresented his residency. These misrepresentations deprived other possible participants in the stock offerings of the opportunity to obtain the shares distributed to Haberman. Haberman also misappropriated HVF assets in connection with certain of these offerings and made related false entries on HVF's books and records.

Respondents

2. **Haberman Management Corp.**, a Delaware corporation with offices in New York, N.Y., is wholly owned by Haberman. It was registered with the Commission as an investment adviser from January 2006 until March 2010. From its inception in 1992, it provided investment advice to, and made investment decisions for, HVF. HMC received fees from HVF for providing investment advice to HVF.

3. **Haberman Value Fund, L.P.**, a Delaware limited partnership, was founded in March 1992 by Haberman, its only general partner. As of December 31, 2008, HVF had 63 limited partners and total assets of approximately $30 million.

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[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. **Ross L. Haberman**, age 50, resides in New York. Haberman is the President and sole owner of HMC and the only general partner of HVF.

Background

5. HVF's investment strategy included participation in the public offerings of mutually-owned financial institutions such as savings and loan associations and savings banks. When these institutions convert from being mutually owned, typically by depositors, to a stock form of ownership, depositors are generally given priority in the allocation of the opportunities to purchase shares in the institution's initial public offering. These priority subscription rights allow depositors to purchase up to a set amount of shares in the initial offering, and potentially to realize a significant profit when shares become available to the public.

6. To effectuate this investment strategy, from at least January 2004 through at least March 2009, Haberman deposited HVF funds in hundreds of certificates of deposit and savings accounts at mutually-owned financial institutions throughout the country. On at least 70 occasions, he made those deposits into accounts he had opened in his own name rather than in HVF's name, most often when the financial institution refused to open an account in the name of the fund. Although these accounts were maintained in Haberman's name, their assets were included on HVF's balance sheet and in inventories of fund assets. As of June 30, 2008 and June 30, 2009, $729,000 and $714,000 of HVF funds, respectively, were deposited in accounts held in Haberman's name.

Misrepresentations in Connection with Bank Conversions

7. When the financial institutions converted from mutual to stock ownership, Haberman completed and signed stock subscription forms, either on his own behalf, in the name of HVF, or both. On a number of occasions, Haberman requested the maximum number of shares available per subscriber. In making some of these requests, Haberman certified to the financial institutions that he would be the beneficial owner of the stock issued by the financial institutions, when, in fact, HVF was to be the beneficial owner. Once he was allocated shares in the conversion, Haberman used the HVF funds held in his name to purchase bank shares in his name. He usually then transferred ownership of the shares (or proceeds from their sale) to HVF. HVF realized $191,943 in profits from this scheme. By misrepresenting who the beneficial owner of the stock would be, HMC, HVF and Haberman deprived other potential participants in the financial institutions' conversions of opportunities to purchase stock in those conversions. Accordingly, HMC, HVF and Haberman willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

8. On at least four occasions, Haberman, through his control of HMC, misappropriated HVF assets by using HVF funds to purchase shares of banks converting from mutual to stock ownership and then retaining some or all of the proceeds from the sale of those shares. Haberman realized profits of $72,869 from these activities. In 2009, he reimbursed HVF for this amount plus interest, for a total of $87,453. When he misappropriated HVF assets, Haberman and HMC willfully violated Section 10(b) of the Exchange Act and Rule 10b-5

thereunder. Haberman and HMC also willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

9. Haberman sometimes also maintained accounts using his own money at the same financial institutions where HVF accounts were held. Usually he opened and maintained these accounts in his or his wife's name. On at least eleven occasions, however, he enlisted the assistance of acquaintances or family members to open accounts at financial institutions where he did not meet residency requirements. In those situations he would provide the individual with money to open up a joint account or CD in both his and the individual's name using the individual's home address. When the financial institutions converted to stock ownership, he sent in the completed stock subscription agreement in his name using the address of the other individual on the account. Haberman realized $91,317 in profits from this scheme. By engaging in these activities, Haberman deprived other potential participants in the financial institutions' conversions of opportunities to purchase stock in those conversions. Accordingly, he willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Misrepresentation of Performance Returns

10. Haberman and HMC misrepresented HVF's performance in documents disseminated to limited partners disclosing HVF's performance for the second quarter of 2008. Haberman and HMC reported HVF's "Average 12 Month Rolling Return" was 11.86% when, in fact, it was negative 0.17%. The 11.86% figure was HVF's average 16 year annual return, not its "Average 12 Month Rolling Return." Accordingly, HMC and Haberman willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which, in pertinent part, prohibit an investment adviser to a pooled vehicle from making any false or misleading material statements of facts to any investor or prospective investor in the pooled vehicle.

Violations of Custody and Books and Records Rules

11. From at least January 2006, Haberman and HMC represented in a private placement memorandum disseminated to limited partners and potential limited partners of HVF that HMC would maintain HVF's funds and securities using "qualified custodians" as required by Rule 206(4)-2 under the Advisers Act. As discussed above, contrary to the provisions of Rule 206(4)-2, HMC and Haberman maintained custody of HVF certificates of deposit that were deposited under Haberman's name but not as agent or trustee for HVF. They also failed to maintain custody of certain certificated securities with a qualified custodian. Therefore, HMC willfully violated and Haberman willfully aided, abetted and caused HMC's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, which require that an investment adviser with custody of client funds or securities to maintain those funds and securities with a qualified custodian in accounts for clients in the clients' names or in the adviser's name as agent or trustee for the clients.

12. Haberman made several false entries on HVF's books to reflect the transactions in which he misappropriated fund assets. For example, in one instance, Haberman incorrectly labeled his repayment of money owed to HVF as a "refund" when it should have been recorded

as a loan. Haberman also listed on HVF's books the payment to HVF as "interest" when in fact it was a partial payment of proceeds from the sale of shares which belonged to HVF. In another instance Haberman listed a payment on HVF's books under the name of the wrong bank. He also made misrepresentations on stock subscription agreements as described above, failed to maintain memoranda of orders for the purchase and sale of securities, powers of attorney and other evidences of the granting of discretionary authority to him, and failed to maintain documents necessary to form the basis of or demonstrate the calculation of HVF's performance. Therefore, from at least January 2006, HMC willfully violated, and Haberman willfully aided, abetted and caused HMC's violations of, Section 204 of the Advisers Act, and Rules 204-2(a)(1), 204-2(a)(3), 204-2(a)(9), and 204-2(a)(16) promulgated thereunder, which require that investment advisers registered with the Commission maintain and preserve certain books and records. Rule 204-2(a)(1) requires that registered investment advisers "make and keep true, accurate and current . . . a journal or journals . . . and any other records of original entry, forming the basis of entries in any ledger." Rule 204-2(a)(3) requires that registered investment advisers "make and keep true, accurate and current . . . a memorandum of each order given by the investment adviser for the purchase or sale of any security . . . ." Rule 204-2(a)(9) requires that registered investment advisers "make and keep true, accurate and current . . . powers of attorney and other evidences of the granting of any discretionary authority by the client to the investment adviser . . . ." Rule 204-2(a)(16) requires that registered investment advisers "make and keep true, accurate and current . . . all accounts, books . . . and other records or documents that are necessary to form the basis for . . . the performance or rate of return of any or all managed accounts . . . ."

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 21C of the Exchange Act, and Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent HMC cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and Sections 204, 206(1), 206(2), and 206(4) of the Advisers Act and Rules 204-2, 206(4)-2 and 206(4)-8 promulgated thereunder;

B. Respondent Haberman cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and Sections 204, 206(1), 206(2) and 206(4) of the Advisers Act, and Rules 204-2, 206(4)-2, and 206(4)-8 promulgated thereunder;

C. Respondent HMC is censured;

D. Respondent Haberman be, and hereby is, barred from association with any investment adviser with the right to reapply for association after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission. Any reapplication for association by Respondent Haberman will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Respondent Haberman, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order;

E. Respondent HVF shall, within thirty days of the entry of this Order, pay disgorgement of $191,943 and prejudgment interest of $71,500 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover of a letter that identifies Haberman Value Fund, L.P. as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Laura B. Josephs, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5010A;

F. Respondent Haberman shall, within thirty days of the entry of this Order, pay disgorgement of $91,317 and prejudgment interest of $27,950 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be (A) made by United States postal money order, certified check, bank cashier's check or bank money order, (B) made payable to the Securities and Exchange Commission, (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312, and (D) submitted under cover of a letter that identifies Ross L. Haberman as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Laura B. Josephs, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5010A; and

G. Respondent Haberman shall, within thirty days of the entry of this Order, pay a civil money penalty in the amount of $100,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Ross L. Haberman as a Respondent in these proceedings, the file number of

these proceedings, a copy of which cover letter and money order or check shall be sent to Laura B. Josephs, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5010A.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 3015 / April 13, 2010

Admin. Proc. File No. 3-9599

In the Matter of JOHN GARDNER BLACK and DEVON CAPITAL MANAGEMENT 1446 Centre Line Road Warriors Mark, Pennsylvania 16877	ORDER DENYING IN PART AND GRANTING IN PART PETITION TO SET ASIDE BAR ORDER

John Gardner Black and Devon Capital Management ("Petitioners") have requested that we vacate our 1998 Order Instituting Proceedings, Making Findings and Imposing Remedial Sanctions ("Settled Order") which revoked Devon Capital's registration as an investment adviser and barred Black from associating with any broker, dealer, municipal securities dealer, investment adviser, or investment company.[1] Petitioners assert that "[t]he factual basis for the proceeding no longer constitute violations" of the provisions alleged. The Division of Enforcement opposes Petitioners' request. For the reasons discussed below, we have determined to deny the requested relief in part and to grant it in part.

I.

On December 12, 1997, Petitioners settled civil injunctive proceedings by agreeing to be enjoined from certain violations of the antifraud provisions of the securities laws.[2] The injunctive complaint alleged that Black, acting through two entities he owned and controlled,

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[1] *John Gardner Black*, Investment Advisers Act Rel. No. 1720 (May 4, 1998), 67 SEC Docket 357.

[2] Although neither the injunctive complaint, *SEC v. Black*, 97-CV-2257 (W.D. Pa. Sep. 26, 1997), nor the consent injunction, *SEC v. Black*, 97-CV-2257 (W.D. Pa. Dec. 12, 1997), nor a related disgorgement order, *SEC v. Black*, 97-CV-2257 (W.D. Pa. Apr. 29, 1998), is in the record, we take official notice of them pursuant to Commission Rule of Practice 323. 17 C.F.R. § 201.323.

Devon Capital and Financial Management Sciences, Inc. ("FMS"),[3] "perpetrated . . . an on-going fraudulent scheme" which "resulted in the loss of millions of dollars of municipal bond proceeds invested by school districts throughout western and central Pennsylvania." According to the complaint, Devon Capital represented to these school districts that its investment products would pay a "specified rate of return to clients over a fixed period" and were "fully protected or collateralized by a pool of securities equaling the amount of the client's principal investments." In fact, the complaint asserts, petitioners "misrepresented . . . the value of the assets held as collateral, overstating the actual value of those assets by approximately $71 million." In addition, the complaint alleged that Petitioners had "misappropriated a total of approximately $2 million" of client funds "to pay personal and business expenses."

Petitioners, without admitting or denying the allegations in the complaint, consented to the entry of the district court's order enjoining them from future violations of the antifraud provisions alleged in the complaint. In entering this order, the district court ruled that "there is sufficient basis herein for the entry of this Final Judgment" and prohibited Petitioners from "contest[ing] the allegations in the Complaint" in connection with the subsequent determination of the appropriate disgorgement and civil penalties amount. Black subsequently consented to a court order requiring him to pay disgorgement of $3,632,031 (plus $326,883 in prejudgment interest), and a civil money penalty of $500,000.[4]

On May 4, 1998, Petitioners consented to the entry of the Settled Order, in anticipation of administrative proceedings, and without admitting or denying the findings contained therein. In issuing the Settled Order, we found that Petitioners had been enjoined and that the complaint in the injunctive proceeding alleged that they had made material misrepresentations and omissions, resulting in millions of dollars in losses to their clients, and that they had "benefitted financially from their actions."

In 2000, subsequent to the issuance of the Settled Order, Black pled guilty to twenty-one counts of investment adviser fraud, three counts of mail fraud, and two counts of making false statements. It appears that these criminal proceedings arose from the same conduct that provided the basis for the earlier injunctive proceeding. In connection with the criminal proceeding, Black stipulated that he, through FMS, represented to clients and prospective clients that he would "secure or collateralize the investments of the client with securities having a fair market value

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[3] FMS was a defendant in the injunctive action but is not a party to the instant petition.

[4] The Division represents that "[t]he Commission's records indicate that only $1,500 has been paid" of the disgorgement, interest and civil penalty assessed against him; Black maintains that he has paid $30,000.

equal to or greater than 100% of the clients' investments . . . ."[5] Black also stipulated that "[a]t no material time as of January 1, 1995, did the collateral accounts hold collateral at a ratio of 100% of the fair market value of client funds invested . . . ."[6] The Stipulation provided further that, even though Black used collateralized mortgage obligations ("CMOs") to provide the promised collateral for the clients' accounts, he "failed to disclose that client funds had . . . been invested in [CMOs]" when clients or their auditors asked him if there were CMOs in their accounts.[7] The Division represents that Black was sentenced to forty-one months' imprisonment, three years' supervised release, and was ordered to pay $61,300,000 in restitution.[8]

II.

Petitioners argue in support of their requested relief that the Commission and the Financial Accounting Standards Board ("FASB") have revised the applicable valuation method for securities of the type at issue in this case, so that the Commission's approach is now consistent with that used by Petitioners during the relevant period, between 1995 and 1997. According to Petitioners, "[h]ad the Commission used the current fair value methods now required, the fair value of the CMO derived using present value analysis would have supported the valuations supplied to clients in monthly statements." In light of this change, Petitioners contend, "there can no longer be a public purpose nor [sic] in the public's interest to enforce the [Commission's] orders."

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[5] As part of his guilty plea, Black signed a "Joint Stipulated Factual Basis Pursuant to FRCRP 11(f)" ("Stipulation"). *United States v. Black*, 99-CR-203 (W.D. Pa. Jan. 24, 2000). There is an appendix attached to the Stipulation listing all the counts of the indictment to which Black pled guilty. Petitioners attached a copy of the Stipulation to their reply.

[6] Black further stipulated that "[t]he solicitation materials . . . at times stated to potential clients that their funds would not be pooled." In fact, however, according to the Stipulation, "[i]n January, 1996, the collateral accounts were merged."

[7] Black stipulated that the clients' inquiries about CMOs were prompted by an August 1996 letter to Pennsylvania school districts from Pennsylvania's Auditor General raising "grave concerns" about investing in CMOs.

[8] Black's conviction could have provided an independent basis for administrative sanctions under the Advisers Act. 15 U.S.C. §§ 80b-3(e) and (f). The Settled Order, however, precedes Black's conviction and reflects only the entry of the consent injunction against him. According to information from the Federal Bureau of Prisons website, John Gardner Black, inmate register number 10984-0068, was released from prison on June 13, 2003. U.S. Fed. Bur. of Prisons, *Inmate Locator*, http://www.bop.gov/iloc2/LocateInmate.jsp. The extent to which Black paid restitution is unclear.

The Division argues in response that Petitioners are making a collateral attack on the injunction to which they agreed. According to the Division, there is "no value in re-opening these proceedings simply to entertain conclusory assertions regarding Black and Devon [Capital]'s valuation [of the securities at issue] more than a decade ago, assertions that are unsupported by any evidence whatsoever and are similar to those rejected on other occasions by the courts." The Division argues further that Petitioners take too narrow a view of the conduct at issue in the injunctive proceeding, specifically ignoring the fraud in connection with the marketing and management of their clients' funds as alleged in the injunctive complaint. The Division argues in conclusion that Petitioners have not "demonstrated the compelling facts or circumstances that would support a grant of relief."

III.

As noted most recently in *Kenneth W. Haver, CPA*,[9] we have a "strong interest" in the finality of our settlement orders.[10] In *Haver*, the petitioner sought reconsideration of a Commission order suspending him from practicing as an accountant before the Commission. The order had been entered with Haver's consent, in settlement of administrative proceedings that were brought based on Haver's consent to an injunction against future violations of the antifraud provisions of the securities laws. Haver sought relief because he had recently obtained access, in a separate class action, to "compelling new evidence" that, according to Haver, raised doubts about whether the allegations made in the underlying injunctive proceeding were true.

In rejecting Haver's petition, we noted that he "misconceive[d] the basis for our suspension."[11] Our decision was based not on any finding of violation but "on the district court's injunction and Haver's offer of settlement." We held that Haver, in consenting to the injunction,

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[9] *Kenneth W. Haver, CPA*, Securities Exchange Act Rel. No. 54824 (Nov. 28, 2006), 89 SEC Docket 1237.

[10] "Public policy considerations favor the expeditious disposition of litigation, and a respondent cannot be permitted to [follow] one course of action and, upon an unfavorable [result], to try another course of action." *Id.* at 1240 n.11 (quoting with indicated alterations *David T. Fleischman*, 43 S.E.C. 518, 522 (1967) (finding that "the failure of a respondent to testify and adduce available evidence to meet the charges against him . . . does not entitle him to have the proceedings reopened after the issuance of an adverse decision")). Appellate courts have found that "[i]f sanctioned parties easily are able to reopen consent decrees years later, the SEC would have little incentive to enter into such agreements. There would always remain open the possibility of litigation on the merits at some time in the distant future when memories have faded and records have been destroyed." *Haver*, 89 SEC Docket at 1241 (quoting *Miller v. SEC*, 998 F.2d 62, 65 (2d Cir. 1993) (affirming Commission order denying a petition to set aside a censure imposed with respondent's consent)).

[11] *Id.* at 1241.

was "presumed . . . to have been enjoined by reason of the misconduct alleged in the complaint."[12] Because "follow on" administrative proceedings presume that the allegations of the injunctive complaint are true, we did not, and were not required to, make any findings of misconduct. Consequently, because we made no misconduct findings in sanctioning Haver, there was no basis for considering the evidence that, Haver claimed, refuted the allegations made in the underlying injunctive proceeding.

Similarly, there is no warrant here for considering Black's assertion that the basis for the injunctive action in this case is no longer valid. As we have repeatedly held, Petitioners, like any parties to a follow-on proceeding, are collaterally estopped from challenging before us the district court's findings or, as here, in a settled proceeding, the allegations made in the complaint in that proceeding.[13] Like Haver, Black settled the underlying injunctive action and remains bound by the allegations in the injunctive complaint unless and until the district court modifies the injunction.[14]

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[12] *Id.*

[13] *See, e.g., Michael Batterman*, 57 S.E.C. 1031, 1039 n.18 (2004) (precluding respondents from challenging in administrative proceeding findings of underlying injunctive action). We note that it is, and was in 1998, our policy "not to permit a defendant . . . to consent to a judgment . . . or order that imposes a sanction while denying the allegations in the complaint . . . ." 17 C.F.R. § 202.5. We reaffirmed our policy in *Marshall E. Melton*, 56 S.E.C. 695, 712 (2003). In any event, Black's collateral attack is not persuasive. Although Petitioners assert that changes in applicable securities valuation methods exonerate them, they do not provide any evidentiary support for their claim nor do the briefs explain what differences the use of the alternative valuation method would have made in the district court's evaluation of Petitioners' conduct.

[14] As we noted in *Haver*, Petitioners could request that the district court vacate the injunction against them on the grounds of "mistake" or "any other reason" pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 60(b) (entitled "Grounds for Relief from a Final Judgment, Order, or Proceeding"). We do not intend to suggest in this order any view regarding such a petition and observe that, it appears, Black's earlier efforts to persuade the courts to reconsider his case were unsuccessful. *See SEC v. Black*, 262 Fed. Appx. 360, 362 (3d Cir. 2008) (denying relief from consent injunction outside direct appeal process); *Black v. United States*, 84 Fed. Cl. 439, 440 (2008) (asserting civil claims against United States). Black has also attempted, again without success, to have his criminal sentence vacated, set aside, or corrected. *United States v. Black*, 2001 US Dist. LEXIS 26296 (W.D. Pa. 2001), *aff'd* 85 Fed. Appx. 875 (3d Cir. 2003) (unpublished).

Although we will not permit collateral attacks on court decisions providing the basis for follow-on proceedings, we have held that the sanctions imposed in such proceedings may be modified based on a consideration of certain factors related to the public interest involved, including

> the nature of the misconduct at issue in the underlying matter . . . the time that has passed since issuance of the administrative bar; the compliance record of, and any regulatory interest in, the petitioner since issuance of the administrative bar; the age and securities industry experience of the petitioner, and the extent to which the Commission has granted prior relief from the administrative bar; whether the petitioner has identified verifiable, unanticipated consequences of the bar; the position and persuasiveness of the Division of Enforcement, as expressed in response to the petition for relief; and whether there exists any other circumstance that would cause the requested relief from the administrative bar to be inconsistent with the public interest or the protection of investors.[15]

In applying these factors, it is our general policy that bars should "remain in place in the usual case and be removed only in compelling circumstances."[16]

Petitioners' arguments that the above-quoted factors favor the requested relief are misplaced. Petitioners focus on Black's asserted compliance with the bar and his thirty years of experience in the industry (before the bar) as reasons to grant the requested relief. We note first that for almost three and one-half years of the time following imposition of the bar, Black was imprisoned. As for the remainder of the time since the bar was imposed, we expect financial industry professionals to comply with our orders.[17]

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[15] *Haver*, 89 SEC Docket at 1240.

[16] *Id.* at 1240 n.9.

[17] In general, a clean disciplinary record is not determinative in our consideration of sanctions. *Marshall E. Melton*, 56 S.E.C. at 708 (imposing bar based on antifraud injunction despite clean disciplinary record); *Martin R. Kaiden*, 54 S.E.C. 194, 209 (1998) (same); *see also Robert Bruce Lohman*, 56 S.E.C. 573, 582 (2003) (imposing bar in insider-trading proceeding despite clean disciplinary record). Although the bar was imposed eleven years ago, we have held that periods substantially longer than eleven years are not unduly long in considering requests to modify sanctions. *See, e.g.*, *Stephen S. Wien*, 57 S.E.C. 162, 172 (2003) (stating that "[i]t has been twenty-one years since the consent order issued, a time frame that is not unduly lengthy and does not weigh significantly in favor of relief"); *Ciro Cozzolino* 57 S.E.C. 175, 183 (2003) (passage of twenty-nine years since bar "does not, standing alone, weigh significantly in favor of relief"); *Mark S. Parnass*, Exchange Act Rel. No. 50730 (Nov. 23, 2004), 84 SEC Docket 727, 729 (same); *see also Victor Teicher*, Exchange Act Rel. No. 58789 (Oct. 15, 2008), 94 SEC

(continued...)

Petitioners were enjoined in connection with a fraudulent scheme that lasted for two years and defrauded clients, mostly rural school districts investing the proceeds from bond issues, of millions of dollars. After Petitioners agreed to the sanctions imposed by the Settled Order, Black pled guilty to criminal charges arising, it appears, out of the same conduct which led to the injunction and was imprisoned and ordered to pay more than $61 million in restitution. Before now, Black has not requested or received from the Commission any relief from the sanctions to which he agreed. Black does not identify any unforseen consequences or hardship resulting from the sanctions and, indeed, represents that he has "no interest and is not planning on becoming involved in the investment advisory business again." Nor is there any evidence that Black, who exhibits no remorse for his actions, has learned from his misconduct or is unlikely to engage in future misconduct if permitted to re-enter the industry.[18]

In sum, we find that Petitioners have not identified any compelling circumstances to justify the requested modification of sanctions. Taking due account of our precedent and our policy not to allow collateral attacks on consent injunctions, we decline to vacate the revocation of Devon Capital's registration or the bar prohibiting Black's association with any investment adviser or investment company.

While we do not believe that circumstances generally favor modification of the sanctions agreed to in the Settled Order, we nevertheless have determined to vacate that portion of the order prohibiting Black from association with a broker, dealer, or municipal securities dealer. We do this in light of precedent issued subsequent to the Settled Order questioning the validity of so-called "collateral bars" such as those involved here.[19]

Accordingly, IT IS HEREBY ORDERED THAT the petition of Devon Capital Management, Inc. to vacate the revocation order entered against it on May 4, 1998, be, and it hereby is, DENIED; and it is further

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[17] (...continued)
Docket 10810, 10812 (stating "when an unqualified bar has been imposed, as is the case here, this 'evidences [our] conclusion that the public interest is served by **permanently** excluding the barred person from the securities industry . . . .'") (quoting *Unqualified Bar Orders*, Exchange Act Rel. No. 34720 (Sept. 13, 1994), 57 SEC Docket 1941, 1941 (emphasis in original)).

[18] We note in this connection that Black has paid very little of the amounts assessed against him by the district court in the injunctive proceeding. *See supra* note 4.

[19] *Victor Teicher v. SEC*, 177 F.3d 1016 (D.C. Cir. 1999) (vacating collateral bar); *see also Salim B. Lewis*, Exchange Act Rel. No. 51817 (Jun. 10, 2005), 85 SEC Docket 2472 (same); *Peter F. Comas*, Exchange Act Rel. No. 49894 (Jun. 18, 2004), 83 SEC Docket 251 (same).

ORDERED that the petition of John Gardner Black to vacate the bar order entered against him on May 4, 1998, as it applies to the bar from association with any investment adviser or investment company, be, and it hereby is, DENIED; and it is further

ORDERED that the bar order entered against John Gardner Black on May 4, 1998 be, and it hereby is, VACATED insofar as it bars John Gardner Black from association with any broker, dealer, or municipal securities dealer.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61906 / April 14, 2010

Administrative Proceeding
File No. 3-13860

In the Matter of the Application of DAGONG GLOBAL CREDIT RATING CO., LTD.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15E(a)(2)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934 AND NOTICE OF HEARING

Dagong Global Credit Rating Co., Ltd. ("Dagong"), a credit rating agency based in Beijing, China, submitted an application with the Securities and Exchange Commission ("Commission") for registration as a nationally recognized statistical rating organization ("NRSRO") pursuant to Section 15E(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17g-1 thereunder.

Pursuant to Section 15E(a)(2)(A) of the Exchange Act, not later than 90 days (or within such longer period as to which the applicant consents) after the application for registration is furnished to the Commission, the Commission shall, by order, either grant such registration or institute proceedings to determine whether such registration should be denied. Under Section 15E(a)(2)(C), the Commission shall grant registration as an NRSRO to an applicant if the Commission finds that the requirements of Section 15E of the Exchange Act are satisfied and unless the Commission finds (in which case the Commission shall deny such registration) that, among other things, if the applicant were so registered, its registration would be subject to suspension or revocation under Section 15E(d) of the Exchange Act.

If the Commission institutes proceedings to determine whether an application for registration should be denied, Section 15E(a)(2)(B)(i)(I) of the Exchange Act requires that the Commission shall include notice of the grounds for denial under consideration and an opportunity for a hearing. Section 15E(a)(2)(B)(i)(II) provides that the proceedings shall be concluded not later than 120 days after the date on which the application for registration is furnished to the Commission. The Commission may extend the time for conclusion of such proceedings, pursuant to Section 15E(a)(2)(B)(iii), for not longer than 90 days, if it finds good cause for such extension and publishes its reasons for such finding, or for such longer period as to which the applicant consents. Section 15E(a)(2)(B)(ii) provides that, at the conclusion of such proceedings, the Commission, by order, shall grant the application or deny the application for registration.

After furnishing its application on December 24, 2009, Dagong consented to two extensions of time for the Commission to act on the application. The first extension was for seven days and the second extension was fourteen additional days. Under Section 15E(a)(2)(B), the Commission is required to act on the application no later than April 14, 2010, unless further extensions are granted by Dagong.

Dagong has provided the following information in connection with its application to register as an NRSRO. Dagong is located in Beijing, China. Dagong has no physical presence in the United States, does not rate any U.S. companies, and has no U.S. persons subscribing to its ratings. When submitting certifications from companies that rely on its ratings for investment purposes, as required for registration, Dagong relied exclusively on companies located in China.

In addition, to date the Commission has been unable to determine whether, under local law requirements applicable to Dagong, Dagong would be able to comply with the provisions in Section 17 of the Exchange Act, and the rules thereunder, relating to making its books and records available for Commission examination, producing books and records to the Commission, and furnishing reports to the Commission.

Accordingly, pursuant to Section 15E(a)(2)(A)(ii) of the Exchange Act, the Commission is instituting proceedings to determine whether Dagong's application for registration as a nationally recognized statistical rating organization should be denied. In these proceedings, grounds for denial under consideration will include:

> (I) whether Dagong has a sufficient connection with U.S. interstate commerce to register as an NRSRO, and thereby invoke the regulatory and oversight authority of the Commission; and
>
> (II) whether Dagong's application for registration should be denied pursuant to Section 15E(a)(2)(C)(ii)(II) on the grounds that, if registered as an NRSRO, Dagong would be subject to having its registration suspended or revoked under Section 15E(d)(1) of the Exchange Act because, in light of requirements in its home jurisdiction, Dagong would be unable to comply with provisions of the U.S. securities laws and rules (an act identified in Section 15(b)(4)(D) of the Exchange Act), including, in particular, Section 17 of the Exchange Act and Rules 17g-2 and 17g-3 thereunder.

Given the nature of the issues raised in the application, the Commission is currently of the view that a hearing on the basis of written submissions will sufficiently allow the parties to address these issues.

Accordingly, IT IS ORDERED, that proceedings under Section 15E(a)(2)(A)(ii) of the Exchange Act be and hereby are instituted to determine whether the application of Dagong should be denied.

IT IS FURTHER ORDERED that a hearing shall be conducted on the basis of written submissions (and in accordance with the Commission's Rules of Practice, 17 C.F.R. §§201.100, et seq., except as otherwise provided) addressing issues of law or fact in dispute and legal

arguments supporting the parties' positions. Dagong and the interested divisions or offices of the Commission shall each file an opening submission not later than May 5, 2010 and a responsive submission not later than May 17, 2010. Each party shall simultaneously serve according to the Rules of Practice on the other party a copy of each submission. Any requests for extensions of time (which shall be made pursuant to Rule of Practice 161), and any requests to submit oral testimony shall be considered contingent upon Dagong's consent to a reasonable extension of time pursuant to Section 15E(a)(2)(B)(iii) of the Exchange Act in addition to the 90-day extension the Commission is hereby ordering as set forth below.

IT IS FURTHER ORDERED that the time period for the conclusion of all proceedings, after which the Commission is required to grant or deny the application, is extended for an additional 90 days pursuant to Section 15E(a)(2)(B)(iii) of the Exchange Act to July 22, 2010. The Commission finds good cause for this 90-day extension on the basis that the application raises substantial legal questions, including questions of foreign law, which necessitate granting the parties sufficient time to prepare written submissions and the Commission sufficient time to consider those submissions.

IT IS FURTHER ORDERED that any person who seeks to participate on a limited basis, or amicus curiae, pursuant to Rules of Practice 210(c) and (d), shall file a motion for leave to participate, together with the proposed submission, with the Secretary of the Commission not later than May 5, 2010.

IT IS FURTHER ORDERED that the Secretary of the Commission shall serve this Order forthwith upon Dagong in accordance with Rule of Practice 141; and that notice to all other persons shall be given by publication of this Order and Notice in the Federal Register; and that this Order and Notice and any subsequent orders granting or denying the application shall be posted on the Commission's Web site at www.sec.gov and published in the SEC Docket.

By the Commission.

Elizabeth M. Murphy
Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

Release No. 34-61902; File No. S7-09-10

RIN 3235-AK62

Proposed Amendments to Rule 610 of Regulation NMS

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment proposed amendments to Rule 610 under the Securities Exchange Act of 1934 ("Exchange Act") relating to access to quotations in listed options as well as fees for such access. The proposed rule would prohibit an exchange from imposing unfairly discriminatory terms that inhibit efficient access to quotations in a listed option on its exchange and establish a limit on access fees that an exchange would be permitted to charge for access to its best bid and offer for listed options on its exchange.

DATES: Comments should be received on or before [insert date 60 days after publication in the Federal Register].

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

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/proposed.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. S7-09-10 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper Comments:

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

All submissions should refer to File No. S7-09-10. 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 printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jennifer Colihan, Special Counsel, at (202) 551-5642; Edward Cho, Special Counsel, at (202)551-5508; or Brian O'Neill, Special Counsel, at (202)551-5643, Division of Trading and Markets ("Division"), Commission, 100 F Street, NE, Washington, DC 20549-6628.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission is proposing to strengthen the national market system for listed options by: (1) prohibiting the imposition of unfairly discriminatory terms by a national securities exchange that inhibit efficient access to quotations in a listed option on its exchange; and (2) establishing a limit on the amount a national securities exchange would be permitted to charge to access the best bid or offer for listed options on its exchange. These proposed amendments would make the requirements for access to the listed options exchanges comparable to the requirements for access to markets that trade NMS stocks.[1] Further, they would address concerns expressed by certain market participants regarding access to options exchanges.[2]

A. Background

In 1975, Congress determined that the "linking of all markets" through communications and data processing facilities would "foster efficiency; enhance competition; increase the information available to brokers, dealers, and investors; facilitate the offsetting of investors' orders; and contribute to the best execution of investors' orders."[3] As such, Congress directed

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1 See 17 CFR 242.610.

2 See infra Section I.B and notes 34-40 and accompanying text.

3 See Section 11A(a)(1)(D) of the Exchange Act, 15 U.S.C. 78k-1(a)(1)(D).

the Commission, through the enactment of Section 11A of the Exchange Act, to facilitate the establishment of a national market system ("NMS") to link together the multiple individual markets that trade securities. Congress intended the Commission to take advantage of opportunities created by new data processing and communications technologies to preserve and strengthen the securities markets.

As previously recognized by the Commission, for the NMS to fulfill its statutory objectives, fair and efficient access to each of the individual markets that participate in the NMS is essential.[4] One of the statutory NMS objectives, for example, is to assure the practicability of brokers executing investors' orders in the best market.[5] Another is to assure the efficient execution of securities transactions.[6] Neither of these objectives can be achieved if brokers cannot fairly and efficiently route orders to execute against the best quotations, wherever such quotations are displayed in the NMS.[7]

The Commission believes that intermarket price protection is essential in a marketplace such as that for listed options where multiple exchanges trade the same securities.[8] For this reason, the Commission in 1999 ordered the exchanges to jointly develop an NMS linkage plan for listed options.[9] The first such NMS plan, which began operation in 2002 ("2002 Linkage

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4 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("NMS Adopting Release") at 37538.

5 See Section 11A(a)(1)(C)(iv) of the Exchange Act, 15 U.S.C. 78k-1(a)(1)(C)(iv).

6 See Section 11A(a)(1)(C)(i) of the Exchange Act, 15 U.S.C. 78k-1(a)(1)(C)(i).

7 See NMS Adopting Release, supra note 4, at 37548.

8 Eight exchanges currently offer options trading facilities and another exchange is anticipated to begin operations shortly. See Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009) (order approving C2 Options Exchange's application for registration as a national securities exchange).

9 See Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999).

Plan"), included a requirement that its participant exchanges avoid trading through[10] better priced quotations displayed on other options exchanges and disseminated pursuant to the Options Price Reporting Authority Plan ("OPRA Plan"), as well as a mechanism by which participating exchanges could seek satisfaction if an order was traded through.[11] In August 2009, the options exchanges implemented a new NMS plan ("Plan"),[12] approved by the Commission, which specifically requires that each participating exchange establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trading through better priced quotations displayed on other options exchanges and disseminated pursuant to the OPRA Plan ("trade-throughs").[13] Rule 608(c) of Regulation NMS requires the options exchanges to comply with the terms of the Plan and to enforce compliance with the Plan by their members and persons

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10 A "trade-through" was defined as a transaction in an options series at a price that is inferior to the NBBO, but shall not include a transaction that occurs at a price that is one minimum quoting increment inferior to the NBBO provided a Linkage Order is contemporaneously sent to each Participant disseminating the NBBO for the full size of the Participant's bid (offer) that represents the NBBO. See Section 2(29) of the 2002 Linkage Plan. "NBBO" was defined as the national best bid and offer in an options series calculated by a Participant. See Section 2(18) of the 2002 Linkage Plan.

11 See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving 2002 Linkage Plan).

The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 608 thereunder. See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981).

12 This new Plan was designed, in part, to apply the Regulation NMS price-protection provisions to the options exchanges. See letter from Michael J. Simon, International Securities Exchange LLC ("ISE"), to Nancy M. Morris, Secretary, Commission, dated September 12, 2007, at 2-3.

13 See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) ("Plan Approval Order") and Section 5(a) of the Plan. A "trade-through" is defined in this new Plan as a transaction in an option series, either as principal or agent, at a price that is inferior to the best bid or offer in an option series that is displayed by an exchange, and is disseminated pursuant to the OPRA Plan. See Sections 2(1), 2(6), 2(14), 2(17), and 2(21) of the Plan.

associated with their members, absent reasonable justification or excuse.[14] Further, each exchange adopted rules to implement the Plan that prohibit members from effecting trade-throughs, subject to certain enumerated exceptions.[15] The approach to trade-throughs under the Plan is similar to that taken by the Commission under Rule 611 of Regulation NMS, which requires that a trading center establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the execution of trades at prices inferior to protected quotations in NMS stocks displayed by other trading centers, subject to applicable exceptions.[16]

To satisfy the requirements of the trade-through provisions of the Plan and the exchanges' rules[17] (collectively referred to as "Trade-Through Rules"), an options exchange with a best bid or best offer that is inferior to another exchange's best quotation may choose to handle a pending incoming marketable order by: (1) cancelling the order; (2) routing the order to another exchange displaying a better price;[18] or (3) providing an opportunity for its members, on

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14 See 17 CFR 242.608(c).

15 See, e.g., ISE Rule 1901, NYSE Arca, Inc. ("NYSE Arca") Rule 6.94, and NASDAQ OMX PHLX, Inc. ("Nasdaq OMX Phlx") Rule 1084. Prior to the adoption of the new Plan, the options exchanges had in place rules addressing trade-throughs as required under the 2002 Linkage Plan. The exchanges revised these rules following the adoption of the new Plan to reflect the trade-through requirements in the new Plan.

16 17 CFR 242.611(a). To be protected, a quotation must be immediately and automatically accessible. See 17 CFR 242.600(b)(58) (defining the term "protected quotation" as any protected bid or protected offer); see also 17 CFR 242.600(b)(57). The term "protected bid" or "protected offer" means a quotation in an NMS stock that is displayed by an automated trading center, is disseminated pursuant to an effective national market system plan, and is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc.

17 See Section 5(a) of the Plan; see also, e.g., ISE Rule 1901, NYSE Arca Rule 6.94 and Nasdaq OMX Phlx Rule 1084.

18 To implement the choice of routing to another exchange to access a better-priced quotation, the options exchanges currently use private routing arrangements that provide for indirect access to quotations displayed by a particular options exchange through the

their own behalf or on behalf of other market participants, to "step up" and trade with the order at a price at least equal to the better displayed price on an away exchange.[19]

In addition, broker-dealers have a duty of best execution.[20] A broker-dealer must carry out a regular and rigorous review of the quality of the options markets to evaluate its best

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members of that exchange. The Commission has stated its belief that the use of private linkages for routing will allow the exchanges to take advantage of new technology that allows for efficient routing and executions, and will give the exchanges greater flexibility for order handling. See Plan Approval Order, supra note 13, at 39364. The options exchanges complied with the requirements of the prior linkage plan by utilizing a stand alone system ("centralized hub") to send and receive specific order types. The centralized hub was a centralized data communications network that electronically linked the options exchanges to one another. The Options Clearing Corporation ("OCC") operated the centralized hub. See id.

19 The Commission separately has proposed changes to Rule 602 of Regulation NMS that may affect these electronic "step-up" mechanisms, if adopted. See Securities Exchange Act Release No. 60684 (September 18, 2009), 74 FR 48632, 48633 (September 23, 2009) (File No. S7-21-09) ("Flash Order Proposal"). See infra notes 72-75 and accompanying text.

20 A broker-dealer has a legal duty to seek to obtain best execution of customer orders. See, e.g., Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 135 F.3d 266, 269-70, 274 (3d Cir.), cert. denied, 525 U.S. 811 (1998); Certain Market Making Activities on Nasdaq, Securities Exchange Act Release No. 40900 (Jan. 11, 1999) (settled case) (citing Sinclair v. SEC, 444 F.2d 399 (2d Cir. 1971); Arleen Hughes, 27 SEC 629, 636 (1948), aff'd sub nom. Hughes v. SEC, 174 F.2d 969 (D.C. Cir. 1949)). See also Order Execution Obligations, Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996) ("Order Handling Rules Release"). A broker-dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated in SRO rules and, through judicial and Commission decisions, the antifraud provisions of the federal securities laws. See Order Handling Rules Release, 61 FR at 48322. See also Newton, 135 F.3d at 270. The duty of best execution requires broker-dealers to execute customers' trades at the most favorable terms reasonably available under the circumstances, i.e., at the best reasonably available price. Newton, 135 F.3d at 270. Newton also noted certain factors relevant to best execution - order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market. Id. at 270 n.2 (citing Payment for Order Flow, Exchange Act Release No. 33026 (Oct. 6, 1993), 58 FR 52934, 52937-38 (Oct. 13, 1993) (Proposed Rules)). See In re E.F. Hutton & Co., Securities Exchange Act Release No. 25887 (July 6, 1988). See also Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006, 55008-55009 (November 2, 1994) ("Approval of Payment for Order Flow Final Rules"). See also NMS Adopting Release, supra note 4, at 37537 (discussing the duty of best execution).

execution policies, including the determination as to which options market it routes customer order flow.[21] The protection against trade-throughs undergirds the broker-dealer's duty of best execution by helping ensure that customer orders are not executed at prices inferior to the best quotations, but does not supplant or diminish the broker-dealer's responsibility for achieving best execution, including its duty to evaluate the execution quality of markets to which it routes customer orders.[22]

These regulatory obligations mean that broker-dealers responsible for routing customer orders, as well as customers making their own order-routing decisions, must have fair and efficient access to the best displayed quotations to achieve best execution of those orders, and the exchanges themselves must have the ability to execute orders against the displayed quotations of other exchanges.[23] Moreover, the benefits of intermarket price protection could be compromised if exchanges were able to charge substantial fees for accessing their quotations.[24]

Further, the Exchange Act authorizes the Commission to adopt rules assuring the fairness and usefulness of quotation information.[25] The wider the disparity in the level of fees among the different exchanges, the less useful and accurate are the displayed prices. For example, if two options exchanges displayed quotations to sell an option for $10.00 per contract, one exchange offer could be accessible for a total price of $10.00 per contract plus a $0.50 per contract access fee, while the second exchange might not charge any such access fee. What appeared in the

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21 See Securities Exchange Act Release No. 49175 (February 3, 2004), 69 FR 6124, 6128 (February 9, 2004) ("Options Concept Release"). See also NMS Adopting Release, supra note 4, at 37538.

22 See NMS Adopting Release, supra note 4, at 37538.

23 See id. at 37539.

24 See id. at 37544.

25 See Section 11A(c)(1)(B) of the Exchange Act, 15 U.S.C. 78k-1(c)(1)(B).

consolidated data stream to be identical quotations would in fact not be identical in terms of all-in costs. The Commission recognizes that there may be different ways to achieve the objective of fair and useful quotations. One approach is to limit the extent to which the all-in price for those who access quotations can vary from the displayed price by limiting fees for accessing those quotations, as proposed here in Rule 610(c)(2).[26]

An access fee limit also creates more transparency in the cost of accessing quoted prices. Currently, there are so many different fees across options exchanges, across different categories of options participants, and across different product types, that it is not easy to estimate the total cost of executing against a quotation for a particular transaction. An access fee cap would provide clearer information on the maximum cost for accessing quoted prices. The Commission recognizes, however, that although a cap on access fees would promote the fairness and usefulness of displayed quotations and transparency in the cost of assessing quoted prices, there may be other fees assessed that would not be included in the proposed cap on access fees.

B. Overview of Current Options Market Structure

In the listed options market, all orders are currently executed on registered national securities exchanges. Options exchanges have, to date, adopted one of two general business models. An exchange using the first model – referred to as the "Make or Take" model – incents market participants to quote aggressively by providing a rebate to an order or quotation displayed on its exchange when such order or quotation is executed. This rebate is funded through the fee charged to the order that executed against the displayed order or quotation. The difference

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[26] See NMS Adopting Release, supra note 4, at 37545 (stating that for quotations to be fair and useful there must be some limit on the extent to which the true price for those who access quotations can vary from the displayed price).

between the fee charged for accessing the order or quotation and the rebate is revenue to the exchange.

NYSE Arca was the first options exchange to implement the Make or Take transaction fee model.[27] The introduction of the Make or Take model followed the reduction of the quoting increment in certain options in 2007.[28] As of February 1, 2010, market participants could represent trading interest in penny increments in options series in 211 specified classes. These classes represent approximately 69.5 percent of trading volume. By August 2, 2010, 361 classes will be included in the Minimum Quoting Increment Pilot Program, representing approximately 88.1 percent of trading volume during February 2010.[29]

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27 See Securities Exchange Act Release No. 55223 (February 1, 2007), 72 FR 6306 (February 9, 2007) (SR-NYSEArca-2007-07). The NASDAQ Options Market LLC ("NOM") also uses a "Make or Take" fee model for certain options classes. See The NASDAQ Options Market: Execution and Routing Fees (available at http://www.nasdaqtrader.com/content/ProductsServices/PriceList/nasdaq_options_pricing.pdf) (current as of December 1, 2009).

28 On January 26, 2007, the then-existing six options exchanges implemented a pilot program to quote certain options series in thirteen classes in one-cent increments ("Minimum Quoting Increment Pilot Program"). The NASDAQ Stock Market LLC ("Nasdaq") became a participant in the Minimum Quoting Increment Pilot Program on March 31, 2008, when it commenced trading on NOM, and BATS Exchange, Inc. ("BATS") became a participant in the Minimum Quoting Increment Pilot Program on February 26, 2010 when it commenced trading on BATS Options Exchange Market. Since 2007, the Minimum Quoting Increment Pilot Program has been extended and expanded several times. See, e.g., Securities Exchange Act Release Nos. 56276 (August 17, 2007), 72 FR 47096 (August 22, 2007) (SR-CBOE-2007-98); 56567 (September 27, 2007), 72 FR 56396 (October 3, 2007) (SR-Amex-2007-96); 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR-Nasdaq-2008-026); 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (SR-NYSEArca-2009-44); and 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR-NYSEArca-2004-44).

29 The source of the data is OptionsMetrics, LLC ("OptionsMetrics"). The data used for the estimates corresponds to February 2010. By August 2010, the Minimum Quoting Increment Pilot Program will incorporate 150 additional classes. Those classes will be incorporated according to volume levels on the month before the expansion. For the current approximation, Commission staff projected which classes would be added by August 2010 using volume data corresponding to February 2010.

On an exchange with a "Make or Take" fee model, broker-dealers representing customer orders must pay a "Take" fee to access a displayed quotation on that exchange. In contrast, on an exchange without that fee model, broker-dealers generally are not assessed a similar fee when a customer order is executed. This distinction brought attention to the issue of whether, and to what extent, access fees impact fair and efficient access to displayed quotations in listed options.

Exchanges using the second model – referred to as the "Broker Payment" model – generally charge no or low fees for the execution of customers' orders.[30] However, these exchanges often charge other types of fees on a per-transaction basis. For example, most options exchanges charge a surcharge or "royalty" fee for executions in certain index option classes.[31]

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30 Exchanges that use the "Broker Payment" model also generally give priority to customer orders at the best price over other orders or quotations at that price. After customer orders are executed, the rules of "Broker Payment" options exchanges dictate how the remainder of an incoming order is allocated against resting non-customer orders or quotations. ISE, for example, requires that priority be given to public customer orders, and provides for pro-rata allocation among non-customer orders and quotations. See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388, 11395 (March 2, 2000) (order approving the registration of the International Securities Exchange LLC as a national securities exchange ("ISE Exchange Approval")). Exchanges that use a "Broker Payment" model do not give priority to orders from certain customers who are "professional" customers under exchange rules. See Securities Exchange Act Release Nos. 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009) (SR-ISE-2006-26); 61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (SR-CBOE-2009-078); and 61802 (March 3, 2010) (SR-Phlx-2010-05). "Professional" customers are treated on ISE, the Chicago Board Options Exchange, Incorporated ("CBOE"), and Nasdaq OMX Phlx in the same manner as a broker-dealer for purposes of specified order execution rules, including priority rules. Under these exchange rules, "Professional" customers participate in ISE's, CBOE's, and Nasdaq OMX Phlx's allocation processes on equal terms with broker-dealers, i.e., they do not receive priority over broker-dealers in the allocation of orders on the exchange. Several exchanges have, however, begun to charge transaction fees to certain customers identified in exchange rules as "professionals." See Securities Exchange Act Release Nos. 59287 and 61198.

31 See BOX Fee Schedule, at 1 (available at http://www.bostonoptions.com/pdf/BOX_Fee_Schedule.pdf) (current as of January 2010); CBOE Fee Schedule, at 1 (available at http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf) (current as of February 2, 2010); ISE Fee Schedule, at 6 (available at

Many exchanges also charge a payment for order flow or "marketing" fee to market makers that trade with customer orders on the exchange.[32] The exchange then makes the proceeds from such fees available to collectively fund payment for order flow to brokers directing order flow to the exchange.[33]

In July 2008 the Commission received a Petition for Rulemaking to Address Excessive Access Fees in the Options Markets from Citadel Investment Group, L.L.C. ("Citadel Petition").[34] In the Citadel Petition, Citadel petitions the Commission to engage in rulemaking to limit the "Take" fees that options exchanges may charge non-members to obtain access to quotations to $0.20 per contract. NYSE Arca also filed a proposal in July 2008 to raise its "Take" fee for certain classes. Specifically, NYSE Arca submitted a proposed rule change for

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http://www.ise.com/assets//documents//OptionsExchange//legal/fee/fee_schedule.pdf) (current as of January 8, 2010); NYSE Amex Fee Schedule, at 3 (available at http://www.nyse.com/pdfs/NYSE_Amex_Options_Fee_Schedule01.04.10.pdf) (current as of January 4, 2010); NYSE Arca Fee Schedule, at 6 (available at http://www.nyse.com/pdfs/NYSE_Arca_Options_Fee_Schedule1-08-2010.pdf) (current as of January 8, 2010); and Nasdaq OMX Phlx Fee Schedule, at 5 (available at http://www.nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf) (current as of February 24, 2010).

32 See CBOE Fee Schedule, at 2 (available at http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf) (current as of February 2, 2010); ISE Fee Schedule, at 6 (available at http://www.ise.com/assets//documents//OptionsExchange//legal/fee/fee_schedule.pdf) (current as of January 8, 2010); NYSE Amex Fee Schedule, at 3 (available at http://www.nyse.com/pdfs/NYSE_Amex_Options_Fee_Schedule01.04.10.pdf) (current as of January 4, 2010); NYSE Arca Fee Schedule, at 6 (available at http://www.nyse.com/pdfs/NYSE_Arca_Options_Fee_Schedule1-08-2010.pdf) (current as of January 8, 2010); and Nasdaq OMX Phlx Fee Schedule, at 6 (available at http://www.nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf) (current as of February 24, 2010).

33 See, e.g., Nasdaq OMX Phlx Fee Schedule, at 6, 15 (available at http://www.nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf) (current as of February 24, 2010). See also infra note 109 and accompanying text.

34 See letter from John C. Nagel, Managing Director & Deputy General Counsel, Citadel, to Nancy M. Morris, Secretary, Commission, dated July 15, 2008 (available at http://www.sec.gov/rules/petitions/2008/petn4-562.pdf).

immediate effectiveness that raised its "Take" fee charged to members for certain designated Minimum Quoting Increment Pilot Program issues from $0.45 per contract to $0.55 per contract, and raised the corresponding credit in those same issues from $0.30 per contract to $0.40 per contract for market makers, and from $0.25 per contract to $0.35 per contract for electronically executed broker-dealer and customer orders.[35] The Commission requested comment on the issue of access fees when it published NYSE Arca's proposal for comment.[36]

The Commission has received several comment letters in response to its request for comment on the NYSE Arca proposed rule change and to the Citadel Petition, which discuss the issue of access fees and imposing a cap on such fees.[37] The Commission also received several

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35 These Pilot issues included: AAPL, CSCO, DIA, MSFT, IWM, QQQQ, RIMM, XLF, SPY, YHOO. See Securities Exchange Act Release No. 58295 (August 4, 2008), 73 FR 46681 (August 11, 2008) (SR-NYSEArca-2008-75).

36 Concurrently, NYSE Arca filed a proposed rule change to increase the fee charged to orders received through the then-existing options linkage in certain Minimum Quoting Increment Pilot Program issues from $0.45 to $0.55 per contract. See SR-NYSEArca-2008-76. The Commission has not published this proposed rule change for notice and comment. Pending Commission action on SR-NYSEArca-2008-76, NYSE Arca has stated that it will not implement its fee changes included in SR-NYSEArca-2008-75.

37 Letters received in response to SR-NYSEArca-2008-75: See letters from John C. Nagel, Managing Director and Deputy General Counsel, Citadel, to Nancy M. Morris, Secretary, Commission, dated July 23, 2008 ("Citadel Letter"); Stephen Schuler and Daniel Tierney, Managing Members, Global Electronic Trading Company to Florence E. Harmon, Acting Secretary, Commission, dated September 2, 2008 ("GETCO Letter"); Christopher Nagy, Managing Director, Order Routing Sales and Strategy, TD Ameritrade, Inc. to Florence E. Harmon, Acting Secretary, Commission, dated September 9, 2008 ("TD Ameritrade Letter"); and Robert R. Bellick, Managing Director, Wolverine to Nancy M. Morris, Secretary, Commission, dated September 10, 2008 ("Wolverine Letter") (available at http://www.sec.gov/comments/sr-nysearca-2008-75/nysearca200875.shtml).

Letter received in response to the Citadel Petition: See letter from Lawrence Leibowitz, Group Executive Vice President and Head of Global Execution and Technology, NYSE Euronext, to Florence E. Harmon, Acting Secretary, Commission, dated September 3, 2008 ("NYSE Euronext Letter") (available at http://www.sec.gov/comments/4-562/4-562.shtml).

Letters received in response to both the Citadel Petition and SR-NYSEArca-2008-75: See letters from David M. Battan, Executive Vice President, Interactive Brokers Group

comment letters in response to a proposal to amend Rule 602 of Regulation NMS to effectively ban marketable "flash orders" in NMS securities that discuss the issue of access fees in listed options.[38] Commenters on the Flash Order Proposal expressed concern that eliminating flash orders on the options exchanges would increase direct costs associated with executing customers' listed options orders.[39] The absence of a limit on fees that an options exchange can charge for accessing its quotation was one reason commenters said that banning flash orders would be more detrimental to listed options customers than to cash equity customers.[40] These

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LLC, to Florence Harmon, Acting Secretary, Commission, dated September 8, 2008 ("IB Letter"); and William Easley, Vice Chairman, Boston Options Exchange ("BOX") to Florence E. Harmon, Acting Secretary, Commission, dated September 11, 2008 ("BOX Letter") (available at http://www.sec.gov/comments/sr-nysearca-2008-75/nysearca200875.shtml).

Letters received in response to SR-NYSEArca-2009-44, which proposed to expand the number of classes eligible to participate in the Minimum Quoting Increment Pilot: See letters from Christopher Nagy, Managing Director, Order Routing Strategy, TD Ameritrade, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated June 17, 2009 ("TD Ameritrade Letter II") and December 1, 2009 ("TD Ameritrade Letter III") (available at http://www.sec.gov/comments/sr-nysearca-2009-44/nysearca200944.shtml).

38 See Flash Order Proposal, supra note 19. A "flash order" generally is any order qualifying for the "immediate execution or withdrawal" exception from Rule 602. For more detail about the basic features that define flash orders, see the Flash Order Proposal. Flash orders allow options exchanges that charge no or low fees to execute customer orders to "step up" and match better displayed quotations on other exchanges.

39 See, e.g., letters from Christopher Nagy, Managing Director, Order Routing Strategy, TD Ameritrade, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated November 23, 2009 ("Ameritrade Flash Letter"); letter from John C. Nagel, Managing Director and Deputy General Counsel, Citadel, to Elizabeth M. Murphy, Secretary, Commission, dated November 20, 2009 ("Citadel Letter II"); Peter Bottini, EVP Trading and Customer Service, and Hillary Victor, Associate General Counsel, optionsXpress, to Elizabeth M. Murphy, Secretary, Commission, dated November 25, 2009 ("optionsXpress Flash Letter"); Thomas F. Price, Managing Director, Securities Industry Financial Association, to Elizabeth M. Murphy, Secretary, Commission, dated December 1, 2009 ("SIFMA Flash Letter") (available at http://www.sec.gov/comments/s7-21-09/s72109.shtml).

40 See SIFMA Flash Letter, supra note 39, at 5. See also Citadel Letter II, infra note 39, at 1-2; Ameritrade Flash Letter, supra note 39, at 3; and optionsXpress Flash Letter, supra note 39, at 6.

concerns about the absence of a limit on access fees on the listed options exchanges echo the comments received in response to the Citadel Petition and NYSE Arca's proposal. These comments were considered in developing this proposal and are discussed below.

II. Proposed Amendments to Rule 610(a)

Access to displayed quotations, particularly the best quotations of an exchange or association, is vital for the smooth functioning of intermarket trading.[41] Brokers responsible for routing their customers' orders, as well as investors that make their own order-routing decisions, must have fair and efficient access to the best displayed quotations of all options exchanges to achieve best execution of those orders. In addition, options exchanges themselves must have the ability to route orders for execution against the displayed quotations of other exchanges. Indeed, the concept of intermarket protection against trade-throughs is premised on the ability of options exchanges to trade with, rather than trade through, the quotations displayed by other options exchanges.[42]

Currently, Rule 610(a) furthers the goal of fair and efficient access to quotations primarily by prohibiting a national securities exchange or national securities association from imposing unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of the national securities exchange or national securities association to any quotations in an NMS stock[43] displayed by the exchange or association.[44]

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41 See NMS Adopting Release, supra note 4, at 37539. Currently, no national securities association quotes or trades listed options.

42 See id.

43 See Rule 600(b)(47), 17 CFR 242.610(b)(47) (defining NMS stock as any NMS security other than an option). See also Rule 600(b)(46), 17 CFR 242.610(b)(46) (defining NMS security as any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options).

This anti-discrimination standard is designed to support indirect access by persons to quotations in NMS stocks through members, and is premised on fair and efficient access of exchange or association members themselves to the quotations in NMS stocks.[45]

The Commission is proposing to amend Rule 610(a) to extend this prohibition to NMS securities,[46] which include listed options as well as NMS stocks. The proposal to extend the anti-discrimination standard in Rule 610(a) to the trading of listed options is designed to support indirect access by persons to quotations in listed options through members. Like current Rule 610(a), the proposed amendment is premised on the need for fair and efficient access of members themselves to the quotations of the exchange in listed options.

Market participants can either become members of an exchange to obtain direct access to its options quotations, or they can obtain indirect access by "piggybacking" on the direct access of members. Access to exchanges currently is addressed by several provisions of the Exchange Act.[47] In particular, Section 6(b)(5) of the Exchange Act requires in part that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or

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44 See Rule 610(a), 17 CFR 242.610(a). See also NMS Adopting Release, supra note 4, at 37539.

45 See NMS Adopting Release, supra note 4, at 37502.

46 See supra note 43 (defining NMS security).

47 Section 6(b)(4) of the Exchange Act requires the rules of an exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities, while Section 6(b)(5) of the Exchange Act requires in part that its rules not be designed to permit unfair discrimination between customers, brokers, or dealers. Section 6(b)(5) also requires an exchange to have rules designed to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. In addition, Section 6(b)(1) of the Exchange Act requires that an exchange must have the capacity to be able to carry out the purposes of the Exchange Act. See 15 U.S.C. 78f(b)(4); 15 U.S.C. 78f(b)(5); 15 U.S.C. 78f(b)(1). Section 11A(a)(1)(C) of the Exchange Act provides that two of the objectives of a national market system are to assure the economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market. See 15 U.S.C. 78k-1(a)(1)(C).

dealers.[48] The proposed amendments to Rule 610(a) would build on this existing access structure, including the prohibition in Section 6(b)(5) against unfair discrimination, by specifically prohibiting unfair discrimination that prevents or inhibits non-members from "piggybacking" on the access of members. The ability to fairly and efficiently obtain indirect access through a member is necessary to assure that non-members can readily access quotations in options to meet the requirements of the Trade-Through Rules and to fulfill the non-members' duty of best execution.[49]

The Commission does not believe that, if it were to prohibit exchanges from imposing unfairly discriminatory terms on non-members who obtain indirect access to quotations in options through members, it would require exchanges to provide non-members with free access to such quotations. Members who provide piggyback access to non-members would be providing a useful service and presumably would charge a fee for such service. The fee would be subject to competitive forces and likely would reflect the costs of membership, plus some element of profit to the members. As a result, non-members that frequently make use of indirect access are likely to contribute indirectly to cover the costs of membership in the market. In addition, the unfair discrimination standard of Rule 610(a) as proposed to be amended would apply only to access to quotations in NMS securities, including options. All other services would be subject to the more general fair access provisions applicable to national securities exchanges, as well as the statutory provisions that govern their respective rules.[50]

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48 The requirements of Section 6(b)(5) of the Exchange Act apply to any rule of an exchange, and as such are not limited to access through members of an exchange to the quotations of that exchange.

49 See supra notes 4-22 and accompanying text.

50 See NMS Adopting Release, supra note 4, at 37540.

On the other hand, any attempt by an options exchange to charge differential fees based solely on the non-member status of a person obtaining indirect access to its quotations would violate Rule 610(a) as proposed to be amended.[51] As noted above, fair and efficient access to quotations is essential to the functioning of the NMS.[52] For example, if an exchange charges discriminatory fees to non-members to access its quotations, this practice would interfere with the functioning of the private linkage approach and detract from its usefulness to exchanges in meeting their required responsibilities under the Trade-Through Rules. Fair and efficient access to the best quotations is also necessary for brokers to achieve best execution of orders.[53] Accordingly, the Commission is proposing to amend Rule 610(a) to establish baseline intermarket access rules for options markets to promote indirect access to such markets by a non-member through a member.

The prohibition on imposing unfairly discriminatory terms in Rule 610(a) currently applies to terms that prevent or inhibit efficient access to quotations. The term "quotation" is defined in Rule 600(a)(62) of Regulation NMS as a bid or offer, and "bid" or "offer" is defined in Rule 600(b)(8) of Regulation NMS as the bid price or the offer price communicated by a member of a national securities exchange or national securities association to any broker or dealer or to any customer.[54] Rule 610(a), therefore, applies to the entire depth of book of

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51 Id. For example, the Commission preliminarily believes an exchange that charges a non-member broker-dealer that is registered as an options market maker on another exchange a higher fee than the fee charged to both member and non-member broker-dealers that also are not market makers on that exchange for obtaining access to its quotations would violate Rule 610(a), as proposed to be amended.

52 See supra notes 4-7 and accompanying text.

53 See NMS Adopting Release, supra note 4, at 37539. See also supra notes 20-22 and accompanying text.

54 See 17 CFR 242.600(b)(62) and 17 CFR 242.600(b)(8).

displayed orders in NMS stocks, including reserve size[55] and displayed size at each price.[56] The Commission's proposal to extend Rule 610(a) to all NMS securities so that listed options markets are covered by the Rule would apply in the same manner.[57] Thus, options markets would be prohibited from imposing unfairly discriminatory terms that prevent or inhibit efficient access to the entire depth of book of displayed orders.

III. Access Fees

A. Proposed Rule 610(c)(2)

Generally, the Commission believes that market forces and the dynamics of competition should determine the level of exchange fees whenever possible.[58] As discussed below, however, the Commission is concerned that because of the requirements for intermarket price protection, competitive forces, by themselves, are not, and will not be, enough to prevent fees from being charged that interfere with fair and efficient access to an option exchange's displayed prices.[59]

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55 "Reserve size" generally means an undisplayed portion of an order. Once the displayed size of an order is executed against, the reserve size is used to refresh the market participant's displayed size. See, e.g., NYSE Arca Rule 6.62(d)(3) and ISE Rule 2104(n).

56 See NMS Adopting Release, supra note 4, at 37548.

57 The Commission notes that, although fees are the most likely way in which an exchange could discriminate against non-members for access to its quote, the Commission's proposal would more broadly prohibit any unfairly discriminatory terms.

58 See Securities Exchange Act Release Nos. 59039 (December 2, 2008), 73 FR 74770, 74781-82 (December 9, 2008) ("NYSE Arca Data Order") (stating in part that "[t]he Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.").

59 See NMS Adopting Release, supra note 4, at 37545 (concluding that imposing a fee limitation was necessary to support the integrity of the price protection requirement established to prevent trade-throughs: "[T]he adopted fee limitation is designed to preclude individual trading centers from raising their fees substantially in an attempt to take improper advantage of strengthened protection against trade-throughs and the

Accordingly, the Commission is proposing to impose a limit on the amount of fees that an exchange can impose (or permit to be imposed) for the execution of an order against the exchange's best bid and offer. This proposal also responds to market participants' concerns regarding access fees,[60] as discussed below.[61]

Each of the options exchanges currently charges market participants fees when incoming orders access their displayed quotations. Although these fees may have different names (e.g., a "Take" fee versus a transaction fee), and may vary in amount based on the type of account from which the order is sent, these fees all have one thing in common - they are fees triggered by the execution of an incoming order against an order or quotation on that exchange.

In particular, on exchanges that use the "Broker Payment" fee model,[62] although orders executed on behalf of customer accounts may not be charged any transaction fees, orders executed on behalf of non-customer accounts are charged transaction fees.[63] In some cases, these fees may be substantial. For example, for options classes not included in the Minimum Quoting Increment Pilot Program, one exchange charges $0.50 per contract for electronically

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adoption of a private linkage regime. In particular, the fee limitation is necessary to address "outlier" trading centers that otherwise might charge high fees to other market participants required to access their quotations by the Order Protection Rule.").

60 These concerns, as noted above, have been raised by a petition for rulemaking to limit the "Take" fees that options exchanges may charge non-members to access quotations and comment letters in response to this petition and NYSE Arca's proposal to raise its "Take" fee. See Citadel Petition, supra note 34; see also supra note 37.

61 See infra notes 70 and 79 and accompanying text.

62 See supra notes 30-33 and accompanying text.

63 A customer generally is understood to be a person that is not a broker-dealer. See, e.g., ISE Rule 100(a)(38) (defining the term "public customer"). However, as noted above, some exchanges have begun to charge transaction fees to certain customers identified in exchange rules as "professionals." See supra note 30.

executed orders for the account of a broker dealer or firm,[64] while another exchange charges $0.45 per contract for electronically executed broker-dealer orders.[65]

In addition, on exchanges that use the "Make or Take" fee model,[66] an exchange charges "Take" fees to members that execute orders against that exchange's quotations. These exchanges then pass a substantial portion of that fee back as a rebate to the member that supplied the accessed liquidity (i.e., market maker quotations or non-marketable limit orders). The "Take" fees charged by these exchanges also can be substantial. For example, for options classes in the Minimum Quoting Increment Pilot Program, one exchange charges $0.45 per contract when an order for the account of a non-customer (and $0.35 per contract when an order for the account of a customer) trades against liquidity on the exchange's book. The exchange then rebates $0.25 per contract to the member (or members) that represented the order (or orders) on its book that provided the liquidity to the incoming order.[67] Another exchange charges a $0.45 per-contract "Take" fee when an order in a Minimum Quoting Increment Pilot Program options class trades with liquidity on the exchange's book. This exchange then rebates $0.30 per contract to an exchange market maker that provided the liquidity to the incoming order and $0.25

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64 See NYSE Arca Fee Schedule (available at http://www.nyse.com/pdfs/NYSE_Arca_Options_Fee_Schedule1-08-2010.pdf) (current as of January 8, 2010).

65 See CBOE Fee Schedule (available at http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf) (current as of February 2, 2010).

66 See supra note 27 and accompanying text.

67 See Section 1 of Nasdaq Rule 7050 and The NASDAQ Options Market: Execution and Routing Fees (available at http://www.nasdaqtrader.com/content/ProductsServices/PriceList/nasdaq_options_pricing.pdf) (current as of January 4, 2010).

per contract to the member that represented a broker-dealer or customer order that provided liquidity to the incoming order.[68]

The Commission believes that the benefits of intermarket price protection and more efficient linkages could be compromised if options exchanges charge substantial fees for accessing their best bids and offers. For this reason, the Commission preliminarily believes that a fee limitation is necessary to support the integrity of the price protection requirement under the Trade-Through Rules.[69] The Commission's views are informed by commenters that argue that a limit on fees for accessing quotations would support the integrity of the rules limiting trade-throughs because a fee limitation would prohibit individual exchanges from raising their fees substantially in an attempt to take improper advantage of protection against trade-throughs. In particular, commenters contend that, in the absence of a fee limit, some exchanges may take advantage of the requirement to protect displayed quotations by charging exorbitant fees to those required to access the exchange's quotations, which could compromise the fairness and efficiency of the NMS for trading standardized options.[70] Although the exchange charging the

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68 See "Transaction Costs" Section of the NYSE Arca Fee Schedule (available at http://www.nyse.com/pdfs/NYSE_Arca_Options_Fee_Schedule1-08-2010.pdf) (current as of January 8, 2010). See also supra notes 35 and 36 and accompanying text.

69 See supra notes 13 and 17-19 and accompanying text for a definition of "Trade-Through Rules."

70 See Citadel Petition, supra note 34, at 4 (arguing that "Taker" fees are sustained by virtue of the regulatory obligations prohibiting trade-throughs, in that when an exchange is quoting alone at the NBBO, market participants cannot avoid the Taker fees imposed by such exchange, irrespective of how high such fees may be); Citadel Letter II, supra note 37, at 6 (arguing that if the Commission were to ban or limit the use of step-up mechanisms in the options markets, the need for an access fee cap would become essential); TD Ameritrade Letter, supra note 37, at 1 (arguing that Make or Take fees have the potential to create incentives for participants to post liquidity and lock markets to capture the rebate and that other options exchanges would have to increase their fees and rebates in order to defend their market share). See also Wolverine Letter, supra note 37, at 6 (asserting that, while a cap implemented as proposed by Citadel would reduce Take fees charged to non-members who may be forced to access "outlier" markets due to

highest fees likely would be the last exchange to which orders would be routed, prices could not move to the next level until someone routed an order to take out the displayed price at such a high fee exchange. Thus, while exchanges would have significant incentives to compete to be near the top in order-routing priority, arguably there would be little incentive to avoid being the least-preferred exchange if fees were not limited.[71]

The proposed fee limitation is designed to preclude this business practice by limiting individual exchanges from having fee structures that take improper advantage of the required protection against trade-throughs and undermine the overall benefits of the new private routing regime. It also would preclude an options exchange from charging excessively high fees selectively to competitors.

The Commission notes that several exchanges have rules that allow - and encourage - their members to electronically "step up" and match a better-priced bid or offer available on another exchange - a "flash" functionality - rather than send orders to other exchanges for execution.[72] These exchanges stated that they implemented this "flash" functionality because of

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trade through obligations, members would still be forced to pay unrestricted fees); GETCO Letter, supra note 37, at 3 (stating that if the Commission does decide to place caps on access fees charged by exchanges that use the "Make or Take" fee model, it should also cap all-in access fees for traditional exchanges, i.e., those that use the "Broker Payment" fee model, regardless of the type of market participant accessing the exchange's quotation).

71 See NMS Adopting Release, supra note 4, at 37545.

72 See, e.g., ISE Rule 803, Supplementary Material .02 and Securities Exchange Act Release Nos. 57551 (March 25, 2008), 73 FR 16917 (March 31, 2008) (SR-ISE-2008-28) and 58038 (June 26, 2008), 73 FR 38261 (July 3, 2008) (SR-ISE-2008-50). See also ISE Fee Schedule, supra note 32, at 3-4 (as an inducement to step-up and avoid routing to away markets, ISE waives the transaction fee for members when they execute against a public customer order that is exposed pursuant to ISE Rule 803, i.e., ISE's step-up mechanism) (current as of January 8, 2010).

the high costs associated with routing an order to away exchanges to be executed, particularly one with a Make or Take fee model.[73]

The Commission separately has proposed changes to Rule 602 of Regulation NMS that may affect these electronic "step-up" mechanisms, if adopted.[74] There are structural differences between the listed options exchanges and the cash equity markets that commenters identified as making the use of "flash" orders on the options exchanges serve a different purpose. In particular, commenters stated that eliminating the ability of market participants on the options exchanges to "step up" to better prices on other exchanges through the use of "flash" orders could impose significant costs on retail options customers whose orders would be routed to other options exchanges because, in part, of the absence of any limits on the fees options exchanges may charge to access their quotations.[75]

The Commission also believes that for quotations to be fair and useful, there must be some limit on the extent to which the all-in price for those who access quotations can vary from the displayed price.[76] The wider the disparity in the level of fees among the different exchanges,

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73 See, e.g., letters from William J. Brodsky, Chairman and Chief Executive Officer, CBOE, to Elizabeth M. Murphy, Secretary, Commission, dated November 18, 2009, at 2 (comment to Flash Order Proposal) ("CBOE Flash Letter"); Michael J. Simon, Secretary, ISE, to Elizabeth Murphy, Secretary, Commission, dated November 23, 2009 at 5 (comment to Flash Order Proposal) ("ISE Flash Letter"); Tony McCormick, CEO, BOX, to Elizabeth M. Murphy, Secretary, Commission, dated November 23, 2009, at 3 (comment to Flash Order Proposal). See also Securities Exchange Act Release Nos. 57551 (March 25, 2008), 73 FR at 16917 (March 31, 2008) (SR-ISE-2008-28) and 57937 (June 6, 2008), 73 FR 33865 (June 13, 2008) (SR-CBOE-2008-58) (relating to electronic exposure on HAL).

74 See Flash Order Proposal, supra note 19.

75 See SIFMA Flash Letter, supra note 39, at 5; Ameritrade Flash Letter, supra note 39, at 3; optionsXpress Flash Letter, supra note 39, at 6; and Citadel Letter II, supra note 39, at 6 (arguing that if the Commission were to ban or limit the use of step-up mechanisms in the options markets, the need for an access fee cap would become essential).

76 See NMS Adopting Release, supra note 4, at 37545.

the less useful and accurate are the displayed prices. For example, if two options exchanges displayed quotations to sell an option for $10.00 per contract, one exchange offer could be accessible for a total price of $10.00 per contract plus a $0.50 per contract access fee, while the second exchange might not charge any such access fee. What appeared in the consolidated data stream to be identical quotations in terms of all-in costs would in fact not be identical. Access fees tend to be highest when exchanges use them to fund substantial rebates to liquidity providers, rather than merely to compensate for agency services.[77] These concerns were also expressed by several commenters who argue that for quotations to be fair and useful, there must be some limit to the extent to which the displayed price can vary from the "all-in" price[78] of a quotation.[79] If exchanges were allowed to charge exorbitant fees and pass most of them through as rebates, the published quotations of such exchanges would not reliably indicate the all-in price actually available.

Section 11A(c)(1)(B) of the Exchange Act authorizes the Commission to adopt rules assuring the fairness and usefulness of quotation information. For quotations to be fair and

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77 Id. at 37544.

78 The term "all-in" price is intended to capture the total costs for executing a trade. See infra note 90 and accompanying text.

79 See BOX Letter, supra note 37, at 5-6 (stating its agreement with Citadel and the Commission that "[f]or quotations to be fair and useful, there must be some limit on the extent to which the true prices for those who access quotations can vary from the displayed price"); Citadel Petition, supra note 34, at 3-5 (arguing that markets employing a Make or Take fee model are charging excessive fees to obtain access to their quotations and, as a result, are causing distortions in such quotations, which should otherwise reliably represent the true prices actually available to investors.); NYSE Euronext Letter, supra note 37, at 3 (stating generally that they are in favor of rules that ensure the reasonableness of fees, similar to rate caps that were enacted in the equities markets in Regulation NMS); TD Ameritrade Letter, supra note 37, at 1-2; and Wolverine Letter, supra note 37, at 6 (asserting that unrestricted fees that members would have to pay would result in executions at prices materially different from the displayed quotations and, as a consequence, run contrary to the purposes behind the trade-through rules and the principles of best execution).

useful, there must be some limit on the extent to which the all-in price for those who access quotations can vary from the displayed price. An access fee limit also creates more transparency in the cost of accessing quoted prices. Currently, there are so many different fees across options exchanges, across different categories of options participants, and across different product types, that it is not easy to estimate the total cost of executing against a quotation for a particular transaction. An access fee cap would provide clearer information on the maximum cost for accessing quoted prices. Consequently, the proposed fee limitation would further the statutory purposes of the Exchange Act by precluding the distortional effects of access fees.

The Commission preliminarily believes that to fully support the integrity of the price protection requirement in the Trade-Through Rules and to achieve the goals that an exchange's displayed quotations be fair and useful and reliably represent the all-in prices that are actually available to investors, the proposed fee limitation should apply to any fee, no matter what it is called,[80] charged to any person[81] for the execution of an incoming order against an options exchange's best bid and offer. As discussed above, the Commission believes that the benefits of intermarket price protection and more efficient linkages could be compromised if options exchanges charge substantial fees for accessing their best bids and offers. The proposed fee limitation is designed to preclude individual exchanges from having fee structures that take improper advantage of the required protection against trade-throughs and undermine the overall

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80 See NYSE Euronext Letter, supra note 37, at 3 (stating that access fees should be addressed not as one model versus the other, but as a fee to access the market independent of the market structure that marketplace employs).

81 See Wolverine Letter, supra note 37, at 6 (asserting that, while a proposed fee cap would reduce Take fees charged to non-members forced to access "outlier" markets at the NBBO due to trade-through obligations, members would still be forced to pay unrestricted fees) and GETCO Letter, supra note 37, at 3 (stating that if the Commission does decide to place caps on access fees charged by exchanges using the "Make or Take" fee model, it should also cap all-in access fees for traditional exchanges, regardless of the type of market participant accessing the exchange's quotation).

benefits of the new private routing regime. It also would preclude an options exchange from charging excessively high fees selectively to competitors. In this regard, the Commission preliminarily believes that limiting the proposed fee cap to apply to only one type of fee charged (for instance, only to "Take" fees), or limiting the proposed fee cap to fees charged only to certain persons (for example, only to non-members) by an options exchange for execution against the exchange's best bid and offer would not fully achieve these objectives because it would not cover all fees that could be charged for access to the exchange's best quotation.

The Commission has received comments that the Make or Take fee structure exerts competitive pressure on the "traditional" fee structure where market makers pay brokers for order flow, and that imposing a cap on Take fees would limit the ability of exchanges that employ a Make or Take model to compete effectively with other exchanges that employ a Broker Payment model, to the detriment of investors.[82] The Commission supports the development of competing market models, as long as they are consistent with the requirements of the Exchange Act. An exchange could not, however, engage in conduct that is otherwise inconsistent with the requirements of the Exchange Act,[83] even if doing so would help that exchange to compete. As discussed above, the Commission preliminarily believes that the benefits of intermarket price protection and more efficient linkages could be compromised if options exchanges charge substantial fees for accessing their best bids and offers, and that a fee limitation is necessary to support the integrity of the price protection requirement under the Trade-Through Rules, but it requests comment on this issue.[84] The Commission also believes that for quotations to be fair

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82 See BOX Letter, supra note 37, at 2-3; IB Letter, supra note 37, at 2-3; and GETCO Letter, supra note 37, at 3.

83 See 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

84 See supra note 69 and accompanying text.

and useful, there must be some limit on the extent to which the all-in price for those who access quotations can vary from the displayed price.[85] The Commission preliminarily believes that adopting an access fee limit of $0.30 per contract for option exchanges, regardless of their particular market structure, would not compromise the competitive viability of exchanges employing a Make or Take fee structure because it preliminarily believes that the proposed level of fee cap would provide those exchanges with sufficient flexibility to structure their fees and rebates to support their market model.[86] Although the Commission preliminarily believes that the proposed fee limit would continue to allow for competition among the options exchanges, it requests comment on this issue and comment on other ways to achieve the Commission's objectives.[87]

The Commission preliminarily believes that a limitation on access fees of $0.30 per contract (equal to $0.003 per share) would be a fair and appropriate solution. In the Commission's preliminary view, limiting access fees to $0.30 per contract would promote intermarket access, standardization of quotations, and the Commission's goals for an effective and efficient linkage between and among the options exchanges. The proposed fee limitation would place all options exchanges on a level playing field in terms of the fees they can charge for the execution of incoming options orders against their best bid and offer. Some exchanges

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85 See supra note 76 and accompanying text. See also NMS Adopting Release, supra note 4, at 37545.

86 See infra Section VIII.A.2 (discussing the impacts of the proposed amendments to Rules 610(a) and (c) on competition). See also infra notes 89 and 172 and accompanying text (noting that the experience of the markets trading NMS stocks in recent years suggests that a fee cap of $0.30 per 100 shares did not prevent markets using a Make or Take fee model from competing effectively in a market where some participants engage in payment for order flow).

87 See infra Sections V (Request for Comment) and VIII.A.2 (discussing the impacts of the proposed amendments to Rules 610(a) and (c) on competition).

might choose to charge lower fees, thereby increasing their ranking in the preferences of order routers; others might charge the full $0.30 per-contract fee and rebate a substantial portion to liquidity providers. The Commission preliminarily believes that competition would ultimately determine which strategy is most successful.

The Commission recognizes, however, that even though it is not proposing to prohibit an exchange from employing any particular market model, the proposed fee limitation may impact different market models in different ways. An exchange with a Make or Take fee model that currently charges a Take fee in excess of the proposed fee cap would take in less revenue per contract from a reduced Take fee, while an exchange with a Broker Payment fee model that charges a transaction fee in excess of the proposed fee cap would take in less revenue per contract from a reduced transaction fee. These reduced fees for accessing an exchange's best bid or offer, standing alone, might have an impact on the manner in which broker-dealers and other market participants, including the exchanges, route order flow. The exchange with the Make or Take fee model, however, might choose to recoup some of that revenue by reducing its Make rebate, which may have an impact on the quoting behavior of market participants that provide liquidity on that exchange. An exchange with a Broker Payment model might choose to recoup some of the revenue by amending other fees charged to its members, which might impact the order routing or other behavior of those members (and the members' customers), depending upon the type of fee change. Accordingly, although the Commission preliminarily believes that the proposed fee limit would allow for vigorous competition among the options exchanges, it

requests comment on the impact of the proposed fee limit on the different exchanges' and market participants' behavior.[88]

The Commission is proposing to set a flat fee cap of $0.30 per contract (the equivalent of $0.003 per share). The Commission is not proposing to establish a cap for low-priced options based on a percentage of the options' price, similar to the existing fee cap of 0.3 percent of the quotation price per share for NMS stocks. The Commission's proposal is based on its preliminary view that the $0.30 per-contract level is consistent with the maximum fee limit for NMS stocks under Rule 610(c). The experience of the markets trading NMS stocks in recent years suggests that a fee cap of $0.30 per 100 shares did not prevent markets using a Make or Take fee model from competing effectively in a market where some participants engage in payment for order flow.[89] In addition, this access fee cap level would help ensure that the "all-in" fee[90] would be below the $1 minimum quoting increment[91] so that the quotations displayed in the NBBO indicate the best prices. For example, having a $0.30 cap[92] would help ensure that an offer of $2 is not inferior to an offer of $2.01 once access and other per-contract fees were added to the price. Stated another way, the Commission preliminarily believes that setting the proposed fee cap at $0.30 per contract would allow options exchanges flexibility to generate revenues from access fees while still providing the exchange the ability to continue to charge other fees,

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88 See infra Sections V (Request for Comment) and VIII.A.2 (discussing the impacts of the proposed amendments to Rules 610(a) and (c) on competition).

89 See infra note 172 and accompanying text.

90 The "all in" fee for transactions in options contracts may include multiple charges such as "Take" fees or transaction fees, routing fees, and licensing fees. See supra note 78.

91 Since every options quotation represents a cost equal to 100 times its price, a penny increment - the smallest possible increment for certain options - equals $1.00 in option cost.

92 A $0.30 per-contract access fee is equal to a fee of $0.003 per underlying share.

such as "licensing" fees charged by exchanges for executions in certain index options[93] or routing fees,[94] without exceeding the $1 minimum increment.

The Commission preliminarily believes that a flat $0.30 per-contract fee cap for all options would strike the appropriate balance between imposing a cap to carry out the objectives discussed above and providing options exchanges flexibility to compete with one another.[95] The Commission preliminarily does not believe that a cap for low-priced options should be based on a percentage of the quotation price as it is for low-priced NMS stocks. The Commission preliminarily believes that differences in the markets for NMS stocks and listed options merit this distinction. First, if an NMS stock is trading at a very low price, the access fee can become significant as a percentage of the total economic exposure. This result is less likely for listed options, given the leverage implicit in an option contract. For example, if an NMS stock is trading for $0.01 per share, so that an order for 100 shares represents $1 worth of stock, an access fee of $0.30 for 100 shares would represent thirty percent of the total economic position. On the other hand, an NMS stock priced at $10 per share could have a short-term out-of-the-

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93 These "licensing" fees generally do not exceed $0.22 per contract. See, e.g., CBOE Fee Schedule (available at http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf) (current as of February 2, 2010); and NYSE Arca Fee Schedule (available at http://www.nyse.com/pdfs/NYSE_Arca_Options_Fee_Schedule1-08-2010.pdf) (current as of January 8, 2010).

94 Fees charged by options exchanges for routing orders to execute on other exchanges range from $0.00 to $0.95 per contract. See NYSE Arca Fee Schedule (available at http://www.nyse.com/pdfs/NYSE_Arca_Options_Fee_Schedule1-08-2010.pdf) (current as of January 8, 2010); and CBOE Fee Schedule (available at http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf) (current as of March 16, 2010) (CBOE charges a $0.50 per contract fee for routing non-customer orders in addition to the customary CBOE execution charge, which for electronic orders for broker-dealers is $0.45 per contract).

95 See infra Section VII.B.2 (discussing generally the costs and benefits of the proposal) and notes 179-183 and accompanying text (discussing the costs with respect to options exchanges that would need to amend their rules to comply with the access fee limitation as a result of proposed Rule 610(c)(2)).

money option priced at $0.01. If the Delta[96] of this option is 0.05, then one option contract would cost $1 but would give the investor exposure equivalent to an investment of $50 of the stock. An access fee of $0.30 per contract for the option would represent only six-tenths of one percent of the economic position.[97]

Second, the restriction on subpenny quoting in NMS stocks does not apply to stocks priced below $1.[98] Thus, for certain low-priced NMS stocks, an access fee of $0.003 per share could be larger than the minimum quoting increment, making it possible for an order to be routed to an exchange quoting a better price but ending up with an inferior all-in price after the access fee. For NMS stocks, the percentage fee cap for stocks priced below $1 helps to mitigate this concern. Because listed options are not currently quoted in subpenny increments, these concerns are not present, and, therefore, the Commission preliminarily believes it is unnecessary to establish a cap based on a percentage of the options' price for low-priced options. Further, if the Commission were to propose a percent-based fee cap for low-priced options, the access fee cap would be, in some cases, less than the amount of the "licensing" fees charged by exchanges for executions in certain index options.

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96 Delta is measured as the change in the option price divided by the change in the underlying asset price. See Guy Cohen, Options Made Easy (2d ed., Upper Saddle River: FT Prentice Hall 2005).

97 A $0.30 per-contract access fee would be a more significant percentage of the option price as the option price decreases. For example, for an option priced at $0.01, a $0.30 per-contract access fee would be 30% of the total option price ($0.01 x 100 = $1 per contract, and $0.30 is 30% of $1). The Commission preliminarily believes, however, that a flat cap of $0.30, rather than a cap based on a percentage of the option price for low-priced options, strikes the appropriate balance, for the reasons discussed in this section. The Commission, however, requests comment on the issue. See infra Section V (Request for Comment).

98 See Rule 612 of Regulation NMS, 17 CFR 242.612.

Finally, a significant percentage of options contract trading volume is in lower priced options.[99] Thus, the Commission estimates that imposing a flat $0.30 per-contract cap, and not including a percentage fee cap for low-priced options similar to the existing fee cap of 0.3 percent of the quotation price per share for NMS stocks, would result in less potential revenue loss for options exchanges from the impact of the proposed fee cap and, therefore, possibly reduce the need for the options exchange to impose other fees on market participants.[100]

B. Terms of Proposed Rule 610(c)(2)

Under proposed Rule 610(c)(2), a national securities exchange would be prohibited from imposing, or permitting to be imposed, any fee or fees that exceeds or accumulates to more than $0.30 per contract for the execution of an order against any quotation in an option series that is the best bid or best offer of such national securities exchange. Thus, when triggered, the proposed fee limitation would apply to any order execution at the displayed price of the best bid or offer and would therefore encompass executions of orders against both the displayed size and any reserve size at the price of those quotations. Further, proposed Rule 610(c)(2) would apply to any fee based on the execution of an incoming order against an exchange's best bid or offer, such as a "Take" fee or other "transaction" fee charged by the exchange when an incoming order executes against the best bid or offer of the exchange. The Commission preliminarily believes that the proposed fee limitation would apply to other types of fees charged by an exchange to a member who represents an incoming order that trades against the exchange's best bid or offer.

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99 Approximately 76% of the contract volume is in options priced at $3 or below, and approximately 48% of the contract volume is in options priced at $1 or below (these estimates are based on December 2009 volume data from OptionsMetrics).

100 See infra notes 179-187 and accompanying text for a discussion of the estimated costs of the proposed fee cap on options exchanges.

For example, the proposed fee limitation would apply to fees charged by various exchanges for the execution of orders in certain options on indexes (called "licensing" or "index surcharge" or "royalty" fees) when the fee is charged for the execution of an incoming order against the exchange's best bid or offer. The proposed fee limitation also would apply to options regulatory fees ("ORF"), such as those that have been adopted by several exchanges.[101] For those exchanges that have adopted an ORF, the fee is charged on a per-contract basis and is assessed on each member for all options transactions executed or cleared by the member in a customer account. Because an ORF would constitute a fee for accessing the best bid or offer of an options exchange when such fee is assessed on a customer order that trades with the exchange's best bid or offer, the ORF would be covered by the proposed amendments to Rule 610(c)(2). So long as the fees are based on the execution of orders against the best bid or offer of the exchange, the proposed restriction in Rule 610(c)(2) would apply. Conversely, fees not triggered by the execution of orders against such quotations (e.g., certain periodic fees such as monthly or annual fees) would not be included.

The proposed fee limitation in Rule 610(c)(2) would apply to any fee charged directly by an options exchange. It would also limit any fee charged by a market participant, such as a market maker, that displays a quotation through the exchange's facilities. The Commission, however, understands that market participants in the options markets currently do not charge access fees. Nothing in proposed Rule 610(c)(2) would preclude an options exchange from taking action to limit fees beyond what would be required under the proposed rule, and such

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101 See Securities Exchange Act Release Nos. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) (SR-CBOE-2008-105); 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009-100); 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR-ISE-2009-105); and 61388 (January 20, 2010), 75 FR 4431 (January 27, 2010) (SR-BX-2010-001).

exchange would have flexibility in establishing its respective fee schedule to comply with proposed Rule 610(c)(2).

The proposed access fee limitation in Rule 610(c)(2) would apply only to quotations that market participants are required to access to comply with the Trade-Through Rules; it would not apply to depth of book quotations. By proposing to apply the fee cap only to the best bid or offer of an options exchange, the limitation is designed to have minimal impact on competition and individual business models while furthering the objectives of the Exchange Act by preserving the fairness and usefulness of quotations, and by providing support for the proper functioning of the Trade-Through Rules, as discussed above.[102]

Further, as the Commission noted in adopting current Rule 610(c), a market participant could intend to interact only with a quotation subject to the access fee cap in Rule 610(c) but in fact execute against a quotation not subject to the cap. For example, at the time a market participant routes an order to an exchange, it could be attempting to execute only against that exchange's best bid or offer, which would be subject to the proposed fee cap. By the time the order arrives at the exchange, the incoming order may, if a better priced bid or offer has been displayed at the exchange for a size smaller than the size of the incoming order, execute partially against the new best bid or offer and partially against the quotation that was previously the exchange's best bid or offer. If the exchange were to charge a fee higher than the access fee cap to the market participant accessing the previous best bid or offer, the Commission believes that such charge could undermine the purpose of the proposed access fee cap as discussed above. Therefore, the Commission believes that to meet the requirements of proposed Rule 610(c)(2),

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102 See NMS Adopting Release, supra note 4, at 37546.

an exchange would have to ensure that it never charges a fee in excess of the cap when a market participant tries to access only the exchange's best bid or offer.[103]

The operation of this limitation would be based on quotations as they are displayed in the consolidated quotation stream. Thus, the exchange would be responsible for ensuring that any time lag between prices in its internal systems and its quotations in the consolidated quotation system do not cause fees to be charged that would violate the limitation of proposed Rule 610(c)(2). Compliance with this requirement obviously would not be a problem for exchanges that do not charge any fees in excess of the proposed cap. If an exchange were to choose to charge higher fees for access to its depth of book quotations,[104] the Commission does not believe the exchange could comply with the proposed Rule 610(c)(2) unless it provided a functionality that enables market participants to assure that they will never inadvertently be charged a fee in excess of the cap. For example, such an exchange could provide a "top-of-book only" or "limited-fee only" order functionality. By using this functionality, market participants themselves could assure that they were never required to pay a fee in excess of the levels proposed in Rule 610(c)(2).[105] Further, for similar reasons, the proposed access fee limitation in Rule 610(c)(2) would apply to an exchange's non-displayed quotations in listed options that are priced better than the exchange's displayed best bid or offer. Specifically, if an exchange had an order type that allowed an order to be entered at a price that is not displayed but is available for

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103 This is consistent with the approach in Regulation NMS. Id.

104 The Commission is not aware of any options exchange that charges differential fees for accessing depth-of-book quotations, but requests comment on the issue.

105 The existing access fee cap for NMS stocks operates in this same manner. See id.

execution, the proposed fee limitation would apply to an execution against that non-displayed price.[106]

C. Payment for Order Flow

In a traditional payment for order flow arrangement in the options market, a specialist or market maker offers cash and non-cash inducements to brokers that direct orders to the specialist or market maker. The specialist or market maker is willing to pay firms for this order flow because it knows that it will be able to trade with a portion of such orders due to specialist and market maker guarantees provided by the exchanges.[107] In addition, some exchanges have adopted fees on market makers to facilitate their members' payment for order flow.[108] Typically,

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106 See, e.g., Chapter VI, Sections 6 and 7 of the NOM Rules governing NOM's price improving order type. "Price Improving Orders" are defined under the NOM Rules as orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent, and those Price Improving Orders that are available for display must be displayed at the minimum price variation in that security and rounded up for sell orders and rounded down for buy orders. See Chapter VI, Section 1(e)(6) of the NOM Rules (defining Price Improving Orders).

107 See, e.g., CBOE Rule 8.13 and ISE Rule 713.

108 See, e.g., Securities Exchange Release Nos. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (SR-Amex-2003-50) (immediately effective proposed rule change to reinstate marketing fee to raise revenue for Amex specialists to compete for order flow); 47948 (May 30, 2003), 68 FR 33749 (June 5, 2003) (SR-CBOE-2003-19) (immediately effective proposed rule change to reinstate marketing fee to compete for order flow); 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR-Phlx-2002-75) (immediately effective proposed rule change to reinstate marketing fee to compete for order flow); 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (SR-ISE-00-10) (order approving ISE's payment for order flow program); 43290 (September 13, 2000), 65 FR 57213 (September 21, 2000) (SR-PCX-00-30) (immediately effective proposed rule change to adopt a payment for order flow fee); 43228 (August 30, 2000), 65 FR 54330 (September 7, 2000) (SR-Amex-00-38) (immediately effective proposed rule change to establish new marketing fee to raise revenue for Amex specialists to compete for order flow); 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR-Phlx-00-77) (immediately effective proposed rule change to adopt a payment for order flow fee); and 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000) (SR-CBOE-00-28) (immediately effective proposed rule change to establish new CBOE marketing fee to raise revenue that could be used by CBOE market makers to pay for order flow).

the exchange charges each market maker a fee for trading with customer orders on the exchange. The exchange then pools the proceeds from such fees and allows specialists and/or market makers to use such funds to pay for order flow.[109]

Several commenters argue that, if the Commission were to limit "Take" fees, it also should limit fees associated with payment for order flow arrangements.[110] This view is premised on the notion set forth by several commenters that payment for order flow fees affect quoted prices, and thus executions received by investors, because market makers that have to pay for order flow will reflect that cost in their quoted prices.[111] In this regard, one commenter petitioned the Commission to impose a cap at the same level on private payment for order flow arrangements between market makers and agency brokerage firms as any cap it imposes on "Take" fees.[112] Another commenter argues that fees relating to "accessing" quotations can be characterized broadly to include exchange fees used to fund members' payment for order flow.[113]

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109 For example, NYSE Amex LLC ("NYSE Amex") imposes a $0.65 per-contract marketing fee for non-Minimum Quoting Increment Pilot Program classes and a $0.25 per-contract marketing fee for Minimum Quoting Increment Pilot Program classes where a market maker trades against an incoming electronic customer order. See NYSE Amex Options Fee Schedule (available at http://www.nyse.com/pdfs/NYSE_Amex_Options_Fee_Schedule01.04.10.pdf) (current as of January 4, 2010).

110 See BOX Letter, supra note 37, at 2 (stating its belief that, if the Commission does decide to enact fee caps, a cap on Take fees is acceptable only to the extent that other options exchanges are willing to accept a comparable limit on payments and fees associated with exchange payment for order flow) and Wolverine Letter, supra note 37, at 7 (stating that any cap on make-take fees should be made in conjunction with a commensurate cap on payment for order flow fees).

111 See BOX Letter, supra note 37, at 4; GETCO Letter, supra note 37, at 3-6; IB Letter, supra note 37, at 2-3 and 6-7; and Wolverine Letter, supra note 37, at 4.

112 See IB Letter, supra note 37, at 1 and 6.

113 See Wolverine Letter, supra note 37, at 3.

The Commission agrees with commenters that payment for order flow fees, among other costs, affect quoted prices. However, the Commission is not proposing to specifically limit payment for order flow, nor the exchange fees imposed on market makers to fund members' payment for order flow. Instead, the Commission is proposing to limit the amount of fees that an exchange can impose, or permit to be imposed, for access to the best bid and offer of the exchange. The Commission preliminarily does not believe that an exchange payment for order flow fee on members is an access fee, i.e., it is not a fee imposed for executing against an exchange's quotation. The basis for the proposal, as discussed at length above,[114] is to (1) provide for fair and efficient access to displayed quotations to support the integrity of the price protection requirement contained in the Trade-Through Rules, and (2) further the objective that quotations be fair and useful by limiting the extent to which the all-in price can vary from the displayed price.

The Commission preliminarily believes these objectives can be achieved without limiting payment for order flow fees. Payment for order flow is when a market maker offers cash and non-cash inducements to brokers that direct orders to the market maker. In addition, some exchanges impose a fee on market makers to facilitate their members' payment for order flow.[115] Payment for order flow fees are not fees imposed by an exchange on incoming orders for executing against an exchange's quotations. Therefore, the Commission preliminarily does not believe that payment for order flow fees directly impact the ability of a market participant to access an exchange's best priced displayed quotations, and therefore does not believe that limiting payment for order flow fees is necessary to achieve the objectives of the proposed fee

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114 See supra notes 58-100 and accompanying text.

115 See supra notes 107-109 and accompanying text.

cap - to provide for fair and efficient access to displayed quotations and that displayed quotations be fair and useful.

However, if a market maker is charged a payment for order flow fee by an exchange when the market maker is accessing the best bid or offer of the exchange, then the proposed fee limitation would apply to that fee because it would be a fee for the execution of an order against the best bid or offer of the exchange. A payment for order flow fee would be a fee for accessing an exchange's best bid or offer if, for example, a market maker's quote traded against a resting customer limit order that is the best bid or offer of the exchange. Similarly, a payment for order flow fee would be a fee for accessing an exchange's best bid or offer if a market maker sent an order in a class to which it is not appointed as a market maker, and that order trades against a customer order resting on the exchange's limit order book that is the best bid or offer of the exchange. In sum, if the rules of the exchange provide that the market maker would pay a payment for order flow fee for executing against the resting customer order that is the best bid or best offer of the exchange, that fee would be covered by proposed Rule 610(c)(2).

On several occasions, the Commission has recognized that the anticipation of payment for order flow raises a potential conflict of interest for brokers handling customer orders, and that reliance by market centers on the strategy of simply paying money to attract orders may present a threat to aggressive quotation competition.[116] At the same time, the Commission has stated that payment for order flow is not necessarily inconsistent with a broker's duty of best execution, so long as appropriate measures are taken to ensure that that duty is, in fact, met.[117] The

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116 See, e.g., Options Concept Release, supra note 21, at 6128-6130.

117 See Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (SR-ISE-00-10) (citing to Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000)); see also Options Concept Release, supra note 21, at 6128-6129.

Commission further acknowledges the broader concern that payment for order flow may result in less aggressive competition for order flow on the basis of price,[118] such as through displaying aggressively-priced quotations or offering opportunities for price improvement. However, the Commission has stated that singling out and banning only one particular form of such payment - for example, payment made possible by an exchange through the collection of fees from its market makers - would scarcely address the issue on the larger scale.[119]

Further, as noted above, the Commission believes that market forces and the dynamics of competition should determine exchange fees, to the extent practicable.[120] Payment for order flow fees generally are charged by exchanges to market makers when they execute against a customer order. If a market maker does not want to pay this fee, the market maker is free to give up its appointment as a market maker on that exchange and become a liquidity provider on another exchange with a more attractive fee structure. For instance, an exchange may set a fee to collect funds for members' payment for order flow at such a level that a market maker may determine it can no longer effectively compete for order flow based on its quotations, which must incorporate the costs of all fees.[121] The market maker may then make the determination to become a liquidity provider on another exchange where it is able to compete more effectively based on the price of its quotations. Similarly, an exchange may determine to charge any market participant a fee for providing liquidity on its exchange.[122] If a market participant did not want

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118 See Securities Exchange Act Release No. 43833, supra note 117, at 7825.

119 Id.

120 See supra note 58.

121 This would assume that the amount of the payment for order flow fee impacts the price at which the market maker is willing to quote.

122 See, e.g., BOX Fee Schedule, Section 7 (available at http://www.bostonoptions.com/pdf/BOX_Fee_Schedule.pdf) (current as of January 2010) (imposing a $0.55 fee for adding liquidity in Non-Penny Classes, a $0.15 fee for adding

to pay this fee, it could choose to send its non-marketable limit order to another options exchange with a more attractive fee structure. The Commission therefore preliminarily believes that competition among the various options exchanges, and the different market models, will act to restrict payment for order flow and other fees for providing liquidity.[123]

IV. Technical Amendments to Rule 610

The Commission is proposing to amend Rule 610(c) to reflect that Nasdaq is now registered as a national securities exchange under Section 6(a) of the Exchange Act.[124] The current rule's prohibition on a trading center imposing, or permitting to be imposed, fees in excess of the stated limits applies to the execution of an order against a protected quotation of the trading center or against any other quotation of the trading center that is "the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best

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liquidity in Penny Pilot Classes except SPY, QQQQ, and IWM, and a $0.05 fee for adding liquidity in SPY, QQQQ, and IWM). In its filing imposing this fee, BOX stated that the changes proposed are in response to various 'Payment for Order Flow' programs currently in operation on other options exchanges. See Securities Exchange Act Release No. 60934 (November 4, 2009), 74 FR 58358 (November 12, 2009).

123 The Commission also notes that the exchanges generally lowered the level of payment for order flow fees charged to their market makers in classes included in the Minimum Quoting Increment Pilot Program. See Securities Exchange Act Release Nos. Securities Exchange Act Release Nos. 55328 (February 21, 2007), 72 FR 9050 (February 28, 2007) (SR-Amex-2007-16); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR-CBOE-2007-11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR-ISE-2007-08); 55223 (February 1, 2007) 72 FR 6306 (February 9, 2007) (SR- NYSEArca-2007-07); and 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR-Phlx-2007-05). As noted above, currently approximately 69.5 percent of trading volume is in classes included in the Minimum Quoting Increment Pilot Program where trading interest can be represented in the quote in one-cent increments, and by August 2, 2010, 363 classes will be included in the Minimum Quoting Increment Pilot Program, representing approximately 88.1 percent of trading volume during February 2010. See supra note 29 and accompanying text.

124 See 15 U.S.C. 78f(a); see also Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

offer of The Nasdaq Stock Market, Inc. in an NMS stock." Given Nasdaq's current status as a registered national securities exchange, there no longer is a need to separately reference Nasdaq's best bid or best offer. Therefore, the Commission is proposing to amend Rule 610(c)(1) to simplify the relevant language to refer only to any other quotation of the trading center that is the best bid or best offer of a national securities exchange or the best bid or best offer of a national securities association in an NMS stock.[125]

The Commission also is proposing to make technical changes to Rule 610(c) to reflect the addition of proposed Rule 610(c)(2) that would apply to listed options.

V. Request for Comments

The Commission requests the views of commenters on all aspects of this proposal, including whether the proposal is consistent with the provisions of the Exchange Act. In particular, the Commission requests comment on the following:

1. Rule 610(a) currently prohibits the imposition of unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of the exchange to quotations in NMS stocks. The Commission requests comment on its proposal to extend this prohibition to include access to quotations of listed options. The Commission further requests comment on whether the Commission's rules also should prohibit unfairly discriminatory terms for other services offered by exchanges. For example, should the Commission rule be expanded to cover exchange transaction fees generally, even those transaction fees that are not based on accessing the exchange's quotations?

2. Rule 610(a) as proposed to be amended would prohibit an exchange from charging higher "Take" fees in certain options classes to non-directed customers than to directed

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125 See proposed Rule 610(c)(1).

customers. Do commenters agree that such a fee differential should be prohibited by the proposed amendments to Rule 610(a)?

3. As discussed above, the Commission is proposing to limit fees charged for accessing the best bid and offer in a listed option, as proposed in Rule 610(c)(2), to support fair and efficient access to an exchange's quotations, and to provide greater transparency in the quoted price. To what extent is this action necessary to achieve these objectives? To what extent do competitive forces in the options markets currently act, or will continue to act, to keep fees such as access fees at a level that does not impede fair and efficient access to an exchange's quotations, or impede the transparency of the quoted price? Does the existence of flash functionality at some of the exchanges that trade listed options have an impact on the level at which options exchanges set access fees?[126]

4. The markets for trading NMS stocks are similar in certain ways to the markets for trading listed options, and in other ways are different. The Commission requests comment on whether, and how, those similarities and differences should impact a decision to apply an access fee cap, as proposed, in the options markets. For example, both NMS stocks and listed options can be traded on multiple markets, and broker-dealers that trade NMS stock and listed options have a duty of best execution with respect to each. Likewise, both markets have prohibitions on trading-through. How, if at all, do these similarities support, or not, the proposed fee cap for accessing an options exchange's best bid and offer?

Unlike NMS stocks, listed options are only traded on exchanges, and not in the over-the-

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126 The Commission separately has proposed changes to Rule 602 of Regulation NMS that, if adopted, would affect flash functionality in the listed options markets, raising concerns about access to order information and incentives for market participants to display their trading interest publicly. See Flash Order Proposal, supra note 19, and supra notes 72-75 and accompanying text.

counter ("OTC") market. It can be argued that one result of the lack of OTC trading in listed options is that more "good" order flow (that is, order flow relatively uninformed about future prices) reaches the options exchanges than the exchanges that trade NMS stocks.[127] It can be further argued that because quotations must be available for execution to all incoming order flow – both informed and uninformed – the quotations must be wider than the prices that could be offered exclusively to uninformed order flow.[128] In addition, it is argued that investors in listed options depend upon the liquidity supplied by professional liquidity providers to a greater extent than in the market for NMS stocks.[129] Further, some market participants state that liquidity providers price options differently than liquidity providers price NMS stocks, pursuant to pricing models or algorithms rather than based on the inherent value of the issuer.[130] Do commenters agree with these statements? How, if at all, do these differences mitigate for or against applying the proposed fee cap for accessing an options exchange's best bid and offer? Do these differences impact the incentives for liquidity providers to quote aggressively, or the competitiveness of an options exchange's fees, differently than a market participant or market trading NMS stocks?

5. The Commission requests comment on the different sources of revenue available to options exchanges, and any differences between those sources available to options exchanges

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127 See ISE Flash Letter, supra note 73, Appendix B at 2.

128 See Letter from Larry Harris, Professor of Finance and Business Economics, USC Marshall School of Business, dated December 4, 2009 ("Harris Letter") at 4. Prices that could be offered exclusively to uninformed order flow could incorporate tighter spreads because the market maker does not need to protect itself from adverse selection by informed traders by building in a wider spread.

129 See CBOE Flash Letter, supra note 73, at 1 and 10; ISE Flash Letter, supra note 73, at 9. See also Letter from Peter Bottini, EVP Trading and Customer Service, and Hillary Victor, Associate General Counsel, optionsXpress, Inc. ("optionsXpress") dated November 25, 2009 ("optionsXpress Letter") at 3.

130 See ISE Flash Letter, supra note 73, at 7-8.

and exchanges that trade NMS stocks. For example, exchanges that have in place rules for listing NMS stocks have the ability to charge listing fees to issuers for listing on their market. Does the amount of revenue received from market data differ significantly for options exchanges versus exchanges that trade NMS stocks? How, if at all, should any differences in sources of revenue for options exchanges versus exchanges that trade NMS stocks mitigate for or against applying the proposed fee cap for accessing an options exchange's best bid and offer? How, if at all, should any differences in sources of revenue for options exchanges versus exchanges that trade NMS stocks impact a determination as to the level of an access fee cap to be imposed?

6. If commenters do not believe that the Commission should limit fees charged for accessing the best bid and offer in a listed option, as proposed in Rule 610(c)(2), do commenters believe that the Commission should take any action with respect to fees charged, or permitted to be charged, by an options exchange for executing against the exchange's best bid or offer in a listed option? If not, please explain why not. If so, please explain why, and what alternative action the Commission should take. For example, would commenters support action by the Commission to cap all fees for executing an options order, including access fees, routing fees, and any other per contract fee, at the minimum pricing variation for the option? Would this alternative achieve the objectives of the proposed fee cap, as discussed above in Section III? Would this alternative approach provide more or less flexibility to exchanges than an access fee cap as proposed in Rule 610(c)(2)?

7. The Commission is proposing a flat fee cap of $0.30 per contract. As discussed above, the Commission's proposal is based on several factors. First, the $0.30 per-contract level is consistent with the maximum fee limit for NMS stocks under Rule 610(c). Experience of the markets trading NMS stocks in recent years suggests that a fee cap of $0.30 per 100 shares did

not prevent markets using a Make or Take fee model from competing effectively in a market where some participants engage in payment for order flow.[131] In addition, this access fee cap level would help ensure that the "all-in" fee would be below the $1 minimum quoting increment. Further, the Commission preliminarily believes that setting the proposed fee cap at $0.30 per contract would allow options exchanges flexibility to generate revenues from access fees while still providing the exchange the ability to continue to charge other fees, such as "licensing" fees charged by exchanges for executions in certain index options or routing fees, without exceeding the $1 minimum increment. The Commission requests comment on this analysis. If commenters agree with this approach and threshold, please explain why; if commenters do not agree, please explain why not.

8. If a commenter believes that a fee cap for accessing the best priced quotation in listed options is necessary and appropriate, the Commission requests comment as to what level such a cap should be set, and what considerations should be part of any analysis as to the level of a fee cap. One commenter states that while 30% of the minimum quoting increment is a reasonable access fee cap for the equity markets, which allow internalization as a defense to excessive access fees, a lower cap is needed in the options markets because internalization is not permitted, and suggests a cap of $0.20 per contract.[132] Other commenters argue that any fee cap should not be lower than $0.99 per contract (for options quoted in one-cent increments) because a customer is still better off paying a $0.99 per contract fee to execute against a price that is better by $1.00 per contract.[133] The Commission requests commenters' views on each of these

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131 See infra note 172 and accompanying text.

132 See Citadel Petition, supra note 34, at 10.

133 See BOX Letter, supra note 37, at 5 (stating in part that if the Commission were to impose a fee limit that it should be $0.01 per contract less than the standard trading

alternative levels, and the reasoning supporting them.

9. One of the bases for the proposed access fee cap is to support the requirements of the Trade-Through Rules and the duty of best execution. It could be argued that because investors will not be worse off accessing a price that is better by $1 per contract as long as the fee to access that quotation is not more than $0.99 per contract,[134] any fee cap should not be lower than $0.99 per contract to support the operation of the Trade-Through Rules. Do commenters agree with this view? Should the fact that there is no guarantee that an order sent to another exchange to access a better displayed price will actually obtain an execution on the away exchange impact the level at which an access fee is capped? Should there be the possibility for more than a one-cent per contract advantage (which is what would result with an access fee of $0.99 per contract) to require market participants to attempt to access quotations in listed options on other exchanges that are better priced by $1 per contract? What percent of the time do orders sent to another exchange to access a better displayed price actually obtain an execution on the away exchange? What other considerations, if any, should the Commission take into account when determining the level of any fee cap imposed for access to an exchange's best bid or offer in a listed option?

10. As discussed above in Question 4, the markets for trading NMS stocks are similar in certain ways to the markets for trading listed options, and in other ways are different. The Commission requests comment on whether, and how, those similarities and differences should impact the level at which an access fee cap should be set for access to an options exchange's best bid and offer. Should any limit on access fees that can be imposed by the options exchanges be

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increment of the class); and IB Letter, supra note 37, at 4-5 (opposing any fee cap less than $0.99 per contract for a contract quoted in pennies).

134 Id.

different than or the same as the existing limit on access fees in the market for NMS stocks? If different, please explain whether an access fee limit in the options exchanges should be higher or lower than the limit for NMS stocks, and the basis for the difference. If the same, please explain why, with specificity.

11. As discussed above, the Commission has proposed a flat access fee cap of $0.30 per contract, and not proposed a percentage fee limit for low-priced options, similar to the 0.3 percent of the price per share limit for NMS stocks priced under $1.[135] The Commission preliminarily believes that differences in the markets for NMS stocks and listed options merit this distinction. Specifically, when an NMS stock is trading at a very low price, the access fee can become significant as a percentage of the total economic exposure. This result is less likely for listed options, given the leverage implicit in an option contract.[136] In addition, the restriction on subpenny quoting in NMS stocks does not apply to stocks priced below $1. Thus, for certain low-priced NMS stocks, an access fee of $0.003 per share could be larger than the minimum quoting increment, making it possible for an order to be routed to an exchange quoting a better price but ending up with an inferior all-in price after the access fee. For NMS stocks, the percentage fee cap for stocks priced below $1 helps to mitigate this concern. Because listed options are not currently quoted in subpenny increments, these concerns are not present, and, therefore, the Commission preliminarily believes it is unnecessary to establish a cap based on a

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135 See supra notes 96-100 and accompanying text.

136 For example, if an NMS stock is trading for $0.01 per share, so that an order for 100 shares represents $1 worth of stock, an access fee of $0.30 for 100 shares would represent thirty percent of the total economic position. On the other hand, an NMS stock priced at $10 per share could have a short-term out-of-the-money option priced at $0.01. If the Delta of this option is 0.05, then one option contract would cost $1 but would give the investor exposure equivalent to an investment of $50 of the stock. An access fee of $0.30 per contract for the option would only represent six-tenths of one percent of the economic position.

percentage of the options' price for low-priced options.[137]

The Commission requests comment on its analysis, and whether the proposed access fee limit should have a percentage fee limit for low-priced options, similar to the 0.3 percent of the price per share for NMS stocks priced under $1, and on its reasoning for not proposing such a percent-based limit for low-priced options. If commenters believe that the proposed access fee cap should be different for low-priced options, please explain with specificity why, and what the breakpoint should be, and why.

12. As discussed above, one of the bases for the proposed fee cap is to ensure the fairness and usefulness of displayed quotations, and to enhance transparency of displayed quotations. The Commission requests comment as to whether there is a need to promote transparency of the displayed quotations in listed options beyond the status quo.

13. If commenters believe that, to support the transparency of displayed quotations, there should be a limit as to how far away from the quoted price the amount that the investor would pay (for a buy) or receive (for a sell) inclusive of access fees should be, what factors should go into determining the allowable deviation? For example, should access fees be limited to one increment less than the minimum quoting increment (for example, $0.99 per contract in an option that has a one-cent minimum increment), such that the investor would always get a better execution price net of access fees when the quoted price is better by one minimum quoting increment? Should the access fees be limited to less than half of the minimum quoting increment (for example, $0.50 per contract in an option that has a one-cent minimum increment), so that the

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137 Commission staff also estimates that imposing a flat $0.30 per-contract cap, and not including a percentage fee cap for low-priced options similar to the existing fee cap of 0.3 percent of the quotation price per share for NMS stocks, would result in less potential revenue loss for options exchanges from the impact of the proposed fee cap. See supra notes 99-100 and accompanying text.

net price to investors inclusive of access fees is closer to the displayed price than the next worse price? Should the allowable access fees be some other amount?

14. The Commission requests comment on whether there are alternative methods other than the proposed access fee cap to achieve the objective of greater transparency in displayed quotations of listed options.

15. The Commission requests comment on the types of fees that should be covered by an access fee limitation. For example, the Commission believes that proposed Rule 610(c)(2) would apply to fees charged for the execution of options on certain indexes (so-called "licensing fees," "royalty fees," or "index surcharge fees"). Please state why it would be appropriate or not appropriate to apply the proposed fee limitation to licensing fees. What would be the impact on these fees if the proposed fee limitation did apply? What would be the impact on market quality if the proposed fee limitation applied to licensing fees?

16. The Commission requests comment on its preliminary view of the applicability of the proposal to an ORF.[138] The Commission also requests comment on any potential impact of the proposal on an ORF.

17. As proposed, the fee limitation in Rule 610(c)(2) would apply to fees charged for executions of orders in all listed options, including those that are listed and traded only on one options exchange ("non-multiply listed options"). Do commenters agree that Rule 610(c)(2) should apply to trades in such options? Or should any fee cap apply only to multiply listed options? Or should the proposed fee limitation in Rule 610(c)(2) be set at a different level for non-multiply listed options? If commenters believe the proposed fee limitation in Rule 610(c)(2) should not apply to fees charged for executions of orders in non-multiply listed options, please

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[138] See supra note 101 and accompanying text.

explain why and how "non-multiply listed options" should be defined.

18. As proposed, the fee limitation in Rule 610(c)(2) would apply to fees charged for the execution of orders in FLEX options and to the execution of complex orders.[139] Do commenters agree that Rule 610(c)(2) should apply to such transactions? If so, should the proposed fee limitation in Rule 610(c)(2) be set at a different level for orders in FLEX options or complex orders? If commenters believe the proposed fee limitation in Rule 610(c)(2) should not apply to fees charged for the execution of orders in FLEX options or to the execution of complex orders, please explain why.

19. What would be the impact of the proposed access fee cap in Rule 610(c) on market quality? In particular, the Commission encourages submission of any data that quantifies potential benefits or harm.

20. Do commenters believe that limiting access fees as proposed in Rule 610(c) would have a disparate effect on one type of market model over another? If not, why not? If so, how? And if so, how would the disparate effect impact the ability of exchanges with different market models to compete with each other? The Commission further requests comment as to whether, and if so how, the quoting, order routing or other behavior of market participants would change if the proposed fee cap were in place.

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139 A complex order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. See, e.g., ISE Rule 722. See also, e.g., CBOE Rule 6.53C (describing a complex order generally as any of the following orders for the same account, including Spread Orders, Straddle Orders, Strangle Orders, Combination Orders, Ratio Orders, Butterfly Spread Orders, Box/Roll Spread Orders, Collar Orders and Risk Reversals, Conversions and Reversals, and Stock-Option Orders). A flex option is a customized option contract that provides the ability to customize key contract terms, like exercise price, exercise styles and expiration dates. See, e.g., http://www.cboe.com/Institutional/FLEX.aspx; CBOE Rule 24A.4.

For example, as discussed above, several commenters express concern with limiting Take fees without also limiting payment for order flow fees.[140] They argue that market participants on Make or Take exchange quote more aggressively because of the Make rebates paid for providing liquidity that are funded by the Take fees charged to liquidity takers.[141] Exchanges with Make or Take fee models thus provide direct competition based on aggressive quoting to exchanges with payment for order flow models because a market maker on a payment for order flow exchange must match the better prices on the Make or Take exchange, or route to the Make or Take exchange and pay the Take fee.[142] Limiting the amount of a Take fee a Make or Take exchange can charge will directly impact the amount of a Make rebate the exchange can pay to liquidity providers, which in turn will impact a liquidity provider's incentive to quote aggressively, thus limiting the Make or Take exchange's ability to compete with an exchange with a payment for order flow fee model through aggressive quoting.[143]

The Commission requests comment on whether commenters agree with this view. Do commenters agree that liquidity providers on Make or Take exchanges quote more aggressively than liquidity providers on other exchanges once their displayed quotations are adjusted to account for the effect of access fees on the "all in" cost to the investor? If so, are liquidity rebates the only reason that liquidity providers on Make or Take exchanges are willing to quote aggressively? For example, does the absence of order flow captured by payments to routing brokers or the absence of guaranteed allocations for liquidity providers also contribute significantly to aggressive quoting by liquidity providers on Make or Take exchanges?

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140 See supra note 82 and accompanying text.

141 See BOX Letter, supra note 37, at 3; IB Letter, supra note 37, at 2-3. See also ISE Flash Letter, supra note 73, at 8; and Harris Letter, supra note 128, at 2.

142 See IB Letter, supra note 37, at 3; GETCO Letter, supra note 37, at 6-7.

143 See id.

Do commenters believe that limiting Take fees, which are a type of access fee, would result in reduced Make rebates paid for supplying liquidity? If so, what are commenters views as to how much Make rebates would be reduced in reaction to reduced Take fees? What would be the impact, if any, of reduced Make rebates on market participant incentives to aggressively quote on exchanges employing a Make or Take fee model? To the extent that commenters believe that limiting Take fees would result in reduced Make rebates paid for supplying liquidity, and that reduced Make rebates would adversely impact market participant incentives to aggressively quote on exchanges employing a Make or Take fee model, what impact would this have on those market participants supplying liquidity? Or on investors taking liquidity?

The Commission requests comment as to the impact of the proposed fee cap on the ability of an exchange with a Make or Take fee model to compete with exchanges with a payment for order flow model. For example, to the extent that commenters believe that limiting Take fees would result in reduced Make rebates paid for supplying liquidity, and that reduced Make rebates would adversely impact market participant incentives to aggressively quote on exchanges employing a Make or Take fee model, do commenters believe that a $0.30 per contract access fee cap, as proposed, would allow Make or Take exchanges to pay a large enough rebate to continue to incent market participants to quote aggressively, and thus compete more aggressively on price with payment for order flow exchanges?

21. The Commission notes the distinction between "aggressive" quotations and "matching" quotations. Aggressive quotations are price leaders and help narrow the NBBO spread (by either improving the NBBO or remaining alone at the NBBO). Matching quotations follow prices set elsewhere and add size to the NBBO, but do not narrow the spread. To what extent do liquidity providers on payment for order flow options exchanges quote aggressively

rather than merely matching the NBBO set elsewhere? Would applying an access fee cap, as proposed, lead market participants on one or both types of options exchange to quote more aggressively and thereby narrow NBBO spreads for listed options? Or would applying an access fee cap lead market participants on one or both types of options exchanges to quote less aggressively? Does your answer change depending on whether the Commission adopts a ban on flash functionality in the options markets?[144]

22. As noted above, the Commission recognizes that even though it is not proposing to prohibit an exchange from employing any particular market model, the proposed fee limitation may impact different market models in different ways. An exchange with either a Make or Take fee model that charges a Take fee in excess of the proposed fee cap, or an exchange with a Broker Payment fee model that charges a transaction fee in excess of the proposed fee cap, would take in less revenue per contract from a reduced Take or transaction fee, as applicable. These reduced fees for accessing an exchange's best bid or offer, standing alone, might have an impact on the manner in which broker-dealers and other market participants, including the exchanges, route order flow. The exchange with the Make or Take fee model, however, might choose to recoup some of that revenue by reducing its Make rebate, which may have an impact on the quoting behavior of market participants that provide liquidity on that exchange. An exchange with a Broker Payment model might choose to recoup some of the revenue by amending other fees charged to its members, which might impact the order routing or other behavior of those members (and the members' customers), depending upon the type of fee change.

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144 See supra notes 19 and 72-75.

The Commission requests comment on how the exchanges might reallocate their sources of revenue, if at all, in response to the access fee limit in proposed Rule 610(c)(2). What changes, if any, to fees other than access fees imposed by, or rebates paid by, exchanges would the options exchanges make in response to being required to limit access fees as proposed? Would any potential disparate impact from these fees changes across exchange fee models lead to harm to investors? If so, please explain. How, if at all, would potential changes to fees other than access fees imposed on members by exchanges impact the behavior of particular categories of market participants, such as retail investors, market makers, and broker-dealers?

23. As noted above in Question 20, several commenters express concern with limiting Take fees without also limiting payment for order flow fees. They argue that limiting the amount of a Take fee a Make or Take exchange can charge will directly impact the amount of a Make rebate the exchange can pay to liquidity providers, which in turn will impact a liquidity provider's incentive to quote aggressively, thus limiting the Make or Take exchange's ability to compete with an exchange with a payment for order flow fee model through aggressive quoting.[145] The Commission notes that the percent of overall contract volume for trading in equity options for the month of February 2010 for each exchange that primarily employs a Make or Take fee model ranges from 2.83 percent to 15.36 percent, and that the aggregate market share of these exchanges was 18.19 percent.[146] Exchanges that primarily employ a Broker Payment Model had an aggregate market share of overall contract volume for trading in equity options for

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145 See supra notes 140-143 and accompanying text.

146 See http://www.theocc.com/webapps/exchange-volume. The data is for the month of February 2010 and includes market share for NOM and NYSE Arca, but does not include BATS, which began trading options on February 26, 2010.

the month of February 2010 of 81.81 percent.[147] The Commission requests comment as to the reasons why commenters believe that the Make or Take fee model has not resulted in greater market share to date, given the arguments that the payment of a Make rebate acts as a direct incentive to quote more aggressively. For instance, how does the existence of flash functionality on other exchanges impact the ability of Make or Take exchanges to compete on quoted price?

24. The proposed fee limitation in Rule 610(c)(2) would prohibit an exchange from imposing, or permitting to be imposed by market participants, any fee or fees that exceed or accumulate to more than the proposed limit. The Commission requests comment on whether it is necessary in the listed options exchanges to include a prohibition, as proposed, on an exchange permitting other market participants to impose fees that exceed the limit. The Commission does not believe that market makers in listed options currently impose fees for the execution of orders against their quotes on an exchange, but requests comment on whether they do. Do commenters think it likely that market makers would in the future impose such fees?

25. In this proposal, the Commission has not proposed to limit payment for order flow fees. As stated above, an exchange payment for order flow fee on members is not an access fee, i.e., it is not a fee imposed for executing against an exchange's quotation.[148] The Commission therefore preliminarily does not believe that it is necessary or appropriate to prohibit payment for order flow fees to achieve its stated objectives in proposing to cap access fees - to ensure fair and efficient access to displayed quotation and to enhance transparency of quoted prices. Several

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147 This data also is from OCC's public website and is for the month of February 2010. See http://www.theocc.com/webapps/exchange-volume. This data covers percent volume for BOX, CBOE, ISE, NYSE Amex, and Nasdaq OMX Phlx.

148 As noted above, if a market maker is charged a payment for order flow fee by an exchange when the market maker is accessing the best bid or offer of the exchange, then the proposed fee limitation would apply to that fee because it would be a fee for the execution of an order against the best bid or offer of the exchange. See supra Section III.C (discussing payment for order flow fees).

commenters, however, argue that payment for order flow fees also impact the displayed (quoted) prices, and thus the prices received by investors when their orders are executed, because market makers that are charged the payment for order flow fees adjust the price at which they are willing to quote to take into account the amount of the payment for order flow fee. In this regard, one commenter petitioned the Commission to impose a cap at the same level on private payment for order flow arrangements between market makers and agency brokerage firms as any cap it imposes on "Take" fees.[149] Another commenter argues that fees relating to "accessing" quotations can be characterized broadly to include exchange fees used to fund members' payment for order flow.[150] Do commenters agree with these statements? If so, do commenters believe that the Commission should limit payment for order flow fees as an "access fee"? The Commission further requests comment on its preliminary determination not to limit payment for order flow fees, and the basis for that determination.

26. As noted above, the Commission has previously acknowledged a concern that payment for order flow may result in less aggressive competition for order flow on the basis of price.[151] To what extent, if any, does payment for order flow in the options markets affect a specialist's or market maker's incentive to quote aggressively? To what extent does payment for order flow in the options markets affect the opportunities for non-professional customers to receive better prices than displayed quotations in price improvement mechanisms? If commenters believe that payment for order flow diminishes a specialist's or market maker's incentives to quote aggressively, what impact, if any, do commenters believe that diminished incentive has on the quality of displayed quotations? How, if at all, would limiting or prohibiting

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149 See IB Letter, supra note 37, at 1 and 6-7.

150 See Wolverine Letter, supra note 37, at 3.

151 See supra note 116 and accompanying text.

payment for order flow fees impact broker-dealer's ability to obtain best execution of their customer's orders?

27. On several occasions, the Commission has recognized that the anticipation of payment for order flow raises a potential conflict of interest for brokers handling customer orders, and that reliance by market centers on the strategy of simply paying money to attract orders may present a threat to aggressive quotation competition. At the same time, the Commission has stated that payment for order flow is not necessarily inconsistent with a broker's duty of best execution, so long as appropriate measures are taken to ensure that that duty is, in fact, met.[152] Do customer orders that are routed pursuant to payment for order flow arrangements receive less favorable executions than orders not subject to such arrangements?

28. Some may argue that specialists and market makers in the options markets establish the prices and sizes of their quotations based in part on the assumption that their counterparties will be other professional traders, which involves more risk than trading with uninformed non-professional traders.[153] The desirability of trading with uninformed order flow due to the lower risks of trading with non-professionals should translate into those orders, on average, receiving better prices than the specialist's or market maker's quotation.[154] Under this argument, specialists and market makers may use payment for order flow as an indirect way to provide a better execution to uninformed or non-professional orders. Do commenters agree with these statements?

29. The Commission requests comment on what, if any, impact the proposed limitation on access fees may have on payment for order flow fees.

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152 See supra notes 117-118 and accompanying text.

153 See Options Concept Release, supra note 21, at 6131. See also supra note 128.

154 See Options Concept Release, supra note 21, at 6131.

30. The Commission requests comment on whether the proposed access fee limitation should apply only to the best bid and offer of each exchange, or whether the limitation also should apply to "depth of book" quotations.

31. Some commenters stated that Make or Take pricing leads to more locked and crossed markets,[155] while others dispute that.[156] The Commission requests commenters' views on this issue. Please provide data that support your view. Could any increase in the incidence of locked and crossed markets be caused or influenced by other factors, such as more efficient and faster quotation updating and trading, or the expansion of the Minimum Quoting Increment Pilot Program? How, if at all, does the recently implemented Plan[157] help alleviate the frequency of locked and crossed markets? How, if at all, would the proposed limitation on access fees affect the frequency of locked/crossed markets?

32. The Commission requests comment on what the impact of imposing a limit on access fees, if any, would be if the Commission were to ban flash orders on the options exchanges.[158]

33. The Commission requests comment on whether there are alternative methods other than the proposed access fee cap to achieve the objectives of the proposal - to provide for fair and efficient access to displayed quotations and that displayed quotations be fair and useful. For example, could additional disclosure of fees charged by exchanges for executions against their quotations in listed options achieve the same objectives by fostering further competition

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155 See Citadel Petition, supra note 34, at 5, and Ameritrade Letter, supra note 37, at 11.

156 See BOX Letter, supra note 37, at 3; IB Letter, supra note 37, at 6; NYSE Euronext Letter, supra note 37, at 3-4; and GETCO Letter, supra note 37, at 7.

157 See supra note 13.

158 See Flash Order Proposal, supra note 19.

based on transparent pricing? Why or why not? Please address current disclosure by options exchanges of their fees, and why that disclosure is or is not sufficient.

34. The Commission requests comment on whether, if it were to adopt the proposed access provisions, a phase-in period would be necessary to allow exchanges and market participants to adapt. If so, what aspect or aspects of the proposal should be phased in, and what would be the appropriate phase-in period?

The Commission recognizes that intermarket access presents a number of complex problems to which there may be many possible solutions. Interested persons may wish to propose and discuss specific, alternative approaches to intermarket access that the Commission should consider for future rulemaking as it seeks to accomplish its goal of strengthening the NMS. Commenters may also wish to discuss whether there are any reasons why the Commission should consider an alternative approach.

VI. Paperwork Reduction Act

The Commission preliminarily does not believe that the proposed amendments to Rule 610(a) pertaining to quotations in a listed option and the proposed access fee limitation in Rule 610(c)(2) contain any "collection of information" requirements as defined by the Paperwork Reduction Act of 1995, as amended ("PRA").[159] The proposed amendment to Rule 610(a) would expand the rule to apply to listed options, in addition to NMS stocks, and would prohibit each national securities exchange or national securities association from imposing unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of such exchange or association to any quotation in an NMS security. The Commission preliminarily does not believe that the prohibition in Rule 610(a), as proposed to be amended to

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159 44 U.S.C. 3501, et seq.

apply to listed options, would require any new or additional collection of information, as such term is defined in the PRA, but the Commission encourages comments on this point.[160]

In addition, proposed Rule 610(c)(2) would prohibit a national securities exchange from imposing, or permitting to be imposed, any fee or fees for the execution of an order against a quotation that is the best bid or best offer of such exchange in a listed option that exceeds or accumulates to more than $0.30 per contract. The Commission preliminarily does not believe that the access fee limitation in proposed Rule 610(c)(2) would require any new or additional collection of information, as such term is defined in the PRA, but the Commission encourages comments on this determination.[161]

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160 See 44 U.S.C. 3502(3) (defining the term "collection of information" to include, generally, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either: (i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes).

The Commission notes that the requirement under the proposed amendment to Rule 610(a) is substantially similar to current Rule 610(a) of Regulation NMS. See 17 CFR 242.610(a). The Commission requested comment on its preliminary view that Rule 610 of Regulation NMS pertaining to access to quotations in an NMS stock did not contain a collection of information requirement as defined by the PRA. See Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126, 11160-61 (March 9, 2004) (File No. S7-10-04) ("Regulation NMS Proposing Release"). The Commission notes that no comments were received that addressed whether Rule 610(a) contained a collection of information requirement. See Securities Exchange Act Release No. 50870 (December 16, 2004), 69 FR 77424, 77476 (December 27, 2004) ("Regulation NMS Reproposing Release").

161 The Commission notes that proposed Rule 610(c)(2) is substantially similar to current Rule 610(c) of Regulation NMS. See 17 CFR 242.610(c). The Commission requested comment on its preliminary view that Rule 610 of Regulation NMS pertaining to a limit on access fees did not contain a collection of information requirement as defined by the PRA. See Regulation NMS Proposing Release, supra, note 160, at 11160-61. The Commission notes that no comments were received that addressed whether the proposed access fee cap under Rule 610 contained a collection of information requirement. See Regulation NMS Reproposing Release, supra note 160, at 37577 n.746.

With respect to a proposed rule change that an options exchange may be required to file pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder to bring its rules into compliance with the proposed amendment to Rule 610(a) and proposed Rule 610(c)(2),[162] the burden of filing such proposed rule change would already be included under the collection of information requirements contained in Rule 19b-4 under the Exchange Act.[163]

VII. Consideration of Costs and Benefits

The proposed amendments to Rule 610 of Regulation NMS would set forth new standards governing means of access to quotations in listed options. The proposal would prohibit an exchange or association from imposing unfairly discriminatory terms that would prevent or inhibit the efficient access of any person through members of such exchange or association to any quotations in an NMS security, including in a listed option, displayed through its SRO trading facility. In addition, to ensure the fairness and accuracy of displayed quotations in listed options, proposed Rule 610(c)(2) would establish an outer limit on the cost of accessing the best bid and best offer on each exchange in a listed option of no more than $ 0.30 per contract.

A. Benefits

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162 See infra Section VII.B.

163 See Securities Exchange Act Release No. 50486 (October 5, 2004), 69 FR 60287, 60293 (October 8, 2004) (File No. S7-18-04) (describing the collection of information requirements contained in Rule 19b-4 under the Exchange Act). The Commission has submitted revisions to the current collection of information titled "Rule 19b-4 Filings with Respect to Proposed Rule Changes by Self-Regulatory Organizations" (OMB Control No. 3235-0045). According to the last submitted revision concluded as of August 5, 2008, the current collection of information estimates 1279 total annual Rule 19b-4 filings with respect to proposed rule changes by self-regulatory organizations.

The Commission preliminarily believes that the proposed amendments to Rule 610 of Regulation NMS would help achieve the statutory objectives for the NMS by promoting fair and efficient access to each individual options exchange.

1. Proposed Amendment to Rule 610(a)

The access provision of Rule 610(a), as proposed to be amended, is designed to strengthen the ability of all market participants that are not members of an options exchange to fairly and efficiently route orders to execute against quotations in a listed option, wherever such quotations are displayed in the NMS, by prohibiting an exchange from unfairly discriminating against any person trying to obtain access through a member to that exchange's quotations. The Commission believes that fair and efficient access to the best displayed quotations of all options exchanges is critical to achieving best execution of those orders.[164] The Commission further believes that such fair and efficient access to the best displayed quotations of options exchanges is critical for compliance with the requirements of the Trade-Through Rules. Specifically, options exchanges themselves must have the ability to route orders for execution against the displayed quotations of other exchanges. Indeed, the concept of intermarket protection against trade-throughs is premised on the ability of options exchanges to route orders to execute against, rather than trade through, the quotations displayed by other options exchanges.[165]

Thus, the Commission preliminarily believes that the proposed amendment to Rule 610(a) would benefit investors by furthering the ability of brokers on behalf of their customers, and of investors themselves, to achieve best execution of their orders in listed options. The Commission also preliminarily believes that the proposed amendment to Rule 610(a) would contribute to the smooth functioning of intermarket trading by furthering the ability of options

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164 See NMS Adopting Release, supra note 4, at 37539..

165 Id.

exchanges and market participants, including investors, to fairly and efficiently access the quotations of each options exchange.[166]

The proposed amendment to Rule 610(a) also would help to clarify when certain terms set by exchanges would be unfairly discriminatory, including terms in current exchange rules. For example, an exchange could not charge a higher per-contract access fee to a non-member broker-dealer that is a registered options market maker on another exchange ("non-member market maker") acting for its own account than to a member or non-member broker-dealer acting for its own account that is not registered as a market maker on another exchange. In this example, neither broker-dealer is registered as, nor is acting in the capacity of, a market maker on that exchange.[167] The Commission preliminarily believes that this type of distinction could unfairly discriminate against non-member market makers and prevent or inhibit such non-member market makers from obtaining efficient access through a member to that exchange's quotations. Similarly, an exchange could not charge differing fees for accessing liquidity depending on whether the order is for the account of a "directed" customer. The Commission preliminarily believes that such a distinction could unfairly discriminate against non-directed customer orders and prevent or inhibit such non-directed customers from obtaining efficient access through a member to that exchange's quotations in certain listed options.

2. Proposed Rule 610(c)(2)

The access fee limitation of proposed Rule 610(c)(2) would address the potential distortions caused by substantial, disparate fees. When a displayed quotation does not include the amount of any fee or fees charged by an exchange for executing against that quotation, persons attempting to execute, or evaluating whether they want to execute, against that quotation

166 Id.

167 See supra note 51 and accompanying text.

cannot readily ascertain the all-in price for the trade. The larger the non-displayed fee(s), the less accurate would be the displayed price in comparison to the all-in price for the trade. This concern is compounded when competing exchanges charge differing fees, as the same displayed price on two or more options exchanges may reflect different all-in prices for executing against the same-priced quotations. Thus, the wider the disparity in the level of access fees among different options exchanges, the less useful and accurate may be the quoted prices at reflecting the full cost of a trade. As a result of the proposed fee limitation, quoted prices should in many cases more closely reflect the total cost of a trade because the highest potential access fee that could be charged by any exchange would be $0.30 per contract. This limitation, in turn, should enhance the usefulness of quotation information.

An access fee limit also makes the cost of accessing quoted prices more transparent. Currently, the eight options exchanges charge so many different fees to different categories of options participants and for different products that it is not easy to estimate that total cost of a particular transaction. An access fee cap would limit the scope of differences and therefore would result in quoted prices providing clearer information on the total cost for executing against quoted prices. Consequently, the proposed fee limitation would further the statutory purposes of the Exchange Act by reducing the tendency of access fees to distort quoted prices. In addition, by applying equally to all types of options exchanges, the proposed fee limitation would promote NMS objectives and further the goals of Section 11A of the Exchange Act relating to equal regulation of markets and broker-dealers.[168]

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168 See Section 11A(c)(1)(F) of the Exchange Act, 15 U.S.C. 78k-1(c)(1)(F) (providing objective to assure equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities).

The proposed fee limitation also would benefit the markets and market participants by addressing options exchanges that otherwise might charge high fees to market participants required to access their quotations under the Trade-Through Rules. The requirements under the Trade-Through Rules and the use of private linkages could provide an exchange the opportunity to take advantage of intermarket price protection by acting essentially as a toll booth between price levels. Even though the exchange charging the highest fees likely would be the last exchange to which orders would be routed, orders could not be executed against the next-best price level until someone routed an order to take out the displayed price at such high fee exchange. While exchanges would have significant incentives to compete to be near the top in order-routing priority, arguably there would be little incentive to avoid being the least-preferred exchange if fees were not limited. Such a business model could detract from the usefulness of quotation information and impede market efficiency and competition.[169]

The Commission preliminarily believes that the proposed access fee cap would limit the viability of this business model. Consequently, another benefit of the proposal would be to place all options exchanges on a level playing field with respect to the maximum amount of access fees they can charge, and, ultimately, the rebates they can pay to liquidity providers, by establishing a clear limit on the fees they can charge. Some options exchanges might choose to charge lower fees, thereby increasing their ranking in the preferences of order routers. Others might charge $0.30 per contract and rebate a substantial proportion to liquidity providers.[170] The Commission

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169 See NMS Adopting Release, supra note 4, at 37584 (concluding that, with respect to NMS stocks, an outlier business model would detract from the usefulness of quotation information and impede market efficiency and competition and that a fee cap would limit such a business model). See also supra notes 69-71 and accompanying text.

170 The Commission notes that nothing in proposed Rule 610(c)(2) would preclude an options exchange from taking action to limit fees beyond what is required by the proposed Rule, and such options exchanges would have flexibility in establishing their

preliminarily believes that competition will determine which strategy is most successful. Proposed Rule 610(c)(2) also would preclude an options exchange from charging high fees selectively to competitors.

The Commission also preliminarily believes that the proposed access fee limitation would further the purposes of Section 11A(c)(1)(B) of the Exchange Act, which authorizes the Commission to adopt rules assuring the fairness and usefulness of quotation information. As discussed above, if options exchanges are allowed to charge high fees and pass most of them through as rebates, the published quotations of such exchanges may not reliably indicate the all-in price that is actually available to investors. For quotations to be fair and useful, there must be some limit on the extent to which the all-in price for those who access quotations can vary from the displayed price. Consequently, the Commission preliminarily believes that the proposed access fee limitation would further the statutory purposes of the NMS by limiting the distortive effects of high fees. Moreover, the Commission preliminarily believes that the proposed fee limitation would further the statutory purpose of enabling broker-dealers to route orders in a manner consistent with the operation of the NMS.[171] Under the Trade-Through Rules, one exchange cannot trade through another exchange displaying the best-priced quotations. The purposes of the Trade-Through Rules would be thwarted if market participants were allowed to charge high fees that distort quoted prices in a listed option.

In proposing amendments to Rule 610, the Commission seeks to help ensure that transactions in listed options can be executed efficiently at any market center for reasonable

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fee schedules to comply with proposed Rule 610(c)(2), consistent with existing requirements of the Exchange Act and the rules and regulations thereunder.

171 Section 11A(c)(1)(E) of the Exchange Act, 15 U.S.C. 78k-1(c)(1)(E), authorizes the Commission to adopt rules assuring that broker-dealers transmit orders for securities in a manner consistent with the establishment and operation of a national market system.

execution fees. By enabling fair access and transparent pricing among the different market places within a unified national market, the Commission preliminarily believes that the proposal would foster efficiency, enhance competition, and contribute to the best execution of orders in listed options.

Finally, the Commission notes that the current access fee limitation in Rule 610(c) has applied to the trading of NMS stocks for several years and believes that such limitation has not caused any apparent harm to competition among markets or market participants trading NMS stocks. For example, when recently requesting comment on various aspects of equity market structure, the Commission noted how trading volume for NMS stocks is spread out among the registered exchanges, ECNs, dark pools, and broker-dealers that execute trades internally.[172] The Commission notes that, currently, the options exchanges are competitive.[173] As such, the Commission preliminarily believes that an access fee limitation applied to the trading of listed options would not harm competition among exchanges or market participants trading listed options.

The Commission also preliminarily believes that the proposed access provisions would help to assure investors that their orders are executed at the best prices and are not subject to large, non-transparent fees by limiting the difference between the all-in price of an investor executing its order and the displayed quotation, regardless of the exchange on which the execution takes place.

B. Costs

1. Proposed Amendment to Rule 610(a)

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172 See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3598 (January 21, 2010) (S7-02-10).

173 See infra Section VIII.A.1 (discussing market share data for January 2010 among the eight options exchanges).

If the proposed amendment to Rule 610(a) were adopted, it could impose costs associated with modifications to an options exchange's rules to comply with such proposed Rule's specific anti-discriminatory standard for access to an exchange's quotations through a member. The Commission notes, however, that each exchange registered as a national securities exchange is currently subject to similar restrictions in Section 6 of the Exchange Act, including the requirements in Section 6(b)(5) that the rules of a national securities exchanges be designed, among other things, not to permit unfair discrimination between customers, issuers, brokers, or dealers.[174] Accordingly, the Commission preliminarily believes that it would be unlikely for the options exchanges to need to amend their rules to comply with Rule 610(a), as proposed to be amended. To the extent that any amendments are necessary, the Commission preliminarily expects such amendments would be minimal. The Commission, therefore, preliminarily believes that any costs incurred as a result of the requirement under the proposed amendment to Rule 610(a) by an options exchange would not be significant.

More specifically, an options exchange that would need to amend its rules to comply with the proposed amendment to Rule 610(a) so as not to unfairly discriminate would be required to file a proposed rule change on Form 19b-4 with the Commission.[175] The Commission further notes that the proposed rule change filing format is not new to the options exchanges, as multiple

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174 Section 6(b)(5) of the Exchange Act also requires in part that the rules of a national securities exchanges be designed to: (1) promote just and equitable principles of trade; (2) remove impediments to and perfect the mechanism of a free and open market and a national market system; and (3) protect investors and the public interest. See 15 U.S.C. 78f(b)(5). See also supra note 47 and accompanying text. No national securities association currently trades listed options.

175 See 15 U.S.C. 78s(b) (requiring each SRO to file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO, accompanied by a concise general statement of the basis and purpose of such proposed rule change). See also 17 CFR 240.19b-4(a) (generally requiring that filings with respect to proposed rule changes by an SRO be made on Form 19b-4, 17 CFR 249.819).

filings are made annually by such exchanges.[176] The Commission estimates that an average rule change requires approximately 34 hours for an exchange to complete at an average hourly cost of $305.[177] The Commission estimates that the aggregate cost of one proposed rule change for each options exchange, which assumes that every options exchange would have to amend its rules to eliminate any unfairly discriminatory terms not consistent with the proposed amendments to Rule 610(a), would total approximately $82,960 ($305 times 34 times 8). Therefore, the Commission preliminarily believes that the costs incurred by an options exchange to make such a filing as a result of the proposed amendment to Rule 610(a) would not be substantial.[178]

2. Proposed Rule 610(c)(2)

The Commission preliminarily does not believe that the fee limitation of proposed Rule 610(c)(2) would impose significant new costs on the options exchanges or market participants. The Commission preliminarily believes that the proposed fee limitation would be relatively easy to administer given that it would impose a single accumulated access fee limitation for all options. For options exchanges that currently charge and collect fees and that would continue to

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176 The Commission notes that, for its 2009 fiscal year (October 1, 2008 to September 30, 2009), the seven options exchanges (NYSE Amex, BOX, CBOE, ISE, NOM, NYSE Arca, and Nasdaq OMX Phlx) filed approximately 444 proposed rule changes in the aggregate pursuant to Section 19(b) and Rule 19b-4 thereunder.

177 The $305 per-hour figure for an attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2008, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. See Securities Exchange Act Release No. 59748 (April 10, 2009), 74 FR 18042, 18093 (April 20, 2009) (S7-08-09) (noting the Commission's modification to the $305 per hour figure for an attorney).

178 The Commission also notes that each options exchange should already have in place policies and procedures to ensure that terms of access to its market are consistent with the federal securities laws and the rules thereunder. See supra note 174 and accompanying text. The Commission preliminarily believes that such options exchange's existing policies and procedures should not change as a result of the proposed amendments to Rule 610, and, therefore, should not incur any new costs, including administrative costs, in this regard.

do so, the costs of imposing and collecting fees are already incurred. The fee limitation would not require an options exchange that does not currently charge fees to begin charging fees. Thus, the Commission preliminarily believes that the proposed fee limitation should not impose significant new administrative costs.

The Commission recognizes that the fee limitations of proposed Rule 610(c)(2) would affect options exchanges that currently impose access fees in excess of the proposed limits. As a result of the access fee limitations of proposed Rule 610(c)(2), such options exchanges would be required to modify their respective rules to ensure compliance with the proposed Rule's fee cap. The Commission preliminarily believes, however, that the potential administrative costs associated with any necessary changes to the rules of an options exchange that may be needed to account for the proposed access fee limitation would not be substantial. The Commission notes that an options exchange that would need to amend its rules and fee schedule to comply with the access fee limitation as a result of proposed Rule 610(c)(2) would be required to file a proposed rule change on Form 19b-4 with the Commission.[179] The Commission further notes that the proposed rule change filing format and the process to change a due, fee, or other charge applicable only to members is not new to the options exchanges, as multiple fee filings are made annually by such exchanges.[180] As stated above, the Commission estimates that an average rule

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179 See supra note 175.

180 An exchange generally would be able to amend its fees imposed on its members by filing a proposed rule change pursuant to Section 19(b)(3)(A) of the Exchange Act of Rule 19b-4(f)(2) thereunder. See 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(f)(2) (permitting proposed rule changes that establish or change a due, fee, or other charge applicable only to members to take effect upon filing with the Commission). The Commission notes that, for its 2009 fiscal year, the seven options exchanges filed approximately 120 proposed rule changes in the aggregate pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b-4(f)(2) thereunder. See supra note 176 (noting the approximate total of all proposed rule changes filed by the options exchanges pursuant to Section 19(b) and Rule 19b-4 thereunder during the same time period).

change requires approximately 34 hours for an exchange to complete at an average hourly cost of $305.[181] The Commission estimates that the aggregate cost for all options exchanges of one proposed rule change for each exchange would total approximately $82,960.[182] Therefore, the Commission preliminarily believes that the costs incurred by an options exchange to make such a filing as a result of proposed Rule 610(c)(2) would not be substantial.[183]

The Commission also recognizes that, as a result of the proposed access fee limitation, certain options exchanges that currently charge access fees that exceed, or accumulate to more than, $0.30 per contract would be required to reduce their access fees, and that this action could result in a reduction in revenue from transaction fees for those exchanges.

The Commission preliminarily estimates that the imposition of an access fee cap, as proposed, could reduce option exchanges' annual transaction fee revenues by about $74 million under a flat $0.30 access fee cap.[184] The estimated revenue losses per exchange are set forth in

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181 See supra note 177.

182 The Commission notes that if an exchange were required to submit a proposed rule change to address a rule or fee that was not consistent with the anti-discriminatory standard proposed in Rule 610(a), as well as a fee that exceeds the proposed fee cap, the exchange could choose to submit one rule filing that would make changes necessary to comply with proposed Rules 610(a) and 610(c)(2) to reduce costs.

183 The Commission also notes that each options exchange should already have in place policies and procedures to ensure that all of the fees it charges, including access fees, are consistent with the federal securities laws and the rules thereunder. The Commission preliminarily believes that, while an options exchange may be required to amend its fee schedule to account for the proposed access fee limitation, such options exchange's existing policies and procedures should not change as a result of the proposed amendments to Rule 610, and therefore, should not incur any new costs, including administrative costs, in this regard.

184 For this estimate, Commission staff used December 2009 option trading data from OCC and OptionMetrics. The Commission staff estimates that if the Commission were to impose a fee cap of 0.3 percent of the price of the option for options priced below $1 - similar to the existing cap for NMS stocks - the potential reduction in revenue for the options exchanges would be $177 million.

Table 3 of the Appendix. Commission staff estimates the proportion of fee losses to total fees for December 2009 and applies that proportion to the annual transaction fee revenue for each exchange. The Commission staff utilized OCC data that contains aggregate two-sided volume data by account type (customer, firm or market maker). In order to estimate the impact on each option exchange's revenues,[185] Commission staff makes a number of assumptions:

- Commission staff assumes that the options exchanges that impose fees in excess of the proposed access fee cap would not adjust their rebates or other fees to offset any shortfalls on revenues imposed by the access fee cap.
- Commission staff looked at a range of fees that each options exchange charges for accessing the best bid or offer in listed options on the exchange, based on its published fee schedule.[186] The fee ranges include any fee that is charged for execution of an order against an exchange's best bid or offer. Thus, they include "Take" fees, transaction fees, index "licensing" fees, certain payment for order flow fees, and ORF. The fee ranges exclude fees charged for transactions in FLEX options, credit default options, and the fee

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The Commission has not included BATS in these revenue impact calculations. As noted below, BATS recently started trading options on February 26, 2010. See infra note 197. Further, BATS' only transaction fee for listed options is $0.30 per contract for removing liquidity (and a $0.20 per-contract rebate for providing liquidity). See BATS Fee Schedule (available at http://batstrading.com/resources/regulation/rule_book/BATS_Ex_Fee_Schedule.pdf) (current as of February 26, 2010).

185 See infra note 187 and accompanying text for an estimate of the impact of the proposed access fee cap on transaction fee revenues using an assumption that the options exchanges that have a Make or Take fee model reduce their "Make" fees to compensate for a reduction in "Take" fees.

186 The fees used are as of January 2010, except that they do not include fees or credits imposed by Nasdaq OMX Phlx in SR-Phlx-2009-116, SR-Phlx-2010-14, and SR-Phlx-2009-104, which filings were abrogated by the Commission on February 19, 2010. See Securities Exchange Act Release No. 61547 (February 19, 2010), 75 FR 8762 (February 25, 2010).

that ISE charges for transactions by broker-dealers registered as market makers on other exchanges. Commission staff has excluded these specific transaction fees from these calculations because it preliminarily believes that the volume of transactions and the corresponding assessed transaction fees are not significant, but requests comment on whether such fees should be included in the cost impact calculation. Any available volume discounts also are not taken into account because such discounts are variable and if applied would reduce the cost estimates. Tables 1 and 2 of the Appendix show the fee ranges used in estimating the revenue impact.

- To estimate the impact on each option exchange's revenues, the Commission staff generally assumes the maximum possible fee for electronically transmitted orders grouped by account type, whether or not the class is included in the Minimum Quoting Increment Pilot Program, and option type. This assumption would lead, conservatively, to higher estimates of revenue losses. Further, because fee levels for equity options tend to be different than fee levels for index options, and because the fee levels for classes included in the Minimum Quoting Increment Pilot Program sometimes are different than the fee levels for classes not included in that Pilot Program, Commission staff estimates fees separately for each.
- Commission staff assumes that access fees only apply to "Takers" of liquidity at a particular exchange. Staff further assumes that customers always "take" liquidity, market makers always "make" liquidity, and firms make up the difference. Based on December 2009 data, Commission staff estimates that average firm volume by option class is about 52% on the "take" side and 48% on the "make" side.

- The OCC classifies cleared trades based on OCC membership rather than exchange membership. Therefore, Commission staff assumes that the OCC "firm" classification applies to both member and non-member firms at a particular exchange. If a particular exchange charges different levels of fees for member and non-member firms, Commission staff conservatively assumes the maximum fee applies to all trades classified as "firm" accounts.

As noted above, this cost estimate assumes that the exchanges do not make any changes to their other fees in response to the proposed access fee cap. Options exchanges may, however, respond to access fee limits by restructuring their fee schedules to mitigate the effect of the proposed fee cap. For example, the impact of imposing a fee limitation in a Make or Take fee model may be mitigated if exchanges using such fee model reduce the rebates to reflect the reduced "Take" fees. In such a case, the net impact on exchange revenue would be less than the amount by which an exchange is required to reduce its "Take" fee because the exchange would pay a smaller rebate to members providing liquidity. In addition, certain options exchanges may simply be able to re-calibrate existing fee structures to offset potential revenue losses, while other exchanges may decide to charge additional fees to make up for potential revenue losses.

Options exchanges have the ability, consistent with the requirements of the Exchange Act, to levy fees on their members. Currently, exchanges charge their members various types of fees for membership, transacting on the exchange, and for other services provided by the exchange, including connectivity fees, regulatory fees, and other fees. The Commission preliminarily believes that exchanges are likely to amend their fees that would not be impacted by the access fee limitation to make up for the reduction in access fee revenue, thus keeping the overall level of fees paid by members, and the amount of revenue received by the exchange,

relatively constant. Further, the Commission preliminarily believes that exchanges that provide rebates to liquidity providers based on the amount of fees the exchanges charge for accessing liquidity may reduce such rebates commensurate with any reduction in the fees charged for accessing liquidity. In this event, the amount of revenue received by the exchange - the difference between the "Take" fee and the "Make" rebate - would remain constant. If exchanges with "Make or Take" models reduce their "Make" fees to compensate for a reduction in "Take" fees due to the proposed access fee cap, the Commission estimates that the imposition of an access fee cap as proposed could reduce option exchanges' transaction fee revenues by about $55 million under a flat $0.30 access fee cap.[187]

The Commission also preliminarily believes that the overall cost to members of exchanges from the proposal to limit access fees would be minimal. As noted above, exchange members pay various types of fees to their exchanges, including transaction fees, regulatory fees, and other fees. Some of these fees are charged for activity by the members' customers or other non-member market participants that comes through members. Exchange members today can choose to pass through these fees to their customers, or not, subject to competition among members for this order flow. As outlined above, the Commission preliminarily believes that the overall revenue to the exchanges - and thus the overall fees charged by exchanges to members - would remain constant, although the levels of fees within individual fee categories may change. Thus, the impact of fee changes on individual members and market participants may vary, depending upon each participant's business structure and trading strategies, and depending upon what portion of the fees each member chooses to "pass through" to its customers.

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187 For this estimate, Commission staff used December 2009 option trading data from OCC and OptionMetrics. See infra Table 3 in the Appendix.

C. Request for Comment

The Commission requests general comment on the costs and benefits of the proposed amendments to Rules 610(a) and (c) of Regulation NMS discussed above, as well as any costs and benefits not already described which could result from them. The Commission also requests data to quantify any potential costs or benefits.

The Commission specifically requests comment on the cost estimates made, and the assumptions underlying those cost estimates as outlined, in Section VII.B.2. For example, do commenters believe that options exchanges that currently impose fees in excess of the fee cap proposed in Rule 610(c)(2) would or would not adjust their rebates or other fees to offset the impact of a fee cap? If commenters believe that options exchanges would adjust their rebates or other fees to offset the impact of a fee cap, what specific types of changes would exchanges make? Further, depending upon the specific change to rebates or fees that commenters believe exchanges would make in response to the proposed fee cap, how do commenters believe that such change(s) would impact the quoting, order routing, or other behavior of particular categories of market participants, such as retail investors, market makers, and broker-dealers?

Do commenters believe that it is appropriate generally to consider the maximum fee charged for electronically transmitted orders in calculating the impact on an options exchange's revenue of the proposed access fee cap? If so, please explain why. If not, please provide detail as to what assumptions should underlie such a calculation. Further, do commenters agree that it is reasonable to exclude specific fees charged for the execution of orders in FLEX options or credit default options, and the fee that ISE charges for transactions by broker-dealers registered as market makers on other exchange, as well as volume discounts, when determining the maximum fee charged by options exchanges? Do commenters agree with the assumption that

customers always "take" liquidity, market makers always "make" liquidity, and firms make up the difference? If not, please provide detail as to what assumptions should be made and any supporting information, or describe another approach for estimating the costs of this proposal.

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

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine 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.[188] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact such rules would have on competition.[189] 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.[190]

A. Competition

The Commission begins its consideration of potential competitive impacts with observations of the current structure of the option markets and broker-dealers, mindful of the statutory requirements regarding competition. Based on the Commission's experience in regulating the options markets and broker-dealers, including reviewing information provided by them in their registrations and filings with the Commission and approving such registration applications, the Commission discusses below the basic framework of the markets they comprise.

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188 15 U.S.C. 78c(f).

189 15 U.S.C. 78w(a)(2).

190 Id.

1. Market Structure for Options Markets

In order to consider whether the proposed rules promote competition, staff of the Commission's Division of Risk, Strategy, and Financial Innovation evaluated the competitive structure of the exchange-listed options trading industry in the United States. In particular, Commission staff considered the nature of competition between liquidity providers within exchanges and competition between exchanges to attract order flow. Within the options exchanges, multiple market makers, proprietary trading firms, and customers submitting limit orders compete to provide liquidity to incoming market or marketable limit orders. Options exchanges compete for order flow through their quotations and, in some cases, through exchange-sponsored payment for order flow.

In the late 1990s, the Commission took actions in response to concerns that the options industry was not fully competitive. Competition in the listed options market is significantly more rigorous today that it has been in the past, as a result of several developments since 1999. These include the move to multiple listing,[191] the advent of electronic exchanges,[192] the extension of the Commission's Quote Rule to options,[193] the injunction against trading outside of

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191 See Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963 (June 5, 1989) (S7-25-87).

192 See ISE Exchange Approval, supra note 30, 65 FR at 11395; Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (approving options trading rules for BOX) ("BOX Approval Order"); 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (approving NYSE Arca's OX, a fully automated trading system for standardized equity options intended to replace NYSE Arca's options trading platform, PCX Plus); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (approving options trading rules for NOM) ("NOM Approval Order"); and 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (approving BATS Exchange proposal to operate as an options exchange) ("BATS Approval Order").

193 See Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).

the national best bid and offer,[194] the adoption of market structures on the floor-based exchanges that permit individual market maker quotations to be reflected in the exchange's quotation,[195] and the Minimum Quoting Increment Pilot Program,[196] among other developments.

Among the relevant considerations in assessing the degree of competition in an industry are the number of competitors and concentration of market share. Listed options in the United States are currently traded on eight national securities exchanges, owned by six entities. These eight exchanges are CBOE, ISE, NYSE Arca, NYSE Amex, Nasdaq OMX Phlx, NOM, BOX, and BATS. Based on market share data for January 2010 obtained from the OCC,[197] the exchange with the highest market share of option volume was CBOE, with 29.58%, followed by ISE at 22.86%. The two exchanges owned by NYSE Euronext together had a market share of 25.82% (NYSE Arca had 13.94% and NYSE Amex had 11.88%). The two exchanges owned by The NASDAQ OMX Group, Inc. together had a market share of 19.76% (Nasdaq OMX Phlx had 17.17% and NOM had 2.59%). The BOX had a market share of 1.98%.

Another key factor determining the competitiveness of an industry is the extent to which there are significant barriers to entry. In the Commission's assessment, barriers to entry in providing trading platforms in the options market are higher than they are in the equities market because equities may be traded off exchange while options may not. Thus, new entrants in the options market face the regulatory costs associated with establishing a national securities

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194 See supra notes 8-16 and accompanying text.

195 See, e.g., Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441, 34442 (June 9, 2003) (SR-CBOE-2002-05) (adopting, among other things, amendments to incorporate firm quote requirements in CBOE's rules).

196 See supra notes 28-29 and accompanying text.

197 Although the Commission approved BATS Exchange's proposal to operate as an options exchange in January 2010 (see BATS Approval Order, supra note 192), BATS Exchange did not commence options trading operations until February 26, 2010. As a result, there is no market share data for BATS for purposes of this discussion.

exchange. These costs are not large enough to prevent entry, as evidenced by the fact that four new option exchanges have entered the industry since 2000,[198] and another is anticipated to begin operations soon.[199] However, it is possible that the economic barriers to entry to the options trading industry may be more significant for participants who do not already have the infrastructure required to operate registered exchanges. With the sole exception of the ISE, every new entrant in the options market since 1973 has been created by participants who were already operating securities exchanges.

Broker-dealers are required to register with the Commission and be a member of at least one SRO. The broker-dealer industry, including market makers, is a competitive industry, with most trading activity concentrated among several dozen larger participants and with thousands of smaller participants competing for niche or regional segments of the market.

There are approximately 5,178 registered broker-dealers, of which approximately 890 are small broker-dealers.[200] Larger broker-dealers often enjoy economies of scale over smaller broker-dealers and compete with each other to service the smaller broker-dealers, who are both their competitors and customers. The reasonably low barriers to entry for broker-dealers are evidenced, for example, by the fact that the average number of new broker-dealers entering the market each year between 2001 and 2008 was 389.[201]

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198 See ISE Exchange Approval, supra note 30; BOX Approval Order, supra note 192; NOM Approval Order, supra note 192; and BATS Approval Order, supra note 192.

199 See supra note 8 (referring to the order approving C2 Options Exchange's application for registration as a national securities exchange).

200 These numbers are based on a review of 2007 and 2008 FOCUS Report filings reflecting registered broker-dealers, and discussions with SRO staff. The number does not include broker-dealers that are delinquent on FOCUS Report filings.

201 This number is based on a review of FOCUS Report filings reflecting registered broker-dealers from 2001 through 2008. The number does not include broker-dealers that are delinquent on FOCUS Report filings. New registered broker-dealers for each year during

2. Discussion of Impacts of Proposed Amendments to Rules 610(a) and 610(c) on Competition

The Commission believes that the estimated costs associated with implementing and complying with the proposed amendments to Rules 610(a) and 610(c) are not so large as to raise significant barriers to entry, or otherwise significantly alter the competitive landscape of the listed options market. Given the reasonably high level of competition for order flow in option markets and among broker-dealers, the Commission believes that this industry would remain competitive, despite the potential costs associated with implementing and complying with the proposed amendments to Rules 610(a) and 610(c), even if those costs influence to some degree the profitability of individual option markets or entry and exit of broker-dealers at the margin.

Trading fees typically constitute the largest component of revenues for option exchanges. For example, transaction fees accounted for approximately 80.8% of total revenues for the CBOE in 2008. Thus, a change in the fee structure that significantly reduces total fees could potentially have an important impact on industry profits and thus on the ability of smaller exchanges, including potential new entrants, to meet their fixed costs. However, the Commission believes that the proposed access fee limitations would have a limited, if any, negative impact on the profitability of individual option markets because option markets would be able to adjust their fee structures to accommodate the access fee cap. Therefore, the Commission preliminarily believes that limiting access fees to $0.30 per contract would not lead to a large reduction in total revenues, and would not put an undue burden on smaller exchanges or new entrants that would result in a decrease in competition in the industry.

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the period from 2001 through 2008 were identified by comparing the unique registration number of each broker-dealer filed for the relevant year to the registration numbers filed for each year between 1995 and the relevant year.

The Commission recognizes that a limit on access fees that applies to exchanges utilizing a "Make or Take" market model effectively limits the size of the liquidity rebate that such exchanges can offer, inasmuch as the economic viability of the "Make or Take" model generally requires that the rebate be smaller than the access fee. The Commission also recognizes that effectively limiting the size of the liquidity rebate in this way may limit the ability of exchanges utilizing the "Make or Take" model to attract liquidity. However, the Commission preliminarily believes that the proposal would not unduly burden "Make or Take" fee models. In the "Make or Take" fee model, the market earns the differential between the "make" credit and the "take" fee. The proposal allows for access fees of up to $0.30 per contract and thus can accommodate a $0.30 per-contract differential in "make" credits and "take" fees. The largest differential charged by "Make or Take" model option markets currently is $0.20 per contract, sufficiently within the $0.30 per-contract access fee limit of the proposal. In addition, the Commission observes that the "Make or Take" market model has become the dominant structure in the equity market despite the cap of $0.003 per share, suggesting that a similar cap in the option market would not prevent the "Make or Take" model from succeeding in the option market. The Commission requests comment on this preliminary view.[202]

Further, the proposed rules apply uniformly to exchanges with different markets and fee structures, thereby facilitating the ability of option markets to compete in a level regulatory environment. A fee limitation is necessary to preclude individual markets from having fee structures that take improper advantage of the protection against trade-throughs in the Trade-Through Rules. Precluding option markets from taking improper advantage of trade-through

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202 See also Section V (Request for Comment).

protection and making sure that all option markets compete under the same regulatory landscape should strengthen the ability of option markets to compete fairly for business.

The Commission believes that the proposed access fee limitations may have benefits that enhance quote competition among markets. The proposed access fee provisions are intended to bolster transparency in the options markets by improving the integrity of the quotations and preventing large, non-transparent fees from being charged on orders that are being sent to a particular market in order to comply with the trade through provisions of the Trade-Through Rules. Since quotation information would be more informative under the proposed access fee limitations, the Commission expects that the proposed amendments would likely encourage quote competition. Moreover, the Commission preliminarily believes that, by prohibiting a national securities exchange or national securities association from imposing unfairly discriminatory terms that would prevent or inhibit the efficient access of any person through members or non-member subscribers, the proposed rule would promote competition to offer the best displayed quotation among exchanges that trade listed options.

The Commission also believes that the proposal would have a minimal effect on the competitiveness of the broker-dealer industry. Since the proposal seeks to limit access fees, the proposal may result in a reduction in fees paid by broker-dealers to options exchanges. On the other hand, it is possible that options exchanges could increase broker-dealer fees, including market maker fees, to offset any revenue losses from an access fee limit. However, since transaction fee costs are typically a small part of the total expenses for a broker-dealer, the Commission preliminarily believes that any increase in transaction fee costs for broker-dealers would have a minimal, if any, effect on the competitiveness of the broker-dealer industry. The Commission seeks comment, however, on the level of options exchange-levied fees on broker-

dealers and whether an increase in these fees would inhibit the competitiveness of the broker-dealer industry.

In summary, the Commission preliminarily believes that the proposal would not result in an undue burden on the competitiveness of any option markets and, as a result, would not result in any decrease in competition among option markets. Moreover, the Commission preliminarily believes that the proposal would promote quote competition in options. The Commission also preliminarily believes that the proposal would not result in an undue burden on the competitiveness of the broker dealer industry.

B. Capital Formation

A purpose of the proposed amendments to Rules 610(a) and 610(c) is to strengthen transparency and quote competition in the option markets regulated by the Commission which should help make investors more willing to invest, resulting in the promotion of capital formation. Long holdings of equity are integral to capital formation. Fair and robust option markets, in which long holders can hedge risk through the option markets, support the public offerings of the underlying equities by which issuers raise capital and, as a result, investors who provided private capital realize profits and manage risk. Therefore, the Commission preliminarily believes that the proposed amendments to Rules 610(a) and 610(c) would increase transparency and quote competition, thereby enhancing investment, and thus capital formation.

C. Efficiency

The access provision of Rule 610(a), as proposed to be amended, is designed to strengthen the ability of all market participants that are not members of an options exchange to fairly and efficiently route orders to execute against quotations in a listed option, wherever such quotations are displayed in the NMS, by prohibiting an exchange from unfairly discriminating

against any person trying to obtain access through a member to that exchange's quotations. Fair and efficient access to the best displayed quotations of all options exchanges is necessary to achieving best execution of those orders.[203] Further, fair and efficient access to the best displayed quotations of options exchanges is necessary for compliance with the requirements of the Trade-Through Rules. Specifically, options exchanges themselves must have the ability to route orders for execution against the displayed quotations of other exchanges. Indeed, the concept of intermarket protection against trade-throughs is premised on the ability of options exchanges to route orders to execute against, rather than trade through, the quotations displayed by other options exchanges.[204] In this way, fair and efficient indirect access would, through the enhancement of the ability to achieve best execution and the support of compliance with the Trade-Through Rules, increase the efficiency of executions across option markets.

The proposed access fee limit would apply equally to all national securities exchanges, thereby promoting the NMS objective of equal regulation of markets. A fee limitation is necessary to preclude individual markets from having fee structures that take improper advantage of the protection against trade-throughs in the Trade-Through Rules. Precluding option markets from taking improper advantage of trade-through protection and making sure that all option markets compete under the same regulatory landscape should strengthen the ability of option markets to compete on a more level playing field, thereby promoting efficiency of execution across option markets by reducing costs.

The Commission solicits comments on these matters with respect to the proposed amendments to Rules 610(a) and (c). Would the proposed amendments have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the

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203 See NMS Adopting Release, supra note 4, at 37539.

204 Id.

Exchange Act? Would the proposed amendments, if adopted, promote efficiency, competition, and capital formation? Commenters are requested to provide empirical data and other factual support for their views if possible.

IX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[205] the Commission must advise the Office of Management and Budget as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of the proposed amendments to Rule 610 on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

X. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act ("RFA")[206] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[207] of the

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205 Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

206 5 U.S.C. 601 et seq.

207 5 U.S.C. 603(a).

Administrative Procedure Act,[208] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities."[209] Section 605(b) of the RFA specifically states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not "have a significant economic impact on a substantial number of small entities."[210]

The proposed amendment to Rule 610(a) of Regulation NMS would prohibit a national securities exchange or national securities association from imposing unfairly discriminatory terms that would prevent or inhibit any person from obtaining efficient access through a member of such exchange or association to the quotations in a listed option. In addition, proposed Rule 610(c)(2) would prohibit a national securities exchange from imposing, or permitting to be imposed, any fee or fees for the execution of an order against any quotation that is the best bid or best offer of such exchange in a listed option that exceeds or accumulates to more than $0.30 per contract. As such, only national securities exchanges registered with the Commission under Section 6 of the Exchange Act and national securities associations registered with the Commission under Section 15A of the Exchange Act would be subject to the proposed amendments to Rules 610(a) and (c). None of the national securities exchanges registered under Section 6 of the Exchange Act or national securities associations registered with the Commission

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208 5 U.S.C. 551 et seq.

209 Although Section 601(b) of the RFA defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0-10, 17 CFR 240.0-10. See Securities Exchange Act Release No. 18452 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. S7-879).

210 See 5 U.S.C. 605(b).

under Section 15A of the Exchange Act that would be subject to the proposed amendments are "small entities" for purposes of the RFA.[211] Accordingly, the Commission preliminarily does not believe that the proposed amendments to Rule 610 would have a significant economic impact on a substantial number of small entities.

The Commission invites commenters to address whether the proposed rules would have a significant economic impact on a substantial number of small entities, and, if so, what would be the nature of any impact on small entities. The Commission requests that commenters provide empirical data to support the extent of such impact.

XI. Statutory Authority

Pursuant to the Exchange Act and particularly, Sections 2, 3(b), 5, 6, 11A, 15, 15A, 17(a) and (b), 19, and 23(a) thereof, 15 U.S.C. 78b, 78c(b), 78e, 78f, 78k-1, 78o, 78o-3, 78q(a) and (b), 78s, and 78w(a), the Commission proposes to amend Rule 610 of Regulation NMS, as set forth below.

Text of Proposed Rule

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows.

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211 See 17 CFR 240.0-10(e). Paragraph (e) of Rule 0-10 states that the term "small business," when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Rule 601 of Regulation NMS, 17 CFR 242.601, and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0-10. Under this standard, none of the exchanges subject to the proposed amendments to Rule 610 is a "small entity" for the purposes of the RFA. The Financial Industry Regulatory Authority or "FINRA" (f/k/a the National Association of Securities Dealers or "NASD") is not a small entity as defined by 13 CFR 121.201.

PART 242 — REGULATION NMS

1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, and 80a-37.

* * * * *

2. Amend § 242.610 by revising paragraphs (a) and (c) to read as follows:

§ 242.610 Access to quotations.

(a) Quotations of an SRO trading facility. A national securities exchange or national securities association shall not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of the national securities exchange or national securities association to the quotations in an NMS security displayed through its SRO trading facility.

* * * * *

(c) Fees for access to quotations.

(1) A trading center shall not impose, nor permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the trading center or against any other quotation of the trading center that is the best bid or best offer of a national securities exchange or the best bid or best offer of a national securities association in an NMS stock that exceed or accumulate to more than the following limits:

(i) If the price of a protected quotation or other quotation is $1.00 or more, the fee or fees cannot exceed or accumulate to more than $0.003 per share; or

(ii) If the price of a protected quotation or other quotation is less than $1.00, the fee or fees cannot exceed or accumulate to more than 0.3% of the quotation price per share.

(2) A national securities exchange shall not impose, nor permit to be imposed, any fee or fees for the execution of an order against a quotation that is the best bid or best offer of such exchange in a listed option that exceed or accumulate to more than $0.30 per contract.

* * * * *

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Dated: April 14, 2010

Appendix

Table 1
Range of Charges for Accessing Quotations[212]

	Equity Options		Index Options	
Exchange	Classes Included in Minimum Quoting Increment Pilot	Classes Not Included in Minimum Quoting Increment Pilot	Classes Included in Minimum Quoting Increment Pilot	Classes Not Included in Minimum Quoting Increment Pilot
NYSE Amex	$0.00 to $0.42	$0.00 to $0.82	$0.00 to $0.64	$0.00 to $1.04
NYSE Arca	$0.45	$0.00 to $0.81	$0.45 to $0.67	$0.00 to $1.03
BOX	-$0.147 to $0.10	-$0.547 to -$0.30	-$0.147 to $0.32	-$0.547 to -$0.08
CBOE	$0.004 to $0.45	$0.004 to $0.85	$0.004 to $0.60	$0.004 to $1.00
ISE	$0.0035 to $0.43	$0.0035 to $0.83	$0.0035 to $0.65	$0.0035 to $1.05
NOM	$0.35 to $0.45	-$0.20 to $0.45	$0.35 to $0.45	-$0.20 to $0.45
Nasdaq OMX Phlx	$0.0035 to $0.56	$0.0035 to $1.01	$0.30 to $0.45	$0.30 to $0.45

Table 2
Range of Charges for Providing Side

	Equity Options		Index Options	
Exchange	Classes Included in Minimum Quoting Increment Pilot	Classes Not Included in Minimum Quoting Increment Pilot	Classes Included in Minimum Quoting Increment Pilot	Classes Not Included in Minimum Quoting Increment Pilot
NYSE Amex	$0.00 to $0.42	$0.00 to $0.82	$0.00 to $0.64	$0.00 to $1.04
NYSE Arca	-$0.30 to -$0.25	$0.00 to $0.81	-$0.25 to $-0.08	$0.00 to $1.03
BOX	$0.053 to $0.40	$0.553 to $0.80	$0.053 to $0.62	$0.553 to $1.02
CBOE	$0.004 to $0.45	$0.004 to $0.85	$0.004 to $0.60	$0.004 to $1.00
ISE	$0.0035 to $0.43	$0.0035 to $0.83	$0.0035 to $0.65	$0.0035 to $1.05
NOM	-$0.25	$0.00 to $0.30	-$0.25	$0.00 to $0.30
Nasdaq OMX Phlx	$0.0035 to $0.56	$0.0035 to $1.01	$0.30 to $0.45	$0.30 to $0.45

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212 As noted above, the Commission has not included BATS in its revenue impact calculations. See supra note 184.

Table 3
Estimates of Potential Revenue Impact on Options Exchanges

Exchange	Annual Transaction Fee Revenues[213] ($Millions)	$0.30 Cap Estimated % of Revenues Impacted	$0.30 Cap Estimated Revenue Loss ($Millions)	$0.30 Cap Estimated % of Revenues Impacted Assuming Make Rebate Reductions	$0.30 Cap Estimated Revenue Loss ($Millions) Assuming Make Rebate Reductions
NYSE Amex	66.5	0.2%	0.1	0.2%	0.1
NYSE Arca	114.8	26.0%	29.8	12.5%	14.4
BOX[214]	4.0	0.0%	0	0.0%	0.0
CBOE	314.5	7.6%	23.9	7.6%	23.9
ISE	264.9	0.1%	0.3	0.1%	0.3
NOM	38.3	11.0%	4.2	0.0%	0.0
Nasdaq OMX Phlx	180.4	8.9%	16.1	8.9%	16.1
Total	**983.4**	**7.6%**	**74.4**	**5.6%**	**54.7**

213 The transaction fee revenue amounts are based on either an exchange's 2008 Annual Report, an exchange's 2009 unaudited financial results from information circulars, or annualized from the exchange's latest 2009 10-Q.

214 Financial data on annual transaction fees are not available for BOX. Therefore, Commission staff annualized its December 2009 fee revenue estimate.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-61908; File No. S7-10-10]

RIN 3235-AK55

Large Trader Reporting System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing new Rule 13h-1 and Form 13H under Section 13(h) of the Securities Exchange Act of 1934 ("Exchange Act") to establish a large trader reporting system. The proposal is intended to assist the Commission in identifying and obtaining certain baseline trading information about traders that conduct a substantial amount of trading activity, as measured by volume or market value, in the U.S. securities markets. In essence, a "large trader" would be defined as a person whose transactions in NMS securities equal or exceed (i) two million shares or $20 million during any calendar day, or (ii) 20 million shares or $200 million during any calendar month. The proposed large trader reporting system is designed to facilitate the Commission's ability to assess the impact of large trader activity on the securities markets, to reconstruct trading activity following periods of unusual market volatility, and to analyze significant market events for regulatory purposes. It also should enhance the Commission's ability to detect and deter fraudulent and manipulative activity and other trading abuses, and should provide the Commission with a valuable source of useful data to study markets and market activity.

The proposed identification, recordkeeping, and reporting system would provide the Commission with a mechanism to identify large traders and their affiliates, accounts, and transactions. Specifically, proposed Rule 13h-1 would require large traders to identify themselves to the Commission and make certain disclosures to the Commission on proposed Form 13H. Upon receipt of Form 13H, the Commission would issue a unique identification number to the large trader, which the large trader would then provide to its registered broker-dealers. Registered broker-dealers would be required to maintain transaction records for each large trader, and would be required to report that information to the Commission upon request. In addition, registered broker-dealers would be required to adopt procedures to monitor their customers for activity that would trigger the identification requirements of the proposed rule.

DATES: Comments should be submitted on or before [insert date 60 days after the date of publication in the Federal Register].

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/proposed.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-10-10 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper comments:

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

All submissions should refer to File Number S7-10-10. 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 St., NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Richard R. Holley III, Senior Special Counsel, at (202) 551-5614, Christopher W. Chow, Special Counsel, at (202) 551-5622, or Gary M. Rubin, Attorney, at (202) 551-5669, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-7010.

SUPPLEMENTARY INFORMATION:

I. Introduction

U.S. securities markets have experienced a dynamic transformation in recent years. In large part, the changes reflect the culmination of a decades-long trend from a market structure with primarily manual trading to a market structure with primarily automated trading. Rapid technological advances have produced fundamental changes in the structure of the securities markets, the types of market participants, the trading strategies employed, and the array of products traded. The markets also have become even more competitive, with exchanges and other trading centers offering innovative order types, data products and other services, and aggressively competing for order flow by reducing transaction fees and increasing rebates.

These changes have facilitated the ability of large institutional and other professional market participants to employ sophisticated trading methods to trade electronically in huge volumes with great speed. For example, high frequency traders have become increasingly prominent at a time when the markets are experiencing an increase in overall volume. Market analysts have offered a wide range of estimates for the level of activity attributable to high frequency traders, but these estimates typically exceed 50% of total volume.[1] Meanwhile, consolidated average daily share volume and trades in NYSE-listed stocks increased from just 2.1 billion shares and 2.9 million trades in January 2005, to 5.9 billion shares (an increase of 181%) and 22.1 million trades (an increase of 662%) in September 2009.[2]

With respect to market movements and volatility, 2008 marked the third largest yearly decline for the Dow Jones Industrial Average ("Dow") since it was inaugurated in 1896, with the Dow finishing down approximately 34% for the year. However, through the end of December

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1 See, e.g., Jonathan Spicer and Herbert Lash, Who's Afraid of High-Frequency Trading?, Reuters.com, December 2, 2009, available at http://www.reuters.com/article/idUSN173583920091202 ("High-frequency trading now accounts for 60 percent of total U.S. equity volume, and is spreading overseas and into other markets."); Scott Patterson and Goeffrey Rogow, What's Behind High-Frequency Trading, Wall Street Journal, August 1, 2009 ("High frequency trading now accounts for more than half of all stock-trading volume in the U.S."). See also Rob Iati, The Real Story of Trading Software Espionage, Advanced Trading, July 10, 2009, available at http://advancedtrading.com/algorithms/showArticle.jhtml?articleID=218401501 (high frequency trading accounts for 73% of U.S. equity trading volume). One source estimates that, five years ago, that number was less than 25%. See Rob Curran & Geoffrey Rogow, Rise of the (Market) Machines, Wall Street Journal, June 19, 2009, available at http://blogs.wsj.com/marketbeat/2009/06/19/rise-of-the-market-machines/. The trend is clear that high frequency traders now play an increasingly prominent role in the securities markets.

2 See NYSE Euronext, Consolidated Volume in NYSE Listed Issues 2000-2009 (available at http://www.nyxdata.com/nysedata/NYSE/FactsFigures/tabid/115/Default.aspx). In addition, NYSE's average speed of execution for small (100-499 shares) market orders and marketable limit orders was 10.1 seconds in January 2005, compared to 0.7 seconds in October 2009. See NYSE Euronext, Rule 605 Reports for January 2005 and October 2009, available at http://www.nyse.com/equities/nyseequities/1201780422054.html. Consolidated average trade size in NYSE-listed stocks was 724 shares in 2005, compared to 268 shares in January through October 2009. See NYSE Euronext, Consolidated Volume in NYSE Listed Issues 2000-2009, available at http://www.nyxdata.com/nysedata/NYSE/FactsFigures/tabid/115/Default.aspx.

2009, the Dow had advanced approximately 19%.[3] While such market movements are pronounced in absolute terms, volatility and expectations of volatility have fluctuated considerably. Notably, the CBOE VIX volatility index (based on the S&P 500) marked a high of 80.86 on November 20, 2008, but had fallen back to the low 20s by late 2009.[4]

In light of the dramatic changes to the securities markets, including increased volumes, volatility, and the growing prominence of large traders, the Commission recently published a Concept Release to solicit public comment on a broad range of market structure issues.[5] Given the dramatic changes to the securities markets, the Commission believes it is appropriate to exercise its authority under Section 13(h) of the Exchange Act and propose to establish a large trader reporting system, so as to enhance the Commission's ability to identify large market participants, collect information on their trading, and analyze their trading activity.

Currently, to support its regulatory and enforcement activities, the Commission collects transaction data from registered broker-dealers through the Electronic Blue Sheets ("EBS") system.[6] The Commission uses the EBS system to obtain securities transaction information for two primary purposes: (1) to assist in the investigation of possible federal securities law

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3 Bloomberg L.P. "Stock price graph for Dow Jones Industrial Average 12/31/08 to 12/31/09." (2010) (18.82%).

4 For purposes of comparison, the high in the VIX for 2007 was 31.09. See CBOE's Volatility Indexes (January 2009) available at http://www.cboe.com/micro/vix/volatility_qrg.pdf. The VIX is a measure of market expectations of near-term volatility conveyed by stock index option prices. Specifically, VIX measures 30-day expected volatility of the S&P 500 Index. The components of VIX are near- and next-term put and call options, usually in the first and second SPX contract months. See Chicago Board Options Exchange, "The CBOE Volatility Index – VIX," at 1 and 4, available at http://www.cboe.com/micro/vix/vixwhite.pdf.

5 See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

6 See 17 CFR 240.17a-25 (Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers).

violations, primarily involving insider trading or market manipulation; and (2) to conduct market reconstructions.

The EBS system has performed relatively effectively as an enforcement tool for analyzing trading in a small sample of securities over a limited period of time. However, because the EBS system is designed for use in narrowly-focused enforcement investigations that generally involve trading in particular securities, it has proven to be insufficient for large-scale market reconstructions and analyses involving numerous stocks during peak trading volume periods.[7] Further, it does not address the Commission's need to identify important market participants and their trading activity. To enhance the Commission's ability to identify large traders and collect information on their trading activity, Congress passed the Market Reform Act of 1990 ("Market Reform Act").[8]

A. The Market Reform Act

Following declines in the U.S. securities markets in October 1987 and October 1989, Congress noted that the Commission's ability to analyze the causes of a market crisis was impeded by its lack of authority to gather trading information.[9] To address this concern, Congress passed the Market Reform Act, which, among other things, amended Section 13 of the

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7 The shortcomings of the EBS system were noted by the Senate Committee on Banking, Housing and Urban Affairs in the Senate Report accompanying the Market Reform Act of 1990. See Senate Report, infra note 9, at 48.

8 PL 101-432 (HR 3657), October 16, 1990.

9 The legislative history accompanying the Market Reform Act also noted the Commission's limited ability to analyze the causes of the market declines of October 1987 and 1989. See generally Senate Comm. on Banking, Housing, and Urban Affairs, Report to accompany the Market Reform Act of 1990, S. Rep. No. 300, 101st Cong. 2d Sess. (May 22, 1990) (reporting S. 648) ("Senate Report") and House Comm. on Energy and Commerce, Report to accompany the Securities Market Reform Act of 1990, H.R. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657).

Exchange Act to add new subsection (h), authorizing the Commission to establish a large trader reporting system under such rules and regulations as the Commission may prescribe.

The large trader reporting authority in Section 13(h) of the Exchange Act was intended to facilitate the Commission's ability to monitor the impact on the securities markets of securities transactions involving a substantial volume or large fair market value, as well as to assist the Commission's enforcement of the federal securities laws.[10] In particular, the Market Reform Act provided the Commission with the authority to collect broad-based information on large traders, including their trading activity, reconstructed in time sequence, in order to provide empirical data necessary for the Commission to evaluate market movement and volatility and enhance its ability to detect illegal trading activity.[11]

The large trader reporting system envisioned by the Market Reform Act authorizes the Commission to require large traders[12] to self-identify to the Commission and provide information to the Commission identifying the trader and all accounts in or through which the trader effects securities transactions.[13] The Market Reform Act also contemplated that the Commission could

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10 See 15 U.S.C. 78m(h)(1). See also Senate Report, supra note 9, at 42.

11 See Senate Report, supra note 9, at 4, 44, and 71. In this respect, though self-regulatory organization ("SRO") audit trails provide a time-sequenced report of broker-dealer transactions, those audit trails generally do not identify the broker-dealer's customers. Accordingly, the Commission is not presently able to utilize existing SRO audit trail data to accomplish the objectives of the Market Reform Act.

12 Section 13(h) of the Exchange Act defines a "large trader" as "every person who, for his own or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level." See 15 U.S.C. 78m(h)(8)(A). The term "identifying activity level" is defined in Section 13(h) as "transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time interval during which such transactions shall be aggregated." See 15 U.S.C. 78m(h)(8)(C). The proposed "identifying activity level" is set forth in paragraph (a)(7) of proposed Rule 13h-1.

13 See 15 U.S.C. 78m(h)(1)(A).

require large traders to identify their status as large traders to any registered broker-dealer through whom they directly or indirectly effect securities transactions.[14]

In addition to facilitating the ability of the Commission to identify large traders, the Market Reform Act authorizes the Commission to collect information on the trading activity of large traders. In particular, the Commission is authorized to require every registered broker-dealer to make and keep records with respect to securities transactions of large traders that equal or exceed a certain "reporting activity level" and report such transactions upon request of the Commission.[15]

The Market Reform Act specifies that the information collected from large traders and registered broker-dealers under a large trader reporting system would be considered confidential, subject to limited exceptions.[16] In addition, the Market Reform Act provides the Commission with the authority to exempt any person or class of persons or any transaction or class of transactions from the large trader reporting system requirements.[17]

B. Prior Rulemaking

The Commission initially proposed to use its authority under Section 13(h) of the Exchange Act to establish a large trader reporting system in 1991.[18] Similar to the current

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14 See 15 U.S.C. 78m(h)(1)(B).

15 See 15 U.S.C. 78m(h)(2). Section 13(h) also provides the Commission with authority to determine the manner in which transactions and accounts should be aggregated, including aggregation on the basis of common ownership or control. See 15 U.S.C. 78m(h)(3). The term "reporting activity level" is defined in Section 13(h)(8)(D) of the Exchange Act to mean "transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated." See 15 U.S.C. 78m(h)(8)(D).

16 See 15 U.S.C. 78m(h)(7).

17 See 15 U.S.C. 78m(h)(6).

18 See Securities Exchange Act Release No. 29593 (August 22, 1991), 56 FR 42550 (August 28, 1991) (S7-24-91) ("1991 Proposal").

proposal, the earlier proposed rulemaking would have required large traders to disclose to the Commission their accounts and affiliations by filing Form 13H and would have imposed recordkeeping and reporting requirements on broker-dealers with respect to the activity of their large trader customers.[19]

After considering the comments received on the 1991 Proposal, the Commission clarified and revised its proposed large trader system and issued a re-proposal in 1994.[20] Among other things, the re-proposal sought to: clarify the definition of large trader and to increase the reporting thresholds;[21] streamline the filing requirements and include provisions for an inactive filing status;[22] and provide a safe harbor for a broker-dealer's duty to monitor compliance with the rule.[23]

C. Rule 17a-25 and the Enhanced EBS System

The Commission did not adopt the large trader reporting rule as re-proposed in 1994. However, in 2001 the Commission adopted Rule 17a-25 to enhance the EBS system and

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19 In 1991, the Commission proposed an "identifying activity level," the triggering level at which large traders would be required to identify themselves to the Commission, of aggregate transactions during any 24-hour period that equals or exceeds either 100,000 shares or fair market value of $4,000,000, or any transactions that constitute program trading. See 1991 Proposal, supra note 18, 56 FR at 42551.

20 See Securities Exchange Act Release No. 33608 (February 9, 1994), 59 FR 7917 (February 17, 1994) (S7-24-91) ("1994 Reproposal").

21 Specifically, the Commission proposed to increase the "identifying activity level" to aggregate transactions in publicly traded securities that are equal to or greater than the lesser of 200,000 shares and fair market value of $2,000,000 or fair market value of $10,000,000. The Commission left unchanged the provision that captured transactions that constitute program trading. See 1994 Reproposal, supra note 20, 59 FR at 7922.

22 See 1994 Reproposal, supra note 20, 59 FR at 7927.

23 See id. at 7918.

facilitate the Commission's ability to collect electronic transaction data to support its investigative and enforcement activities.[24]

Rule 17a-25 enhanced the EBS system in three primary areas. First, it requires broker-dealers to submit to the Commission securities transaction information responsive to a Blue Sheets request in electronic format.[25] Second, the rule modified the EBS system to take into account evolving trading strategies used primarily by institutional and professional traders. Specifically, the rule requires firms to supply three additional data elements - prime brokerage identifiers,[26] average price account identifiers,[27] and depository institution identifiers[28] - to assist

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24 See Securities Exchange Act Release No. 44494 (June 29, 2001), 66 FR 35836 (July 9, 2001) (S7-12-00) (final rulemaking) ("EBS Release"); 42741 (May 2, 2000), 65 FR 26534 (May 8, 2000) (proposed rulemaking).

25 See 17 CFR 240.17a-25. Rule 17a-25 requires submission of the same standard customer and proprietary transaction information that SROs request in connection with their market surveillance and enforcement inquiries. For a proprietary transaction, the broker-dealer must include the following information: (1) clearing house number or alpha symbol used by the broker-dealer submitting the information; (2) clearing house number(s) or alpha symbol(s) of the broker-dealer(s) on the opposite side to the trade; (3) identifying symbol assigned to the security; (4) date transaction was executed; (5) number of shares, or quantity of bonds or options contracts, for each specific transaction; whether each transaction was a purchase, sale, or short sale; and, if an options contract, whether open long or short or close long or short; (6) transaction price; (7) account number; (8) identity of the exchange or market where each transaction was executed; (9) prime broker identifier; (10) average price account identifier; and (11) the identifier assigned to the account by a depository institution. For customer transactions, the broker-dealer also is required to include the customer's name, customer's tax identification number, customer's address(es), branch office number, registered representative number, whether the order was solicited or unsolicited, and the date the account was opened. If the transaction was effected for a customer of another member, broker, or dealer, the broker-dealer must include information on whether the other party was acting as principal or agent on the transaction.

26 The Commission requires prime brokerage identifiers to avoid double-counting of transactions where EBS submissions reflect the same trade by both the executing broker-dealer and the broker-dealer acting as the prime broker. See EBS Release, supra note 24, 66 FR at 35838.

27 Some broker-dealers use "average price accounts" as a mechanism to buy or sell large amounts of a given security for their customers. Under this arrangement, a broker-dealer's average price account may buy or sell a security in small increments throughout a trading session, and then transfer the accumulated long or short position to one or more accounts for an average price or volume-weighted average price after the market close. Similar to prime brokerage identifiers, the Commission requires average price account identifiers to avoid double-counting where the EBS

the Commission in aggregating securities transactions by entities trading through multiple accounts at more than one broker-dealer.[29] Finally, the rule requires broker-dealers to update their contact person information to provide the Commission with up-to-date information necessary for the Commission to direct EBS requests to the appropriate staff.[30]

D. The Current Proposal

While Rule 17a-25 enhanced the Commission's EBS system and improved the Commission's ability to obtain electronic transaction records, it is insufficient for large-scale investigations and market reconstructions involving numerous stocks during peak trading volume periods, and is therefore inadequate with respect to the Commission's efforts to monitor the impact of large trader activity on the securities markets.[31]

In particular, Rule 17a-25 does not specify a definitive deadline by which EBS trade information must be furnished to the Commission and, in the Commission's experience, data collected through the EBS system often is subject to lengthy delays, particularly with respect to files involving a large number of transactions over an extended time period. Commission staff often must make multiple requests to broker-dealers to obtain sufficient order information about the purchase or sale of a specific security to be able to adequately analyze the trading. These multiple requests and responses can take a significant amount of time and delay the

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submission reflects the same transaction for both the firm's average price account and the accounts receiving positions from the average price account. See EBS Release, supra note 24, 66 FR at 35838-39.

28 The inclusion of a depository identifier in EBS reports was designed to expedite the Commission's efforts to aggregate trading when conducting complex trading reconstructions. See EBS Release, supra note 24, 66 FR at 35839.

29 See 17 CFR 240.17a-25(b).

30 This provision was designed to address the recurring problem of frequent staff turnover and re-organizations at broker-dealers to ensure the Commission directs EBS requests to the appropriate personnel. See EBS Release, supra note 24, 66 FR at 35839.

31 See 15 U.S.C. 78m(h)(1).

Commission's efforts to analyze the data on a contemporaneous basis. Further, since decimal trading has increased the number of price points for securities, the volume of transaction data subject to reporting under the EBS system, particularly in the case of active large traders, can be significantly greater than the EBS system was intended to accommodate in a typical request for data. Thus, the current EBS system does not efficiently collect large volumes of data in a timely manner that allows the Commission to perform contemporaneous analysis of market events.

Further, the data generated by the EBS system does not include important information on the time of the trade or the identity of the customer.[32] While the Commission may be able to use price as a proxy for execution time when reconstructing trading history in a particular security, such analysis is extremely resource intensive and hinders the Commission's ability to promptly analyze data on a contemporaneous basis. Further, information to identify the large trader customer can provide valuable information to permit the Commission to track large trader activity across markets and through various broker-dealers. The ability to track and analyze this information would facilitate the Commission's efforts both to investigate potential manipulative activity and to reconstruct a more accurate market history and would be particularly useful when

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32 The Commission staff also is developing, for Commission consideration, a proposal to establish a consolidated audit trail for equities and options that would collect and consolidate detailed information about orders entered and trades executed on any exchange or in the over-the-counter market. As Commission staff is unable to estimate when that proposal could potentially be operational, the large trader reporting system proposed today is designed to address in the near term the Commission's current need for access to more information about large traders and their activities. Longer term, the proposed large trader reporting system should continue to provide a uniquely valuable tool for efficiently identifying the most significant market participants, in particular with respect to the requirement on large traders to self-identify to the Commission, as this aspect is uniquely addressed by Section 13(h) of the Exchange Act and proposed Rule 13h-1.

analyzing information on large traders, as some large traders may trade through multiple accounts at multiple broker-dealers and may trade using sponsored access.[33]

In light of recent turbulent markets and the increasing sophistication and trading capacity of large traders, the Commission needs to enhance further its ability to collect and analyze trading information more efficiently, especially with respect to the most active market participants. In particular, the Commission needs a mechanism to reliably identify large traders, and promptly and efficiently obtain their trading information on a market-wide basis.

The Commission believes a proposal for a large trader reporting system is necessary because, as noted above, large traders appear to be playing an increasingly prominent role in the securities markets. For example, market observers have offered a wide range of estimates for the percent of overall volume attributable to one potential subcategory of large trader – high frequency traders – which are typically estimated at 50% of total volume or higher.[34] The proposed large trader reporting system is intended to provide the Commission with an efficient system for obtaining the information necessary to monitor more effectively the impact on the securities markets of "large traders." As discussed in greater detail below, the Commission proposes to define a "large trader" as a person who, in exercising investment discretion, effects transactions in NMS securities[35] in an amount equal to or greater than (1) during a calendar day,

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33 The Commission recently proposed rules that would address sponsored access to exchanges. See Securities and Exchange Act Release No. 61379 (January 26, 2010), 75 FR 4713 (January 29, 2010) (File No. S7-03-10).

34 See supra note 1.

35 17 CFR 240.600(b)(46) (defining "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options."). The term refers to all exchange-listed securities, including equities and options.

either 2 million shares or shares with a fair market value of $20 million; or (2) during a calendar month, either 20 million shares or shares with a fair market value of $200 million.[36]

Among other things, the Commission believes that a large trader reporting system would enhance its ability to (1) reliably identify large traders and their affiliates, (2) obtain far more promptly trading data on the activity of large traders, including execution time,[37] and (3) aggregate and analyze trading data among affiliated large traders.

II. Description of the Proposed Rule

A. Application and Scope

As discussed in detail below, under proposed Rule 13h-1, any person would be a "large trader" that "directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level."[38] All large traders would be required to identify themselves to the Commission by filing Form 13H, and would be required to update their Form 13H at least annually and more frequently as necessary.[39]

Upon receiving an initial Form 13H, the Commission would assign each large trader a unique Large Trader Identification Number ("LTID"). The LTID is a critical component of the proposal, and is intended, among other things, to enable the Commission to aggregate accounts and transactions of large traders on an inter-broker-dealer basis to capture a large trader's trading

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36 See infra notes 72-73 and accompanying text (discussing the calculation of the identifying activity level when determining who meets the definition of large trader).

37 See infra note 149 and accompanying text.

38 See proposed Rule 13h-1(a)(1).

39 See proposed Rule 13h-1(b)(1).

activity even where the large trader executes trades through a number of different registered broker-dealers. In particular, the LTID would allow the Commission to efficiently sort trade information by large trader.

A large trader would be required to disclose to each of its registered broker-dealers its LTID and identify all of the accounts held by that broker-dealer through which the large trader trades.[40] By requiring the large trader to identify all applicable accounts to its registered broker-dealer, the proposed rule would place the self-identification requirement directly on the large trader, which should assist the registered broker-dealer in easily identifying and marking all of the large trader's accounts held by the broker-dealer. A broker-dealer also would be required to identify itself as a large trader if it effected transactions for a proprietary account (or other account over which it exercises investment discretion) at or above the identifying activity level. Further, the proposed rule would require large traders to provide, upon request, additional information to the Commission that would allow the Commission to further identify the large trader and all accounts through which the large trader effects transactions.[41]

Proposed Rule 13h-1 also would impose recordkeeping and reporting requirements on registered broker-dealers, and would require registered broker-dealers to provide large trader transaction data to the Commission upon request. Finally, the proposed rule would require registered broker-dealers to establish and maintain systems and procedures designed to help assure compliance with the identification requirements of the proposed rule.

Accordingly, the proposed rule would impose the following obligations on a large trader: (1) self-identify to the Commission by filing and updating Form 13H; (2) disclose its LTID to its

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40 See proposed Rule 13h-1(b)(2).

41 See proposed Rule 13h-1(b)(4). For example, the Commission might request additional information regarding a response provided in Schedule 6 to a large trader's Form 13H concerning the identification of accounts.

registered broker-dealers and others with whom it collectively exercises investment discretion; and (3) provide certain additional information in response to a Commission request. The proposed rule would impose the following obligations on registered broker-dealers: (1) maintain records of transactions effected for large traders that are identified by the specific large trader; (2) electronically report large trader transaction information to the Commission upon request; and (3) monitor compliance with the proposed rule.

B. Defining Large Trader

The proposed definition of a large trader is based on the definition of "large trader" in Section 13(h)(8)(A) of the Exchange Act.[42] Specifically, paragraph (a)(1) of the proposed rule defines a "large trader" as "any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level."

When determining who would be subject to the proposed requirements as a "large trader," the proposed definition is intended to focus, in more complex organizations, on the parent company of the entities that employ or otherwise control the individuals that exercise investment discretion. The purpose of this focus is to narrow the number of persons that would need to self-identify as "large traders" while allowing the Commission to identify the primary institutions that conduct a large trading business. As discussed further below, the proposed rule

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42 See 15 U.S.C. 78m(h)(8)(A) (providing that "the term 'large trader' means every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level").

provides specific guidance as to who should self-identify as a "large trader." Paragraph (b)(3)(i) of the proposed rule provides that a large trader shall not be required to separately comply with the requirements of paragraph (b) if a person who controls the large trader complies with all of the requirements under paragraphs (b)(1), (b)(2), and (b)(4) applicable to such large trader with respect to all of its accounts.[43] The intent of this proposed provision is to push the identification requirement up the corporate hierarchy to the parent entity to identify the primary institutions that conduct a large trading business. By focusing the identification requirements in this manner, the Commission would be able to identify easily the controlling persons that themselves, or through subsidiaries or employees, operate as large traders, while limiting the filing and self-identification burdens that would be imposed to a relatively small group of persons. Accordingly, if a natural person or a subsidiary entity within a large organization independently qualifies as a large trader, but the parent company files Form 13H and identifies itself as the large trader, then the natural person or subsidiary entity would not be required to separately identify itself as a large trader, file Form 13H, or be subject to the other requirements that would apply to large traders. Importantly, this provision would require that the entity that self-identifies as the "large trader" comply with the proposed rule with respect to all accounts within the entity over which investment discretion is exercised, directly or indirectly. Accordingly, if the parent

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[43] Notably, the definition of "investment discretion" in Section 3(a)(35) of the Exchange Act, 15 U.S.C. 78c(a)(35), applies to a person that is "authorized to determine what securities or other property shall be purchased or sold by or for the account" as well as a person that "makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions...." To the extent that an entity employs a natural person that individually, or collectively with others, would meet the proposed definition of a "large trader," then, for purposes of proposed Rule 13h-1, the entity that controls that person or those persons would be considered a "large trader."

company files Form 13H, then all accounts over which any controlled person exercises investment discretion should be tagged with the parent company's LTID.[44]

Conversely, paragraph (b)(3)(ii) of the proposed rule would apply the same principle on a "top down" basis, providing that a large trader shall not be required to comply with the requirements of paragraph (b) if one or more persons controlled by such large trader collectively comply with all of the requirements under paragraphs (b)(1), (b)(2), and (b)(4) applicable to such large trader with respect to all of its accounts. A controlling person of one or more large traders would be required to comply with all of the requirements of paragraph (b) unless the entities that it controls discharge all of the responsibilities of the controlling person under paragraph (b). The intent of this provision is to focus the identification requirement on the parent company, and avoid the application of the requirement to natural persons who may be controlling owners of the parent company. This provision is designed to limit the reporting burden to a relatively small group of persons and avoid redundant identification of accounts, while allowing the Commission to identify the controlling institutions that operate as large traders and obtain information on their trading. As with paragraph (b)(3)(i), this provision would require that the entities that self-identify as large traders (i.e., an entity that is "controlled by" the non-filer) comply with the proposed rule with respect to all accounts of the non-filer controlling person. In other words, a

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[44] Although the proposed rule would relieve a controlled person from separately reporting as a large trader so long as its parent entity complies with the rule with respect to all of its accounts, the Commission anticipates designing the large trader reporting system to accommodate those large traders that wish to voluntarily identify with more granularity the subsidiary, trading desk, or other unit that is directly exercising investment discretion over the account. For example, although the large trader parent entity would be assigned a single LTID by the Commission, the LTID could include a number of blank fields, so that the large trader could elect to append additional characters to sub-identify the relevant unit that directly controls the account. The large trader could then use its generic LTID, along with the more particularized information, when identifying its accounts to its broker-dealers. Large traders voluntarily using these additional characters on their LTID may choose to do so for internal recordkeeping purposes and to facilitate responses to Commission requests for information.

controlling person would not be excused from the large trader requirements under this provision if it directly or indirectly exercises investment discretion over any other accounts, including those of other large traders, unless all of those other large traders have also self-identified with respect to all of its accounts. The purpose of this proposed provision is to make sure that the entity that self-identifies as a large trader encompasses the full extent of the large trader activity within its domain and those of its controlling person.

For example, a parent holding company generally would file a Form 13H on behalf of itself and each of its large trader subsidiaries. So long as the Form provides all of the relevant information (e.g., discloses contact information and all of the accounts through which it and its affiliates trade), and the holding company makes the necessary disclosures to its and its subsidiaries' broker-dealers, then the large trader subsidiaries would not be required to individually file Forms 13H.[45] Alternatively, if all of the large trader's subsidiaries collectively comply with all of the requirements of proposed paragraphs (b)(1), (b)(2), and (b)(4) with respect to all of the parent company's trading activity, then the holding company would not be required to file a Form 13H.[46] If however, a holding company has two subsidiaries that independently qualify as large traders, and only one elects to file its own Form 13H, then the holding company still would be required to file its own Form 13H that encompasses both subsidiaries.[47] The holding company's Form 13H therefore would include information on each of its subsidiaries, and transactions of both subsidiaries would be tagged with the parent company's LTID.[48]

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45 See proposed paragraph (b)(3)(i).

46 See proposed paragraph (b)(3)(ii).

47 Both the holding company and subsidiary that elected to file its own Form 13H would identify the other as an affiliated large trader in Item 5 of the Form.

48 Transactions of the subsidiary that filed its own Form 13H would also be tagged with its unique LTID. See infra text accompanying note 113 (discussing multiple LTIDs).

The examples above describe situations in which, for the limited purpose of determining who should self-identify as a large trader, investment discretion would be considered to be indirectly exercised by a parent company by virtue of the direct or indirect power that the parent company exercises over its subsidiaries. Those who do not exercise investment discretion -- either directly or indirectly through, for example controlled persons -- would not be large traders, and so mere ownership of accounts -- by trusts,[49] custodians, or nominees, for example -- through which the requisite number of securities transactions are effected would not trigger large trader status.

The proposed rule focuses on entities that directly or indirectly exercise investment discretion and are responsible for trading large amounts of securities. As these entities can represent significant sources of liquidity and overall trading volume, their trading may have a direct impact on the markets. As such, the Commission believes that the proposed rule, if adopted, would allow the Commission to more readily identify these large traders and obtain current information on their trading activity. The Commission also believes that the proposed rule is tailored to achieve the objectives of Section 13(h) of the Exchange Act by allowing the Commission to monitor the impact of large traders on the securities markets and assisting the Commission's enforcement of the federal securities laws, while at the same time minimizing the burden on affected entities.

1. Definition of Person and Control

Section 13(h)(8)(E) of the Exchange Act defines "person" as having "the meaning given in Section 3(a)(9) [of the Exchange Act] and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central

[49] Trustees exercising investment discretion on behalf of such trusts would be large traders.

bank."[50] Section 3(a)(9) of the Exchange Act defines person as "a natural person, company, government, or political subdivision, agency, or instrumentality of a government."[51] Paragraph (a)(2) of the proposed rule defines "person" by reference to the definition contained in Section 13(h)(8)(E) of the Exchange Act."[52] Accordingly "person," for purposes of proposed Rule 13h-1, would include, among other things, two or more persons acting together for the purpose of trading, acquiring, holding, or disposing of NMS securities.[53]

In addition, paragraph (a)(3) of the proposed rule defines control (including the terms "controlling," "controlled by," and "under common control with") 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 securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote or direct the vote of 25% or more of a class of voting securities of an entity or has the power to sell or direct the sale of 25% of more of a class of voting securities of such entity, or in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that entity." The proposed definition of control is based on the definition of control contained in Form 1 (Application for Registration or Exemption from Registration as a National Securities Exchange). The Commission preliminarily believes that the proposed definition of control is sufficiently limited

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50 See 15 U.S.C. 78m(h)(8)(E).

51 15 U.S.C. 78c(a)(9).

52 As required by Section 13(h)(8)(E) of the Exchange Act, the proposed rule expressly excludes foreign central banks from the definition of a person. See 15 U.S.C. 78m(h)(8)(E). See also Senate Report, supra note 9, at 49 (noting that foreign central banks were to be excluded in the interest of comity and due to the nature of the specific functions of such entities).

53 See, e.g., House Comm. on Energy and Commerce, Report to Accompany the Securities Market Reform Act of 1990, H.R. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657).

to capture only those persons with a significant enough controlling interest to warrant identification as a large trader.[54]

While a natural person typically exercises investment discretion over an account, the proposed large trader reporting system is intended to capture the activity of the entity that employs the natural person doing the trading.[55] As discussed above, the proposed rule is intended to push requirements triggered by the large trader definition up the hierarchy of corporate control to the parent company, where applicable. For example, a company that controls persons who, collectively or individually, meet the definition of large trader would file Form 13H and identify itself as the large trader, and all transactions by its employee traders, as well as the employee traders of entities under its control, would be marked with the parent's LTID number.

The following examples elaborate on which person would identify itself as the "large trader." For example, if a firm (e.g., a corporation, limited liability company, partnership, limited partnership) employs two natural persons who exercise investment discretion and trade in an amount that would qualify them individually as "large traders," then the firm, as their employer, would file Form 13H and identify itself as a large trader, and the individual employees

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54 In particular, the Commission notes that the definition of control contained in Form 1 is among the least expansive definitions of control referenced in Commission rules. Cf. Rule 19h-1(f)(2) under the Exchange Act, 17 CFR 240.19h-1(f)(2) (featuring a 10% threshold with respect to the right to vote 10 percent or more of the voting securities or receive 10 percent or more of the net profits). The Commission believes that this definition of control represents a less burdensome option that still achieves the goal of identifying persons who exert direct or indirect control over large traders. Further, the Commission has not incorporated the provision contained in the Form 1 definition of control that is applicable to directors, general partners, or officers that exercise executive responsibility. Rather, given the proposed rule's focus on parent companies, the Commission's proposed definition focuses on the existence of a corporate control relationship over the large trader entity.

55 Where a firm trades through an algorithmic trading system in which trading decisions are performed by a computer program without the intervention of a natural person, the exercise of investment discretion would be attributed to the firm by way of the natural person or persons who are responsible for the design of the trading engine.

would not file Form 13H. In addition, if a firm employs two natural persons who exercise investment discretion and trade in an amount that would not individually qualify them as "large traders," but, when taken together, the exercise of investment discretion and trading effected by those two natural persons would qualify the firm as a large trader, then the firm, as their employer, would file Form 13H and identify itself as a large trader. This would be the case as long as the firm, directly or indirectly, is the employer of the natural persons and exercises control over them in the context of the employer relationship.[56]

In the case of a large firm that is composed of numerous operating subsidiaries, to accomplish the Commission's goals, the Commission intends that the entity that is the ultimate parent company would file Form 13H and identify itself as the large trader, not the individual subsidiaries. For example, in the case of a large financial holding company, if an adviser and a registered broker-dealer subsidiary both employ persons who exercise investment discretion over accounts and effect the requisite level of transactions (either collectively or individually), the financial holding company could identify itself as the large trader by filing Form 13H, and the adviser and broker-dealer subsidiaries need not file Form 13H.

The following additional examples are intended to provide further clarity as to the party the Commission believes should self-identify as a large trader under the proposed rule:

- In the case of a registered investment adviser that acts as the adviser to several investment companies registered under the Investment Company Act (e.g., mutual funds), even if each fund is managed by one natural person that would meet the

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56 The Commission notes that the proposed rule would require the aggregation of accounts over which employees exercise investment discretion in the scope of their employment. See proposed Rule 13h-1(a)(4) (defining "investment discretion"). Therefore, as an entity determines whether it is a large trader, it would not count transactions effected by employees in their personal (e.g., 401(k)) accounts.

applicable large trader threshold, the investment adviser would file Form 13H and identify itself as a large trader and the individual fund manager would not file Form 13H. For purposes of the proposed rule, the investment company would not directly or indirectly exercise investment discretion over one or more accounts and therefore would not file Form 13H.

- Where four individuals form a partnership and operate a proprietary trading business through a computerized algorithmic trading engine, the partnership entity would file Form 13H and identify itself as a large trader, and the four individual partners would not file Form 13H, so long as the partnership covers all of the partners' trading activity for the partnership.[57]
- If a natural person large trader is not employed by an entity (e.g., the person is self-employed), then the natural person would file Form 13H and identify itself as a large trader.

By focusing on parent companies, the proposed rule requires large traders to aggregate accounts over which persons they control exercise investment discretion.[58] Accordingly, even if any individual employee, group, or subsidiary within a company would not effect transactions that equal or exceed the identifying activity threshold by itself, if collectively the ultimate parent company operates subsidiaries or controls individuals that together effect transactions that equal or exceed the identifying activity threshold, then the parent company would need to identify itself as a large trader.

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57 See proposed Rule 13h-1(b)(3)(ii).

58 See proposed Rule 13h-1(a)(1) (defining the term "large trader" to include "any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion...").

The Commission believes that the proposed focus on parent company-level entities should reduce the burden of the proposed rule by requiring self-identification by a concentrated group of parent companies, while capturing those organizations that in the aggregate are responsible for exercising investment discretion over the trading of a substantial volume or fair market value of NMS securities. Notably, companies would not be able to divide their trading among employees, groups, or subsidiaries for the purpose of avoiding meeting the definition of large trader under the proposed rule.

2. Definition of Investment Discretion

Paragraph (a)(4) of proposed Rule 13h-1 states that the definition of "investment discretion" shall have the meaning provided for in Section 3(a)(35) of the Exchange Act. Section 3(a)(35) provides that "[a] person exercises 'investment discretion' with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder."[59] A person's employees would be deemed to exercise investment discretion on behalf of that person when they act within the scope of their employment. This provision is intended to clarify that when an entity determines whether it meets the definition of large trader, it would not count, for example, transactions effected by employees in their personal

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[59] 15 U.S.C. 78c(a)(35)(B).

accounts. The Commission preliminarily believes that this proposed definition would identify those persons and entities responsible for making trading decisions concerning securities transactions involving a substantial volume or a large fair market value consistent with the purposes of Section 13(h) of the Exchange Act.

3. Definition of Transaction and NMS Security

Paragraph (a)(6) of the proposed rule defines the term "transaction" to mean all transactions in NMS securities, including exercises or assignments of option contracts, except for a limited number of transactions that are specifically identified in that paragraph, which are discussed below. The term "NMS security" is defined in Rule 600(b)(46) under the Exchange Act.[60] The proposed rule would apply to trading in NMS securities that are traded through any facility of a national securities exchange, as well as traded in foreign or domestic over-the-counter markets and after-hours systems.

Section 13(h)(8)(B) defines the term "publicly traded security" to mean "any equity security (including an option on individual equity securities, and an option on a group or index of such securities) listed, or admitted to unlisted trading privileges, on a national securities exchange, or quoted in an automated interdealer quotation system."[61] The Commission preliminarily believes that the definition of "NMS security" encompasses the universe of

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60 17 CFR 240.600(b)(46). An "NMS security" means "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options."

61 See 15 U.S.C. 78m(h)(8)(B).

securities that the term "publicly traded security" used in Section 13(h)(8)(B) was intended to cover.[62]

For purposes of determining whether a person effects the requisite amount of transactions in NMS securities to meet the definition of "large trader," paragraph (a)(6) of the proposed rule would exclude a limited set of transactions from the term "transaction" and the requirements of the proposed rule. The proposed exclusions are designed to exempt certain small and otherwise infrequent traders from the definition of a large trader as well as activity that is not characterized by active investment discretion or is associated with capital raising or employee compensation.

Specifically, the Commission preliminarily believes that the proposed excepted transactions are not effected with an intent that is commonly associated with an arm's length purchase or sale of securities in the secondary market and therefore do not fall within the types of transactions that are characterized by the exercise of investment discretion. While a large enough one-time transaction in the proposed categories could have an impact on the market, the Commission would be able to obtain information on that trade through other means, including the EBS system. The Commission preliminarily believes that the benefit to the Commission of identifying such person as a large trader solely through one of the enumerated excepted transactions would not be justified by the costs that would be imposed on the person and their registered broker-dealer that accompany meeting the definition of large trader. Accordingly, the Commission proposes to exclude the following types of transactions, described below, from the proposed definition of "transaction":

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62 The Commission notes that the term "NMS security" was adopted in 2005, fourteen years after the adoption of Section 13(h). See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04) (Regulation NMS adopting release).

- any journal or bookkeeping entry made to an account to record or memorialize the receipt or delivery of funds or securities pursuant to the settlement of a transaction;[63]
- any transaction that is part of an offering of securities by or on behalf of an issuer, or by an underwriter on behalf of an issuer, or an agent for an issuer, whether or not such offering is subject to registration under the Securities Act of 1933, provided, however, that this exemption shall not include an offering of securities effected through the facilities of a national securities exchange;
- any transaction that constitutes a gift;
- any transaction effected by a court-appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate;[64]
- any transaction effected pursuant to a court order or judgment;
- any transaction effected pursuant to a rollover of qualified plan or trust assets subject to Section 402(c)(1) of the Internal Revenue Code;[65] and
- any transaction between an employer and its employees effected pursuant to the award, allocation, sale, grant or exercise of a NMS security, option or other right

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63 The Commission notes that such activity is part of the clearance and settlement process. Because proposed Rule 13h-1 focuses on effecting transactions for the purchase or sale of an NMS security, the Commission does not believe that the capture of this activity is useful in the context of a rule that is designed to identify trading activity.

64 This proposed exclusion draws a distinction between the distribution and continuing administration of an estate. A court-appointed fiduciary may be authorized to invest and reinvest in securities for many years. Transactions effected pursuant to the continuing administration or investment of an estate's assets would fall outside the exclusion for transactions of a decedent or marital estate, as they would indicate an on-going exercise of investment discretion and extend beyond a one-time event. Only those transactions effected pursuant to the distribution or liquidation of such estates would be excluded.

65 26 U.S.C. 402(c)(1).

to acquire securities at a pre-established price pursuant to a plan which is primarily for the purpose of an issuer benefit plan or compensatory arrangement. The Commission preliminarily believes that narrowing the definition of a transaction should reduce the impact of the proposed rule on infrequent traders and at the same time allow the Commission to focus the proposed rule on those persons and activities that require large trader identification.

4. Identifying Activity Level

Section 13(h)(8)(C) defined the term "identifying activity level" to mean "transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time interval during which such transactions shall be aggregated."[66] The "identifying activity level" is the threshold level of transaction activity at which a market participant would be considered a "large trader" and required to identify itself to the Commission. The Commission proposes that "identifying activity level" mean aggregate transactions in NMS securities that are equal to or greater than: during a calendar day, either two million shares or shares with a fair market value of $20 million; or (2) during a calendar month, either twenty million shares or shares with a fair market value of $200 million.[67]

The thresholds are designed to identify large traders that effect transactions of a substantial magnitude relative to overall volume. In formulating the proposed threshold, the Commission considered a level that would identify those entities that effect transactions in an amount corresponding to approximately 0.01% of the daily volume and market value of trading in NMS stocks. The Commission staff estimates that daily matched volume in NMS stocks

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66 See 15 U.S.C. 78m(h)(8)(C).

67 See proposed Rule 13h-1(a)(7).

traded on U.S. securities exchanges or reported through a transaction reporting facility[68] is within a range of 7 to 10 billion shares in late 2009.[69] Doubling that matched volume figure to account for the two sides of every trade, considering that the large trader proposal is focused on the aggregated buy and sell activity of traders, results in a figure of between 14 billion and 20 billion shares. Given the Commission's objective to define a "large" trader to be one who effects transactions of approximately .01% of overall daily volume on the equities markets, then a large trader would be a trader who effects transactions involving 2 million shares daily. The Commission estimates that, based on its experience with information gathered in connection with transaction fees pursuant to Section 31 of the Exchange Act,[70] the daily market value of trading in NMS stocks, also on a double-counted basis, is approximately $200 billion. Applying the same 0.01% standard to market value that was applied to daily volume results in a threshold of approximately $20 million.

The first prong of the proposed threshold is designed to identify large traders who effect transactions, on a daily basis, in a substantial volume. The second prong of the proposed threshold is intended to identify large traders who might not trigger the calendar-day threshold but might nevertheless effect transactions in large enough amounts over the course of a calendar

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68 Over-the-counter trades, including trades executed by alternative trading systems, are reported to the consolidated trade streams through one of the trade reporting facilities operated by FINRA on behalf of exchanges, or through FINRA's ADF.

69 While the proposed large trader definition would include options trading in defining a large trader, the proposed threshold was based on information for NMS stock trading. This figure does not count transactions conducted on derivatives markets. Consequently, the Commission believes that the 7 to 10 billion figure understates overall volume relative to the proposed gross-up methodology for calculating the identifying activity threshold. Nevertheless, the Commission preliminarily believes that considering reported volume in NMS stocks provides an appropriate and relevant benchmark, using figures that are widely accessible, for determining the threshold for large trader status. The Commission notes that several exchanges provide daily and moving average volume figures on public websites. See, e.g., www.nasdaqtrader.com.

70 15 U.S.C. 78ee.

month to warrant becoming subject to the proposed requirements that would be applicable to large traders. In addition, the second prong should allow the Commission to establish a high enough first prong so as to not pick up small or infrequent traders who might trigger identification based on a single transaction.

Section 13(h)(3) of the Exchange Act authorizes the Commission to prescribe rules governing the manner in which transactions and accounts shall be aggregated for purposes of determining who should be defined as a large trader.[71] The proposal would require market participants to use a "gross up" approach in calculating their activity levels. Offsetting or netting transactions among or within accounts, even for hedged positions, would be added to a participant's activity level in order to show the full extent of a trader's purchase and sale activity.[72] Specifically, paragraph (c)(1) of proposed Rule 13h-1 would specify that the volume or fair market value of equity securities purchased and sold would be aggregated with the market value of transactions in options or on a group or index of equity securities.[73] For purposes of the identifying activity level, with respect to options, only purchases and sales, and not exercises, would be counted. By considering only purchases and sales, the proposed rule is intended to

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71 See 15 U.S.C. 78m(h)(3).

72 In particular, a trader that nets or hedges its positions, e.g., one that seeks to achieve a net position of zero at the end of a trading day, may nevertheless have transacted in a substantial volume or fair market value during the course of the day. Through the proposed rule, the Commission seeks to identify any person who effects transactions in the requisite amount. Substantial trading activity has the potential to impact the market regardless of the person's net position.

73 For example, 50,000 shares of XYZ stock and 500 XYZ call options would count as aggregate transactions of 100,000 shares in XYZ (i.e., 50,000 + 500 x 100 = 100,000). With respect to index options, the market value would be computed by multiplying the number of contracts purchased or sold by the market price of the options and the applicable multiplier. For example, if ABC Index has a multiplier of 100, a person who purchased 200 ABC call options for $400 would have effected aggregate transaction of $8 million (i.e., 200 x 400 x 100 = $8,000,000). Transactions in index options are not required to be "burst" into share equivalents for each of the underlying component equities.

focus on the trading of options and avoid double-counting towards the applicable identification threshold.

The Commission believes that this approach would accurately identify those traders that effect purchase and sale transactions in a large volume of securities in absolute terms and is designed to minimize the burden on affected entities in calculating the applicable thresholds by utilizing a bright line standard that is readily applied.

To help prevent circumvention of the proposed rule, paragraph (c)(2) further would prohibit a person from disaggregating accounts to avoid identification and the accompanying proposed requirements of a large trader. Accordingly, the proposal would prohibit, among other things, persons from splitting activity among multiple registered broker-dealers, accounts, or transactions for the purpose of evading the large trader identification requirement. Additionally, where two separate entities engage in a coordinated trading strategy that results in the joint exercise of investment discretion over their individual accounts, each entity must count the transactions in NMS securities effected through those "joint" accounts toward its identifying activity level.[74]

The Commission believes that the capture of substantial trading activity would be essential to accomplish the purposes of Section 13(h) of the Exchange Act. The Commission has balanced this need against the burden of capturing the information and preliminarily believes that the proposed identifying activity level strikes an appropriate balance. In particular, the Commission preliminarily believes that trading activity in an amount corresponding to the proposed identifying activity level effected during the applicable measuring periods is

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[74] The definition of "person" includes two or more persons acting as a partnership, limited partnership, syndicate, or other group. As discussed infra, if a person meets the identifying activity level, the person would be a large trader and would need to list the applicable accounts in proposed Schedule 6 to Form 13H.

sufficiently substantial to warrant identification as a large trader so that the Commission can more readily obtain information about that trader and its market activity. The Commission also preliminarily believes that the proposed identifying activity level would establish a simple bright-line threshold consistent with the activity-based threshold contemplated by Section 13(h) of the Exchange Act.

5. Inactive Status

Proposed Rule 13h-1(b)(3)(iii) would establish an optional inactive status for large traders. Specifically, large traders previously assigned an LTID whose aggregate transactions during the previous full calendar year did not reach the identifying activity level at any time during the year would be eligible to file for inactive status upon checking a box on the cover page of a Form 13H filing. This status would be available to traders that become less active and no longer meet the threshold at which large trader status is realized. After a large trader files for inactive status, it would be relieved from the Form 13H filing requirements, as well as the requirement to inform its registered broker-dealers and others with whom it shares investment discretion, of its LTID.[75]

As proposed, large traders on inactive status who once again reach the identifying activity level would be required to reactivate their large trader status by filing Form 13H promptly after effecting transactions in an amount that equals or exceeds the large trader identifying activity threshold.[76] In submitting a "Reactivated Status" Form 13H, the large trader would retain the LTID initially assigned to it, and would be required to notify registered broker-dealers and others of its status and LTID.

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[75] In addition, a large trader on inactive status could inform its broker-dealers of its inactive status and request that the broker-dealer cease tagging its transactions with its LTID.

[76] See infra note 81 (discussing the "promptly" standard).

The Commission believes that the proposed provision for an inactive status should eliminate the ongoing costs of compliance with the proposed rule, including the requirement to file amendments to Form 13H with the Commission, for those entities that no longer trade in amounts that would meet the definition of large trader. The Commission preliminarily believes that the provision for an inactive status is consistent with the objectives of Section 13(h) of the Exchange Act.

As a subset of inactive status, proposed Form 13H would allow a large trader that discontinues operations to file an amended Form 13H reflecting its "Termination" status. For example, this status would be applicable in the event of certain mergers or acquisitions involving a large trader, including a merger of two large traders. In that instance, the non-surviving large trader would be required to submit a "Termination Filing" that specifies the effective date of the merger. In Item 5b of the Form 13H, the surviving large trader would be required to list as an affiliate the non-surviving company, note that the company no longer exists, and provide the LTID of the non-surviving company. The Commission believes that specifically allowing a large trader to file an updated Form 13H indicating that it has discontinued operations will allow large traders to accurately reflect their status to the Commission and will enhance the utility of the proposed large trader reporting system.

C. Large Trader Self-Identification

Section 13(h)(1) of the Exchange Act authorizes the Commission to prescribe identification requirements for large traders for the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume, or a large fair market value or exercise value, and to assist the Commission in the enforcement of the Exchange Act.[77]

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[77] See 15 U.S.C. 78m(h)(1).

The Commission is specifically authorized to require large traders to provide it with the information deemed necessary or appropriate to identify large traders and all accounts in or through which large traders effect transactions.[78] The Commission also is authorized to require large traders to disclose their large trader status to the registered broker-dealers that carry the accounts through which they effect transactions.[79] The Commission is proposing Rule 13h-1(b) and Form 13H to implement these provisions of Section 13(h)(1) of the Exchange Act.

As discussed below, under the proposed rule, each large trader would be required to identify itself to the Commission by filing electronically with the Commission a Form 13H.[80] Additionally, each large trader would be required to identify itself to the broker-dealers through which it effects transactions as well as to any other entity with which it shares investment discretion over an account. Finally, the proposed rule would require a large trader to promptly provide the Commission with such other descriptive or clarifying information that the Commission may request from time to time to further identify the large trader and all accounts through which the large trader effects transactions.[81] Under this provision, the Commission would be able to obtain, for example, clarifying information concerning information provided in a Form 13H filing.

1. Form 13H Filing Requirements

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78 See 15 U.S.C. 78m(h)(1)(A).

79 See 15 U.S.C. 78m(h)(1)(B).

80 The Commission is proposing an electronic filing system for proposed Form 13H, and the proposed rule would require electronic filing. See proposed Rule 13h-1(b)(1). If the Commission adopts the proposed rule as proposed, it is possible that large traders might be required to file Form 13H in paper until such time as an electronic filing system is operational and capable of receiving the Form. Large traders would be notified as soon as the electronic system can accept filings of Form 13H.

81 See proposed Rule 13h-1(b)(4). See also infra note 83 (referencing the "promptly" standard of Rule 15b3-1)."

Paragraph (b)(1) of the proposed rule would require large traders to file Form 13H with the Commission promptly after first effecting transactions that reach the identifying activity level.[82] Thereafter, large traders would be required to file an amended Form 13H promptly following the end of a calendar quarter, but only if any of the information contained in the Form 13H becomes inaccurate for any reason (e.g., change of name or address, contact number, type of organization, principal business, regulatory status, or accounts maintained).[83] To the extent none of the information contained in the Form became inaccurate during the quarterly period, the large trader would not be required to file an amended form. Regardless of whether it files any amended Forms 13H, a large trader would still be required to file proposed Form 13H annually, within 45 days after the calendar year-end, in order to help ensure the accuracy and currency of all of the information reported to the Commission.[84]

The Commission believes that the proposed requirement that large traders keep current the information contained in their Form 13H submissions will provide the Commission with up-to-date information that the Commission could utilize promptly when needed. Unless the Commission has up-to-date Forms 13H for each large trader, the Commission could be impaired in its ability quickly to identify and contact large traders, as well as identify their accounts, affiliates, and trading activity. Given the limited amount of information proposed to be collected on the Form 13H, the Commission believes the burden of amending the form would be justified by the benefit to the Commission of minimizing problems that could arise from otherwise stale information.

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82 See proposed Rule 13h-1(b)(1)(i).

83. See proposed Rule 13h-1(b)(1)(iii) (requiring registered broker-dealers to "promptly file" amendments to Form 13H as necessary). See also 17 CFR 240.15b3-1 (concerning a similar standard for Form BD).

84 See proposed Rule 13h-1(b)(1)(ii).

2. Form 13H and Instructions

Proposed Form 13H, and the Schedules and Instructions thereto, are designed to capture basic information on each large trader consistent with the Commission's authority under Section 13(h) of the Exchange Act. The proposed Instructions to the proposed form provide all of the pertinent definitions, examples of who would be a large trader, and what information must be provided on Form 13H. The proposed Instructions also provide guidance and cross-references to Rule 13h-1 and other related instructions. The Commission believes that a careful review of the Instructions to Form 13H should assist large traders and facilitate the completion and filing of Form 13H.

The cover page to proposed Form 13H requires a large trader to indicate the nature of the submission it is filing, including: "Initial Filing," "Annual Filing," "Interim Filing," "Inactive Status," "Reactivated Status," and "Termination Filing." It also requires that a large trader provide its LTID. For its "Initial Filing," a large trader would not be able to provide an LTID, as the Commission would issue the LTID only after it receives the initial Form 13H submission. After receiving its LTID, the large trader would need to file promptly an "Interim Filing" to include the LTID and any new information.[85] The cover page also would require contact information for the large trader, and requires the signature of the large trader's representative. The cover page contains a statement for the person signing the form to acknowledge that all of the information contained in the form is true, correct, and complete. In addition, the cover page

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[85] Proposed Schedule 6 of Form 13H would require a large trader to provide the LTID for all other large traders (if any) that also exercise investment discretion over the accounts it identifies. When large traders submit their "Initial Filings" after implementation of this rule, large traders may not have the LTID of these other large traders for the same reason: the Commission may not have issued them yet. Therefore, as the Commission issues LTID numbers, and as large traders disclose their LTIDs to each other as required under proposed paragraph (b)(2), large traders would need to file "Interim Filings."

notes that intentional misstatements or omissions of fact constitute a federal crime and may result in civil penalties or other sanctions.

Proposed Item 1 to Form 13H would require large traders to identify their business by checking the appropriate pre-populated categories or by indicating "other." In Item 2, a large trader would be required to disclose whether it or any of its affiliates files forms with the Commission and, if so, to indicate the types of forms and all applicable SEC File and CRD numbers. The Commission anticipates that some of the most common registrations or filings that large traders may list in proposed Item 2 would include, for example, Form BD, Form ADV, or Form 10-K. Identification of this information will allow the Commission to readily ascertain the regulatory status of the large trader and its controlled persons.

Proposed Item 3 to Form 13H would require a large trader to disclose whether it or any of its affiliates is: (1) a registered trader or otherwise registered with the Commodity Futures Trading Commission; (2) is a bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank; (3) an insurance company; or (4) regulated by a foreign regulator. For each entity that is, the form requires additional identifying information, which will allow the Commission to readily ascertain the regulated status of the large trader, and provide context for the Commission to understand the large trader's operations. Such entities must be identified and, for entities registered under the Commodity Exchange Act, the large trader would be required to provide its registration type and number. For other identified entities, a large trader would be required to disclose the applicable regulator(s).

Proposed Item 4 to Form 13H, and the corresponding Schedule 4, would require the large trader to disclose basic business information. For example, the large trader must disclose

whether it exercises investment discretion as a trustee, partnership, or corporation. Natural person large traders would be required to disclose whether they are self-employed or otherwise employed. Entities would be required to disclose the jurisdiction in which they are organized and their organization type: partnership, limited partnership, corporation, limited liability company, or other. In addition, entities would be required to identify those persons who own or control a large trader corporation, partnership, limited partnership, or trust. The term "executive officer," used in proposed Schedule 4, would mean "policy-making officer" and otherwise would be interpreted in accordance with Rule 16a-1(f) under the Exchange Act.[86] Further, each large trader would be required to describe the nature of its business. Identification of this information will help the Commission understand the corporate structure of the large trader and the nature of its business. Among other things, this information would be useful to the Commission to provide context to a large trader's operations, and would help the Commission understand the control relationships surrounding the large trader. This information also would be useful to the Commission in tailoring any requests for additional information that it may send to a large trader.

Proposed Item 5 to Form 13H would collect information about the affiliates of large traders that either exercise investment discretion over accounts that hold NMS securities or that beneficially own NMS securities, if any. For purposes of this form, "affiliate" would be defined to mean any person that directly or indirectly controls, is under common control with, or is controlled by the large trader. This proposed definition of affiliate is designed to allow the Commission to collect comprehensive identifying information relating to the large trader and is consistent with other similar definitions of the term.[87] The large trader would be required to

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[86] 17 CFR 240.16a-1(f).

[87] This definition is similar to the definition of "affiliate" provided in the instructions to Form 1, 17 CFR 249.1. See also supra note 54.

identify each affiliate that either exercises investment discretion over accounts that hold NMS securities or that beneficially owns NMS securities, state the nature of its affiliate's business, and explain the relationship to the large trader (e.g., limited partner, direct subsidiary). Additionally, the large trader would be required to provide any applicable LTID for its large trader affiliates. Among other things, proposed Item 5 would allow the Commission to more carefully tailor any request that it may make to disaggregate large trader activity, and should also assist the Commission in understanding the affiliate relationships of the large trader and determine whether the correct entities had self-identified with the Commission.

Proposed Item 6, and the accompanying Schedule 6, are designed to collect information concerning accounts over which the large trader exercises investment discretion. Specifically, the proposed schedule would require the large trader to identify all the accounts over which it directly or indirectly (e.g., through controlled persons) exercises investment discretion for purposes of the proposed rule. Proposed Schedule 6 also would require a large trader to disclose the LTID of any other large traders that exercise investment discretion over the identified accounts. The Commission would use this information to cross-reference accounts and avoid the double counting of transactions. To reduce the burden on large traders, the proposed Instructions specify that large traders may submit internally produced lists of accounts, provided that such lists contain all required information in a format substantially similar to the applicable Schedule. Finally, Schedule 6 would require the identification of a designated contact person at the large trader that the Commission could consult concerning the accounts listed on the Schedule 6.

3. Confidentiality

Section 13(h)(7) of the Exchange Act provides that Section 13(h) "shall be considered a statute described in subsection (b)(3)(B) of [5 U.S.C. 552]", which is part of the Freedom of

Information Act ("FOIA").[88] As such, "the Commission shall not be compelled to disclose any information required to be kept or reported under [Section 13(h)]."[89] Accordingly, the information that a large trader would be required to disclose on proposed Form 13H or provide in response to a Commission request would be exempt from disclosure under FOIA. In addition, any transaction information that a registered broker-dealer would report under the proposed rule also would be exempt from disclosure under FOIA.

4. Self-Identification to Others

Proposed paragraph (b)(2) of Rule 13h-1 would require each large trader to disclose its LTID to those registered broker-dealers that effect transactions on its behalf. In doing so, a large trader would be required to identify all of the accounts held by such broker-dealer to which its LTID applies. For example, a large trader would not be required to disclose to Broker-Dealer A the large trader's accounts held by Broker-Dealer B, but the large trader would need to specifically highlight to Broker-Dealer A all of the accounts held by Broker-Dealer A over which the large trader exercises investment discretion. Requiring large traders to provide this information to their broker-dealers would place the primary account identification responsibilities on those who can most readily satisfy them - the large traders themselves - and would facilitate the ability of registered broker-dealers to fulfill their recordkeeping and reporting requirements under the proposed rule by facilitating their ability to identify and properly mark all applicable accounts through which a large trader trades.

Proposed paragraph (b)(2) of Rule 13h-1 also would require each large trader to disclose its LTID to others with whom it collectively exercises investment discretion. The purpose of this provision is to enable large traders to provide all information required under Schedule 6 of Form

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88 5 U.S.C. 552(b)(3)(B) is now 5 U.S.C. 552(b)(3)(A)(ii).

89 See Section 13(h)(7) of the Exchange Act, 15 U.S.C. 78m(h)(7).

13H.[90] In addition, the proposed requirement would facilitate the ability of a large trader to provide a broker-dealer with the LTID of all large traders that exercise investment discretion over an account.[91]

D. Recordkeeping, Reporting, and Monitoring Responsibilities

Section 13(h)(2) of the Exchange Act authorizes the Commission to prescribe for registered broker-dealers recordkeeping requirements related to large trader activity that it deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[92] The Commission also is authorized to conduct reasonable periodic, special, or other examinations of registered broker-dealers of all records required to be made and kept pursuant to the rule.[93] Paragraph (d) of the proposed rule would implement the recordkeeping provisions of Section 13(h)(2) of the Exchange Act.

In addition, Section 13(h)(2) of the Exchange Act specifically authorizes the Commission to require registered broker-dealers to report transactions that equal or exceed the reporting activity level effected directly or indirectly by or through such broker-dealer for persons who they know are large traders, or any persons who they have reason to know are large traders on the basis of transactions effected by or through such broker-dealers.[94] The Commission is proposing paragraph (e) of Rule 13h-1 to implement the transaction reporting provisions of

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90 Specifically, Schedule 6 would require a large trader to disclose the LTID of all other large traders who exercise investment discretion over the accounts listed. Absent this requirement, large traders would have no reason to know the LTIDs of the large traders with whom they share investment discretion.

91 For example, where two advisers co-manage an account, Adviser A would inform Adviser B of its LTID, and Adviser B would provide both its LTID and Adviser A's LTID to the broker-dealer carrying the account.

92 See 15 U.S.C. 78m(h)(2).

93 See 15 U.S.C. 78m(h)(4).

94 See 15 U.S.C. 78m(h)(2).

Section 13(h)(2) of the Exchange Act. The proposed rule would mirror the statutory requirement that records and information required to be made and kept pursuant to the proposed rule be available for reporting to the Commission on the morning after the day the transactions were effected.[95] While such information must be available for reporting to the Commission on the following day, the proposed rule further clarifies that transaction data would be required to be submitted to the Commission before the close of business on the day specified in the request for such transaction information.[96] Further, the Commission is authorized to require that such transaction reports be transmitted in any format that it may prescribe, including machine-readable form.[97] The proposed rule mirrors this requirement and, as discussed further below, the proposed rule would utilize the general format applicable to the EBS system, as modified to accommodate the specific requirements of the proposed rule, including the fields of LTID and execution time.[98]

The proposed rule would impose certain duties on broker-dealers. In particular, the proposed rule would impose recordkeeping and reporting requirements on the following: registered broker-dealers that are large traders; registered broker-dealers that, together with a large trader or Unidentified Large Trader, exercise investment discretion over an account; and registered broker-dealers that carry accounts for large traders or Unidentified Large Traders or, with respect to accounts carried by a non-broker-dealer, broker-dealers that execute transactions for large traders or Unidentified Large Traders. Additionally, the proposed rule would require

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95 See proposed Rule 13h-1(d)(5). This requirement was intended to include Saturdays or holidays. See Senate Report, supra note 9, at 40.

96 See proposed Rule 13h-1(e).

97 See 15 U.S.C. 78m(h)(2).

98 See infra note 104 and accompanying text.

registered broker-dealers to implement procedures to encourage and foster compliance with the self-identification requirements of the proposed rule.

1. Broker-Dealer Recordkeeping

Proposed paragraph (d)(1) of Rule 13h-1 would provide that "[e]very registered broker-dealer shall maintain records of all information required under paragraphs (d)(2) and (d)(3) for all transactions effected directly or indirectly by or through (i) an account such broker-dealer carries for a large trader or an Unidentified Large Trader, (ii) an account over which such broker-dealer exercises investment discretion together with a large trader or an Unidentified Large Trader, or (iii) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion. Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader, the broker-dealer effecting transactions directly or indirectly for such large trader or Unidentified Large Trader shall maintain records of all of the information required under paragraphs (d)(2) and (d)(3) for those transactions."

The term "Unidentified Large Trader" would be defined to mean "each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this rule that a registered broker-dealer knows or has reason to know is a large trader."[99] The proposed "reason to know" standard is discussed in more detail below in the context of a registered broker-dealer's responsibility to monitor for Unidentified Large Traders.

To help the Commission monitor the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value, assist in the Commission's investigation of possible federal securities law violations, and allow the

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[99] See proposed Rule 13h-1(a)(9).

Commission to conduct time-sequenced market reconstructions, the proposed rule would require registered broker-dealers to maintain specified data that would be relevant for these purposes. Notably, as discussed below, registered broker-dealers already are required to maintain most of the proposed fields of information for all of their customers pursuant to Rule 17a-25 under the Exchange Act and the EBS system. In particular, the proposed rule would require registered broker-dealers to maintain the following information:

- date the transaction was executed;
- account number;
- identifying symbol assigned to the security;
- transaction price;
- number of shares or option contracts traded in each specific transaction; whether each transaction was a purchase, sale, or short sale; and, if an option contract, whether the transaction was a call or put option, an opening purchase or sale, a closing purchase or sale, or an exercise or assignment
- clearing house number of the entity maintaining the information and the clearing house numbers of the entities on the opposite side of the transaction;
- designation of whether the transaction was effected or caused to be effected for the account of a customer of such registered broker-dealer, or was a proprietary transaction effected or caused to be effected for the account of such broker-dealer;
- identity of the exchange or other market center where the transaction was executed;
- time that the transaction was executed;

- LTID(s) associated with the account, unless the account is for an Unidentified Large Trader;
- prime broker identifier;
- average price account identifier; and
- if the transaction was processed by a depository institution, the identifier assigned to the account by the depository institution.

In addition, proposed paragraph (d)(3) broadens the list of required broker-dealer records for transactions effected by Unidentified Large Traders beyond those that would be required for a self-identified large trader in order to assist the Commission in identifying the Unidentified Large Trader. Specifically, for Unidentified Large Traders, in addition to the above fields, the registered broker-dealer also would be required to retain and report such person's name, address, date the account was opened, and tax identification number(s).

The proposed rule would incorporate the requirement contained in Section 13(h)(2) that transaction records be available for reporting to the Commission on the morning of the day following the day the transactions were effected.[100] When the Commission makes a request for data, the proposed rule specifies that registered broker-dealers would be required to furnish it before the close of business on the day specified in the request for such transaction information.[101] Paragraph (d)(4) of the proposed rule would require that such records be kept for a period of three years, the first two in an accessible place, in accordance with Rule 17a-4(b) under the Exchange Act.[102]

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100 See proposed Rule 13h-1(d)(5). This time frame is established in Section 13(h)(2) of the Exchange Act. See 15 U.S.C. 78m(h)(2).

101 See proposed Rule 13h-1(e).

102 17 CFR 240.17a-4(b).

Currently, broker-dealers already are required to provide most of the proposed fields of information for all of their customers pursuant to Rule 17a-25 under the Exchange Act and the EBS system.[103] The only additional items of information that this proposal would capture beyond what is currently captured by the existing EBS system are: (1) LTID and (2) transaction execution time.[104] In this respect, the proposed rule is intended to address the principal limitations of the EBS system when applied to a large trader reporting system under Section 13(h) of the Exchange Act, namely the EBS system's lack of transaction execution time information and lack of a LTID to uniformly identify large traders on a market-wide basis. The proposed rule also would require registered broker-dealers to be able to report trading information for large traders to the Commission much more promptly than the EBS system.[105] The Commission preliminarily believes that the collection of current trading information is necessary to allow it to monitor the impact on the securities markets of large trader activity, particularly during times of market stress when such analyses are particularly relevant, as well as

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103 Rule 17a-25 requires that broker-dealers provide to the Commission upon request the following information for proprietary transactions: (1) clearing house number or alpha symbol used by the broker-dealer submitting the information; (2) clearing house number(s) or alpha symbol(s) of the broker-dealer(s) on the opposite side to the trade; (3) security identifier; (4) execution date; (5) quantity executed; (6) transaction price; (7) account number; (8) identity of the exchange or market where each transaction was executed; (9) prime broker identifier; (10) average price account identifier; and (11) the identifier assigned to the account by a depository institution. For transactions effected for a customer account, a broker-dealer must provide to the Commission upon request the following information: the customer's name, customer's address, the customer's tax identification number, and other related account information. See Rule 17a-25(a)(2)(ii). Additionally, if the transaction was effected for a customer of another firm or broker-dealer, the broker-dealer must state whether the other broker-dealer was acting as principal or agent on the transaction. See Rule 17a-25(a)(2)(iii).

104 While the recording of execution time is already required of registered broker-dealers pursuant to Rule 17a-3, 17 CFR 240.17a-3, and is currently captured by many SRO audit trails, see, e.g., CBOE Chapter VI, Rule 6.51 (Reporting Duties), with respect to the proposed large trader reporting system, the reporting of execution times within the specified period would constitute a new requirement compared to the existing EBS system. Execution times would need to be recorded and reported with the same degree of precision that is required by applicable rules.

105 See EBS Release, supra note 24, 66 FR at 35836 (noting that firms are requested to submit the electronic bluesheets data within 10 business days).

to support the Commission's efforts to detect and deter fraudulent and manipulative activity and other trading abuses.

In particular, the capture of transaction execution times would allow the Commission to reconstruct a more accurate and complete time-sequenced market history and facilitate the Commission's ability to more accurately assess the market impact of large traders, particularly during times of peak activity and market stress. The Commission preliminarily believes that capturing execution time would be essential for accomplishing the purposes of Section 13(h) of the Exchange Act, as the Market Reform Act intended a large trader system through which the Commission could perform time-sequenced reconstruction of trading activity.[106]

The Commission acknowledges that, in some instances, multiple LTIDs may be disclosed to a registered broker-dealer for a single account. For example, such a situation could arise where more than one large trader exercises investment discretion over an account (e.g., where two large trader investment managers co-manage an account), or where a parent company and one of its subsidiaries both identify themselves as large traders. Therefore, registered broker-dealers would need to develop systems capable of tracking multiple LTIDs. The Commission preliminarily believes that capturing the LTID of all large traders that exercise investment discretion for an account would be essential to adequately monitor the trading activity of each large trader that exercises investment discretion over those transactions that are reported to the Commission by broker-dealers and thereby accomplish the purposes of Section 13(h) of the Exchange Act. Without that information, the Commission could be hindered in its ability to readily use large trader data as contemplated in Section 13(h), including to support its regulatory and enforcement activities.

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106 See Senate Report, supra note 9, at 38-40.

2. Broker-Dealer Reporting

Complementing the proposed recordkeeping requirements on brokers and dealers, proposed paragraph (e) of Rule 13h-1 would implement the transaction reporting provisions of Section 13(h)(2) of the Exchange Act.

a. General Requirements

Under proposed paragraph (e) of proposed Rule 13h-1, the broker-dealers required to keep records pursuant to paragraph (d)(1) also would have a duty to report that information upon request. More specifically, upon the request of the Commission, those broker-dealers would be required to report electronically, in machine-readable form and in accordance with a format specified by the Commission that is based on the existing EBS system format, all required information for all transactions effected directly or indirectly by or through accounts carried by such broker-dealer for large traders and Unidentified Large Traders if they equal or exceed the reporting activity level.[107] Broker-dealers would need to report a particular day's trading activity only if it equals or exceeds the "reporting activity level," which is defined and discussed below. Transaction reports, including data on transactions up to and including the day immediately preceding the request, would need to be furnished to the Commission before the close of business on the day specified in the request for such transaction information.[108] In recognition of the value of using existing reporting systems where practicable, the proposed rule would require

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107 Section 13(h)(2) requires that "[s]uch records and reports shall be in a format and transmitted in a manner prescribed by the Commission (including, but not limited to, machine readable form)." See 15 U.S.C. 78m(h)(2).

108 Section 13(h)(2) requires that "[s]uch records shall be available for reporting to the Commission, or any self-regulatory organization that the Commission shall designate to receive such reports, on the morning of the day following the day the transactions were effected, and shall be reported to the Commission or a self-regulatory organization designated by the Commission immediately upon request by the Commission or such a self-regulatory organization." See 15 U.S.C. 78m(h)(2).

broker-dealers to utilize the existing technology and infrastructure of the EBS system to the greatest degree possible to maintain large trader data and transmit it to the Commission.[109]

b. Reporting Activity Level

Consistent with Section 13(h)(2) of the Exchange Act, the proposed rule would require a registered broker-dealer to report only those transactions that equal or exceed the reporting activity level for that particular day of trading being reported. Paragraph (a)(8) of Rule 13h-1 would define the "reporting activity level" as: (i) each transaction in NMS securities, effected in a single account during a calendar day, that is equal to or greater than 100 shares; (ii) any other transaction in NMS securities, effected in a single account during a calendar day, that a registered broker-dealer may deem appropriate; or (iii) such other amount that may be established by order of the Commission from time to time. While a registered broker-dealer would be required to report for a given day data only if it equals or exceeds the reporting activity level, the rule specifically would allow a broker-dealer to voluntarily report a day's trading activity that falls short of the applicable threshold. For example, registered broker-dealers may consider it more appropriate, given the low level of the proposed reporting activity level, to take this approach if they prefer to avoid implementing systems to filter the transaction activity and would rather utilize a "data dump" approach to reporting large trader transaction information to the Commission.

In proposing a reporting activity level of 100 shares, the Commission notes that large traders often break-up large-size orders and disburse their trading interest across multiple market centers in an effort to maintain the confidentiality of the trade and minimize any market impact it might otherwise have if it were revealed to its full extent. Such large orders often are processed

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[109] Section 13(h)(5)(A) of the Exchange Act directs the Commission to take into account existing reporting systems in exercising its authority under Section 13(h). See 15 U.S.C. 78m(h)(5)(A).

by algorithmic systems that split the order into smaller orders of a hundred to a few hundred shares. For example, high frequency traders often quote and trade in round lots of 100 shares or a few hundred shares. By establishing a low reporting activity level, the Commission intends for the proposed rule to result in the reporting of substantially all large trader activity in response to a request for data.[110] Access to substantially all trading data would allow the Commission to perform more complete and accurate reconstructions of aggregate large trader activity.

The proposed rule also would implement the authority in Section 13(h)(8)(D) of the Exchange Act, allowing the Commission to establish, from time to time, such reporting activity level that the Commission shall specify by rule, regulation, or order, by proposing that the Commission would be able to alter the reporting activity level by order.[111] The Commission could use this authority to change the reporting activity level if necessary to assure, for example, the quality of 13H Reports and the level of compliance with the identification requirements.[112]

Unlike the identifying activity level, when considering the reporting activity level, a registered broker-dealer would consider only the trading activity for each of its large trader and unidentified accounts, and would not need to aggregate transaction information on an intra-broker-dealer basis solely for calculating the reporting activity level. Thus, if a large trader maintains two separate accounts at a registered broker-dealer under the same LTID, the broker-dealer would be required to report activity in each account only if the activity in such account equaled or exceeded the reporting activity level on the specified day. A registered broker-dealer

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110 See proposed Rule 13h-1(a)(6) (exceptions to the definition of transaction).

111 See proposed Rule 13h-1(a)(8). See also Senate Report, supra note 9, at 73 (noting that this authority to act by order was intended to provide the Commission with the flexibility necessary for responding to changing market conditions).

112 The Commission might, for example, consider whether an alternative threshold amount would be more appropriate if large traders were managing their account activity to avoid the proposed 100 share reporting activity level.

would report each account separately and would not need to aggregate accounts with the same LTID. By establishing a low reporting activity level, the Commission's proposal eliminates the need to propose aggregation requirements to assure that most large trader accounts would be reported in response to a request for data. The Commission believes that most active large trader accounts on any given day should contain sufficient transactions (i.e., at least 100 shares traded) to make the accounts reportable in response to a particular Commission request.

c. Multiple LTIDs

Under the proposal, it is possible that more than one LTID could be associated with a particular account. For example, such a situation could arise where two or more large traders share investment discretion over the account. For transactions involving these accounts, the registered broker-dealer would be required to record each LTID for every trade effected in such account.[113] In response to a request for records, the registered broker-dealer would report transaction information containing each LTID associated with the account. For identified large traders, the Commission could then use the LTID information collected on Schedule 6 to proposed Form 13H to filter the data and avoid double counting transactions.

3. Broker-Dealer Monitoring and Safe Harbor

The proposed rule places the principal burden of compliance with the identification requirements on large traders themselves. The Commission, however, believes that a limited monitoring requirement at the broker-dealer level would provide a necessary backstop to encourage compliance and fulfill the objectives of Section 13(h) of the Exchange Act.

Section 13(h) of the Exchange Act contemplates that registered broker-dealers would assist in fostering compliance with a large trader reporting system by monitoring their

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[113] Broker-dealers also would need to monitor for Unidentified Large Traders that effect transactions through a shared account.

customers' compliance with the large trader self-identification requirements. Specifically, Section 13(h)(2) of the Exchange Act authorizes the Commission to establish rules for recordkeeping and reporting of transactions effected by persons a registered broker-dealer "knows or has reason to know" is a large trader, based on transactions effected directly or indirectly by or through such broker-dealer. Proposed paragraphs (d) and (e) of Rule 13h-1 would implement that authority by requiring registered broker-dealers to maintain records of and report to the Commission information about transactions effected by Unidentified Large Traders.[114]

With respect to identifying large traders, the Commission emphasizes that the principal burden of compliance with the proposed identification requirements is placed squarely on large traders themselves. However, the Commission also believes that requiring some form of monitoring by the entities that are in the best position to know the details of a large trader's account would help assure that the objectives of the rule are met.

The Commission acknowledges that the duty to monitor its large trader customers would impose a burden on registered broker-dealers. To minimize this burden, paragraph (f) of proposed Rule 13h-1 would establish a "safe harbor" for the duty to monitor for Unidentified Large Traders.[115] Pursuant to proposed paragraph (a)(9), in the case of an Unidentified Large Trader, a "registered broker-dealer has reason to know whether a person is a large trader based on the transactions in NMS securities effected by or through such broker-dealer." A registered

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114 See supra text accompanying note 99 (discussing recordkeeping requirements for Unidentified Large Traders). In particular, proposed Rule 13h-1(d)(3) would broaden the list of required elements for transactions effected by Unidentified Large Traders, and would require broker-dealers to report for Unidentified Large Traders such person's name, address, date the account was opened, and tax identification number(s).

115 See proposed Rule 13h-1(a)(9) (defining an Unidentified Large Trader as "each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this rule that a registered broker-dealer knows or has reason to know is a large trader.")

broker-dealer would not be deemed to know or to have reason to know that a person is an Unidentified Large Trader if: (1) it does not have actual knowledge that a person is a large trader; and (2) it established and maintained policies and procedures reasonably designed to assure compliance with the identification requirements of the proposed safe harbor. Paragraphs (f)(1) and (2) of the proposed rule provide the specific elements that would be required for the safe harbor.

The safe harbor contained in paragraph (f)(1) of the proposed rule would require the establishment of systems "reasonably designed to detect and identify" persons who have not complied with the identification requirements by providing the broker-dealer with their LTID and highlighting all accounts to which it applies. This paragraph incorporates the "reason to know" standard and clarifies that, with respect to an account or group of accounts that may be identified as large traders (e.g., commonly owned or controlled accounts), policies and procedures would be within the safe harbor if they are reasonably designed to detect and identify such groups of accounts based on account name, tax identification number, or other readily available information.

The Commission would consider "other readily available information" to include, for example, those instances where a single customer effects the requisite transactions through a single registered representative, trading desk, or branch office in his or her personal accounts, accounts of family members, or accounts of others, pursuant to written trading authorizations. In that case, a broker-dealer should be able to identify a large trader based on readily available information. Similarly, customer authorization to transfer funds or securities among accounts in order to receive approval for trading activities, meet margin requirements, or to settle transactions, would be considered to be readily available information, as broker-dealers could

use that information to readily identify accounts that may be related. Accordingly, a broker-dealer's responsibility would be limited to those Unidentified Large Traders that are readily identifiable and apparent to the broker-dealer.

Paragraph (f)(2) of the proposed rule would require that broker-dealer monitoring policies and procedures contain systems reasonably designed to inform persons of their obligations to file proposed Form 13H and disclose their large trader status. In this respect, the Commission would consider questions and informative disclosures on new account applications, as well as notices to Unidentified Large Traders when their transactions approach the reporting level, among other things, to fulfill this element of the safe harbor. The Commission believes that, because broker-dealers are in the best position to know the details of a large trader's account, a proposed requirement on broker-dealers to inform a large trader customer of the customer's responsibility to self-identify to the Commission would help educate large traders on their obligations under the proposed rule and foster compliance with it.

The Commission notes that the elements of the safe harbor do not contain precise compliance prescriptions such as automated systems, employee training programs, or other specific systems or procedures. The adequacy of monitoring procedures would depend on the nature and characteristics of a broker-dealer's business. The Commission believes that a variety of systems or procedures may be effective for accomplishing the objectives of the monitoring requirements and, therefore, could satisfy the requirements of the safe harbor. The Commission preliminarily believes that the proposed safe harbor contains sufficient detail and adds objectivity to the "reason to know" requirements of Section 13(h)(2) of the Exchange Act in a manner that is designed to minimize the burden of the monitoring requirements of the proposed large trader system.

E. Exemptions

Section 13(h)(6) of the Exchange Act authorizes the Commission "by rule, regulation, or order, consistent with the purposes of this title, [to] exempt any person or class of persons or any transaction or class of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the operation of [Section 13(h)], and the rules and regulations thereunder."[116] Proposed Rule 13h-1(g) would implement this authority, providing that: "[u]pon written application or upon its own motion, the Commission may by order exempt, upon specified terms and conditions or for stated periods, any person or class of persons or any transaction or class of transactions from the provisions of this rule to the extent that such exemption is consistent with the purposes of the Securities Exchange Act." Accordingly, persons desiring an exemption from Rule 13h-1 could request exemptive relief under proposed paragraph (g) of the rule.

The Commission is not proposing at this time any specific or class exemptions with respect to persons or classes of persons covered by the proposed rule.[117] The Commission is proposing a comprehensive large trader system that is designed to track all large traders through a system capable of producing comprehensive trading records.

F. Foreign Entities

Section 13(h)(5)(C) of the Exchange Act directs the Commission, in exercising its authority under Section 13(h), to take into account the relationship between U.S. and

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116 15 U.S.C. 78m(h)(6).

117 As discussed above, however, the Commission does propose limiting the application of those provisions of the proposed rule that concern broker-dealers to carrying broker-dealers, or executing broker-dealers where the account is carried by a bank. In addition, the proposed rule proposes to exclude certain types of transactions from the definition of "transaction." See proposed Rule 13h-1(a)(6). See also supra text accompanying notes 60-65 (discussing the exceptions for transactions not covered by the proposed rule).

international securities markets.[118] The Commission is concerned that excluding foreign large traders from the proposed rule's requirements could create a competitive disparity between domestic markets and persons and foreign markets and persons. In particular, including foreign large traders within the scope of the proposed rule would provide the Commission with information on entities contemplated by the statute that trade substantial amounts of NMS securities regardless of their legal domicile and would subject all such entities equally to the self-identification and filing requirements that the Commission is proposing herein.

As discussed above, the application and scope of the proposed rule would be established by the proposed definition of a large trader, which is based on Section 13(h)(8)(A) of the Exchange Act.[119] The Commission notes that foreign broker-dealers that are not U.S. registered would not be subject to the broker-dealer recordkeeping or transaction reporting requirements of the proposed rule. Accordingly, the only foreign entities that would be subject to the proposed rule are those that would qualify as large traders. As discussed above, under the proposal, the duties and burdens imposed on each large trader would be to: (1) file and update Form 13H;[120] (2) disclose large trader status;[121] and (3) upon request, provide additional descriptive or clarifying information with respect to information provided on Form 13H.[122]

Pursuant to the proposal, a foreign entity or person could be a large trader, and thus subject to the proposed rule, if the following elements were present: (1) the person exercises investment discretion over accounts;[123] (2) the aggregate transactions in NMS securities for those

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118 15 U.S.C. 78m(h)(5)(C).

119 15 U.S.C. 78m(h)(8)(A).

120 See proposed Rule 13h-1(b)(1).

121 See proposed Rule 13h-1(b)(2).

122 See proposed Rule 13h-1(b)(4).

123 See proposed Rule 13h-1(a)(4) (defining "investment discretion").

accounts reach the identifying activity level;[124] and (3) such transactions were effected by use of any means or instrumentality of interstate commerce or the mails or any facility of a national securities exchange.[125]

By way of example of how the proposal would operate, assume that a foreign investment adviser maintains accounts with a registered broker-dealer. Assume further that, through these accounts, the foreign investment adviser effects trades in NMS securities on a national securities exchange for its foreign clients (i.e., citizens of, or persons domiciled in, a foreign country) that reach the identifying activity level. In this case, the foreign investment adviser would be required to file Form 13H and Schedules 4 and 6. If a foreign client of the foreign investment adviser also were a large trader by virtue of exercising investment discretion (together with the foreign investment adviser) over its investments, then the foreign investment adviser would be required to include in its Schedule 6 the client's LTID when listing that client's account. The foreign investment adviser would not be required to disclose on its Form 13H the identities of any of its clients that have not been issued a LTID. Additionally, under the proposal, the foreign investment adviser would be required to disclose its LTID to its registered broker-dealers and anyone else with whom it shares investment discretion.

As a second example of how the proposal would operate, assume that a registered broker-dealer receives an order from a customer to effect transactions in NMS securities in a foreign over-the-counter market or exchange. To effect these trades, the registered broker-dealer transmits the order information to a foreign broker-dealer affiliate. Further, assume that the

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124 See proposed Rule 13h-1(a)(7) (defining "identifying activity level").

125 See 15 U.S.C. 78m(h)(8)(A) (defining "large trader" as "every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange...).

affiliated foreign broker-dealer effects the transaction for an account that it carries in the name of the domestic broker-dealer. Because the transaction was effected through a registered broker-dealer, this activity could cause the customer to be a large trader if the activity reached the identifying activity level. The customer exercised investment discretion over its own account and effected indirectly, through an account maintained by a registered broker-dealer, the requisite level of transactions in NMS securities.

G. Proposed Implementation

The Commission proposes that the broker-dealer recordkeeping requirements contained in paragraph (d) and the reporting requirements contained in paragraph (e) of the proposed rule become effective 6 months after adoption of a final rule. The Commission believes that this time frame would provide sufficient time for the registered broker-dealers to plan, design, and implement the various enhancements to their existing transaction reporting systems required by the proposed rule. In particular, because the proposed rule would utilize the existing infrastructure of the EBS system, the Commission preliminarily believes that broker-dealers should be able to efficiently enhance their existing recordkeeping and reporting systems to meet the requirements of the proposed large trader system within the proposed implementation period. In addition, the Commission proposes that the identification requirements for large traders contained in paragraph (b) become effective 3 months after adoption of a final rule. The Commission believes that this time frame would provide sufficient time for large traders to familiarize themselves with the new form and the applicable filing requirements, and would give large traders sufficient time to calculate their trading over the applicable measuring period, which includes aggregate transactions during a calendar month.

H. Solicitation of Comments

The Commission generally requests comment on all aspects of the proposed rule and the proposed large trader reporting system. In addition, the Commission also requests comment on the following specific issues:

- Is the definition of "large trader" in proposed Rule 13h-1(a)(1) to mean "any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, with or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level" appropriate and sufficiently clear? Should the Commission consider an alternative definition?

- Would the proposed definition of "identifying activity level" (aggregate transactions in NMS securities that are equal to or greater than: (1) during a calendar day, either two million shares or shares with a fair market value of $20 million; or (2) during a calendar month, either twenty million shares or shares with a fair market value of $200 million) identify those market participants that transact in a significant enough volume such that the Commission should identify the person as a large trader? Should the Commission consider different levels? Should they be higher or lower than what has been proposed? Please explain your reasoning and provide relevant data.

- Is 0.01% of daily volume and market value of trading in NMS stocks an appropriate basis from which to determine the identifying activity level? Should the Commission consider an alternative level?

- Are there other factors the Commission should take into consideration when determining who should be a large trader or what should be the identifying activity level?

- Would basing the large trader definition on aggregated transactions during a different measuring period be more appropriate? For example, to minimize the applicability of the rule to persons that effect one-time transactions greater than the identifying level but who otherwise never or rarely trade anywhere near a substantial volume or large fair market value, instead of considering activity over a calendar day, should the Commission consider activity over several days, a week, or some other time period?

- Instead of requiring large traders to file Form 13H with the Commission "promptly" after first effecting transactions that reach the identifying activity level, should the Commission consider an alternative deadline, such as 10 business days?

- Are the proposed definitions of person, control, and investment discretion appropriate? Should the Commission consider alternative definitions?

- Is the definition of "transaction" in proposed Rule 13h-1(a)(6) and the exceptions thereto appropriate to accomplish the Commission's goals of focusing on trading activity that constitutes an arm's length purchase or sale and warrants the continuing burdens associated with the proposed requirements? Should any other transactions be excluded from the definition of "transaction?" Should any of the transactions proposed to be excepted instead be included? Please explain your reasoning.

- Are the aggregation provisions in proposed Rule 13h-1(c) for the purpose of determining whether a person meets the definition of a large trader appropriate? Should the Commission consider any other alternatives?

- Is the definition of Unidentified Large Trader in proposed Rule 13h-1(a)(9), i.e., a person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of the proposed rule that a registered broker-dealer knows or has reason to know is a large trader, appropriate? Should the Commission consider an alternative definition?

- Is the proposal sufficiently drafted to identify the appropriate person as a large trader? Is the proposed focus on identifying the parent company appropriate to accomplish the Commission's goals and the goals of Section 13(h) of the Exchange Act? Or should the rule take a more granular focus and instead require identification and the assignment of an LTID at a more particularized level within the parent company? Would such an approach be more or less burdensome? In the alternative, should the LTID contain information on both the parent company and the trading entity and the individual trader for a particular trade? Should the Commission consider any other alternatives in this regard? Does assigning a LTID at the parent level pose any difficulties to achieving the goals of the proposed rule?

- Are there other types of large trader identification alternatives that would achieve the Commission's objectives without diminishing the effectiveness of a large trader system in accomplishing the objectives of Section 13(h) of the Exchange Act? Are there any existing identifiers that could serve as an alternative or supplement to the LTID?

- In a situation where fiduciary duties require segregation of proprietary trading from customer trading, should separate LTIDs be required?

- Should the LTID number be structured in any particular manner? For example, should the LTID number be structured so that it discloses both the identity of the parent company and the actual legal entity that effects the trade? Should the LTID number be designed to be "extensible" so that it could be expanded for use

in recording aggregated equity and equity option position (as opposed to trade) information, OTC derivatives trades, OTC derivatives positions, and different categories of trader (e.g., hedge fund, insurance company, pension plan), if tracking this information becomes required under applicable law?

- Are the filing requirements applicable to large traders contained in proposed Rule 13h-1(b) sufficiently clear? Is the provision for inactive status appropriate and sufficient, or should it be modified or eliminated? Are the provisions in proposed Rule 13h-1(b)(3)(i) and (ii) regarding compliance by controlling or controlled persons sufficiently clear, or should they be modified? Are there other considerations or alternatives that the Commission should consider?

- Item 5 of proposed Form 13H requests information on a large trader's affiliates, including name, description of their business, relationship to the large trader, and LTID (if any). Should the Commission require any other information on affiliates, such as the tax identification number(s) of the affiliate?

- Should the Commission implement an electronic filing system for the receipt of Form 13H, and, if so, should any particular features be incorporated into the system?

- Is an Annual Filing requirement redundant, in light of the proposed requirement to submit Interim Filings as necessary, or is it necessary to require that large traders keep current their disclosed information?

- How often would large traders need to file "Interim Filings" to correct information that has become inaccurate? The Commission also solicits comments concerning the requirement to submit Interim Filings "promptly" following the end of a calendar quarter in the event that any of the information contained in a Form 13H filing becomes inaccurate for any reason. Are there some items required by the Form that could be more efficiently updated on a less frequent basis? Are there any items required by the Form that ought to be updated more frequently?

- For the broker-dealer recordkeeping requirements contained in proposed Rule 13h-1(d)(2), are there any other fields, elements, codes, designations, or identifiers that the Commission should consider in order to be able to conduct market reconstructions or to aid its investigatory program? Should any of the proposed fields be modified or eliminated? If so, please explain why.

- Should registered broker-dealers also be required to maintain (and report upon request) the exercise price and expiration date of the option position?[126]

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126 This information is not covered by Rule 17a-25 under the Exchange Act, 17 CFR 240.17a-25.

- Is the time frame for the availability of transaction information specified in proposed Rule 13h-1(d)(5) appropriate to ensure that the Commission has access to timely transaction data? Should the Commission consider an alternative time frame?

- Are the proposed monitoring responsibilities that would apply to registered broker-dealers sufficient, or are there other or more effective means, within the limitations provided by Section 13(h), that would help assure compliance with the large trader identification requirements?

- Is the safe harbor provided for in proposed Rule 13h-1(f) sufficient to clarify the conditions under which a broker-dealer would be deemed to know or have reason to know whether a person is a large trader? Would an alternative formulation better achieve the Commission's purpose to rely on broker-dealers to help assure compliance by large traders with the self-identification requirements of the proposed rule? Are the policies and procedures that a broker-dealer would need to adopt to take advantage of the proposed safe harbor sufficiently clear and appropriate? Are there any other factors the Commission should consider?

- Would the proposed monitoring responsibility on registered broker-dealers and the related safe harbor contained in proposed Rule 13h-1(f) encourage entities that satisfy the large trader standard to identify themselves? Should the Commission consider imposing other types of monitoring duties on broker-dealers? Should the Commission consider requiring a broker-dealer to report promptly to the Commission any Unidentified Large Trader that it detects? Should the Commission require a broker-dealer to report to the Commission a list of all large traders for which it effects transactions?

- Should the Commission consider imposing a duty on large traders to monitor for Unidentified Large Traders among persons with whom they share investment discretion?

- Should the Commission consider exempting certain categories of persons from the proposed rule? The Commission is interested in comments concerning whether certain categories of persons also should be exempt, including the following categories, and if so why:

    - A registered broker-dealer that does not carry accounts for itself or others and is registered by a national securities exchange as a specialist or market maker.

    - A registered broker-dealer that does not carry accounts for itself or others and is a member of a national securities exchange that exclusively executes transactions on the floor of such national securities exchange (i.e., a "floor broker").

- The Commission is also interested in whether other categories of persons should be excluded.

- Is the proposed "reporting activity level" of transactions in NMS securities, effected in a single account during a calendar day, equal to or greater than 100 shares or any other transaction in NMS securities, effected in a single account during a calendar day, that a registered broker-dealer may consider an appropriate threshold? Why or why not? If not, please identify a more appropriate level and explain your rationale. Should aggregation principles apply to the reporting activity level and could doing so deter non-compliance with the rule? Would doing so impose a significant technological burden on reporting systems?

- Does the proposed 6-month implementation period with respect to the recordkeeping and reporting requirements for broker-dealers, and the 3-month implementation period with respect to the large trader identification requirements, strike an appropriate balance between timely implementation and time needed for system changes, or would a longer or shorter period be more appropriate? If another implementation period is suggested, please also estimate the corresponding change in implementation costs (if any).

- What are the expected costs and related burdens of modifying firms' existing systems to accommodate the proposed new data elements of LTID and execution time?

- Currently, firms are requested to comply with an EBS request for equity and equity option trade data in 10 business days. Is it realistic to expect that broker-dealers will, the first time a request for production is made by the Commission under the proposed rule, be able to produce the required data elements for a day's trades for a large trader in electronic, machine-readable form on the morning after the day the transactions occur?

- Is requiring broker-dealers to maintain the required large trader trade information for prompt production to the Commission upon request the best way to make this information available to the Commission for the rule's purposes? In this connection, we note that the CFTC's Large Trader Reporting Program, requires large traders of commodity futures and commodity options to report positions periodically without the CFTC being required to make a prior request for the information. Is this a meaningful precedent for the Commission's large trader reporting system? Why or why not?

- Would a system that requests weekly or daily reporting of large trader trade information to the Commission be unduly burdensome to broker-dealers? Or would it actually be less burdensome to broker-dealers than complying with occasional Commission requests for such information, without having a reliable system in place for providing such information to the Commission? Does data production have to be systematized to be efficient and reasonably free of errors?

If a broker-dealer sets up a system to provide large trader information to the Commission on a daily basis as a matter of routine, would the ongoing costs to the broker-dealer for providing large trader information be de minimis because the information consists of data the broker-dealer produces on a daily basis anyway in the course of operating its business?

- The proposed rule also is designed to enhance the Commission's ability to conduct market surveillance and to detect and deter fraudulent and manipulative activity. Would it be preferable and ultimately less burdensome for broker-dealers to report large trader activity on a more routine basis (e.g., daily, weekly, or monthly) rather than provide requested information on an infrequent or ad hoc basis?

- Should Item 5a of Form 13H and the corresponding instructions be amended to permit large traders that are registered broker-dealers to incorporate by reference the information provided on Form BD about affiliates?

- Does the proposed rule sufficiently minimize the burden on natural persons?

- Should the proposed rule be expanded to include securities other than NMS securities? If so, what other types of securities should be included?

- Would the large trader reporting requirements influence the day-to-day decisions made by large traders in any substantive way? Would the proposed requirements impact trading strategies? For example, might traders choose in some cases to avoid trading in equities or options in favor of alternative vehicles such as OTC derivatives to avoid reporting? Might they curtail the extent of their trading? Might they trade in foreign jurisdictions?

- Would the application of the proposed rule provide incentives for trading to be effected through certain entities or market centers? If so, how and which ones? For example, would large traders direct their trading through non-registered broker-dealers, like those relying on the foreign broker/dealer exemption (Rule 15a-6)?

- Is the proposed three-year record retention requirement for registered broker-dealers adequate for the Commission to achieve the objectives of the proposed rule? Should the Commission provide for a longer retention period, for example five or more years?

- Is the proposed treatment of foreign entities appropriate? Why or why not? The Commission is aware that some foreign jurisdictions may have statutes that could potentially restrict the ability of a large trader to provide information to the Commission on Form 13H, and that the ability of large traders organized in such jurisdictions would depend on the provisions of such statutes as applied to the scope of information solicited in proposed Form 13H. To what extent do any

foreign statutes complicate foreign large traders' ability to comply with the proposed rule?

III. Specific Factors to be Considered by the Commission

Section 13(h)(5) of the Exchange Act requires the Commission, when exercising its rulemaking authority under Section 13(h) to take into account: (1) existing reporting systems; (2) the costs associated with maintaining information with respect to transactions effected by large traders and reporting such information to the Commission; and (3) the relationship between United States and international securities markets. As discussed in this release, the Commission took into account these factors when formulating the proposed rule in exercising its authority under Section 13(h) of the Exchange Act.

The proposed rule reflects the Commission's commitment to utilize existing industry systems, such as the EBS system, in an effort to minimize the costs associated with the proposed large trader system while accomplishing the purposes of the proposed rule. Further, the application of the proposed rule to foreign entities has been considered in light of its impact on the relationship between U.S. and international securities markets.

The Commission has attempted to propose an efficient large trader system that accommodates different types of large traders and business practices while at the same time providing the Commission with a useful tool to identify large traders and their trading activity and assist the Commission in monitoring the impact of large traders on the securities markets. The Commission preliminarily believes that the proposed rule would establish a narrow definition of large trader, and thus limit the costs and burdens of the system on the relevant entities that are responsible for trading decisions.

The Commission preliminarily believes that the information to be captured and disclosed under the proposed identification requirements would be the minimum necessary for creating an

effective large trader system that would achieve the purposes of Section 13(h) of the Exchange Act. Moreover, the recordkeeping and reporting requirements of the proposed rule have been designed to minimize costs while accomplishing the purposes of Section 13(h) of the Exchange Act. In particular, much of the information that would be required to be retained by registered broker-dealers under the proposed rule is similar to the information currently required to be provided by broker-dealers under Rule 17a-25 of the Exchange Act. Further, the rule contemplates that registered broker-dealers would use the existing reporting infrastructure of the EBS system to transmit trading data to the Commission. As such, large trader transaction data would be collected and disclosed in a manner that utilizes the existing reporting systems. Accordingly, the Commission preliminarily believes that the proposed recordkeeping and reporting requirements are designed to minimize costs and provide a tailored method of collecting large trader transaction information.

The Commission acknowledges that certain provisions of the proposed rule would cause market participants to incur costs including: (1) preparation, filing, and updating of Form 13H; (2) maintenance and reporting of large trader transaction information; (3) maintenance and reporting of LTIDs and execution times; and (4) development and implementation of monitoring systems and procedures.[127] However, the Commission preliminarily believes that the proposal minimizes the costs of a proposed large trader reporting requirement to the greatest extent possible while still allowing the Commission to implement a system that captures a unique large trader identifier and execution times, both of which the Commission believes would be critical elements necessary to accomplish the objectives of Section 13(h) of the Exchange Act.

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[127] See infra Sections IV (Paperwork Reduction Act) and V (Consideration of Costs and Benefits).

In addition, the monitoring provisions of the proposed rule would require a registered broker-dealer to monitor its customers' trading. These obligations are intended to facilitate compliance with the proposed rule. The Commission preliminarily believes that the proposed safe harbor provision would provide meaningful detail and objectivity that would considerably reduce the burden of the monitoring responsibility on registered broker-dealers.

Finally, the Commission believes that the proposed rule's application to foreign persons accomplishes the objectives of Section 13(h) in part by maintaining uniformity between domestic and international securities markets.[128]

IV. Paperwork Reduction Act

Certain provisions of the proposal contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995 ("PRA")[129] and the Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The title of the new collection of information, including proposed Rule 13h-1 and proposed Form 13H, is "Information Required Regarding Large Traders Pursuant to Section 13(h) of the Securities Exchange Act of 1934 and Rules Thereunder." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Summary of Collection of Information under Proposed Rule 13h-1

Under proposed Rule 13h-1, a "large trader" would be any person that directly or indirectly, including through other persons controlled by such person, exercises investment

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128 See House Comm. on Energy and Commerce, Report to Accompany the Securities Market Reform Act of 1990, H.R. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657) (expressing the intent that the Commission consider "the relationship between our domestic markets and the international market place for securities.").

129 44 U.S.C. 3501 et. seq.

discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, with or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level.

All large traders would be required to identify themselves to the Commission by filing Form 13H, and would be required to update their Form 13H from time to time.[130] Upon receiving an initial Form 13H, the Commission would assign to the large trader a unique large trader identification number ("LTID"). Each large trader would be required to disclose to registered broker-dealers effecting transactions on its behalf its large trader identification number and each account to which it applies.[131] Each large trader also would be required to disclose its large trader identification number to all others with whom it collectively exercises investment discretion. Further, upon request by the Commission, a large trader would be required promptly to provide additional information to the Commission that would allow the Commission to further identify the large trader and all accounts through which the large trader effects transactions.[132]

Proposed Rule 13h-1 also would impose recordkeeping, reporting, and monitoring requirements on registered broker-dealers. Proposed paragraph (d)(1) would require every registered broker-dealer to maintain records of all information required under paragraphs (d)(2) and (d)(3) for all transactions effected directly or indirectly by or through (i) an account such broker-dealer carries for a large trader or an Unidentified Large Trader, (ii) an account over which such broker-dealer exercises investment discretion together with a large trader or an Unidentified Large Trader, or (iii) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion. Additionally, where a

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130 See proposed Rule 13h-1(b).

131 See proposed Rule 13h-1(b)(2).

132 See proposed Rule 13h-1(b)(4).

non-broker-dealer such as a bank carries an account for a large trader or an Unidentified Large Trader, the broker-dealer effecting such transactions directly or indirectly for a large trader would be required to maintain records of all of the information required under paragraphs (d)(2) and (d)(3) for those transactions. The term "Unidentified Large Trader" would be defined to mean each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of proposed Rule 13h-1 that a registered broker-dealer knows or has reason to know is a large trader.[133] A registered broker-dealer would have reason to know whether a person is a large trader based on the transactions in NMS securities effected by or through such broker-dealer. Further, a registered broker-dealer would not be deemed to know or have reason to know that a person is a large trader if it establishes policies and procedures reasonably designed to assure compliance with the identification requirements and does not have actual knowledge that a person is a large trader.[134]

Section 13(h)(2) of the Exchange Act provides that records of a large trader's transactions must be made available on the morning after the day the transactions were effected.[135] The proposed rule would incorporate this requirement in paragraph(d)(5). Paragraph (d)(4) of the proposed rule would require that such records be kept for a period of three years, the first two in an accessible place, in accordance with Rule 17a-4 under the Exchange Act.[136]

Complementing the recordkeeping requirements on broker-dealers, under proposed paragraph (e), registered broker-dealers that are required to keep records pursuant to paragraph

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133 See proposed Rule 13h-1(a)(9).

134 See proposed Rule 13h-1(f).

135 See 15 U.S.C. 78m(h)(2).

136 17 CFR 240.17a-4.

(d)(1) also would have a duty to report that information.[137] Specifically, upon the request of the Commission, registered broker-dealers must report electronically, in machine-readable form and in accordance with instructions issued by the Commission, all information required under paragraphs (d)(2) and (d)(3) for all transactions effected directly or indirectly by or through accounts carried by such broker-dealer for large traders and other persons for whom records must be maintained, equal to or greater than the reporting activity level.[138]

Broker-dealers would need to report a particular day's trading activity only if it equals or exceeds the "reporting activity level." While a registered broker-dealer is required to report for a given day data only if it is equal to or greater than the reporting activity level, the rule specifically allows a broker-dealer to voluntarily report a day's trading activity that falls short of the applicable threshold. Registered broker-dealers may wish to take this approach if they prefer to avoid implementing systems to filter the transaction activity and would rather utilize a "data dump" approach to reporting large trader transaction information to the Commission.

In recognition of the value of utilizing existing reporting systems, the proposed rule would require broker-dealers to transmit the transaction records by utilizing the infrastructure of the existing EBS system. Transaction reports, including data on transactions up to and including the day immediately preceding the request, would need to be furnished before the close of business on the day specified in the request for the information.

B. Proposed Use of Information

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137 See proposed Rule 13h-1(e).

138 To assist the Commission in enforcing the self-identification requirements of the proposed rule, paragraph (e) of the proposed rule would require broker-dealers to maintain and report certain information about all transactions effected by Unidentified Large Traders. In addition to the information required to be maintained for identified large traders, a broker-dealer would be required to retain and report for Unidentified Large Traders such person's name, address, date the account was opened, and tax identification number(s). See proposed Rule 13h-1(d)(3).

The Commission would use the information collected pursuant to proposed Rule 13h-1 to identify large traders and collect data on the trading activity of large traders. The proposed large trader reporting system would allow the Commission to monitor more readily and efficiently the impact of large traders on the securities markets and would facilitate the Commission's trading reconstruction efforts as well as enhance its monitoring, enforcement, and regulatory activities. Registered broker-dealers would use the information they collect pursuant to proposed Rule 13h-1, namely the LTID, to comply with the proposed recordkeeping requirements and the proposed requirement to report to the Commission upon request all transactions effected for large traders. In addition, any registered broker-dealer that chooses to rely on the proposed safe harbor provisions would use the information they collect pursuant to proposed Rule 13h-1 as well as policies and procedures consistent with the proposed rule as part of their systems to detect and identify Unidentified Large Traders and inform them of their obligations to file Form 13H and disclose large trader status under the proposed rule. Self-regulatory organizations, pursuant to their obligations to enforce compliance by their members and persons associated with their members with the rules and regulations under the Exchange Act,[139] would evaluate whether a broker-dealer has collected and maintained the information required by proposed Rule 13h-1 to surveil for and enforce compliance with the proposed rule.

C. Respondents

While we are not aware of a database that would allow the Commission to calculate the precise number of persons that would meet the definition of large trader, based on the Commission's experience in this area, the Commission estimates that there would be 400 large traders subject to the proposed rule. The estimated number of large traders accounts for the

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139 See 15 U.S.C. 78f(b)(1).

proposed filing requirement provisions contained in proposed Rule 13h-1(b)(3), including the rule's focus, in more complex organizations, on the parent company of the entities that employ or otherwise control the individuals that exercise investment discretion. In addition, the Commission estimates from broker-dealer responses to FOCUS report filings with the Commission made in 2009 that there would be 300 registered broker-dealers subject to the proposed rule, including some broker-dealers that will also themselves be large traders. This estimate reflects the number of broker-dealer carrying firms that the Commission believes would carry accounts for large traders or that would effect transactions directly or indirectly for a large trader or Unidentified Large Trader where a non-broker-dealer carries the account. The Commission seeks comment on the number of large traders and registered broker-dealers that could be affected by the proposed rule and the nature of the proposed rule's effect on those persons and entities.

D. Estimated Total Annual Reporting and Recordkeeping Burden

1. Estimated Burden on Large Traders

Proposed Rule 13h-1 would present new burdens to persons and entities that meet the definition of large trader. In particular, persons, including those that might not presently be registered with the Commission in some capacity, that meet the definition of "large trader" would become subject to a new reporting duty, as the proposed rule would require each large trader to identify itself to the Commission by filing a Form 13H and submitting annual updates, as well as updates on a quarterly basis if necessary to correct information that becomes inaccurate. Additionally, each large trader would be required to identify itself to each registered broker-dealer through which it effects transactions and to all others with whom it collectively exercises investment discretion.

Paragraph (b)(1) of the proposed rule would require large traders to file Form 13H with the Commission promptly after first effecting transactions that reach the identifying activity level.[140] Thereafter, large traders would be required to file an amended Form 13H promptly following the end of a calendar quarter in the event that any of the information contained therein becomes inaccurate for any reason (e.g., change of name and address, type of organization, principal business, regulatory status, accounts maintained, or associations).[141] Regardless of whether any interim amended Form 13Hs are filed, large traders also would be required to file Form 13H annually, within 45 days after the calendar year-end, in order to ensure the accuracy of all of the information reported to the Commission.[142] Additionally, proposed Rule 13h-1(b)(4) provides that the Commission may require large traders to provide, upon request, additional information to identify the large trader and all accounts through which the large trader effects transactions.

For purposes of the PRA, the Commission estimates that it would take a large trader approximately 20 hours to calculate whether its trading activity qualifies it as a large trader, complete the initial Form 13H with all required information, obtain a LTID from the Commission, and inform its registered broker-dealers and other entities of its LTID and the accounts to which it applies. The Commission understands that large traders currently maintain systems that capture their trading activity, and believes that these existing systems would be sufficient without further modification to enable a large trader to determine whether it effects transactions for the purchase or sale of any NMS security for or on behalf of accounts over which it exercises investment discretion in an aggregate amount equal to or greater than the

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140 See proposed Rule 13h-1(b)(1)(i).

141 See proposed Rule 13h-1(b)(1)(iii).

142 See proposed Rule 13h-1(b)(1)(ii).

identifying activity level. Accordingly, the Commission preliminarily estimates that the one-time burden for large traders would be approximately 8,000 burden hours.[143]

The Commission preliminarily estimates that the ongoing annualized burden for complying with proposed Rule 13h-1 would be approximately 6,800 burden hours for all large trader respondents.[144] This figure is based on the estimated number of hours it would take to file interim updates and the annual updated Form 13H. The Commission estimates that the average large trader would be required to file 1 annual update and 3 interim updates.[145]

Therefore, in summary, under the proposed rule, the total burden on large trader respondents would be 8,000 hours for the first year and 6,800 hours for each subsequent year.

2. Estimated Burden on Registered Broker-Dealers

As part of the Commission's existing EBS system, pursuant to Rule 17a-25 under the Exchange Act, the Commission currently requires registered broker-dealers to keep records of

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143 The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f-1: (Compliance Manager at 3 hours) + (Compliance Attorney at 7 hours) + (Compliance Clerk at 10 hours) x (400 potential respondents)= 8,000 burden hours. Rule 13f-1, like the proposed rule, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information.

144 The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f-1 and Rule 17a-25: (Compliance Manager at 2 hours) + (Compliance Attorney at 5 hours) + (Compliance Clerk at 10 hours) x (400 potential respondents)= 6,800 burden hours. Rule 13f-1, like the proposed rule, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information. As discussed supra, Rule 17a-25 requires broker-dealers to disclose information that is very similar in scope and character to the information required under the proposed rule. The Commission believes that determining whether a firm reaches the identifying activity level is a compliance function and that no software reprogramming would be required. See infra note 177.

145 This estimate is based on the varied characteristics of large traders and the nature and scope of the items that would be disclosed on proposed Form 13H that would require updating, and considers that large traders would file one required annual update and three quarterly updates when information contained in the Form 13H becomes inaccurate.

most of the information for their customers that would be captured by proposed Rule 13h-1.[146] The additional items of information that this proposal would capture are: (1) LTID; and (2) transaction execution time. To capture the additional field that includes the LTID number, all registered broker-dealers with large trader customers or that are themselves large traders would have to re-program their systems. Some registered broker-dealers also would need to re-program their systems to capture execution time, to the extent their systems do not already capture that information in a manner that is reportable pursuant to an EBS request for data, and LTID.

The Commission believes that the burden of the proposed rule for individual registered broker-dealers would likely vary due to differences in their recordkeeping systems. The Commission estimates that all registered broker-dealers that have a client base that includes large traders and Unidentified Large Traders, or broker-dealers that are themselves large traders, would be required to make modifications to their existing systems to capture the additional data elements that are not currently captured by systems that comply with Rule 17a-25, including, for example, the LTID number. The Commission estimates from broker-dealer responses to FOCUS report filings with the Commission made in 2009 that there would be 300 registered broker-dealers subject to the proposed rule, including some of those broker-dealers that will also

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146 See 17 CFR 240.17a-25. Pursuant to Rule 17a-25, broker-dealers are required to maintain the following information that would be captured by the proposed rule: date on which the transaction was executed; account number; identifying symbol assigned to the security; transaction price; the number of shares or option contracts traded and whether such transaction was a purchase, sale, or short sale, and if an option transaction, whether such was a call or put option, an opening purchase or sale, a closing purchase or sale, or an exercise or assignment; the clearing house number of such broker or dealer and the clearing house numbers of the brokers or dealers on the opposite side of the transaction; a designation of whether the transaction was effected or caused to be effected for the account of a customer of such broker or dealer, or was a proprietary transaction effected or caused to be effected for the account of such broker or dealer; market center where the transaction was executed; prime broker identifier; average price account identifier; and the identifier assigned to the account by a depository institution. For customer transactions, the broker-dealer is required to also include the customer's name, customer's address, the customer's tax identification number, and other related account information.

themselves be large traders. The Commission preliminary estimates that the one-time, initial annualized burden for registered broker-dealers for system development, including re-programming and testing of the systems to comply with the proposed rule, would be approximately 133,500 burden hours.[147]

This figure is based on the estimated number of hours for initial internal development and implementation, including software development, taking into account the fact that new data elements are required to be captured and must be available for reporting to the Commission as of the morning following the day on which the transactions were effected. Because broker-dealers already capture, pursuant to Rule 17a-25, most of the data that proposed Rule 13h-1 would capture, the Commission does not expect broker-dealers to incur any hardware costs.

The Commission preliminarily believes that the ongoing annualized expense for the recordkeeping requirement for registered broker-dealers would not result in a burden for purposes of the PRA, as registered broker-dealers already are required to provide to the Commission almost all of the proposed information for all of their customers pursuant to Rule 17a-25 under the Exchange Act. Once a registered broker-dealer's system is revised to capture the additional fields of information, the Commission does not believe that the additional fields

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147 The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f-1 and Rule 17a-25: (Computer Ops Dept. Mgr. at 30 hours) + (Sr. Database Administrator at 25 hours) + (Sr. Programmer at 150 hours) + (Programmer Analyst at 100 hours) + (Compliance Manager at 20 hours) + (Compliance Attorney at 10 hours) + (Compliance Clerk at 20 hours) + (Sr. Systems Analyst at 50 hours) + (Director of Compliance at 5 hours) + (Sr. Computer Operator at 35 hours) x (300 potential respondents)= 133,500 burden hours. As noted above, the Commission acknowledges that, in some instances, multiple LTIDs may be disclosed to a registered broker-dealer for a single account. Therefore, our hourly burden estimate factors in the cost that registered broker-dealers would need to develop systems capable of tracking multiple LTIDs. Rule 13f-1, like the proposed rule, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information. As discussed supra, Rule 17a-25 requires broker-dealers to disclose information that is very similar in scope and character to the information required under the proposed rule.

would result in any ongoing annualized expense beyond what broker-dealers already incur under Rule 17a-25.

In addition to requiring registered broker-dealers to maintain records of account transactions, the proposed rule would also require registered broker-dealers to report such transactions to the Commission upon request. The Commission preliminarily believes that this collection of information would not involve any substantive or material change in the burden that already exists as part of registered broker-dealers providing transaction information to the Commission in the normal course of business.[148] However, the Commission notes that the information would need to be available for reporting to the Commission on a next-day basis, versus the 10 business day period associated with an EBS request for data.[149] Nevertheless, once the electronic recordkeeping system is in place to capture the information, where such system is designed and built to furnish the information within the time period specified in the proposal, the Commission preliminarily believes that the collection of information would result in minimal additional burden.

Although it is difficult to predict with certainty the Commission's future needs to obtain large trader data, the Commission preliminarily believes that, taking into account the Commission's likely need for data to be used in market reconstruction purposes and investigative matters, the Commission estimates that it would likely send 100 requests for large trader data per year to each registered broker-dealer.[150] The Commission estimates that it would take a

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148 See 17 CFR 240.17a-25.

149 See Securities Exchange Act Release No. 44494 (June 29, 2001), 66 FR 35836 (July 9, 2001) (S7-12-00) (17a-25 adopting release).

150 Compared to the EBS system, where the Commission sent 5,168 electronic blue sheets requests between January 2007 and June 2009, the Commission preliminarily expects to send fewer requests for large trader data, in particular because the Commission preliminarily expects that a request for large trader data would be broader and encompass a larger universe of securities and a

registered broker-dealer 2 hours to comply with each request, considering that a broker-dealer would need to run the database query of its records, download the data file, and transmit it to the Commission. Accordingly, the ongoing annual aggregate hour burden for broker-dealers is estimated to be 60,000 hours (100 x 300 x 2 = 60,000).[151]

The proposed rule also would require registered broker-dealers to monitor large traders to help ensure compliance by large traders with the self-identification requirements of the rule. In particular, proposed paragraph (e) would require certain broker-dealers to maintain and report to the Commission certain information about all transactions effected by Unidentified Large Traders.

The Commission acknowledges that the duty to monitor would impose burdens on broker-dealers. To reduce the monitoring burden, the Commission has proposed a safe harbor provision for the monitoring duty. Specifically, registered broker-dealers would be deemed to not know or to have no reason to know that a person is an Unidentified Large Trader if: (1) it has established and maintains policies and procedures reasonably designed to assure compliance with the identification requirements of the proposed rule; and (2) it does not have actual knowledge that a person is a large trader.[152]

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longer time period than would be the case for the typically more targeted EBS requests it sends to broker-dealers.

151 The Commission derived the total estimated burdens based on the Commission's experience with, and burden estimates for, other existing reporting systems, including Rule 17a-25. The Commission estimated that each broker-dealer who electronically responds to a request for data in connection with Rule 17a-25 and the EBS system spends 8 minutes per request. See EBS Release, supra note 24, at 66 FR 35841. Unlike EBS, under proposed Rule 13h-1, a broker-dealer would also be required to report data on Unidentified Large Traders. The Commission therefore believes that the time to comply with a request for data under the proposed rule could take longer than would a similar request for data under the EBS system, as a broker-dealer likely would take additional time to review and report information on any Unidentified Large Traders, including the additional fields of information specified in paragraph (d)(3) of the proposed rule, that they would be required to report to the Commission under the proposed rule.

152 See proposed Rule 13h-1(f).

The Commission preliminary estimates that the one-time, initial burden for all registered broker-dealers to comply with the proposed monitoring requirements would be approximately 21,000 burden hours to establish a compliance system to detect and identify Unidentified Large Traders.[153] This figure is based on the estimated number of hours to establish policies and procedures reasonably designed to assure compliance with the identification requirements of the proposed rule. The Commission preliminarily estimates that the ongoing annualized burden to all broker-dealers for the monitoring requirements of the proposed rule, including the proposed requirement on broker-dealers to inform Unidentified Large Traders of their obligations to File Form 13H and disclose their large trader status under proposed Rule 13h-1, would be approximately 4,500 burden hours.[154]

Therefore, under the proposed rule, the total burden on these respondents would be 164,500 hours for the first year[155] and 14,500 hours for each subsequent year.[156]

E. Collection of Information is Mandatory

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153 The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f-1: (Sr. Programmer at 10 hours) + (Compliance Manager at 10 hours) + (Compliance Attorney at 10 hours) + (Compliance Clerk at 20 hours) + (Sr. Systems Analyst at 10 hours) + (Director of Compliance at 2 hours) + (Sr. Computer Operator at 8 hours) x (300 potential respondents)= 21,000 burden hours. Rule 13f-1, like the proposed rule, requires monitoring of a certain trading threshold.

154 The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f-1 and Rule 17a-25: (Compliance Attorney at 15 hours) x (300 potential respondents)= 4,500 burden hours. Rule 13f-1, like the proposed rule, requires monitoring of a certain threshold and, upon reaching that threshold, disclosure of information.

155 This figure is derived from the estimated one-time burdens from the recordkeeping requirement (133,500 burden hours) + the reporting requirement (10,000 burden hours) + the monitoring requirement (21,000 burden hours)= 164,500 total burden hours.

156 This figure is derived from the estimated ongoing burdens from the reporting requirement (10,000 burden hours) + the monitoring requirement (4,500 burden hours)= 14,500 total burden hours.

All collections of information pursuant to the proposed rule would be a mandatory collection of information.

F. Confidentiality

Section 13(h)(7) of the Exchange Act provides that Section 13(h) "shall be considered a statute described in subsection (b)(3)(B) of [5 U.S.C. 552]", which is part of the Freedom of Information Act ("FOIA").[157] As such, "the Commission shall not be compelled to disclose any information required to be kept or reported under [Section 13(h)]."[158] Accordingly, the information that a large trader would be required to disclose on proposed Form 13H or provide in response to a Commission request would be exempt from disclosure under FOIA. In addition, any transaction information that a registered broker-dealer would report to the Commission under the proposed rule also would be exempt from disclosure under FOIA.

G. Retention Period of Recordkeeping Requirements

Registered broker-dealers would be required to retain records and information under the proposed rule for a period of three years, the first two in an accessible place, in accordance with Rule 17a-4 under the Exchange Act.[159]

H. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (1) evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the

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157 5 U.S.C. 552(b)(3)(B) is now 5 U.S.C. 552(b)(3)(A)(ii).

158 See Section 13(h)(7) of the Exchange Act, 15 U.S.C. 78m(h)(7).

159 17 CFR 240.17a-4.

burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, 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. S7-10-10. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collection of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7-10-10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE, Washington, DC 20549-0213.

V. Consideration of Costs and Benefits

The Commission is sensitive to the costs and benefits of our proposal to establish a large trader reporting system. We request comment on the costs and benefits associated with the proposal. The Commission has identified certain costs and benefits associated with the proposal and requests comment on all aspects of its preliminary cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. The Commission also seeks comments on the benefits identified and the costs described in each section of this cost-benefit analysis, as well as elsewhere in this release. Finally, the

Commission requests that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions on such estimates.

A. Benefits

U.S. securities markets have experienced a dynamic transformation in recent years. In large part, the changes reflect the culmination of a decades-long trend from a market structure with primarily manual trading to a market structure with primarily automated trading. Rapid technological advances have produced fundamental changes in the structure of the securities markets, the types of market participants, the trading strategies employed, and the array of products traded. The markets also have become even more competitive, with exchanges and other trading centers offering innovative order types, data products and other services, and aggressively competing for order flow by reducing transaction fees and increasing rebates. These changes have facilitated the ability of large institutional and other professional market participants to employ sophisticated trading methods to trade electronically in huge volumes with great speed. In addition, large traders have become increasingly prominent at a time when the markets are experiencing an increase in overall volume.[160]

Currently, to support its regulatory and enforcement activities, the Commission collects transaction data through the EBS system.[161] The Commission uses the EBS system to obtain securities transaction information for two primary purposes: (1) to assist in the investigation of possible federal securities law violations, primarily involving insider trading or market manipulation; and (2) to conduct market reconstructions.

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160 See, e.g., infra note 1.

161 See 17 CFR 240.17a-25 (Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers).

The EBS system has performed effectively as an enforcement tool for analyzing trading in a small sample of securities over a limited period of time. However, because the EBS system is designed for use in narrowly-focused enforcement investigations that generally involve trading in particular securities, it has proven to be insufficient for large-scale market reconstructions and analyses involving numerous stocks during peak trading volume periods.[162] Further, it does not address the Commission's need to identify important market participants and their trading activity.

Following declines in the U.S. securities markets in October 1987 and October 1989, Congress noted that the Commission's ability to analyze the causes of a market crisis was impeded by its lack of authority to gather trading information.[163] To address this concern, Congress passed the Market Reform Act, which, among other things, amended Section 13 of the Exchange Act to add new subsection (h), authorizing the Commission to establish a large trader reporting system under such rules and regulations as the Commission may prescribe.[164]

The large trader reporting authority in Section 13(h) of the Exchange Act was intended to facilitate the Commission's ability to monitor the impact on the securities markets of securities transactions involving a substantial volume or large fair market value, as well as to assist the Commission's enforcement of the federal securities laws.[165] In particular, the Market Reform Act provided the Commission with the authority to collect broad-based information on large

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162 See supra note 7 and accompanying text.

163 The legislative history accompanying the Market Reform Act also noted the Commission's limited ability to analyze the causes of the market declines of October 1987 and 1989. See generally Senate Report, supra note 9, and House Comm. on Energy and Commerce, Report to accompany the Securities Market Reform Act of 1990, H.R. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657).

164 PL 101-432 (HR 3657), October 16, 1990.

165 See 15 U.S.C. 78m(h)(1). See also Senate Report, supra note 9, at 42.

traders, including their trading activity, reconstructed in time sequence, in order to provide empirical data necessary for the Commission to evaluate market movement and volatility and enhance its ability to detect illegal trading activity.[166]

The large trader reporting system envisioned by the Market Reform Act authorizes the Commission to require large traders[167] to self-identify to the Commission and provide information to the Commission identifying the trader and all accounts in or through which the trader effects securities transactions.[168] The Market Reform Act also authorized the Commission to require large traders to identify their status as large traders to any registered broker-dealer through whom they directly or indirectly effect securities transactions.[169]

In addition to facilitating the ability of the Commission to identify large traders, the Market Reform Act also authorizes the Commission to collect information on the trading activity of large traders. In particular, the Commission is authorized to require every registered broker-dealer to make and keep records with respect to securities transactions of large traders that equal or exceed a certain "reporting activity level" and report such transactions upon request of the Commission.[170]

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166 See Senate Report, supra note 9, at 4, 44, and 71. In this respect, though self-regulatory organization ("SRO") audit trails provide a time sequenced report of broker-dealer transactions, those audit trail generally do not identify the broker-dealer's customers. Accordingly, the Commission is not presently able to utilize existing SRO audit trail data to accomplish the objectives of the Market Reform Act.

167 Section 13(h) of the Exchange Act defines a "large trader" as "every person who, for his own or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level." See 15 U.S.C. 78m(h)(8)(A).

168 See 15 U.S.C. 78m(h)(1)(A).

169 See 15 U.S.C. 78m(h)(1)(B).

170 See 15 U.S.C. 78m(h)(2). Section 13(h) also provides the Commission with authority to determine the manner in which transactions and accounts should be aggregated, including

To implement its authority under Section 13(h) of the Exchange Act, the Commission now is proposing new Rule 13h-1 and Form 13H to establish an activity-based large trader reporting system. The proposal is intended to assist the Commission in identifying, and obtaining certain baseline trading information about traders that conduct a substantial volume or large fair market value of trading activity in the U.S. securities markets. In essence, a "large trader" would be defined as a person who effects transactions in NMS securities of at least, during any calendar day, two million shares or shares with a fair market value of $20 million or, during any calendar month, either 20 million shares or shares with a fair market value of $200 million.[171] The proposed large trader reporting system is designed to facilitate the Commission's ability to monitor the impact on the securities markets of large trader activity, and allow it to conduct trading reconstructions following periods of unusual market volatility and analyze significant market events for regulatory purposes. It also should enhance the Commission's ability to detect and deter fraudulent and manipulative activity and other trading abuses.

The proposed identification, recordkeeping, and reporting system would provide the Commission with a mechanism to identify large traders, and the affiliates, accounts, and transactions of large traders. Specifically, proposed Rule 13h-1 would require large traders to identify themselves to the Commission and make certain disclosures to the Commission on proposed Form 13H. Upon receipt of Form 13H, the Commission would issue a unique

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aggregation on the basis of common ownership or control. See 15 U.S.C. 78m(h)(3). The term "reporting activity level" is defined in Section 13(h)(8)(D) of the Exchange Act to mean "transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated." See 15 U.S.C. 78m(h)(8)(D).

[171] This test is defined in the proposed rule as the "identifying activity level." See proposed Rule 13h-1(a)(7). Section 13(h)(8)(c) of the Exchange Act authorizes the Commission to determine, by rule or regulation, the applicable identifying activity level. 15 U.S.C. 78m(h)(8)(c).

identification number to the large trader, which the large trader would then provide to its registered broker-dealers. Registered broker-dealers would be required to maintain transaction records for each large trader customer, and would be required to report that information to the Commission upon request. In addition, registered broker-dealers would be required to adopt procedures to monitor their customers' activity for volume that would trigger the identification requirements of the proposed rule.

In light of recent turbulent markets and the increasing sophistication and trading capacity of large traders, the Commission believes it needs to further enhance its ability to collect and analyze trading information, especially with respect to the most active market participants. In particular, the Commission believes it needs a mechanism to reliably identify large traders, and promptly and efficiently obtain their trading information on a market-wide basis.

The Commission believes a proposal for a large trader reporting system is necessary because, as noted above, large traders appear to be playing an increasingly prominent role in the securities markets.[172] Market observers have offered a wide range of estimates for the percent of overall volume attributable to one potential subcategory of large trader – high frequency traders – which are typically estimated at 50% of total volume or higher.[173] The proposed large trader reporting system is intended to provide a basic set of tools so that the Commission can monitor more readily and efficiently the impact on the securities markets of large traders.

Among other things, the Commission believes that a large trader reporting system would enhance its ability to (1) reliably identify large traders and their affiliates, (2) obtain more

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172 See 15 U.S.C. 78m(h)(1) and (h)(2) (reflecting the purpose of Section 13(h) of the Exchange Act to allow the Commission to monitor the impact of large traders).

173 See supra note 1.

promptly trading data on the activity of large traders, including execution time, and (3) aggregate and analyze trading data among affiliated large traders and affiliated accounts.

The Commission generally requests comment on the anticipated benefits of the proposal, including whether the proposal would: (1) assist in the examination for and investigation of possible federal securities law violations, including insider trading or market manipulation; (2) assist the Commission in conducting market reconstructions; and (3) provide the Commission with a system that would allow it to analyze more readily and efficiently the impact of large traders on the securities markets. Would the proposed rule provide benefits that the Commission has not discussed?

B. Costs

1. Large Traders

The Commission preliminarily anticipates that the primary costs to large traders from the proposal are the requirement to self-identify to the Commission, including utilizing existing systems to detect when the large trader meets the identifying activity level, and the filing and information requirements when large trader status is achieved, as well as the requirement to inform its broker-dealers and others with whom it exercises investment discretion of its LTID and all accounts to which it applies. The proposed rule would require large traders to file Form 13H with the Commission promptly after first effecting transactions that reach the identifying activity level.[174] Large traders would be required to amend their Forms 13H by submitting an "Interim Filing" promptly following the end of a calendar quarter in the event that any of the information contained in a Form 13H filing becomes inaccurate for any reason (e.g., change of name or address, type of organization, principal business, regulatory status, accounts maintained,

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[174] See proposed Rule 13h-1(b)(1)(i).

or associations).[175] Regardless of whether any interim amended Form 13Hs are filed, large traders would be required to file Form 13H annually, within 45 days after the calendar year-end, in order to ensure the accuracy of all of the information reported to the Commission.[176]

The Commission estimates that the aggregate costs for all 400 potential large trader respondents to self-identify on Form 13H and obtain from the Commission and inform others of its LTID and the accounts to which it applies would be $1,317,600.[177] The Commission believes that potential large trader respondents would not need to modify their existing systems to comply with proposed Rule 13h-1. The Commission believes that large traders already employ software that tracks the number and market value of the shares they trade, and the Commission expects that firms would be able to use their existing systems to monitor whether they reach the identifying activity level. Accordingly, the estimate above does not include any software modification costs. In addition, the Commission estimates that the aggregate cost to file interim updates and the annual updated Form 13H would be $998,400.[178] The Commission does not

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175 See proposed Rule 13h-1(b)(1)(iii).

176 See proposed Rule 13h-1(b)(1)(ii).

177 The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 13f-1: (Compliance Manager (3 hours) at $258 per hour) + (Compliance Attorney (7 hours) at $270 per hour) + (Compliance Clerk (10 hours) at $63 per hour) x (400 potential respondents)= $1,317,600. Rule 13f-1, like the proposed rule, requires the filing of a form (Form 13F) upon exceeding a certain trading threshold. This figure is based on the estimated number of hours and hourly costs for the one-time, initial annualized burden for registered broker-dealers for development, including re-programming and testing of the systems to comply with the proposed rule. Hourly figures are from SIFMA's Management & Professional Earnings in the Securities Industry 2008 and SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 or 2.93, as appropriate, to account for bonuses, firm size, employee benefits, and overhead.

178 The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's experience with, and burden estimates for, other existing reporting systems including Rule 6a-2: (Compliance Manager (2 hours) at $258 per hour) + (Compliance Attorney (5 hours) at $270 per hour) + (Compliance Clerk (10 hours) at $63 per hour) x (400 potential respondents)= $998,400. Rule 6a-2, like the proposed rule, requires: (1) form amendments when there are any material changes to the information provided in the previous

expect these minimal costs per large trader of self-identification and reporting to the Commission to have any significant effect on how large traders conduct business because such costs would not be so large, when compared to level of activity at which a large trader would be trading, so as to result in a change in how such traders conduct business, create a barrier to entry, or otherwise alter the competitive landscape among large traders.

The term "price efficiency" has a technical meaning in financial economics, which is not the only way the term can be interpreted in the Exchange Act.[179] We have, nonetheless, considered the effect of proposed new Rule 13h-1 on price efficiency in terms of financial economic theory, under which the proposed large trader reporting system could adversely affect the extent to which security prices reflect available information. As discussed above, the Commission acknowledges that the proposal would entail certain costs on large traders. These costs would be incremental to certain large traders which, as part of their business model, expend resources to gather and process public information that is ultimately reflected into prices through their trading activity. The Commission is sensitive to the costs of the proposal and preliminarily believes these costs would have minimal impact on a large trader's decision to gather and process public information, and also have minimal impact on a large trader's decision to ultimately trade on this information. Because the large trader reported positions would be made available only to the Commission, and not to the public or a trader's competitors, we expect the

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submission; and (2) submission of periodic updates of certain information provided in the initial Form 1, whether or not such information has changed.

179 Where we use the terms "price efficiency" in this proposing release we are using terms of art as used in the economic literature proceeding under the "efficient markets hypothesis," under which financial prices are assumed to reflect all available information and accordingly adjust quickly to reflect new information. See, e.g., Fama, Eugene F., (1991), Efficient capital markets: II, Journal of Finance; Fama E, French K. (1992), The Cross-Section of Expected Stock Returns, Journal of Finance. It should be noted that price efficiency is not identical with the ordinary sense of the word "efficiency."

proposed rule to have little impact on where a large trader conducts its business. The Commission therefore preliminarily believes that the proposal mitigates any potential adverse impact on price efficiency.

The Commission believes that the proposed rule's requirement for large traders to file and update Form 13H with the Commission, and to identify itself to each registered broker-dealer through which it effects transactions and to all others with whom it collectively exercises investment discretion, will have minimal adverse effect on efficiency, competition, or capital formation. In particular, the Commission does not believe that the requirement to self-identify to the Commission and the increased regulatory scrutiny it would entail would deter large traders from continuing to actively participate in the securities markets or would otherwise negatively impact large traders. Because the large trader positions will be reported only to the Commission, and not made public to a trader's customers or competitors, we expect the proposed rule to have little to no impact on competition.

The Commission acknowledges that, in addition to promoting price efficiency, the trading activity of certain large traders also promotes market liquidity in secondary securities markets. The Commission also acknowledges that participation in primary market offerings may be affected by changes in expectations about secondary market liquidity and price efficiency. As discussed above, however, the Commission preliminarily believes that the proposed rule would have minimal impact on a large trader's secondary market trading activities, and therefore believes there would be little to no impact on capital formation. Further, the Commission believes that proposed Rule 13h-1(b) would enhance the Commission's efforts to monitor the markets, in furtherance of promoting efficiency and capital formation and thereby bolstering investor confidence.

The Commission has sought to limit compliance costs wherever possible. The Commission proposes to establish an initial "identifying activity level" of: (1) 2 million shares, or shares with a fair market value of $20 million, effected during a calendar day; or (2) 20 million shares or shares with a fair market value of $200 million, effected during a calendar month. The Commission preliminarily believes that this threshold identifying activity level strikes an appropriate balance between the need to identify significant large traders and the burden on affected entities of capturing this information.

Further, when determining who would be subject to the proposed requirements as a "large trader," the proposed definition is intended to focus, in more complex organizations, on the parent company of the entities that employ the individuals that exercise investment discretion. The purpose of this focus is to narrow the number of persons that would need to self-identify as "large traders," while allowing the Commission to identify the primary institutions that conduct a large trading business. Focusing the identification requirements in this manner would enable the Commission to identify easily and be able to contact readily the principal group of persons that control large traders, while minimizing the filing and self-identification burdens that would be imposed on large traders.

In addition, the Commission is proposing an inactive filing status. The inactive filing status is intended to reduce the burden on infrequent traders who may trip the threshold on a particular occasion but do not regularly trade at sufficient levels to merit continued status as a large trader. In particular, large traders that have not effected aggregate transactions at any time during the previous full calendar year that are equal to or greater than the identifying activity level would be eligible for inactive status upon checking a box on the cover page of their next

annual Form 13H filing.[180] The proposed inactive status is designed to minimize the impact of the proposed rule on natural persons that infrequently trade in a magnitude that may warrant imposing the added regulatory burdens of the proposed rule. As a subset of inactive status, proposed Form 13H would provide a space for a large trader to reflect the termination of its operations (i.e., inactive status where the entity, because it has discontinued operations, has no potential to requalify for large trader status in the future). This designation would allow large traders to inform the Commission of their status and would signal to the Commission not to expect future amended Form 13H filings from the large trader. For example, termination status would be relevant in the case of a merger or acquisition where the large trader does not survive the corporate transaction. In addition, with respect to registered broker-dealers, the termination filing status should reduce the burden on registered broker-dealers who would no longer have to track the entity's LTID.

From time to time, information provided by large traders through their Forms 13H may become inaccurate. Rather than requiring prompt updates whenever this occurs, the proposed rule instead would require "Interim Filings" only quarterly (and only when the prior submission becomes inaccurate). The quarterly period is designed specifically to mitigate the filing burden of large traders.

A further limitation of the proposal targeted at balancing between capturing significant trading activity and the burden of capturing this information is that the Commission has proposed several exceptions from the definition of "transaction." These exceptions, among others, would include: any transaction that constitutes a gift, any transaction effected by a court-appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate, any

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[180] See proposed Rule 13h-1(b)(3)(iii).

transaction effected pursuant to a court order or judgment, and any transaction effected pursuant to a rollover of qualified plan or trust assets subject to Section 402(c)(1) of the Internal Revenue Code.[181] The Commission believes that narrowing the definition of a transaction by adding these exclusions would reduce the impact of the proposed rule on infrequent traders and registered broker-dealers while at the same time allowing the Commission to focus the rule on those entities and activities most appropriate to identify under the proposed rule.

2. Registered Brokers and Registered Dealers

The Commission preliminarily anticipates that the three primary costs to registered broker-dealers from the proposal are: (1) recordkeeping requirements; (2) reporting requirements; and (3) monitoring requirements.

The rule would require that registered broker-dealers keep records of transactions for each person they know is a large trader and for each person who has not complied with the information requirements that they have reason to know is a large trader based on transactions effected by or through such broker-dealer (an "Unidentified Large Trader").[182] The proposed rule would require brokers and dealers to furnish transaction records of both identified large traders and Unidentified Large Traders to the Commission upon request. While most of the proposed data required to be kept pursuant to proposed Rule 13h-1 is already required under Rule 17a-25 and reported via the EBS system, the large trader system would contain a few additional fields of information, notably the LTID number(s) and execution time. The proposed rule would require that such records be kept for a period of three years, the first two in an accessible place, in accordance with Rule 17a-4(b) under the Exchange Act.[183]

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181 See proposed Rule 13h-1(a)(6).

182 See proposed Rule 13h-1(a)(9) (defining "Unidentified Large Trader").

183 17 CFR 240.17a-4.

The Commission preliminarily estimates that the one-time, initial expense for each registered brokers-dealer for development, including re-programming and testing of the systems, would be approximately $106,060.[184] The Commission also preliminarily believes that there would be minimal additional costs associated with the operation and maintenance of the large trader system, because the proposed large trader system would utilize the existing EBS system. Accordingly, the total start-up, operating, and maintenance cost burden for registered broker-dealers is estimated to be $31,818,000 (300 x $106,060 = $31,818,000). As previously noted, this figure is based on the estimated number of hours for initial internal development and implementation, including software development, taking into account the fact that new data elements are required to be captured and to be available for reporting to the Commission on the morning following the day on which the transactions were effected. Because broker-dealers already capture most of the data required to be captured under proposal Rule 13h-1 pursuant to Rule 17a-25, the Commission does not expect any additional hardware costs.

The proposed rule would require registered broker-dealers to report transactions that equal or exceed the reporting activity level effected by or through such broker-dealer for both identified and Unidentified Large Traders. More specifically, upon the request of the Commission, registered broker-dealers would be required to report electronically, in machine-readable form and in accordance with instructions issued by the Commission, all information

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184 The Commission derived the total estimated one-time burdens from the following: (Computer Ops Dept. Mgr. (30 hours) at $335 per hour) + (Sr. Database Administrator (25 hours) at $281 per hour) + (Sr. Programmer (150 hours) at $292 per hour) + (Programmer Analyst (100 hours) at $193 per hour) + (Compliance Manager (20 hours) at $258 per hour) + (Compliance Attorney (10 hours) at $270 per hour) + (Compliance Clerk (20 hours) at $63 per hour) + (Sr. Systems Analyst (50 hours) at $244 per hour) + (Director of Compliance (5 hours) at $388 per hour) + (Sr. Computer Operator (35 hours) at $75 per hour) = $106,060. As noted above, the Commission acknowledged that, in some instances, multiple LTIDs may be disclosed to a registered broker-dealer for a single account. Therefore, our cost estimate factors in the cost that registered broker-dealers would need to develop systems capable of tracking multiple LTIDs.

required under paragraphs (d)(2) and (d)(3) for all transactions effected directly or indirectly by or through accounts carried by such broker-dealer for large traders and other persons for whom records must be maintained, which equal or exceed the reporting activity level. These broker-dealers would need to report a particular day's trading activity only if it equals or exceeds the "reporting activity level," but would be permitted to report all data without regard to that threshold.

The Commission estimates that the costs of the proposed reporting requirements would be $16,200,000.[185] The Commission is taking into account that the proposed rule would utilize the recordkeeping and reporting infrastructure of the existing EBS system.

Paragraph (f) of proposed Rule 13h-1 would establish a "safe harbor" for the proposed duty to monitor for Unidentified Large Traders.[186] Pursuant to proposed paragraph (a)(9), in the case of an Unidentified Large Trader, a "registered broker-dealer has reason to know whether a person is a large trader based on the transactions in NMS securities effected by or through such broker-dealer." A registered broker-dealer would not be deemed to know or to have reason to know that a person is an Unidentified Large Trader if: (1) it does not have actual knowledge that a person is a large trader; and (2) it established and maintained policies and procedures reasonably designed to assure compliance with the identification requirements of the proposed safe harbor. Paragraphs (f)(1) and (2) of the proposed rule provide the specific elements that would be required for the safe harbor. Paragraph (f)(2) of the proposed rule would require that

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185 See supra text accompanying note 151. The Commission derived the total estimated ongoing burdens from the following: (Compliance Attorney (2 hours) at $270 per hour) x (100 requests per year) x (300 potential respondents)= $16,200,000.

186 See proposed Rule 13h-1(a)(9) (defining an Unidentified Large Trader as "each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this rule that a registered broker-dealer knows or has reason to know is a large trader.")

broker-dealer monitoring policies and procedures contain systems reasonably designed to inform persons of their obligations to file proposed Form 13H and disclose their large trader status.

The Commission estimates the initial, one-time burden to establish policies and procedures pursuant to the proposed safe harbor provision would be $4,756,800.[187] The Commission estimates that the ongoing burden would be $1,215,000.[188] The Commission believes that the proposed safe harbor would reduce the burden of the monitoring requirements of the proposed rule on registered broker-dealers. Among other things, they would limit the broker-dealer's obligations to only those Unidentified Large Traders that should be readily identifiable and apparent to the broker-dealer, and would require the broker-dealer to inform such persons of their obligations to file proposed Form 13H and disclose their large trader status to the Commission.

To assist the Commission in evaluating the costs that could result from the proposed rule, the Commission requests comments on the potential costs identified in this proposal, as well as any other costs that could result from the proposed rule. The Commission asks commenters to quantify those costs, where possible, and provide analysis and data to support their views on the costs. While the Commission does not anticipate that there would be significant adverse consequences to a broker-dealer's business as a result of the proposed rule, it seeks commenters'

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187 See supra note 153. The Commission derived the total estimated one-time burdens from the following: (Sr. Programmer (10 hours) at $292 per hour) + (Compliance Manager (10 hours) at $258 per hour) + (Compliance Attorney (10 hours) at $270 per hour) + (Compliance Clerk (20 hours) at $63 per hour) + (Sr. Systems Analyst (10 hours) at $244 per hour) + (Director of Compliance (2 hours) at $388 per hour) + (Sr. Computer Operator (8 hours) at $75 per hour) x (300 potential respondents)= $3,982,800.

188 See supra note 154. The Commission derived the total estimated ongoing burdens from the following: (Compliance Attorney at (15 hours) at $270 per hour) x (300 potential respondents)= $1,215,000.

views regarding the possibility of any such impact. For instance, would the proposed rule impact a broker-dealer's ability to attract or retain its large trader customers?

In addition, the Commission requests specific comment on the following questions:

- Are there ways to further reduce the burdens of the filing requirements on large traders? Is the provision for inactive status sufficient?
- Does the capture of trade execution times in a large trader reporting system present any particular technological or other operational challenges?
- Does the potential capture of multiple LTIDs raise any particular issues?
- What other costs might registered broker-dealers incur in developing policies and procedures to monitor for Unidentified Large Traders? Are there ways to further reduce the burdens of monitoring for Unidentified Large Traders and informing them of their obligations to file Form 13H?
- Do commenters believe that the costs of operating and maintaining a large trader reporting system will result in additional costs beyond the existing EBS system?
- Are there ways to further reduce the burdens of the proposed large trader reporting system?
- Would the proposed rule have any unintended, negative consequences for the U.S. markets?

Commenters should provide specific data and analysis to support any comments they submit with respect to the costs and benefits discussed above and any other costs and benefits identified by the commenters.

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

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine 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.[189] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[190] Exchange Act 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.

The Commission is proposing Rule 13h-1 pursuant to our authority under Section 13(h) of the Exchange Act. Section 13(h)(2) requires the Commission, when engaging in rulemaking pursuant to that authority that would require every registered broker-dealer to make and keep for prescribed periods such records as the Commission by rule or regulation prescribes, to consider whether such rule is "necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of [the Exchange Act]."[191]

A. Competition

We consider in turn the impact of proposed new Rule 13h-1 on the securities markets and market participants. Information provided by market participants and broker-dealers in their registrations and filings with us informs our views on the structure of the markets they comprise.

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189 15 U.S.C. 78c(f).

190 15 U.S.C. 78w(a)(2).

191 The Commission is proposing Rule 13h-1(b) relating to identification requirements for large traders pursuant to Section 13(h)(1) of the Exchange Act, which does not require the Commission to consider the factors identified in Section 3(f), 15 U.S.C. 78c(f). Analysis of the effects, including the considerations under Section 23(a), of proposed Rule 13h-1(b) is discussed above in Sections IV and V.

We begin our consideration of potential competitive impacts with observations of the current structure of these markets.

The securities trading industry is a competitive one with reasonably low barriers to entry. The intensity of competition across trading platforms in this industry has increased in the past decade as a result of a number of factors, including market reforms and technological advances. This increase in competition has resulted in decreases in market concentration, more competition among trading centers, a proliferation of trading platforms competing for order flow, and decreases in trading fees.

The reasonably low barriers to entry for trading centers are evidenced, in part, by the fact that new entities, primarily alternative trading systems ("ATSs"), continue to enter the market.[192] For example, currently, there are approximately 50 registered ATSs. In addition, the Commission within the past few years has approved applications by two entities – BATS and Nasdaq – to become registered as national securities exchanges for trading equities, and approved proposed rule changes by two existing exchanges – International Securities Exchange, LLC and Chicago Board Options Exchange, Incorporated – to add equity trading facilities to their existing options business. We believe that competition among trading centers has been facilitated by Rule 611 of Regulation NMS,[193] which encourages quote-based competition between trading centers; Rule 605 of Regulation NMS,[194] which empowers investors and broker-

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192 See Securities Exchange Act Release No. 60997 (Nov. 13, 2009), 74 FR 61208, 61234 (Nov. 23, 2009) (discussing the reasonably low barriers to entry for ATSs and that these reasonably low barriers to entry have generally helped to promote competition and efficiency).

193 17 CFR 242.611.

194 17 CFR 242.605.

dealers to compare execution quality statistics across trading centers; and Rule 606 of Regulation NMS,[195] which enables customers to monitor order routing practices.

Broker-dealers are required to register with the Commission and at least one SRO. The broker-dealer industry, including market makers, is a competitive industry with most trading activity concentrated among several larger participants and thousands of smaller participants competing for niche or regional segments of the market. There are approximately 5,178 registered broker-dealers, of which approximately 890 are small broker-dealers.[196]

Larger broker-dealers often enjoy economies of scale over smaller broker-dealers and compete with each other to service the smaller broker-dealers, who are both their competitors and customers. The reasonably low barriers to entry for broker-dealers are evidenced, for example, by the fact that the average number of new broker-dealers entering the market each year between 2001 and 2008 was 389.[197]

As discussed above, the Commission acknowledges that the proposal would entail certain costs. In particular, requiring registered broker-dealers to establish recordkeeping systems to capture the required information, in particular the new fields that are not currently captured under the existing EBS system, would require one-time initial expenses, as discussed above. In addition, to utilize the proposed safe harbor, registered broker-dealers would need to implement policies and procedures to monitor their customers' trading in order to determine whether

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195 17 CFR 242.606.

196 These numbers are based on a review of 2007 and 2008 FOCUS Report filings reflecting registered broker-dealers, and discussions with SRO staff. The number does not include broker-dealers that are delinquent on FOCUS Report filings.

197 This number is based on a review of FOCUS Report filings reflecting registered broker-dealers from 2001 through 2008. The number does not include broker-dealers that are delinquent on FOCUS Report filings. New registered broker-dealers for each year during the period from 2001 through 2008 were identified by comparing the unique registration number of each broker-dealer filed for the relevant year to the registration numbers filed for each year between 1995 and the relevant year.

customers' trades would trigger the threshold for large trader status. Preliminarily, the Commission does not believe that these expenses would adversely affect competition.

In our judgment, the costs of proposed Rule 13h-1 would not be so large as to significantly raise barriers to entry, or otherwise alter the competitive landscape of the industries involved because the incremental costs of Rule 13(h) that would be incurred by broker-dealers would be small relative to the costs of complying with the existing EBS system.[198] In industries characterized by reasonably low barriers to entry and competition, the viability of some of the less successful competitors may be sensitive to regulatory costs. Nonetheless, we believe that the broker-dealer industry would remain competitive, despite the costs associated with implementing proposed new Rule 13h-1, even if those costs influence the entry or exit decisions of individual broker-dealer firms at the margin. The Commission does not expect that the costs associated with proposed new Rule 13h-1, which are small relative to the costs of complying with the existing EBS system, would be a determining factor in a broker-dealer's entry or exit decision or decision to accept large trader clients because the volume of trading associated with large traders and resultant revenue that could be gained by servicing a large trader would outweigh the costs associated with the proposed rule.

Further, the Commission would not be compelled to disclose any information required to be kept or reported under Section 13(h) of the Exchange Act, including information kept or reported pursuant to proposed Rule 13h-1.[199] Accordingly, information and trading data that the Commission would obtain pursuant to the proposed rule would not be shared with others and would not be available to other large traders or broker-dealers.

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198 See supra Sections IV (Paperwork Reduction Act) and V (Consideration of Costs and Benefits) for a detailed description of the expected costs.

199 See supra text following note 89.

The approach of proposed new Rule 13h-1 would advance the purposes of the Exchange Act in a number of significant ways. In light of recent market turmoil and the increasing prominence, sophistication, and trading capacity of large traders, the Commission believes it should further enhance its ability to collect and analyze information on large traders. The Commission believes that the proposed large trader reporting system could enhance its ability to identify large traders and collect trading data on their activity at a time when, for example, many such traders employ rapid algorithmic systems that quote and trade in huge volumes. The proposed large trader reporting system would provide a basic set of tools necessary to allow the Commission to monitor and analyze more readily and efficiently the impact of large traders, including high-frequency traders, on the securities markets.

The Commission preliminarily believes that the proposal to establish the large trader reporting system would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In particular, the Commission believes that the proposal would implement the Commission's authority under Section 13(h) of the Exchange Act at a crucial time when large traders play an increasingly prominent role in the securities markets.

B. Capital Formation

As discussed above, the Commission preliminary believes that the proposed rule will have little to no direct impact on capital formation. However, proposed new Rule 13h-1 is intended to facilitate the Commission's ability to monitor the impact on the securities markets of securities transactions involving a substantial volume of shares, a large fair market value or a large exercise value, as well as to assist the Commission's enforcement of the federal securities laws. As noted in Paragraph B of Section II, the proposed rule focuses on the core of the large trader reporting system – the entities that control persons that exercise investment discretion and

are responsible for trading large amounts of securities. As these entities can represent significant sources of liquidity and overall trading volume, their trading may have a direct impact on the cost of capital of securities issuers. As such, the Commission's ability to promptly obtain information from registered broker-dealers on large trader activity should better enable the Commission to understand the impact of large traders on the securities markets. As the Commission improves its understanding, it should be better positioned to administer and enforce the federal securities laws, thereby promoting the integrity and efficiency of the markets, as well as, ultimately, investor confidence and capital formation. For example, the information collected from Rule 13h-1(b) would allow for a more timely reconstruction of trading activity during a market crisis and thus could better position the Commission to craft any regulatory responses.

Proposed new Rule 13h-1 is intended to facilitate the Commission's ability to monitor the impact on the securities markets of securities transactions involving a substantial volume of shares, a large fair market value or a large exercise value, as well as to assist the Commission's enforcement of the federal securities laws. As noted in Paragraph B of Section II, the proposed rule focuses on the core of the large trader reporting system – the entities that control persons that exercise investment discretion and are responsible for trading large amounts of securities. As these entities can represent significant sources of liquidity and overall trading volume, their trading may have a direct impact on the cost of capital of securities issuers. As such, the Commission's ability to promptly obtain information from registered broker-dealers on large trader activity should assist the Commission's efforts to indirectly promote capital formation by better enabling the Commission to understand the impact of large traders on the securities markets. For example, the information collected from proposed Rule 13h-1(b) would allow for a more timely reconstruction of trading activity of large traders during a market crisis, and thus

could better position the Commission to craft any regulatory responses. Specifically, we believe that, armed with more current and accurate trading information on large traders, the Commission would be able to identify regulatory and potential enforcement issues more quickly. Thus, proposed Rule 13h-1 could help maintain investor confidence in the markets, and thus could add depth and liquidity to the markets and promote capital formation. Further, the Commission preliminarily believes that the requirements imposed on all large traders, whether U.S. or foreign, are necessary and appropriate, not unduly burdensome, and would be imposed uniformly on all affected entities (whether U.S. or foreign).

C. Efficiency

Proposed new Rule 13h-1 is designed to achieve the appropriate balance between our goals of monitoring the impact on the securities markets of securities transactions by large traders, and assisting the Commission's enforcement of the federal securities laws, on the one hand, and the effort to minimize the burdens and costs associated with implementing a proposed large trader system.

The Commission preliminarily believes that the disclosure by registered broker-dealers to regulators that would be achieved by the proposed large trader reporting system would promote efficiency by enabling the Commission to go beyond the EBS system, which permits investigations of small samples of securities over a limited period of time, to instead assist with large-scale investigations and market reconstructions involving numerous stocks during peak trading volume periods. The proposal also would enable the Commission to receive from registered broker-dealers contemporaneous information on large traders' trading activity much more promptly than is currently the case with the EBS system. With a system designed specifically to help the Commission reconstruct and analyze time-sequenced trading data, the

Commission could more quickly investigate the nature and causes of unusual market movements and initiate investigations and regulatory actions where warranted.

D. Request for Comment

The Commission requests comment on all aspects of this analysis and, in particular, on whether the proposed large trader reporting system would place a burden on competition, as well as the effect of the proposal on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[200] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[201] of the Administrative Procedure Act,[202] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities."[203] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not "have a significant economic impact on a substantial number of small entities."[204]

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200 5 U.S.C. 601 et seq.

201 5 U.S.C. 603(a).

202 5 U.S.C. 551 et seq.

203 Although Section 601(b) of the RFA defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0-10, 17 CFR 240.0-10. See Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS-305).

204 See 5 U.S.C. 605(b).

Paragraph (a) of Rule 0-10 provides that for purposes of the Regulatory Flexibility Act, a small entity when used with reference to a "person'" other than an investment company means a person that, on the last day of its most recent fiscal year, had total assets of $5 million or less.[205] In reference to a broker-dealer, small entity means total capital of less than $500,000 and not affiliated with any person that is not a small business or small organization. Pursuant to Section 605(b), the Commission preliminarily believes that proposed Rule 13h-1 and Form 13H would not, if adopted, have a significant economic impact on a substantial number of small entities.

Proposed Rule 13h-1 and Form 13H would require self-identification by large traders, which is a term that, as discussed below, would implicate persons and entities with the resources and capital necessary to transact securities in substantial volumes relative to overall market volume in publicly traded securities. Specifically, the proposed rule defines "large trader" as a person that effects transactions in an "identifying activity level" of: (1) 2 million shares, or shares with a fair market value of $20 million, effected during a calendar day; or (2) 20 million shares, or shares with a fair market value of $200 million, effected during a calendar month.

The Commission anticipates that the types of entities that would identify as large traders would include, for example, broker-dealers, financial holding companies, investment advisers, and firms that trade for their own account. The Commission does not believe that any small entities would be engaged in the business of trading, over the course of the applicable measuring period, in a volume that approaches the threshold levels. Because the proposed rule focuses on parent companies and is designed to identify the largest market participants by volume or fair market value of trading, the Commission believes that a large trader that trades in such

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205 17 CFR 240.0-10(a). Investment companies are small entities when the investment company, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less at the end of its most recent fiscal year. 17 CFR 270.0-10(a).

substantial volumes would necessarily have considerable assets (beyond the level of a small entity) to be able to conduct such trading.

In addition, proposed Rule 13h-1 would apply to registered broker-dealers that serve large trader customers. The Commission believes that, given the considerable volume in which a large trader as defined in the proposed rule would effect transactions, particularly in the case of high-frequency traders, registered broker-dealers servicing large trader customers or broker-dealers that are large traders themselves likely would be larger entities, with total capital greater than $500,000, that have systems and capacities capable of handling the trading associated with such accounts. Further, because the trading capacities of large traders will typically necessitate the services of sophisticated broker-dealers likely to be well capitalized entities or affiliated with well capitalized entities, the Commission does not believe that any broker-dealer that maintains large trader customers would be "not affiliated with any person that is not a small business or small organization" under Rule 0-10.

The Commission solicits comment as to whether proposed Rule 13h-1 and Form 13H would have a significant economic impact on a substantial number of small entities. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[206] the Commission must advise the OMB as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) an annual effect on the economy of $100 million or more

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206 Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

(either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of the proposed rule on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Statutory Authority

Pursuant to the Exchange Act and particularly, Sections 13(h) and 23(a) thereof, 15 U.S.C. 78m and 78w, the Commission proposes new Rule 13h-1 under the Exchange Act that would implement a large trader reporting system to provide the Commission with a mechanism to identify large traders, and the affiliates, accounts, and transactions of large traders.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements; Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The authority citation for Part 240 continues to read in part as follows:

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

* * * * *

2. Add § 240.13h-1 to read as follows:

§ 240.13h-1 Large trader reporting system.

(a) Definitions. -- For purposes of this section –

(1) The term large trader means any person that directly or indirectly, including through other persons controlled by such person, exercises investment discretion over one or more accounts and effects transactions for the purchase or sale of any NMS security for or on behalf of such accounts, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than the identifying activity level.

(2) The term person has the same meaning as in Section 13(h)(8)(E) of the Securities Exchange Act of 1934.

(3) The term control (including the terms controlling, controlled by and under common control with) means 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 securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote or direct the vote of 25% or more of a class of voting securities of an entity or has the power to sell or direct the sale of 25% or more of a class of voting securities of such entity, or in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that entity.

(4) The term investment discretion has the same meaning as in Section 3(a)(35) of the Securities Exchange Act of 1934. A person's employees who exercise investment discretion within the scope of their employment are deemed to do so on behalf of such person.

(5) The term NMS security has the meaning provided for in Rule 600(b)(46) under the Securities Exchange Act of 1934.

(6) The term transaction or transactions means all transactions in NMS securities, including exercises or assignments of option contracts, except for the following transactions:

(i) any journal or bookkeeping entry made to an account in order to record or memorialize the receipt or delivery of funds or securities pursuant to the settlement of a transaction;

(ii) any transaction that is part of an offering of securities by or on behalf of an issuer, or by an underwriter on behalf of an issuer, or an agent for an issuer, whether or not such offering is subject to registration under the Securities Act of 1933, provided, however, that this exemption shall not include an offering of securities effected through the facilities of a national securities exchange;

(iii) any transaction that constitutes a gift;

(iv) any transaction effected by a court appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate;

(v) any transaction effected pursuant to a court order or judgment;

(vi) any transaction effected pursuant to a rollover of qualified plan or trust assets subject to Section 402(a)(5) of the Internal Revenue Code; or

(vii) any transaction between an employer and its employees effected pursuant to the award, allocation, sale, grant or exercise of a NMS security, option or other right to acquire securities at a pre-established price pursuant to a

plan which is primarily for the purpose of an issuer benefit plan or compensatory arrangement.

(7) The term identifying activity level means: aggregate transactions in NMS securities that are equal to or greater than: (1) during a calendar day, either two million shares or shares with a fair market value of $20 million; or (2) during a calendar month, either twenty million shares or shares with a fair market value of $200 million.

(8) The term reporting activity level means:

(i) each transaction in NMS securities, effected in a single account during a calendar day, that is equal to or greater than 100 shares;

(ii) any other transaction in NMS securities, effected in a single account during a calendar day, that a registered broker-dealer may deem appropriate; or

(iii) such other amount that may be established by order of the Commission from time to time.

(9) The term Unidentified Large Trader means each person who has not complied with the identification requirements of paragraphs (b)(1) and (b)(2) of this rule that a registered broker-dealer knows or has reason to know is a large trader. A registered broker-dealer has reason to know whether a person is a large trader based on the transactions in NMS securities effected by or through such broker-dealer.

(b) Identification requirements for large traders.

(1) Form 13H. Except as provided in paragraph (b)(3), each large trader shall file electronically Form 13H (17 CFR 249.327) with the Commission, in accordance with the instructions contained therein:

(i) promptly after first effecting aggregate transactions, or after effecting aggregate transactions subsequent to becoming inactive pursuant to paragraph (b)(3) of this rule, equal to or greater than the identifying activity level;

(ii) within 45 days after the end of each full calendar year; and

(iii) promptly following the end of a calendar quarter in the event that any of the information contained in a Form 13H filing becomes inaccurate for any reason.

(2) Disclosure of large trader status. Each large trader shall disclose to the registered broker-dealers effecting transactions on its behalf its large trader identification number and each account to which it applies. Each large trader also shall disclose its large trader identification number to all others with whom it collectively exercises investment discretion.

(3) Filing requirement.

(i) Compliance by controlling person. A large trader shall not be required to separately comply with the requirements of paragraph (b) if a person who controls the large trader complies with all of the requirements under paragraphs (b)(1), (b)(2), and (b)(4) applicable to such large trader with respect to all of its accounts.

(ii) Compliance by controlled person. A large trader shall not be required to separately comply with the requirements of paragraph (b) if one or more persons controlled by such large trader collectively comply with all of the requirements under paragraphs (b)(1), (b)(2), and (b)(4) applicable to such large trader with respect to all of its accounts.

(iii) Inactive status. A large trader that has not effected aggregate transactions at any time during the previous full calendar year in an amount equal to or greater than the identifying activity level at any time during the year shall become inactive upon filing a Form 13H and thereafter shall not be required to file Form 13H or disclose its large trader status unless and until its transactions again are equal to or greater than the identifying activity level. A large trader that has ceased operations may elect to become inactive by filing an amended Form 13H to indicate its terminated status.

(4) Other information. Upon request, a large trader must promptly provide additional descriptive or clarifying information that would allow the Commission to further identify the large trader and all accounts through which the large trader effects transactions.

(c) Aggregation.

(1) Transactions. For the purpose of determining whether a person is a large trader, the following shall apply:

(i) the volume or fair market value of transactions in equity securities and the volume or fair market value of the equity securities underlying transactions in options on equity securities, purchased and sold only, shall be aggregated;

(ii) the fair market value of transactions in options on a group or index of equity securities (or based on the value thereof), purchased and sold only, shall be aggregated; and

(iii) under no circumstances shall a person be permitted to subtract, offset, or net purchase and sale transactions, in equity securities or option contracts,

and among or within accounts, when aggregating the volume or fair market value of transactions effected under this rule.

(2) Accounts. Under no circumstances shall a person be permitted to disaggregate accounts to avoid the identification requirements of this rule.

(d) Recordkeeping requirements for broker and dealers.

(1) Generally. Every registered broker-dealer shall maintain records of all information required under paragraphs (d)(2) and (d)(3) for all transactions effected directly or indirectly by or through (i) an account such broker-dealer carries for a large trader or an Unidentified Large Trader, (ii) an account over which such broker-dealer exercises investment discretion together with a large trader or an Unidentified Large Trader, or (iii) if the broker-dealer is a large trader, any proprietary or other account over which such broker-dealer exercises investment discretion. Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader, the broker-dealer effecting transactions directly or indirectly for such large trader or Unidentified Large Trader shall maintain records of all of the information required under paragraphs (d)(2) and (d)(3) for those transactions.

(2) Information. The information required to be maintained for all transactions shall include:

(i) the clearing house number of the entity maintaining the information and the clearing house numbers of the entities on the opposite side of the transaction;

(ii) identifying symbol assigned to the security;

(iii) date transaction was executed;

(iv) the number of shares or option contracts traded in each specific transaction; whether each transaction was a purchase, sale, or short sale; and, if an option contract, whether the transaction was a call or put option, an opening purchase or sale, a closing purchase or sale, or an exercise or assignment;

(v) transaction price;

(vi) account number;

(vii) identity of the exchange or other market center where the transaction was executed.

(viii) a designation of whether the transaction was effected or caused to be effected for the account of a customer of such registered broker-dealer, or was a proprietary transaction effected or caused to be effected for the account of such broker-dealer;

(ix) if part or all of an account's transactions at the registered broker-dealer have been transferred or otherwise forwarded to one or more accounts at another registered broker-dealer, an identifier for this type of transaction; and if part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise received from one or more other registered broker-dealers, an identifier for this type of transaction;

(x) if part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise received from another account at the reporting broker-dealer, an identifier for this type of transaction; and if part or all of an account's transactions at the reporting broker-dealer have

been transferred or otherwise forwarded to one or more other accounts at the reporting broker-dealer, an identifier for this type of transaction;

(xi) if a transaction was processed by a depository institution, the identifier assigned to the account by the depository institution;

(xii) the time that the transaction was executed; and

(xiii) the large trader identification number(s) associated with the account, unless the account is for an Unidentified Large Trader.

(3) Information relating to Unidentified Large Traders. With respect to transactions effected directly or indirectly by or through the account of an Unidentified Large Trader, the information required to be maintained for all transactions also shall include: such Unidentified Large Trader's name, address, date the account was opened, and tax identification number(s).

(4) Retention. The records and information required to be made and kept pursuant to the provisions of this rule shall be kept for such periods of time as provided in § 240.17a-4(b).

(5) Availability of information. The records and information required to be made and kept pursuant to the provisions of this rule shall be available on the morning after the day the transactions were effected (including Saturdays and holidays).

(e) Reporting requirements for brokers and dealers. Upon the request of the Commission, every registered broker-dealer who is itself a large trader, exercises investment discretion over an account together with a large trader or an Unidentified Large Trader, or carries an account for a large trader or an Unidentified Large Trader shall electronically report to the Commission, using the infrastructure supporting 17 CFR 240.17a-25, in machine-readable form and in accordance with instructions issued by the Commission, all information required under paragraphs (d)(2) and (d)(3) for all transactions effected directly or indirectly by or through accounts carried by such

broker-dealer for large traders and Unidentified Large Traders, equal to or greater than the reporting activity level. Additionally, where a non-broker-dealer carries an account for a large trader or an Unidentified Large Trader, the broker-dealer effecting such transactions directly or indirectly for a large trader shall electronically report using the infrastructure supporting 17 CFR 240.17a-25, in machine-readable form and in accordance with instructions issued by the Commission, all information required under paragraphs (d)(2) and (d)(3) for such transactions equal to or greater than the reporting activity level. Such reports shall be submitted to the Commission before the close of business on the day specified in the request for such transaction information.

(f) Monitoring safe harbor. For the purposes of this rule, a registered broker-dealer who either is a large trader, exercises investment discretion over an account together with a large trader or an Unidentified Large Trader, carries an account for a large trader or an Unidentified Large Trader, or effects transactions directly or indirectly for a large trader where a non-broker-dealer carries the account shall not be deemed to know or have reason to know that a person is a large trader if it establishes policies and procedures reasonably designed to assure compliance with the identification requirements of this rule and does not have actual knowledge that a person is a large trader. Policies and procedures shall be deemed to satisfy this requirement if they include:

(1) systems reasonably designed to detect and identify Unidentified Large Traders based upon transactions effected through an account or a group of accounts considering account name, tax identification number, or other information readily available to such broker-dealer; and

(2) systems reasonably designed to inform Unidentified Large Traders of their obligations to file Form 13H and disclose large trader status under this rule.

(g) Exemptions. Upon written application or upon its own motion, the Commission may by order exempt, upon specified terms and conditions or for stated periods, any person or class of persons or any transaction or class of transactions from the provisions of this rule to the extent that such exemption is consistent with the purposes of the Securities Exchange Act.

PART 249 -- FORMS, SECURITIES EXCHANGE ACT OF 1934

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

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

* * * * *

4. Add § 249.327 to read as follows:

§ 249.327 Form 13H Information required on large traders pursuant to Section 13(h) of the Securities Exchange Act of 1934 and rules thereunder.

This form shall be used by persons that are large traders required to furnish identifying information to the Commission pursuant to Section 13(h)(1) of the Securities Exchange Act of 1934 [15 U.S.C. § 78m(h)(1)] and Rule 13h-1(b) thereunder [§ 240.13h-1(b) of this chapter].

Note: The text of Form 13H does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission
Washington, DC 20549
FORM 13H

Information Required Regarding Large Traders Pursuant To Section 13(h) of the Securities Exchange Act of 1934 and Rules Thereunder

[ ] INITIAL FILING: Date identifying transactions first effected (mm/dd/yyyy)_____

[ ] ANNUAL FILING: Calendar year ending _____
Items and schedules being updated_____

[ ] INTERIM FILING: Items and schedules being corrected_____

Effective date of each correction_____

[ ] INACTIVE STATUS: Date commencing inactive status (mm/dd/yyyy)_____

[ ] TERMINATION FILING: Effective date (mm/dd/yyyy)_____

[ ] REACTIVATED STATUS: Date identifying transactions first effected, post-inactive status (mm/dd/yyyy)_____

_____

Name of Large Trader

_____ _____

LTID Taxpayer Identification Number

_____

Business Address (Street, City, State, Zip)

Telephone No. (___) ___ - ____ Facsimile No. (___) ___ - ____ Email _____

The Form, schedules, and continuation sheets must be submitted by a natural person who either is the large trader or is a person authorized by the large trader to make this submission. If this authorized person is anyone other than the large trader named above, complete the item immediately below:

_____

Name and Title of Authorized Person (Last, First, Middle Initial)

_____

Relationship to Large Trader

_____

Business Address (Street, City, State, Zip)

Telephone No. (___) ___ - ____ Facsimile No. (___) ___ - ____ Email _____

ATTENTION

Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a). Intentional misstatements or omissions of facts may result in civil fines and other sanctions pursuant to the Securities Exchange Act of 1934.

The authorized person signing this form represents that all information contained in the form, schedules, and continuation sheets is true, correct, and complete. It is understood that all information whether contained in the form, schedules, or continuation sheets, is considered an integral part of this form and that any amendment represents that all unamended information remains true, correct, and complete.

Pursuant to the Securities Exchange Act of 1934, the undersigned has caused this form to be signed on its behalf in the City of _____ and the State of _____ on the _____ day of _____, 2____.

_____

Signature of Person Authorized to Submit this Form

FORM 13H
INFORMATION REQUIRED OF ALL LARGE TRADERS

ITEM 1. BUSINESSES OF THE LARGE TRADER (check as many as applicable)

[ ] Broker or Dealer
[ ] Investment Adviser
[ ] Insurance Company
[ ] Other Financial Institution
[ ] Commodity Pool Operator
[ ] Bank
[ ] Investment Company registered under the Investment Company Act
[ ] Pension Trustee
[ ] Holding Company
[ ] Government Securities Broker or Dealer
[ ] Municipal Securities Broker or Dealer
[ ] Futures Commission Merchant
[ ] Other (specify) _____
[ ] Hedge Fund or other Fund not registered under the Investment Company Act

ITEM 2. SECURITIES AND EXCHANGE COMMISSION REGISTRATION

Does the large trader, or any of its affiliates, file any forms with the Commission?

[ ] Yes [ ] No

If yes, specify the forms filed:

-- Use Continuation Sheets if Necessary --

ity	Form(s) Filed	SEC File No. or CRD Number (if applicable)

ITEM 3. REGULATED ENTITIES

(a) Is the large trader or any of its affiliates registered with the CFTC as a "registered trader" pursuant to sections 4i and 9 of the Commodity Exchange Act?

[ ] Yes [ ] No

If yes, specify the registration number: _____

Is the large trader or any of its affiliates otherwise registered under the Commodity Exchange Act?

[ ] Yes [ ] No

If yes, specify the type of registration and number:

_____

_____

_____

_____

-- Use Continuation Sheets if Necessary --

(b) Is the large trader or any of its affiliates a bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?

[ ] Yes [ ] No

If yes, identify each entity and its bank regulator:

_____ _____

_____ _____

(c) Is the large trader or any of its affiliates an insurance company?

[ ] Yes [ ] No

If yes, identify each entity and its insurance regulator:

_____ _____

_____ _____

(d) Is the large trader or any of its affiliates regulated by a foreign regulator?

[ ] Yes [ ] No

If yes, identify each entity and its foreign regulator(s):

_____ _____

_____ _____

ITEM 4. ORGANIZATION/INDIVIDUAL INFORMATION

Complete and submit Schedule 4 with this Form.

ITEM 5. LARGE TRADER AFFILIATES

Does the large trader have any affiliates that either exercise investment discretion over accounts that hold NMS securities or that beneficially own NMS securities?

[ ] Yes [ ] No

If yes, identify each affiliate and its relationship to the large trader below.

-- Use Continuation Sheets if Necessary --

Name	Business	Relationship to the Large Trader	LTID (if any)

ITEM 6. LIST OF ACCOUNTS OVER WHICH THE LARGE TRADER EXERCISES INVESTMENT DISCRETION

Complete and submit Schedule 6 with this Form.

SCHEDULE 4 TO FORM 13H

Page ___ of ___ Name of Large Trader _____ LTID _____

ITEM 1. LARGE TRADER ORGANIZATION (check as many as apply)

[ ] Self-Employed (for individuals)
[ ] Otherwise Employed (for individuals)
[ ] Trustee
[ ] Limited Liability Company
[ ] Partnership
[ ] Limited Partnership
[ ] Corporation
[ ] Other _____

Complete the following for each general partner, and in the case of limited partnerships, each limited partner that is the owner of more than a 10 percent financial interest in the accounts of the large trader:

-- Use Continuation Sheets if Necessary --

Name	Status (check one for each)
_____	[ ] General Partner [ ] Limited Partner
_____	[ ] General Partner [ ] Limited Partner
_____	[ ] General Partner [ ] Limited Partner
_____	[ ] General Partner [ ] Limited Partner
_____	[ ] General Partner [ ] Limited Partner
_____	[ ] General Partner [ ] Limited Partner
_____	[ ] General Partner [ ] Limited Partner

Complete the following for each executive officer, director, or trustee of a large trader corporation or trustee:

-- Use Continuation Sheets if Necessary --

Name	Status (check one for each)
_____	[ ] Officer [ ] Director [ ] Trustee
_____	[ ] Officer [ ] Director [ ] Trustee
_____	[ ] Officer [ ] Director [ ] Trustee
_____	[ ] Officer [ ] Director [ ] Trustee
_____	[ ] Officer [ ] Director [ ] Trustee
_____	[ ] Officer [ ] Director [ ] Trustee
_____	[ ] Officer [ ] Director [ ] Trustee

ITEM 2. JURISDICTION IN WHICH THE LARGE TRADER ENTITY IS INCORPORATED OR ORGANIZED:

_____

(city, state)

ITEM 3. PRINCIPAL PLACE OF BUSINESS, IF DIFFERENT THAN INFORMATION PROVIDED ON THE COVER PAGE:

_____

(street, city, state, zip)

ITEM 4. DESCRIBE THE NATURE OF THE LARGE TRADER ENTITY'S BUSINESS

_____

SCHEDULE 6 TO FORM 13H

LIST OF ACCOUNTS OVER WHICH THE LARGE TRADER EXERCISES INVESTMENT DISCRETION

Page ___ of ___ Name of Large Trader _____ LTID _____

ITEM 1. DESIGNATE THE PERSON(S) TO CONTACT FOR INFORMATION REGARDING TRANSACTIONS EFFECTED THROUGH THE ACCOUNTS LISTED ON THIS SCHEDULE:

-- Use Continuation Sheets if Necessary --

_____

Name and Title of Designated Person

_____

Business Address (street, city, state, zip)

Telephone No. (___) ___ - ____ Facsimile No. (___) ___ - ____ Email_____

ITEM 2. IDENTIFICATION OF ACCOUNTS

-- Use Continuation Sheets if Necessary --

Broker-Dealer	Broker-Dealer Account Number	Account Name	LTIDs of Other Large Traders That Exercise Investment Discretion Over the Account

Large traders are required to disclose their LTID to their executing broker-dealers, including those listed on this schedule if applicable, and to comply with the identification requirements of Rule 13h-1.

INSTRUCTIONS FOR FORM 13H

A. Instructions for Form 13H—Cover Page.
Type of Filing. Indicate the type of Form 13H filing by checking the appropriate box at the top of the cover page to Form 13H.

If the filing is an "Initial Filing," indicate the first date on which the aggregate number of transactions effected reached the identifying activity level. An initial filing must include a manually signed Form 13H and all applicable Schedules.

If the filing is an "Annual Filing," indicate the ending date of the applicable calendar year and list the specific Items or Schedules that are amended or changed. If no information has changed, the large trader need only complete and sign the cover pages.

If the filing is an "Interim Filing" indicate the Items and Schedules being corrected and the effective date(s) of the corrections. "Interim Filings" must be filed promptly following the end of a calendar quarter in the event that any of the information contained in a Form 13H filing becomes inaccurate for any reason. A large trader must file an "Interim Filing," when, for example, it changes its name, business address, organization type (e.g., a large trader partnership reincorporates as a limited liability company, or regulatory status (e.g., a hedge fund registers under the Investment Company Act), or when it adds or closes brokerage accounts through which it trades. A large trader also must file an "Interim Filing" to reflect changes in affiliations (e.g., the large trader acquires or is acquired by another entity, an existing affiliate becomes a large trader) and joint account management (e.g., a large trader assumes sole management authority over an account that formerly was jointly managed with another large trader).

If the filing is for "Inactive Status," indicate the date that the large trader qualified for inactive status. A large trader shall become inactive, and exempt from the filing and self-identification requirements upon filing for inactive status until the identifying activity level is reached again.

If the filing is for "Reactivated Status," indicate the date that the aggregate number of transactions again reached or exceeded the identifying activity level.

All filings, other than the "Initial Filing," must indicate the applicable LTID assigned by the Commission and the Taxpayer Identification Number of the large trader. A large trader of inactive status that subsequently resumes activities requiring it to file Form 13H will retain the LTID initially assigned by the Commission and must include that LTID in its filing for "Reactivated Status."

B. Instructions for Form 13H—Items 1 through 5.
Item 1. Business of the Large Trader. Specify the type of business engaged in by the large trader by checking one or more of the listed business types. If the large trader is engaged in more than one type of business, check each type that applies to the large trader. If the large trader is an individual, check "Other" and specify the occupation of such individual. Large trader trust companies and thrift institutions must check "Other Financial Institution." The large trader must disclose in Item 1 only those businesses in which it is directly engaged; businesses

engaged in by affiliates of the large trader must be disclosed in Item 5.

Item 2. SEC Registrations. Indicate whether the large trader or any of its affiliates files forms with the Commission. If "Yes" is checked, identify the entity and the applicable form(s) filed.

SEC file numbers may be obtained through EDGAR, and CRD numbers may be obtained by calling the member services office of the Financial Industry Regulatory Authority (FINRA), during normal business hours.

Item 3. Regulated Entities.
Indicate whether the large trader or any of its affiliates is registered with the Commodity Futures Trading Commission as a "Reporting Trader" pursuant to Sections 4i and 9 of the Commodity Exchange Act, or otherwise is registered under the Commodity Exchange Act. If so, for each entity, specify the number and type of registration. Indicate whether the large trader or any of its affiliates is a bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank. If so, for each entity, identify the bank regulator. Indicate whether the large trader or any of its affiliates is an insurance company and, if so, identify each entity and its insurance regulator. Indicate whether the large trader or any of its affiliates is regulated by a foreign regulator. If so, for each entity, identify the foreign regulator(s). Unlike Item 1, Item 3 applies to the large trader and its affiliates.

Item 4 and Schedule 4. Type of Large Trader.
The large trader must fill out Schedule 4, which captures basic organizational information. The term "executive officer," used in Schedule 4, means "policy-making officer" and otherwise is interpreted in accordance with Rule 16a-1(f) under the Exchange Act. If the entity is incorporated in more than one jurisdiction, all jurisdictions must be identified. All terms, including "limited liability company," have the meanings ascribed to them in the United States.

Item 5. Large Trader Affiliates.
Indicate in Item 5a whether the large trader has any affiliates that either exercise investment discretion over accounts that hold or beneficially own NMS securities. For purposes of the Form, an "affiliate" is any person that, directly or indirectly, controls, is under common control with, or is controlled by the large trader. If "Yes" is checked, identify all affiliates, and describe their businesses and relationships to the large trader (e.g., direct subsidiary, general partner in Limited Partnership A). Disclose in Item 5b names and LTIDs of affiliated large traders (if any).

Item 6 and Schedule 6. List of Large Trader Accounts.
All large traders must fill out Schedule 6, which requires a large trader to list information about the accounts over which the large trader exercises investment discretion. Provide the following information: the name of the registered broker-dealer that holds the account, the account number, the account name, and, if another large trader also exercises investment discretion over an account, the LTID of that other large trader. Large traders may attach internally produced lists of accounts to the Schedule provided that such lists capture all required information in a format substantially similar to the Schedule. If the large trader does not know the LTID of the other large traders at the time of filing (e.g., when it files its "Initial Filing"), it must submit

promptly an "Interim Filing" upon learning those LTIDs. Provide also name(s) and contact information for the person(s) designated to provide information about the transactions effected through these accounts.

Qualifications of the Designated Contact Person. The large trader is required to designate a contact person for information regarding the accounts listed on the Schedule. The designated contact person must: (i) be a natural person; (ii) be employed by or otherwise affiliated with the large trader; (iii) be authorized by the large trader to respond promptly to any inquiries or requests from the Commission.

Requests for Information. The Commission may require the large trader to provide descriptive or clarifying information about the information disclosed in the Form 13H.

* * * * *

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

April 14, 2010

Commissioner Walter and Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61918 / April 15, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-12628

In the Matter of **ZURICH CAPITAL MARKETS INC.,** **Respondent.**	**NOTICE OF PROPOSED PLAN OF DISTRIBUTION AND OPPORTUNITY FOR COMMENT**

Notice is hereby given, pursuant to Rule 1103 of the Securities and Exchange Commission's ("Commission") Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1103, that the Division of Enforcement has submitted to the Commission a proposed plan for the distribution of the Fair Fund in this matter ("Distribution Plan").

On May 7, 2007, the Commission entered an Order instituting settled administrative and cease-and-desist proceedings against Zurich Capital Markets Inc. ("ZCM" or "Respondent") in this matter ("Order"). *In the Matter of Zurich Capital Markets Inc.*, Admin. Proc. File No. 3-12628, Securities Exchange Act of 1934 Release No. 55711 (May 7, 2007). In the Order, the Commission authorized the establishment of a Fair Fund, comprised of $16,809,354.42 in disgorgement, prejudgment interest, and penalties paid by Respondent, for distribution to the mutual funds affected by certain hedge funds' market timing trading for which ZCM provided leverage financing. The Order provided that the Fair Fund was to be distributed pursuant to a distribution plan developed by Respondent.

OPPORTUNITY FOR COMMENT

Pursuant to this Notice, all interested parties are advised that they may print a copy of the Distribution Plan from the Commission's public website, http://www.sec.gov. Interested parties may also obtain a written copy of the Distribution Plan by submitting a written request to George S. Canellos, Regional Director, United States Securities and Exchange Commission, 3 World Financial Center, Room 400, New York, NY 10281. All persons who desire to comment on the Distribution Plan may submit their comments, in writing, within 30 days of the date of this Notice:

1. by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-1090;
2. by using the Commission's Internet comment form (http://www.sec.gov/litigation.admin.shtml); or
3. by sending an e-mail to rule-comments@sec.gov.

Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Number 3-12628" in the subject line. Comments received will be available to the public. Persons should only submit information that they wish to make publicly available.

DISTRIBUTION PLAN

The Fair Fund is comprised of the $16,809,354.42 paid by ZCM, plus accumulated interest, less any federal, state, or local taxes on the interest. The Distribution Plan provides for distribution of the Fair Fund to affected mutual funds identified in an exhibit to the plan that were harmed by the actions of certain hedge funds that engaged in deceptive market timing from 1999 through 2003. Respondent aided and abetted the hedge funds' deceptive market timing by providing leverage financing to the hedge funds. If the Distribution Plan is approved, the affected mutual funds will receive proportionate shares of the Fair Fund as calculated by the Respondent. The shares will be calculated from information in Respondent's records, and records obtained from third-parties. The affected mutual funds will not need to go through a claims process.

By the Commission.

Elizabeth M. Murphy
Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

April 16, 2010

IN THE MATTER OF	
Apogee Technology, Inc.,	**ORDER OF SUSPENSION OF TRADING**
File No. 500-1	

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Apogee Technology, Inc. ("Apogee") because it has been delinquent in its required periodic reports since March 2009. Apogee is quoted on the Pink Sheets OTC Markets, Inc. under the ticker symbol ATCS.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on April 16, 2010, through 11:59 p.m. EDT on April 29, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61925 / April 16, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13862

In the Matter of	
Apogee Technology, Inc.,	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**
Respondent.	

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondent Apogee Technology, Inc. ("Respondent" or "Apogee").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Apogee Technology, Inc. (CIK No. 0000823876) is a Delaware corporation headquartered in Norwood, Massachusetts. Apogee's common stock was registered under Section 12(g) of the Exchange Act until October 2003, when it then became registered under Section 12(b) of the Exchange Act and listed on the American Stock Exchange. In January 2008, its stock was delisted and deregistered from Section 12(b). It reverted to its Section 12(g) registration and is currently still registered under Section 12(g) of the Exchange Act. Apogee's securities are currently quoted on the Pink Sheets OTC Markets, Inc., ("Pink Sheets") under the symbol "ATCS." Apogee files as a smaller reporting company.

A judgment by consent was entered against Apogee on May 22, 2009, in a civil injunctive action. Among other things, the judgment enjoined Apogee from future

violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b), 13(a) 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1 and 13a-13 thereunder.

B. DELINQUENT PERIODIC FILINGS

2. Respondent is delinquent in its periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1). In particular, Apogee has filed a materially deficient Form 10-K for the 2008 fiscal year and materially deficient Forms 10-Q for the three quarters of 2009 with the Commission since November 14, 2008, and has failed to file a Form 10-K for the 2009 fiscal year.

3. Respondent's annual report for the year ended December 31, 2008, was originally due by March 31, 2009.

4. Respondent did not file a Form 10-K for the fiscal year ended December 31, 2008, until December 18, 2009.

5. The financial statements contained in the December 18, 2009 filing are unaudited and the filing was materially deficient because Respondent's outside auditor disclaimed its opinion on those financial statements.

6. On January 15, 2010, Respondent subsequently filed its Forms 10-Q for the quarters ended March 31, June 30, and September 30, 2009. These filings had been due originally on May 15, on August 14, and on November 16, 2009, respectively. However, the financial statements in these filings were based on Apogee's unaudited 2008 financial statements, rendering these reports materially deficient.

7. Respondent's Form 10-K for the fiscal year ended December 31, 2009, was not filed by its original due date of March 31, 2010, and has not been filed to date.

8. Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission current and accurate information in periodic reports. Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q).

9. Section 13(a)(2) of the Exchange Act requires annual reports to be certified by independent public accountants if required by the rules and regulations of the Commission.

10. Rule 8-02 under Article 8 of Regulation S-X requires smaller reporting companies following the end of their fiscal year to file an audited balance sheet, and statements of income and cash flows.

11. Rule 8-03 under Article 8 of Regulation S-X requires smaller reporting companies to file interim financial statements with a balance sheet as of the end of the issuer's preceding fiscal year.

12. As a result of its violation of Rules 8-02 and 8-03 of Article 8 of Regulation S-X, Respondent failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and

B. Whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondent registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondent personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)]:

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this

or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Attachment

By: Jill M. Peterson
Assistant Secretary

APPENDIX 1

CHART OF DELINQUENT FILINGS
Apogee Technology, Inc.

Filing	Date Due	Filing Date	Status
Form 10-K; year-ended December 31, 2008	March 31, 2009 (extended to April 15, 2009, by filing Form 12b-25)	December 18, 2009	Filed, but materially deficient.
Form 10-Q; first quarter of 2009	May 15, 2009 (extended to May 20, 2009, by filing Form 12b-25)	January 15, 2010	Filed, but materially deficient.
Form 10-Q; second quarter of 2009	August 14, 2009	January 15, 2010	Filed, but materially deficient.
Form 10-Q; third quarter of 2009	November 16, 2009	January 15, 2010	Filed, but materially deficient.
Form 10-K; year ended December 31, 2009	March 31, 2010 (extended to April 15, 2010, by filing Form 12b-25)	N/A	Not filed.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 61928 / April 16, 2010

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 3016 / April 16, 2010

INVESTMENT COMPANY ACT OF 1940
Rel. No. 29207 / April 16, 2010

Admin. Proc. File No. 3-13337

In the Matter of Diane M. Keefe c/o Robert Knuts Park & Jensen, LLP 630 Third Avenue New York, New York 10017	CORRECTED ORDER REMANDING PROCEEDING TO ADMINISTRATIVE LAW JUDGE

I.

Diane M. Keefe, a former employee of Pax World Management Corp. ("Pax Management"), a registered investment adviser, appeals an administrative law judge's decision. The law judge found that Keefe, a portfolio manager of the Pax World High Yield Fund ("Fund"), an investment company registered with the Commission and advised by Pax Management, willfully violated Section 34(b) of the Investment Company Act of 1940[1] by creating handwritten notes that falsely represented that several Fund investment committee

[1] 15 U.S.C. § 80a-33(b). Investment Company Act Section 34(b) prohibits any person from making an untrue statement of material fact in, among other things, any document the keeping of which is required pursuant to Investment Company Act Section 31(a).

("Investment Committee") meetings involving all three committee members occurred on certain dates. The law judge suspended Keefe for twelve months from association with an investment adviser, broker, or dealer.

II.

A. Procedural History

The law judge decided this matter by summary disposition pursuant to Commission Rule of Practice 250 after cross-motions were filed by the parties.[2] Under Rule 250(a), the facts of the pleadings of the party against whom such a motion is made must be taken as true, except as modified by stipulations, admissions, uncontested affidavits, or facts of which the Commission may take official notice.[3] A record on summary disposition is limited to the parties' filings, supplemented by attachments. Here, the record includes investigatory testimony from Keefe and Pax Management compliance liaison, Janet Spates, excerpts of Fund registration statements and proxies regarding the Investment Committee, and certain communications between Commission staff and employees or counsel for Pax Management.

B. Undisputed Facts

During the period at issue, Keefe was the portfolio manager for the newly created Fund. Keefe was responsible for the day-to-day management of the Fund's portfolio, including deciding which portfolio securities to buy and sell on behalf of the Fund. Pax Management was responsible for, among other things, managing the Fund's assets, subject to the supervision of the Fund's board of directors.

The Fund's registration statements and proxy statements filed with the Commission from 2000 to 2004 state that the Fund had an Investment Committee with "the responsibility of overseeing the investments of the Fund." However, the Fund's board never adopted a resolution forming the Investment Committee. The Fund's disclosure documents differed as to the makeup of the purported Investment Committee. The supplementary statements of additional information identify the Investment Committee members as Thomas W. Grant, the president and a director of the Fund and the president of Pax Management, and Laurence A. Shadek, the chairman of the board of directors of the Fund and Pax Management. The proxy statements identify Grant, Shadek, and Keefe as Investment Committee members. The proxy statements filed from 2001 to 2004 each state that the Investment Committee held two meetings during the previous calendar year. Keefe, Shadek, and Grant worked in the adviser's New York office.

In August 2003, staff from the Commission's Office of Compliance Inspections and Examinations notified the Pax World Fund Family, a family of mutual funds including the Fund,

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[2] 17 C.F.R. § 201.250.

[3] 17 C.F.R. § 201.250(a).

of an imminent examination. Janet Spates, the Fund's assistant treasurer who also served as the adviser's operations manager, chief financial officer, chief operating officer, and a "compliance liaison," assisted in the preparation of materials for the examination. Keefe faxed the notes at issue to Spates, who worked in the adviser's New Hampshire headquarters. Keefe has appealed the initial decision to the Commission, and this proceeding followed.

C. Conclusion

We have reviewed the limited record before us and believe that the record would benefit from direct and cross-examination of any relevant witnesses and the fact-finding determinations of a law judge. Moreover, the parties did not address the issue of sanctions in their cross-motions for summary disposition. While Rule 250 in many circumstances is an appropriate means for disposition of a proceeding,[4] we believe that this case should be remanded to continue the process initiated by the Order Instituting Proceedings. Pursuant to the Commission's Rules of

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[4] We have repeatedly upheld the use of summary disposition by a law judge in cases where the respondent has been enjoined or convicted of an offense listed in certain sections of the federal securities laws, the sole determination is the proper sanction, and no material fact is genuinely disputed. *See, e.g., Chris G. Gunderson, Esq.*, Securities Exchange Act Rel. No. 61234 (Dec. 23, 2009), 97 SEC Docket 24040 (injunction); *Martin A. Armstrong*, Investment Advisers Act Rel. No. 2926 (Sept. 17, 2009), 96 SEC Docket 20556 (conviction and injunction), *appeal filed*, No. 09-1260 (D.C. Cir. Oct. 1, 2009); *Scott B. Gann*, Exchange Act Rel. No. 59729 (Apr. 8, 2009), 95 SEC Docket 15818 (injunction), *aff'd*, No. 09-60435 (5th Cir. 2010) (slip copy); *Gary M. Kornman*, Exchange Act Rel. No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246 (conviction), *petition denied*, 592 F.3d 173 (D.C. Cir. 2010); *Jeffrey L. Gibson*, Exchange Act Rel. No. 57266 (Feb. 4, 2008), 92 SEC Docket 2104 (injunction), *petition denied*, 561 F.3d 548, 553 (6th Cir. 2009); *Conrad P. Seghers*, Advisers Act Rel. No. 2656 (Sept. 26, 2007), 91 SEC Docket 2293 (injunction), *petition denied*, 548 F.3d 129 (D.C. Cir. 2008); *Jose P. Zollino*, Exchange Act Rel. No. 55107 (Jan. 16, 2007), 89 SEC Docket 2598 (conviction and injunction); *Michael Batterman*, 57 S.E.C. 1031 (2004) (injunction), *aff'd*, No. 05-0404 (2d Cir. 2005) (unpublished); *Charles Trento*, 57 S.E.C. 341 (2004) (conviction); *Joseph P. Galluzzi*, 55 S.E.C. 1110 (2002) (conviction and injunction); *John S. Brownson*, 55 S.E.C. 1023 (2002) (conviction), *petition denied*, 66 F. App'x. 687 (9th Cir. 2003) (unpublished). Courts have acknowledged the propriety of applying Rule 250 in such circumstances because, in most instances, the "proceeding has resolved the central issue concerning the nature of the 'alleged misconduct' and only the question of the appropriate sanctions remains." *Kornman v. SEC*, 592 F.3d 173, 182 (D.C. Cir. 2010); *see also Gibson v. SEC*, 561 F.3d 548, 553 (6th Cir. 2009) (denying respondent's petition for review and noting that the Commission has held that summary disposition is not disfavored in follow-on proceedings, such as the proceeding at issue, and that the respondent already agreed not to dispute the facts alleged in the original district court complaint).

We also have upheld the use of summary disposition by a law judge in a case where the respondent admitted that it failed to file quarterly or annual reports required under Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13. *Eagletech Commc'ns., Inc.*, Exchange Act Rel. No. 54095 (July 5, 2006), 88 SEC Docket 1225.

Practice, the parties are free to explore issues as they see fit during a hearing process. However, we note that amplification of the current record with facts supporting either party's position on the issue of materiality would aid any decisional process.[5]

Accordingly, IT IS ORDERED that the disciplinary proceeding against Diane M. Keefe be, and it hereby is, remanded for further consideration; and it is further

ORDERED that the Administrative Law Judge shall issue an initial decision no later than 234 days (300 days as provided in the original Order Instituting Proceedings less 66 days that elapsed between the date of service of the Order Instituting Proceedings and the filing of pleadings regarding each party's motion for summary disposition) from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

By the Commission.

Elizabeth M. Murphy
Secretary

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[5] The Division filed, pursuant to Commission Rule of Practice 452, a motion to supplement the record with fifteen sets of Fund board minutes. The Division asserts that these minutes reveal that the board meetings did not provide the kind of supervision Keefe claims to have received and therefore undermines her argument that the notes were not material. Because we are remanding this proceeding, we do not address the motion, and leave it for the law judge to decide on remand if the Division still wishes to pursue it.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61930 / April 16, 2010

In the Matter of	:	ORDER PURSUANT TO SECTIONS 13(f)(2), 13(f)(4) AND 36 OF THE SECURITIES EXCHANGE ACT OF 1934 DENYING APPLICATION FOR EXEMPTION FROM RULE 13f-1 UNDER THE SECURITIES EXCHANGE ACT OF 1934
Wynnefield Capital Management LLC and Wynnefield Capital, Inc.	:	

Wynnefield Capital Management LLC and Wynnefield Capital, Inc. (together, "Wynnefield"), investment managers of certain private investment companies, filed an application on February 13, 2007, pursuant to section 13(f)(2) of the Securities Exchange Act of 1934 ("Exchange Act") seeking an exemption from rule 13f-1 under the Exchange Act ("Exemptive Application"). The Commission has considered the Exemptive Application. The Commission finds that the standard for an exemption from section 13(f)(1) of the Exchange Act and rule 13f-1 thereunder, set forth in section 13(f)(4) of the Exchange Act, has not been met.

Background

Section 13(f)(1) of the Exchange Act and rule 13f-1 thereunder require every "institutional investment manager," as defined in section 13(f)(5)(A) of the Exchange Act, that exercises investment discretion with respect to "section 13(f) securities," as defined in rule 13f-1, having an aggregate fair market value of at least $100 million ("Institutional Manager," and the securities, "Reportable Securities"), to file with the Commission quarterly reports on Form 13F setting forth each Reportable Security's name, CUSIP number, the number of shares held, and the market value of the position. Form 13F must be filed within 45 days of the end of the calendar year during which the $100 million threshold was satisfied and within 45 days of the end of the first three calendar quarters that follow.

Congress enacted section 13(f) in order to make publicly available information about Institutional Managers' holdings of Reportable Securities, and to create with the Commission a central depository of historical and current data about these holdings.[1] The legislative history of section 13(f) suggests that the provision was designed to further regulatory and policymaking

[1] *See* Report of Senate Comm. On Banking, Housing and Urban Affairs, S.Rep.No. 75, 94th Cong., 1st Sess. 83 (1975) at 79-82, 85-87.

uses of the information, as well as to contribute to the transparency and integrity of, and investor confidence in, the U.S. equity markets.[2]

Under section 13(f)(3) of the Exchange Act, information filed on Form 13F must be made publicly available, "except that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with [the Freedom of Information Act ("FOIA")]." Rule 200.80(b)(4) of the Commission's Freedom of Information Act rules provides that the Commission generally will not publish or make available to any person matters that "[d]isclose trade secrets and commercial or financial information obtained from a person and privileged or confidential." An Institutional Manager seeking to delay or prevent public disclosure of any such information provided on Form 13F must submit a written confidential treatment request following the procedures set forth in rule 24b-2 under the Exchange Act and the Commission's Instructions to Form 13F ("Instructions").

Under section 13(f)(2) of the Exchange Act, in relevant part, the Commission may by order exempt an Institutional Manager from section 13(f)(1) of the Exchange Act or the rules thereunder. Pursuant to Section 13(f)(4) of the Exchange Act, the Commission must determine that any such exemption is consistent with the protection of investors and the purposes of section 13(f). Under section 36 of the Exchange Act, in relevant part, the Commission may by order exempt any person from any provision of the Exchange Act or any rule or regulation thereunder. Rule 0-12 under the Exchange Act sets forth Commission procedures for applications for orders under section 36 of the Exchange Act. The Commission has not established separate procedures for applications under section 13(f)(2), and therefore follows the procedures set forth in rule 0-12 for issuing this order.

The Exemptive Application

Wynnefield, an Institutional Manager subject to section 13(f)(1) of the Exchange Act and rule 13f-1 thereunder, filed the Exemptive Application. The Exemptive Application stated that "exemptive relief under Section 13(f)(2) of the Exchange Act is consistent with Congressional intent in situations where disclosure would otherwise be harmful to reporting companies or their investors." The Exemptive Application went on to state that the CT Request process under section 13(f)(3) of the Exchange Act "is insufficient to prevent harm to [Wynnefield] "because it is (i) unduly burdensome, as Wynnefield would "have to continually file new [CT Requests] annually to keep sensitive information confidential," and (ii) uncertain, so as to "adversely affect [Wynnefield's] investment strategies," "because there can be no assurance that the Commission will grant, or continue to grant, confidential treatment." The Exemptive Application also stated that Wynnefield's "investment strategies are trade secrets protected by the Takings Clause of the Fifth Amendment [of the U.S. Constitution]." The Exemptive Application went on to argue that "an exemption pursuant to section 13(f)(2) is necessary to avoid a 'taking' without just compensation in violation of the Fifth Amendment."

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2 *See id.* at 80-84.

The Commission's Findings

The Commission has considered the arguments set forth in the Exemptive Application. We note that Congress, in section 13(f)(3) of the Exchange Act, specifically provided protection from public disclosure for an Institutional Manager's trade secrets and similar sensitive business information. The Commission has established an administrative process, detailed in rule 24b-2 under the Exchange Act and the Instructions, for Institutional Managers to submit CT Requests to protect such information from public disclosure. For the calendar quarters ended December 31, 2006 through and including September 30, 2009, Wynnefield submitted CT Requests for its entire portfolio of Reportable Securities ("Wynnefield CT Requests") in accordance with the established administrative procedures for CT Requests.[3] By letter dated February 1, 2010, the Commission staff, under delegated authority from the Commission, denied the Wynnefield CT Requests.[4]

The CT Request process is tailored to protect certain specific information upon a demonstration of substantial harm, while ensuring that other information required by Form 13F is publicly disclosed consistent with section 13(f)(1).[5] We do not believe that Congress generally intended for the Commission to exempt an Institutional Manager from disclosing its Reportable Securities pursuant to section 13(f)(2) when the Commission's authority to delay or prevent public disclosure of certain Reportable Securities pursuant to section 13(f)(3) could adequately protect the proprietary interests of an Institutional Manager. Therefore, absent extraordinary circumstances, an Institutional Manager seeking protection on grounds provided for under section 13(f)(3) must make a good faith effort to obtain that protection through the CT Request process. Because the Fifth Amendment argument in the Exemptive Application seeks to protect from public disclosure information that is trade secrets, such protection is more properly addressed pursuant to the CT Request process. The fact that Wynnefield in good faith pursued the CT Request process and failed to obtain the requested protection does not in and of itself amount to an extraordinary circumstance that justifies an exemption pursuant to section 13(f)(2) of the Exchange Act.

The Commission and the staff administer the CT Request process in accordance with the substantive and procedural requirements that are set forth in section 13(f) of the Exchange Act, rules 13f-1 and 24b-2 thereunder, FOIA, and the Instructions. Under section 13(f)(3) of the Exchange Act, information filed on Form 13F must be made publicly available, "except that the Commission, as it determines to be necessary or appropriate in the public interest or for the

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3 *See* Wynnefield's public filings on EDGAR available at http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001056835&type=&dateb=&owner=exclude&start=0&count=40.

4 *See* rule 30-5(c)(1) of the Commission's Rules of Practice (delegating authority under section 24(b) of the Exchange Act and rule 24b-2 to the Commission's Division of Investment Management to grant and deny CT Requests under section 13(f)(3) of the Exchange Act).

5 The information collected on Forms 13F has been and continues to be used by U.S. regulators, academics, the media and financial information distributors, and investors and other U.S. equity markets participants, as intended by Congress. See, e.g., *Full Value Advisors, LLC,* Exchange Act Release No. 61327 (Jan. 11, 2010) (Commission order that discusses some of the uses of information collected on Forms 13F).

protection of investors, may delay or prevent public disclosure of any such information in accordance with [FOIA]." We believe that section 13(f)(3) thus anticipated the very process that Wynnefield finds objectionable -- the submission of a request for confidential treatment and the Commission's evaluation of the request on a case by case basis, with the accompanying uncertainty as to whether the request will be granted. Therefore, we do not believe that Wynnefield's objections to the CT Request process justify an exemption from section 13(f)(1) of the Exchange Act and rule 13f-1 thereunder.

Having considered the Exemptive Application, the Commission finds that Wynnefield has failed to demonstrate that exempting it from rule 13f-1 under the Exchange Act would be consistent with the protection of investors and the purposes of section 13(f), as required by section 13(f)(4).

Accordingly, IT IS ORDERED, pursuant to sections 13(f)(2), 13(f)(4) and 36 of the Exchange Act, that Wynnefield's Exemptive Application is denied.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3017 / April 16, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13863

In the Matter of **STEPHEN X. KIM and SPYGLASS MANAGEMENT, L.P.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTIONS 203(e) and 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Stephen X. Kim ("Kim") and Spyglass Management, L.P. ("Spyglass Management") (collectively the "Respondents").

II.

In anticipation of the institution of these proceedings, the Respondents have submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over Respondents and the subject matter of these proceedings, and the findings contained in Section III.3, below, which are admitted, the Respondents consent to the entry of this Order Instituting Administrative Proceedings Pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and the Respondents' Offer, the Commission finds that:

1. Spyglass Management is a Nevada limited partnership based in Houston, Texas, that is registered with the Commission as an investment adviser. Spyglass Management served as the investment adviser to Spyglass Capital Partners, L.P. (the "Fund") from 2004 through 2007.

2. Kim, age 38, resides in Houston, Texas. During the relevant period, Kim was the sole owner of Spyglass Holdings, LLC, which was the general partner of Spyglass Management. Kim was a registered representative with several FINRA broker-dealers at various points from 1993 through 2003. During the relevant period, Kim served as the sole investment officer of Spyglass Management.

3. On March 29, 2010, a final judgment was entered by consent against Kim and Spyglass Management, permanently enjoining them from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), in the civil action entitled Securities and Exchange Commission v. Stephen X. Kim and Spyglass Management, L.P., Civil Action Number 4:10-cv-00816, in the United States District Court for the Southern District of Texas.

4. The Commission's complaint alleged that, in connection with the sale of limited partnership interests, Spyglass Management and Kim misrepresented Kim's background, misused and misappropriated investor funds, sent out false account statements indicating to investors that the Fund was profitable, and otherwise engaged in conduct that operated as a fraud and deceit on investors.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents Kim and Spyglass Management's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(e) of the Advisers Act, that Respondent Spyglass Management's registration as an investment adviser be, and hereby is, revoked.

Pursuant to Section 203(f) of the Advisers Act, that Respondent Kim be, and hereby is, barred from association with any investment adviser.

Any reapplication for association by the Respondent Kim will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to

notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

April 20, 2010

IN THE MATTER OF	
V-GPO, Inc., **Valesc Holdings, Inc.,** **Venture Stores, Inc.,** **Vertigo Theme Parks, Inc.** **(f/k/a Snap2 Corp.),** **Videolan Technologies, Inc.,** **VisionGateway, Inc.,** **Vital Health Technologies, Inc.** **(n/k/a Caribbean American Health** **Resorts), and** **VoiceNet, Inc.,**	**ORDER OF SUSPENSION OF TRADING**
File No. 500-1	

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of V-GPO, Inc. because it has not filed any periodic reports since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Valesc Holdings, Inc. because it has not filed any periodic reports since the period ended June 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Venture Stores, Inc. because it has not filed any periodic reports since the period ended October 25, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vertigo Theme Parks, Inc. (f/k/a Snap2 Corp.) because it has not filed any periodic reports since the period ended June 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Videolan Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VisionGateway, Inc. because it has not filed any periodic reports since the period ended July 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Vital Health Technologies, Inc. (n/k/a Caribbean American Health Resorts) because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VoiceNet, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 20, 2010, through 11:59 p.m. EDT on May 3, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61940 / April 20, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13864

In the Matter of	
V-GPO, Inc.,	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**
Vertigo Theme Parks, Inc., (f/k/a Snap2 Corp.),	
Videolan Technologies, Inc., and VoiceNet, Inc.,	
Respondents.	

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents V-GPO, Inc., Vertigo Theme Parks, Inc. (f/k/a Snap2 Corp.), Videolan Technologies, Inc., and VoiceNet, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. V-GPO, Inc. (CIK No. 831297) is a dissolved Florida corporation located in Sarasota, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). V-GPO is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2006, which reported a net loss of over $1.8 million for the prior nine months. As of April 14, 2010, the company's stock (symbol "VGPO") was quoted on the Pink Sheets operated by Pink OTC Markets, Inc. ("Pink Sheets"), had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Vertigo Theme Parks, Inc. (f/k/a Snap2 Corp.) (CIK No. 1079287) is a Nevada corporation located in Boca Raton, Florida with a class of securities registered with the

Commission pursuant to Exchange Act Section 12(g). Vertigo is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2005, which reported a net loss of $523,604 for the prior nine months. As of April 14, 2010, the company's stock (symbol "VTPK") was quoted on the Pink Sheets, had ten market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

3. Videolan Technologies, Inc. (CIK No. 946345) is a forfeited Delaware corporation located in Louisville, Kentucky with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Videolan is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1997, which reported a net loss of over $4.87 million for the prior nine months. On January 5, 1998, the company announced that it had ceased operations. On February 17, 1998, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was terminated on May 5, 1998. As of April 14, 2010, the company's stock (symbol "VLNT") was quoted on the Pink Sheets, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. VoiceNet, Inc. (CIK No. 1023745) is a void Delaware corporation located in Fair Haven, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). VoiceNet is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended Setember 30, 2001, which reported a net loss of over $1.84 million for the prior nine months. As of April 14, 2010, the company's stock (symbol "VCNE") was quoted on the Pink Sheets, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to

notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary,

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61950 / April 21, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13866

In the Matter of **ULH Corp. (n/k/a UniHolding Corp.), Unapix Entertainment, Inc., Unicomp, Inc., and Unidyne Corp.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents ULH Corp. (n/k/a UniHolding Corp.), Unapix Entertainment, Inc., Unicomp, Inc., and Unidyne Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. ULH Corp. (n/k/a UniHolding Corp.) (CIK No. 354199) is a delinquent Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). UniHolding is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended May 31, 1999, which reported a net loss of $1,290,000 for the prior twelve months. As of April 14, 2010, the company's common stock (symbol "UHLD") was quoted on the Pink Sheets operated by Pink OTC Markets, Inc. ("Pink Sheets"), had three market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

2. Unapix Entertainment, Inc. (CIK No. 902787) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Unapix Entertainment is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2000, which reported a net loss of $2,269,000 for the prior six months. On November 27, 2000, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of New York, and the case was terminated on January 10, 2003. As of April 14, 2010, the company's common stock (symbol "UPXE") was quoted on the Pink Sheets, had three market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

3. Unicomp, Inc. (CIK No. 792341) is a delinquent Colorado corporation located in Woodstock, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Unicomp is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q/A for the period ended November 30, 2000, which reported a net loss of $6,251,000 for the prior three months. On August 25, 2006, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Western District of North Carolina, which was converted to a Chapter 7 petition, and the case was still pending of as April 14, 2010. As of April 14, 2010, the company's common stock (symbol "UCMPQ") was quoted on the Pink Sheets, had six market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

4. Unidyne Corp. (CIK No. 350678) is a void Delaware corporation located in Kenosha, Wisconsin with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Unidyne is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1999, which reported a net loss of $4,398,000 for the prior nine months. As of April 14, 2010, the company's common stock (symbol "UDYN") was quoted on the Pink Sheets, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

April 21, 2010

IN THE MATTER OF	:	
ULH Corp. (n/k/a UniHolding Corp.), Unapix Entertainment, Inc., Unicomp, Inc., and Unidyne Corp.,	:	**ORDER OF SUSPENSION OF TRADING**
File No. 500-1	:	

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ULH Corp. (n/k/a UniHolding Corp.) because it has not filed any periodic reports since it filed a Form 10-K for the period ended May 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Unapix Entertainment, Inc. because it has not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Unicomp, Inc. because it has not filed any periodic reports since it filed a Form 10-Q/A for the period ended November 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Unidyne Corp. because it

has not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1999.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 21, 2010, through 11:59 p.m. EDT on May 4, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

April 23, 2010

In the Matter of **ADSOUTH PARTNERS, Inc.,** **American Racing Capital, Inc.,** **Buck-A-Roo$ Holding Corporation,** **DDS Technologies USA, Inc., and** **VECTr Systems Inc.** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ADSOUTH PARTNERS, Inc. (CIK: 1158235) because it has not filed a periodic report for any reporting period since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Racing Capital, Inc. (CIK: 1103086) because it has not filed a periodic report for any reporting period since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Buck-A-Roo$ Holding Corporation (CIK: 1314642) because it has not filed a periodic report for any reporting period since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DDS Technologies USA, Inc. (CIK: 1099217)

because it has not filed a periodic report for any reporting period since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VECTr Systems Inc. (CIK: 1343259) because it has not filed a periodic report for any reporting period since the period ended September 30, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 23, 2010, through 11:59 p.m. EDT on May 6, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

April 23, 2010

In the Matter of **Global Medical Products Holdings, Inc.,** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Medical Products Holdings, Inc. because it has not filed any periodic reports since the period ended June 30, 2003.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on April 23, 2010, through 11:59 p.m. EDT on May 6, 2010.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Rel. No. 9118 / April 23, 2010

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 61966 / April 23, 2010

Admin. Proc. File No. 3-11626r

In the Matter of

JOHN A. CARLEY, EUGENE C. GEIGER,
THOMAS A. KAUFMANN, EDWARD H. PRICE, and
CHRISTOPHER H. ZACHARIAS

ORDER DISMISSING FRAUD AND REPORTING ALLEGATIONS

On January 31, 2008, we issued an opinion[1] making numerous findings, including, as relevant to this proceeding, that (i) John A. Carley and Christopher H. Zacharias, officers and directors of Starnet Communications International, Inc. ("Starnet"), and other respondents violated Section 5 of the Securities Act of 1933[2] by distributing unregistered Starnet stock to the public; and (ii) Carley and Zacharias violated the antifraud and reporting provisions of the Securities Act and the Securities Exchange Act of 1934[3] by failing to disclose as a related-party transaction in Starnet's 1999 annual report the nature and extent of the plan to provide Starnet officers and employees with a way to exercise their options under Starnet's stock option plan as part of an illegal scheme to distribute unregistered stock. We ordered that Carley and Zacharias

[1] *John A. Carley*, Securities Act Rel. No. 8888 (Jan. 31, 2008), 92 SEC Docket 1693.

[2] 15 U.S.C. § 77e.

[3] Specifically, § 17(a) of the Securities Act (15 U.S.C. § 77q(a)); §§ 10(b) and 13(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78m(a)); and Exchange Act Rules 10b-5, 12b-20 and 13a-1 (17 C.F.R. §§ 240.10b-5, 240.12b-20, and 240.13a-1).

cease and desist from committing or causing any violations or future violations of the applicable securities laws and further ordered that Carley disgorge $2,489,740 plus prejudgment interest and Zacharias disgorge $1,451,128.55 plus prejudgment interest.

Three of the respondents, including Carley and Zacharias, appealed to the United States Court of Appeals for the District of Columbia Circuit challenging our findings of violation and the sanctions imposed. On June 23, 2009, the Court of Appeals denied Carley's and Zacharias's petition for review with respect to the Section 5 violations and the cease-and-desist and disgorgement orders based on those violations. The Court granted the petition for review with respect to Zacharias and Carley's fraud and reporting violations, as well as the cease-and-desist orders based thereon. The Court concluded that we did not establish that the information about related-party transactions omitted from Starnet's 1999 annual report was material. The Court remanded the issue to the Commission.[4]

Given the remedial sanctions sustained against respondents, we have decided, in our discretion, to dismiss the remaining allegations against Carley and Zacharias for failing to disclose the stock option transactions in Starnet's 1999 annual report.[5] As a result, we dissolve the cease-and-desist order with respect to these alleged violations. We do not express a view on the merits.

Accordingly, it is ORDERED that the proceeding against Carley and Zacharias with respect to the allegations that they violated Securities Act Section 17(a), Exchange Act Sections 10(b) and 13(a), and Exchange Act Rules 10b-5, 12b-20 and 13a-1 be, and it hereby is, DISMISSED.

By the Commission.

Florence E. Harmon

Elizabeth M. Murphy
Secretary

By: Florence E Harmon
Deputy Secretary

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[4] *Zacharias v. SEC*, 569 F.3d 458, 469 (D.C. Cir. 2009).

[5] Zacharias also contends that the cease-and-desist order with respect to Securities Act Section 5 is unwarranted. However, the Court of Appeals affirmed the Commission's findings of violation and the sanctions imposed with respect to Section 5. We see no basis for reconsidering that order.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 61967 / April 23, 2010

Admin. Proc. File No. 3-13623

In the Matter of the Application of

PENNMONT SECURITIES
and
JOSEPH D. CARAPICO

c/o Lynanne B. Wescott
The Wescott Law Firm P.C.
239 South Camac Street
Philadelphia, PA 19107-5609

For Review of Disciplinary Action Taken by the

PHILADELPHIA STOCK EXCHANGE, INC.

ORDER GRANTING MOTION TO DISMISS APPLICATION FOR REVIEW

I.

On September 4, 2009, PennMont Securities ("PennMont") and its general partner, Joseph D. Carapico (together, "Applicants"), both suspended members of the Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange"),[1] filed a "Request for Consideration of Appeal Out of Time Pursuant to Rule 420(b)" with the Commission.[2] In that request, Applicants asked the

[1] On July 24, 2008, PHLX was acquired by the NASDAQ OMX Group, Inc. and renamed NASDAQ OMX PHLX, Inc. *See* Press Release, NASDAQ OMX Group, NASDAQ OMX Group to Complete Acquisition of the Philadelphia Stock Exchange (July 24, 2008), *available at http://ir.nasdaqomx.com/releasedetail.cfm?ReleaseID=324143*. Because the disciplinary action taken here was instituted before that date, the Exchange's prior corporate name is used herein.

[2] PennMont later moved for issuance of a Commission order directing PHLX to request a stay of its collection action against PennMont in Pennsylvania state court for the legal (continued...)

Commission to review "the suspension by PHLX of PennMont and Carapico on March 10, 2008" based on Applicants' failure to pay legal fees and expenses assessed by PHLX against Applicants pursuant to PHLX Rule 651. The fees and expenses had been incurred by the Exchange in connection with its defense of litigation initiated by Applicants. Applicants argue that their appeal is timely. In the alternative, Applicants assert that their appeal should be considered because of the presence of "extraordinary circumstances," as provided in Commission Rule of Practice 420(b), which permits an exception to the thirty-day filing deadline where such circumstances exist.[3]

On October 29, 2009, the Exchange filed a "Motion to Dismiss Application for Review" asserting, among other things, that Applicants have not established the presence of extraordinary circumstances and therefore failed to satisfy the requirement for an extension of the filing deadline. For the reasons set forth below, we have determined to grant PHLX's motion to dismiss Applicants' application.

II.

The legal fees and expenses at issue in this case arise from extensive litigation that was initiated by Applicants against PHLX more than ten years ago. This litigation began in 1998, when Applicants sued PHLX and its then-Board of Governors in the Court of Common Pleas for Philadelphia County, Pennsylvania, objecting to certain proposed ownership and structural changes pursued by the Exchange at that time (the "1998 Action").

On August 5, 2004, PHLX adopted Rule 651, a fee-shifting provision, pursuant to its rule-making authority.[4] Rule 651 provides, in relevant part, that:

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[2] (...continued)
fees and expenses at issue, which motion the Commission denied. *PennMont Sec.*, Admin. Proc. File No. 3-13623, Order (Sept. 28, 2009).

[3] Commission Rule of Practice 420(b) states that applications for review of a self-regulatory organization's "final disciplinary sanction" must be filed with the Commission "within 30 days after the notice of the sanction is filed with the Commission and received by the aggrieved person applying for review," and the Commission "will not extend this 30-day period, absent a showing of extraordinary circumstances." 17 C.F.R. § 201.420(b).

[4] Pursuant to Section 19(b) of the Securities Exchange Act and Rule 19b-4 thereunder, Rule 651 became effective upon filing. 15 U.S.C. § 78s(b); 17 C.F.R. § 240.19b-4; *Philadelphia Stock Exchange, Inc. Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Legal Fees Incurred by the Exchange*, Securities Exchange Act Rel. No. 50159 (Aug. 5, 2004), 83 SEC Docket 1768.

> any member, [or] member organization . . . who fails to prevail in a lawsuit or other legal proceeding instituted by such person or entity against the Exchange or any of its board members . . . and related to the business of the Exchange shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding . . . .

On October 7, 2004, after Rule 651 had been in effect for approximately two months, the Pennsylvania state court awarded PHLX summary judgment in the 1998 Action and dismissed all of Applicants' claims against the Exchange and its Board of Governors. PennMont appealed. In 2006, the Pennsylvania Superior Court affirmed the ruling of the Court of Common Pleas and, in the same year, the Supreme Court of Pennsylvania refused to review the decision.[5]

On November 1, 2007, the Exchange, pursuant to Rule 651, tendered an invoice (the "Rule 651 Invoice") to Applicants for $925,612.20 in legal fees and expenses incurred by PHLX in defending the 1998 Action, which included fees and expenses incurred by PHLX prior to the enactment of Rule 651.[6] PennMont objected to the Rule 651 Invoice and sought injunctive relief from the United States District Court for the Eastern District of Pennsylvania to thwart the Exchange's collection efforts.[7]

As the District Court considered PennMont's request for injunctive relief, the Exchange's three-member Special Committee to Review Delinquencies and Payments (the "Special Committee")[8] scheduled a telephone hearing that was convened on December 19, 2007.[9]

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[5] *Carapico v. Phila. Stock Exch., Inc.*, 897 A.2d 513 (Pa. Super. Ct. 2006) (affirming summary judgment for defendants), *alloc. denied*, 906 A.2d 1196 (Pa. 2006).

[6] The Exchange later reviewed its payments of fees and expenses in the 1998 Action and reduced the amount of fees and expenses at issue to $913,963.38.

[7] Members of the Exchange maintain accounts with the National Securities Clearing Corporation ("NSCC") to facilitate the collection of fees owed to the Exchange. The Exchange had informed PennMont of its intention to debit the amount set forth in the Rule 651 Invoice from PennMont's NSCC account if PennMont refused to pay.

[8] One of the members of the Special Committee was a named party in the 1998 Action.

[9] The Special Committee also set a briefing schedule, responded to inquiries by Applicants about the formation, composition, and governance of the Special Committee, and conducted the telephone hearing after providing forty days' notice to Applicants. In lieu of submitting briefs to the Special Committee, Applicants submitted the motion for preliminary

(continued...)

Applicants did not participate in the hearing. PHLX states that it sent Applicants' counsel the call-in information for the hearing via facsimile, although Applicants' counsel insists that she never received the call-in information. The chair of the Special Committee noted at the hearing that "the Exchange representatives made every effort, indeed multiple efforts to secure [Applicants' counsel's] attendance at the meeting," including "double checking with [Applicants' counsel's] office" at the time of the hearing.

On the same day, the Special Committee issued an order (the "Special Committee Order") upholding the Rule 651 Invoice and declaring that the Special Committee Order was the "final action by the Exchange in this matter."[10] The Special Committee Order provided further that if PennMont or Carapico did not pay the Rule 651 Invoice or agree upon a payment schedule with PHLX within thirty days (*i.e.*, by January 18, 2008), their Exchange memberships would be suspended.[11] PHLX's legal counsel sent Applicants' counsel a letter on December 27, 2007 indicating that PHLX "assume[d] that [Applicants] will appeal the suspensions to the Securities and Exchange Commission." On January 4, 2008, Applicants' counsel sent PHLX a letter asking PHLX to explain "any rights of appeal, the time frames and how time is counted, and to which organization" with respect to the Special Committee Order. On January 7, 2008, PHLX responded to Applicants' counsel, advising that the Special Committee Order constituted a final action by PHLX and directed Applicants' counsel to Securities Exchange Act Section 19(d) and

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[9] (...continued)
injunction and brief in support of subject matter jurisdiction filed by PennMont in the District Court proceeding.

[10] *PennMont Sec.*, Order of Special Comm. to Review Delinquencies and Payments (Bd. of Governors Special Comm. Dec. 19, 2007).

[11] On January 3, 2008, the Special Committee issued an opinion summarizing the rationale underlying the Special Committee Order (the "Special Committee Opinion"). *PennMont Sec.*, Opinion of Special Comm. to Review Delinquencies and Payments (Bd. of Governors Special Comm. Jan. 3, 2008). In the Special Committee Opinion, the Special Committee noted that:

> Rule 651 was properly adopted and correctly applied. The Rule was adopted by the Exchange after due notice to all affected parties and was approved by the SEC. Counsel for the appellants submitted a comment in the proceedings which objected to the adoption of the Rule recognizing that it would apply to them should it be adopted. The SEC nevertheless approved the Rule. Further, there was no basis in the Rule to conclude that it should not be applicable in a case, such as this, brought by parties who were both members and shareholders. Finally, the applicable case law on retroactivity makes clear that it is appropriate to apply Rule 651, which is a fee-shifting provision, to pending matters (internal citation omitted).

Commission Rule of Practice 420, which contain the filing requirements for appeals of any "final disciplinary sanction" imposed by self-regulatory organizations ("SROs") such as PHLX.[12] These provisions provide for Commission review of such SRO sanctions if the appealing party files with the Commission a petition for review within thirty days after notice of the sanction is filed by the SRO with the Commission and received by the party. On January 9, 2008, PHLX filed with the Commission and served on Applicants a notice of the Special Committee Order.[13]

On January 18, 2008, PHLX adjourned Applicants' suspension until the District Court ruled on PennMont's motion for a preliminary injunction and sent a copy of an amended Special Committee Order to Applicants' counsel reflecting such adjournment (the "Amended Special Committee Order"). On February 12, 2008, the District Court denied PennMont's motion for injunctive relief and dismissed the case for failure to state a claim.[14] On March 10, 2008, PHLX suspended Applicants' memberships with the Exchange.[15] PennMont appealed the District Court

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[12] 15 U.S.C. § 78s(d); 17 C.F.R. § 201.420.

[13] The notice again notified Applicants that "Section 19(d)(1) of the Securities Exchange Act of 1934 and SEC Rule of Practice 210.420 provide guidance for appeals of determinations by SROs." That same day, PHLX's legal counsel filed a response to PennMont's motion for a preliminary injunction in the District Court proceeding outlining the exclusive jurisdiction of the Commission with respect to the review of a "final disciplinary sanction" of a member of an SRO.

[14] *PennMont Sec. v. Frucher*, 534 F. Supp. 2d 538, 542 (E.D. Pa. 2008).

[15] Applicants note that, although they were notified of their suspensions and excluded from PHLX's trading floor at this time, the Exchange continued to list Applicants as active members of the Exchange on PHLX's website until at least September 29, 2009. PHLX also continued to bill PennMont for its trading permit on the Exchange through at least October 25, 2009, and PennMont continued to pay PHLX for its trading permit on the Exchange through at least August 2009. PHLX did not explain why it continued to bill PennMont for its trading permit on the Exchange while PennMont was a suspended membership firm.

On April 4, 2008, the Exchange filed a collection action against PennMont in Pennsylvania state court for the amount of the Rule 651 Invoice, and on October 5, 2009 the Pennsylvania state court granted PHLX's motion for summary judgment and ordered Applicants to pay the adjusted amount of the Rule 651 Invoice plus interest. *NASDAQ OMX PHLX, Inc. v. PennMont Sec.*, March Term 2008, No. 5995, slip op. (Pa. Ct. Com. Pl. Phil. Co. Oct. 5, 2009). On October 23, 2009, the Pennsylvania state court denied PennMont's motion for reconsideration and rejected PennMont's request for a stay pending resolution of this application for review. *NASDAQ OMX PHLX, Inc. v. PennMont Sec.*, March Term 2008, No. 5995, Order (Pa. Ct. Com.

(continued...)

decision to the United States Court of Appeals for the Third Circuit, which vacated and remanded with orders to dismiss the District Court's order on August 17, 2009, finding that there was no subject matter jurisdiction to consider PennMont's claims because PennMont had failed to seek Commission review of PHLX's action before appealing to the courts.[16] This appeal followed.

III.

Applicants contend that their application for review of the Special Committee Order is timely.[17] We disagree.

Commission Rule of Practice 420(b) is clear – applications for review of a self-regulatory organization's "final disciplinary sanction" must be filed with the Commission "within 30 days after the notice of the sanction is filed with the Commission and received by the aggrieved person applying for review." The Special Committee Order, which on its face stated that it was the "final action by the Exchange in this matter," constituted the requisite "final disciplinary sanction." As we held in *Richard B. Feinberg*, a Special Committee's action is a "final

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[15] (...continued)
Pl. Phila. Co. Oct. 23, 2009), *aff'd*, 2009 Phila. Ct. Com. Pl. LEXIS 251 (Pa. Ct. Com. Pl. Phila. Co. Nov. 19, 2009).

There is no indication that PHLX has sought reimbursement for expenses incurred subsequent to the dismissal of the 1998 Action.

[16] PennMont filed a petition with the Third Circuit for an en banc rehearing of the decision and to enjoin PHLX's collection action, which was denied on September 17, 2009. *PennMont Sec. v. Frucher*, 586 F.3d 242 (3d Cir. 2009), *reh'g en banc denied*, ___ F.3d ____ (3d Cir. 2009), *cert. denied*, 2010 U.S. LEXIS 2054 (2010).

[17] Applicants filed a motion with the Commission on November 20, 2009 to introduce eight exhibits into the record for Applicants' appeal out of time. The exhibits include a copy of PHLX's rule regarding late charges, invoices from PHLX through October 25, 2009 for PennMont's trading permit on the Exchange, and various other documents. Commission Rule of Practice 452 permits the submission of additional evidence upon the motion of a party, provided that such motion "show[s] with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously." Although Applicants could not have adduced certain of the exhibits before the Special Committee, Applicants have failed to demonstrate that the exhibits are material to our determination of whether extraordinary circumstances exist to justify their appeal out of time pursuant to Commission Rule of Practice 420(b). Consequently, Applicants' request for inclusion of the exhibits in the record for this case is denied.

disciplinary sanction" if it (i) makes a determination of wrongdoing (*i.e.*, that respondent did not pay the Rule 651 invoice at issue), and (ii) imposes a sanction (*i.e.*, that respondent be suspended if he failed to pay the amount set forth on the Rule 651 invoice at issue).[18] The Special Committee Order satisfies this standard because it included a finding that Applicants did not pay the Rule 651 Invoice, and it imposed a suspension on Applicants if they did not either pay the Rule 651 Invoice or reach agreement with PHLX on a payment schedule within thirty days. Consequently, Applicants had thirty days from January 9, 2008 to file their application for review (*i.e.*, thirty days from when PHLX filed with the Commission and served on Applicants a notice of the Special Committee Order). Having failed to do so, their application for review is untimely.

We reject Applicants' contention that the Amended Special Committee Order was PHLX's "final disciplinary sanction" in this matter, and that PHLX's failure to file the Amended Special Committee Order with the Commission tolled the thirty-day filing period. The Amended Special Committee Order did not materially alter the disciplinary sanction imposed by the Special Committee Order. It merely stayed the sanction. In addition, we note that Applicants received the Amended Special Committee Order and were unquestionably aware that their suspensions commenced on March 10, 2008. Under these circumstances, we find that the Amended Special Committee Order did not displace the Special Committee Order as the "final disciplinary sanction" that commenced the thirty-day time period for Applicants to file an application for review.[19]

We also reject Applicants' alternative contention that the time period for them to file their application for review of the Special Committee Order did not begin to run until either (i) the Third Circuit issued its August, 17, 2009 decision finding no subject matter jurisdiction, (ii) PHLX amended its books and records after September 28, 2009 to reflect Applicants'

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[18] Exchange Act Rel. No. 59577 (Mar. 13, 2009), 95 SEC Docket 15118, 15122.

[19] *See MFS Sec. Corp.*, 56 S.E.C. 380, 387 n.13 (2003) (stating that "we have previously held that the failure of an SRO to file the required notice [under Exchange Act Section 19(d)] does not prevent Commission review" (citing *William J. Higgins*, 48 S.E.C. 713, 717 (1987)), *aff'd*, 380 F.3d 611 (2d Cir. 2004); "[Exchange Act] Section 19(d)(2) grants the Commission the authority to review any SRO action 'with respect to which a self-regulatory organization is required . . . to file notice . . .' whether or not such notice is filed"); *see also Todd and Co.*, 47 S.E.C. 242, 244 n.7 (1980) (holding that where "Applicants argued that NASD failed to file proper notice of its action against them, as required by Section 19(d)(1) of the Securities Exchange Act and the rules thereunder . . . we fail to see how they were in any way prejudiced"). Even if the thirty-day filing deadline ran from the date of the Amended Special Committee Order or the date Applicants' suspensions commenced, Applicants' application is still substantially untimely.

suspensions, or (iii) PHLX ceased billing PennMont for its trading permit.[20] Exchange Act Section 19(d) and Commission Rule of Practice 420 start the running of the thirty-day time period for the filing of an application for review from the Exchange's filing the "final disciplinary sanction" with the Commission and Applicants' receipt of it. Thus, Applicants' contentions about the pendency of the Third Circuit proceeding and the Exchange's failure to correct its books, records and billing are not relevant.

IV.

Alternatively, Applicants argue that the extraordinary circumstances of this case justify our consideration of their appeal regardless of whether they satisfied the thirty-day filing deadline. We disagree with Applicants and find that the requisite extraordinary circumstances are not present, requiring dismissal of their appeal as untimely.

A. Applicants Have Not Demonstrated that "Extraordinary Circumstances" Beyond Their Control Caused the Delay

Pursuant to Rule 420(b), the Commission may, in the exercise of its discretion, hear an otherwise untimely application only if "extraordinary circumstances" are present. Courts have recognized that strict compliance with filing deadlines facilitates finality and encourages parties to act timely in seeking relief.[21] As we have repeatedly stated, "parties to administrative proceedings have an interest in knowing when decisions are final and on which decisions their reliance can be placed."[22] For this reason, the "extraordinary circumstances" exception is to be

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[20] Applicants contend that PHLX had "not completed the suspension process, thus tolling the time to request review by the SEC, making PennMont's request to the SEC timely."

[21] *See Taylor v. Freeland & Kronz*, 503 U.S. 638, 644 (1992) ("Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality."); *see also In re Bushnell*, 273 B.R. 359, 369 (Bankr. D. Vt. 2001) (rejecting untimely appeal and acknowledging that the certainty created by appellate deadlines is essential to expedient resolution of appeals and an even playing field for all parties); *cf. French Hosp. Med. Ctr. v. Shalala*, 89 F.3d 1411, 1420 (9th Cir. 1996) (noting "policy of finality embodied in [agency's] appeal deadline"); *In re GAC Corp.*, 640 F.2d 7, 8 (5th Cir.1981) ("The time requirements contained in [the federal appellate rule for taking an appeal] derive from the need for finality of judgments and an end to litigation.").

[22] *Edward J. Jakubik, Jr.*, Exchange Act Rel. No. 61541 (Feb. 18, 2010), __ SEC Docket ___, ___ (quoting *Lance E. Van Alstyne*, 53 S.E.C. 1093, 1098 n.10 (1998)); *see also Robert M. Ryerson*, Exchange Act Rel. No. 57839 (May 20, 2008), 93 SEC Docket 6058, 6061.

narrowly construed and applied only in limited circumstances.[23] To do otherwise would thwart the very clear policies of finality and certainty underlying the thirty-day filing deadline set forth in Exchange Act Section 19(d) and Rule of Practice 420(b).

We believe that an extraordinary circumstance under Rule of Practice 420(b) may be shown where the reason for the failure timely to file was beyond the control of the applicant that causes the delay. In construing what constitutes extraordinary circumstances, we have looked to analogous areas of federal law involving deadlines, including the judicial doctrine of "equitable tolling" of filing deadlines.[24] Under this doctrine, federal courts may excuse an untimely filing where the party has been pursuing his rights diligently but some extraordinary circumstance beyond the party's control – such as attorney misconduct or mental incapacity – prevented the party from making a timely filing.[25] Even when circumstances beyond the applicant's control give rise to the delay, however, an applicant must also demonstrate that he or she promptly arranged for the filing of the appeal as soon as reasonably practicable thereafter.[26] An applicant

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[23] *Cf. In re Home & Family, Inc.*, 85 F.3d 478, 481 (10th Cir. 1996) (discussing analogous "unique circumstances" exception for untimeliness in bankruptcy proceedings and explaining that "it is a disfavored doctrine that is to be applied only in 'carefully limited circumstances'" (*quoting Senjuro v. Murray*, 943 F.2d 36, 37 (10th Cir. 1991))).

[24] *Wallace v. Kato*, 549 U.S. 384, 396 (2007) ("Equitable tolling is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs."). We also consider the meaning of "extraordinary circumstances" as used in Section 208(a)(2)(D) of the Immigration Nationality Act, which permits tolling of the filing deadline for applications for asylum where the petitioner can show "extraordinary circumstances related to the delay in filing." 8 U.S.C. § 1158(a)(2)(D). Such circumstances include serious illness or mental disability, legal disability, ineffective assistance of counsel, and the death or serious illness or incapacity of the petitioner's legal representative or a member of the petitioner's immediate family. 8 C.F.R. § 208.4(a)(5). As indicated below, Applicants have not identified these kinds of circumstances in this case.

[25] *See, e.g., Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *Baldayaque v. United States*, 338 F.3d 145, 152-53 (2d Cir. 2003); *Spitsyn v. Moore*, 345 F.3d 796, 798-801 (9th Cir. 2003); *Fahy v. Horn*, 240 F.3d 239, 244-46 (3d Cir. 2001).

[26] Our decisions have rejected applications for review where applicants did not act promptly in pursuing their appeals. *See, e.g., Ryerson*, 93 SEC Docket at 6064 (holding that extraordinary circumstances did not exist where, among other things, NASD "did not cause the fourteen-month delay between the issuance of the [underlying] opinion and the filing of the petition before [the Commission]," but rather the delay "resulted from [applicant's] deliberate choice not to appeal . . ."); *Larry A. Saylor*, Exchange Act Rel. No. 51949 (June 30, 2005), 85

(continued...)

whose application is delayed as a result of extraordinary circumstances remains under an obligation to proceed promptly in pursuing appellate recourse.

It is undisputed that no circumstances beyond Applicants' control led to their failure to timely file an application for review. Applicants were notified of their right of appeal to the Commission four times by PHLX (including a response by PHLX on January 7, 2008 to a letter by Applicants' counsel asking for PHLX to provide "any rights of appeal, the time frames and how time is counted, and to which organization"). Despite this, Applicants elected to pursue their objections in the federal courts rather than filing an application for review with the Commission. Having made this election, Applicants cannot complain at this stage about the consequences of their choices.[27]

B. Applicants Have Not Demonstrated Any Other Extraordinary Circumstances

Rather than demonstrate delay caused by circumstances beyond their control, Applicants simply argue that various procedural and substantive issues raised by their application – arguments they could have raised well over one year ago – present extraordinary circumstances warranting review of their untimely application. We believe that the measure of whether an untimely application presents an extraordinary circumstance is not simply the relative weight of the arguments presented on appeal – otherwise, the "extraordinary circumstances" requirement would be read out of Commission Rule of Practice 420. We do not intend here to catalogue every extraordinary circumstance that might lead the Commission to exercise its discretion to hear an appeal filed out of time.[28] While we reserve the right to hear an untimely appeal in our

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[26] (...continued)
SEC Docket 3118, 3124-25 (dismissing application for review citing "[applicant's] thirty-two year delay in filing an appeal of NASD action taken after a proceeding in which he participated, and of which he admits being apprised immediately"); *but see David L. Turpinseed*, 48 S.E.C. 689, 689 n.1 (1987) (accepting application for review filed twenty days late by exercising "the discretion granted us by Section 19(d)(2) of the Securities Exchange Act").

[27] *See supra* note 26; *see also Jakubik*, __ SEC Docket ___ (granting motion to dismiss petition for review filed five years after petitioner notified of SRO's final disciplinary sanction).

[28] See, e.g., *MFS Sec. Corp.*, 56 S.E.C. at 382-94 (accepting appeal from action taken by the New York Stock Exchange ("NYSE") that was filed almost three years late because (i) the United States Court of Appeals for the Second Circuit "asked for the Commission's views as to whether the NYSE's actions comported with the Exchange Act and the NYSE's rules" and (ii) "MFS's application present[ed] novel facts and legal issues," but making clear that, despite (continued...)

discretion,[29] as discussed below, none of the legal issues raised here present, in our view, extraordinary circumstances warranting review.

- Contrary to Applicants' assertion that "no administrative procedures were in place" at PHLX for Applicants to contest the Rule 651 Invoice, the administrative procedures implemented by the Special Committee appear to have been consistent with the routine adjudicatory procedures of the Exchange and to have resulted in no unfairness towards Applicants.

- Applicants' argument that PHLX should have raised Rule 651 as a counterclaim in the 1998 Action instead of initiating the Special Committee proceeding raises a question of state law that does not qualify as a critical legal issue warranting our review.

- Applicants' argument that a member of the Special Committee should have been disqualified is foreclosed because Applicants failed to raise this objection during the Exchange proceeding.[30]

- Contrary to Applicants' assertion, Rule 651 does not impose any requirement that the Special Committee Order must set forth an explicit determination regarding the reasonableness of the fees and expenses.

- With respect to Applicants' arguments regarding the enactment of Rule 651, we have previously upheld the Rule 651 adoption process (finding that Rule 651 was "consistent with existing precedent and [presented] no novel issues"),[31] and have

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[28] (...continued)
accepting the untimely appeal, the Commission "[g]enerally would reject such an application as untimely" and stating that "[o]ur action should not be viewed as indicating that we will accept other applications under similar circumstances").

[29] *Id.*

[30] *See, e.g.*, *Stephen R. Boadt*, 51 S.E.C. 683, 685 (1993) (holding that where an applicant did not object to the composition of a hearing panel before such hearing panel, "[w]e are therefore not required to consider this objection because he failed to present it to the [hearing panel] at a time when it could have been remedied, if appropriate").

[31] *Lawrence Gage*, Exchange Act Rel. No. 54600 (Oct. 13, 2006), 89 SEC Docket 279, 288.

upheld Rule 651 as applied to lawsuits "relating to the business of the Exchange."[32]

- Contrary to Applicants' assertions, Rule 651 is not vague.[33]

- Contrary to Applicants' assertions, we find no indication that PHLX used Rule 651 to penalize Applicants for challenging Exchange management decisions, or that the application of Rule 651 by PHLX in this case was inconsistent with state law within the meaning of the Exchange Act.[34]

- Contrary to Applicants' assertions, in *Richard B. Feinberg* we held that "[n]othing in [Rule 651] suggests that [respondent's] membership status must have played a role in the suit."[35]

- With respect to Applicants' assertion that Rule 651 requires PHLX to submit evidence that it paid the legal fees and expenses at issue, the plain language of Rule 651 only requires that such fees and expenses have been "incurred by the Exchange."

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[32] *Feinberg*, 95 SEC Docket at 15118.

[33] By its express terms, it applies to "[a]ny member, member organization . . . or person associated with any of the foregoing who fails to prevail in a lawsuit or other legal proceeding instituted by such person or entity against the Exchange or any of its board members, officers, committee members, employees, or agents, and related to the business of the Exchange." It further requires that any such person or entity "pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding . . . ." *See Heath v. SEC*, 586 F.3d 122, 140 (2d Cir. 2009) (sustaining NYSE disciplinary action based on violation of "just and equitable principles of trade" rule, holding that the Due Process Clause in the United States Constitution requires that "laws be crafted with sufficient clarity to give the person of ordinary intelligence a reasonable opportunity to know what is prohibited," and noting that the Supreme Court has "expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe") (quoting *Perez v. Hoblock*, 368 F.3d 166, 174-76 (2d Cir. 2004)).

[34] *But see Bus. Roundtable v. SEC*, 905 F.2d 406 (D.C. Cir. 1990) (holding that the Commission exceeded its statutory authority under the Exchange Act in barring a stock exchange from listing common stock with restricted voting rights because the applicable rule "directly interfere[d] with the substance of what the shareholders may enact" under state law).

[35] 95 SEC Docket at 15123 n.13.

- Finally, with respect to Applicants' contention that Rule 651 was impermissibly applied retroactively by PHLX, resolution of this issue turns in substantial part on the proper application of state law under the particular facts of this matter.[36] For that reason, we find that it does not present the type of critical legal issue that could potentially rise to the level of an extraordinary circumstance that might necessitate taking an appeal filed well over a year past its due date.[37]

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[36] Although the United States Supreme Court has admonished against the application of laws and rules retroactively absent a very clear expression in the provision otherwise, in *Bradley v. Sch. Bd. of Richmond*, the Court permitted the application of a newly enacted fee-shifting provision to litigation that was already ongoing absent the requisite clear expression. 416 U.S. 696 (1974). In *Landgraf v. USI Film Prods.*, the Court offered two explanations to reconcile this apparent tension. First, the Court stated that "[a]ttorney's fee determinations . . . are 'collateral to the main cause of action' and 'uniquely separable from the cause of action to be proved at trial.'" 511 U.S. 244, 277 (1994) (quoting *White v. New Hampshire Dept. of Employment Sec.*, 455 U.S. 445, 451-52 (1982)). The logic of this distinction would similarly apply to the facts of this matter. Second, the Court stated that *Bradley* did not present a retroactivity issue "because the prior availability of a fee award, and the likelihood that fees would be assessed under pre-existing [equitable] theories," meant that "the new fee statute simply 'd[id] not impose an additional or unforeseeable obligation' upon the school board." *Id.* at 278 (quoting *Bradley*, 416 U.S. at 721).

It is unclear from the record whether this second distinction is present under the particular facts of this matter, and thus it is unclear whether or not the result in *Bradley* would carry over if Applicants had filed a timely application. Here, PHLX argues that Applicants contractually agreed "to abide by the . . . rules and regulations of the Exchange (which . . . shall be deemed to include *any dues, fees, and other charges imposed by the Exchange*), in each case *as they have been or shall be from time to time amended*," PHLX By-Laws Art. XII, § 12-9(a), and knew that they could be subject to assessment for the Exchange's legal fees in defense of the 1998 Action under Pennsylvania's Dragonetti Act. *Citing* 42 Pa. C.S. § 8351, *et. seq.* (imposing liability against a "person who takes part in the procurement, initiation or continuation of civil proceedings against another" for "wrongful use of civil proceedings" if "[t]he proceedings have terminated in favor of the person against whom they are brought").

[37] We have considered all of the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.

V.

In sum, the Applicants' application for review was untimely and they have not established that extraordinary circumstances that might otherwise counsel in favor of our reviewing the application.

Accordingly, it is ORDERED that the Philadelphia Stock Exchange, Inc.'s motion to dismiss the application for review filed by PennMont Securities and Joseph D. Carapico be, and it hereby is, GRANTED.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Florence E. Harmon
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61969 / April 23, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13867

In the Matter of **LEP Group PLC (n/k/a Wayrol PLC), LIF, Liferate Systems, Inc., and Loch Harris, Inc.,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents LEP Group PLC (n/k/a Wayrol PLC), LIF, Liferate Systems, Inc., and Loch Harris, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. LEP Group PLC (n/k/a Wayrol PLC) (CIK No. 839094) is an England and Wales corporation located in Surrey, England with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LEP is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended December 31, 1993, which reported a net loss of $27,997 for the prior twelve months.

2. LIF (CIK No. 757642) is a California limited partnership located in Carbondale, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LIF is delinquent in its periodic filings with the

Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2000.

3. Liferate Systems, Inc. (CIK No. 937251) is an inactive Minnesota corporation located in Minneapolis, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Liferate Systems is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2000.

4. Loch Harris, Inc. (CIK No. 766347) is a dissolved Nevada corporation located in Austin, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Loch Harris is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported a net loss of $3,350,204 for the prior three months.

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports. Rule 13a-16 requires foreign private issuers to furnish quarterly and other reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to

notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By Jill M. Peterson
Assistant Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61970 / April 23, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 3019 / April 23, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13868

In the Matter of **BETH R. CHAPMAN,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Beth R. Chapman ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Respondent

1. Chapman, age 55, is a resident of Corsicana, Texas. From at least 1990 until on or about January 6, 2009, Chapman was a registered representative associated with broker-dealers and investment advisers registered with the Commission. From 2005 until on or about January 6, 2009, Chapman was associated with a Massachusetts limited liability partnership (the "Firm") that was and is registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act and as an investment adviser pursuant to Section 203(a) of the Advisers Act. Shortly after Chapman became associated with the Firm, the Firm opened an Office of Supervisory Jurisdiction ("OSJ") in Corsicana, with Chapman as its branch office manager. Chapman holds Series 7, 24, 53, 63 and 65 securities licenses. She has no prior disciplinary history.

Other Relevant Person

2. Susan G. Slovak ("Slovak"), age 50, is a resident of Ennis, Texas. From 2005 until on or about January 6, 2009, Slovak was a registered representative associated with the Firm, working in the Corsicana OSJ under supervision by Chapman and the Firm.

3. On April 23, 2010, the Commission filed a civil injunctive action in the United States District Court for the Northern District of Texas against Slovak (the "Complaint") alleging, among other things, that Slovak defrauded three customers by misappropriating and misusing funds from their accounts. The Complaint further alleged that, in order to accomplish and then cover up the scheme, Slovak made material misstatements and omissions in her communications with affected customers and compliance personnel, in connection with sales and purchases of securities in the customers' accounts.

4. Simultaneously with the Commission's filing of the Complaint, without admitting or denying the allegations in the Complaint, Slovak consented to the entry of a final judgment permanently restraining and enjoining her from violating, directly or indirectly, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and Sections 206(1) and (2) of the Advisers Act.

Slovak's Misconduct

5. Starting in 2005, Slovak took more than $330,000 from an 83-year-old customer, by liquidating securities in his brokerage account and transferring the proceeds to her personal bank accounts. Slovak used the proceeds to pay personal expenses. A large portion of the funds were misappropriated from the customer, while other funds were apparently taken from him with his permission.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. In or about July 2008, Slovak misappropriated approximately $144,000 from the accounts of two more customers, by making unauthorized sales of securities in their accounts and misusing the proceeds for her personal benefit. In or about August 2008, when her misappropriation from these two customers became known to Chapman, Slovak agreed to pay the funds back to the two customers, with interest. Through her material misstatements and omissions, however, Slovak misled Firm compliance staff and one of the two customers about the true nature of her misappropriation.

Respondent's Failure to Supervise

7. Under the Firm's written supervisory procedures and applicable law, as the branch manager of an OSJ, Chapman was responsible, along with others at the Firm, for exercising reasonable supervision over Slovak.

8. Chapman was unaware that Slovak was misappropriating funds from the 83-year-old customer. In or about August 2008, however, Chapman learned about Slovak's July 2008 misappropriations from the other two customers. At that time, Chapman insisted that Slovak pay the funds back to the two customers, with interest, through the repurchase of securities in the customers' accounts. In related communications with Firm compliance staff, however, Chapman intentionally failed to disclose the circumstances under which Slovak had sold securities and withdrawn funds from the customers' accounts, by indicating only that the funds had been withdrawn by "mistake," rather than disclosing that the withdrawals resulted from Slovak's intentional misconduct. Chapman also instructed Slovak to tell one of the customers that the funds had been withdrawn in error.

Conclusions

9. Section 15(b)(6) of the Exchange Act, incorporating by reference Section 15(b)(4)(E) of the Exchange Act, authorizes the Commission to sanction a person who is associated, or at the time of the alleged misconduct was associated, with a broker or dealer, for failing reasonably to supervise, with a view to preventing violations of the federal securities law, another person who commits such a violation, if that person is subject to the person's supervision. Similarly, Section 203(f) of the Advisers Act, incorporating by reference Section 203(e)(6) of the Advisers Act, authorizes the Commission to sanction a person who is associated, or at the time of the alleged misconduct was associated, with an investment adviser, for failing reasonably to supervise, with a view to preventing violations of the federal securities law, another person who commits such a violation, if that person is subject to the person's supervision. Along with others at the Firm, Chapman was responsible for supervising Slovak.

10. Supervisors must respond reasonably when confronted with red flags suggesting that a registered representative may be engaging in improper activities. *See George J. Kolar*, Exchange Act Rel. No. 46127, 2002 SEC LEXIS 1647 (June 26, 2002) (Commission opinion); *Consolidated Investment Services, Inc.*, Exchange Act Rel. No. 36687, 52 SEC 582 (January 5, 1996) (Commission opinion); *Patricia A. Johnson*, Exchange Act Rel. No. 35698, 52 SEC 253 (May 10, 1995), vacated on other grounds, *Patricia A. Johnson v. SEC*, 87 F.3d 484 (D.C. Cir. 1996).

11. When Chapman was put on notice of Slovak's misconduct in August 2008, she failed reasonably to address these red flags. First, she took it upon herself to address the misconduct, rather than report it to the Firm, as required by Firm compliance procedures. Moreover, she misled Firm compliance officials about the circumstances under which funds were transferred from the customers' accounts.

12. As a result of Chapman's misleading statements to compliance, and inaction, no one at the Firm, including Chapman, reasonably followed up to determine if Slovak had misappropriated, or was continuing to misappropriate, funds from other customers, including the 83-year-old customer. Moreover, no one determined whether the victims of Slovak's misappropriations were accurately and fully informed of the circumstances surrounding the withdrawals from, and deposits to, their accounts, so, among other things, the customers could make informed decisions about whether to continue doing business with the Firm, Chapman and Slovak. As a result, Chapman's supervisory response to Slovak's misconduct was not reasonable.

13. As a result of the conduct described above, Chapman failed reasonably to supervise Slovak within the meaning of Sections 15(b)(4)(E) and 15(b)(6)(A) of the Exchange Act and Sections 203(f) and 203(e)(6) of the Advisers Act, with a view to preventing and detecting Slovak's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and of Sections 206(1) and (2) of the Advisers Act.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Chapman's Offer.

Accordingly, it is hereby ORDERED:

A. Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Chapman be, and hereby is barred from association in a supervisory capacity with any broker, dealer, or investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

B. That, within ten days of the entry of this Order, Respondent Chapman shall pay a civil money penalty in the amount of $25,000 to the Commission. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money

order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Chapman as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Rose Romero, Regional Director, Securities and Exchange Commission, 801 Cherry Street, Unit 18, Fort Worth, TX 76102.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

Commissioner Aguilar not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9119 / April 23, 2010

SECURITIES EXCHANGE ACT OF 1934
Release No. 61968 / April 23, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13869

In the Matter of **Paul George Chironis,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Paul George Chironis ("Respondent" or "Chironis").

II.

After an investigation, the Division of Enforcement alleges that:

Summary

1. While a registered representative at Capital Growth Financial, Inc. ("Capital Growth), a now-defunct broker-dealer, Respondent Paul Chironis defrauded the Sisters of Charity – a congregation of elderly nuns – through abusive trading in their accounts. The Sisters of Charity maintained two accounts at Capital Growth (the "Accounts"), both of which contained predominantly mortgage-backed securities, including securities issued or guaranteed by the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association

(Fannie Mae), and the Government National Mortgage Association (Ginnie Mae) (collectively, "MBS"). Chironis was the registered representative on both Accounts.

2. During the period January 1, 2007 through January 31, 2008 (the "Relevant Period"), Chironis engaged in an abusive trading pattern that featured churning and the charging of undisclosed excessive markups and markdowns on riskless principal bond trades. For example, during the Relevant Period, Chironis purchased 46 bonds for the Accounts, predominantly long-term MBS. Of the 46 bonds purchased, he sold 38 within the same period. The average holding period for bonds acquired and sold during the Relevant Period was only 4.3 months. In fact, Chironis frequently sold one bond and replaced it with a bond issued by a similar issuer and offering a similar yield over a similar duration. The impact of Chironis' frequent trading of securities in the Accounts was exacerbated by the excessive transaction fees – in the form of markups and markdowns – that Chironis charged. During the Relevant Period, the Accounts were charged, on average, markups of 3.68% and markdowns of 1.92% for MBS, which were excessive given the highly liquid market for these securities and the minimal work required by Chironis.

3. Chironis' trading had a devastating impact on the Accounts, while enriching Chironis. In 2007, the Accounts had an average combined balance of approximately $8.3 million. During the Relevant Period, the Accounts purchased approximately $20.1 million and sold $18 million worth of securities. The trades cost the Accounts $959,027, over 11.3% of their value in 13 months.

Respondent

4. **Paul George Chironis**, age 57, is a resident of Melville, New York. Chironis has worked in the securities industry since 1981 and maintained Series 7 and 63 licenses since 1983. Prior to his association with Capital Growth, Chironis received seven customer complaints filed with the NASD/FINRA, including complaints for churning and unsuitability. As a result of customer complaints, in January 2006, the Michigan Securities Division required that Chironis be placed on heightened supervision, and in March 2006 the Vermont Securities Division prohibited Chironis from soliciting investors in Vermont. Chironis was associated with Capital Growth from November 2005 until February 2008, when Capital Growth ceased business operations. Since March 2009, Chironis has been associated with another registered broker-dealer located in New York, New York.

Other Relevant Entities

5. **Capital Growth**, a former Florida corporation that had offices in Boca Raton, Florida and New York, New York, was a registered broker-dealer until February 2008, when it ceased operations due to its failure to meet net capital requirements. On February 11, 2008, Capital Growth filed with the Commission a Form BDW, which became effective on April 11, 2008.

6. **The Sisters of Charity** (the "Sisters of Charity" or the "Congregation") is a congregation of mostly elderly nuns residing in Bronx, New York. During the relevant period, the Sisters of Charity maintained two accounts at Capital Growth: a General Fund Account ("General

Account") used for operational purposes, including paying for the care of members of the Congregation living in assisted living facilities, and a Charitable Trust Account ("Charitable Trust"), used for the Congregation's charitable endeavors.

The Sisters of Charity Become Customers of Chironis

7. Chironis first began working as a registered representative for the Sisters of Charity in October 2003, when the Congregation transferred the Charitable Trust Account to Advest, Inc. ("Advest"), where Chironis worked as a registered representative.

8. In November 2005, Merrill Lynch & Co. ("Merrill Lynch") acquired Advest, and thereafter Merrill Lynch rescinded Chironis' offer of employment, in part, due to prior customer complaints against Chironis, including complaints of excessive trading.

9. Chironis then accepted employment at Capital Growth, working at its New York office. Chironis agreed to work at Capital Growth, in part, because the compensation structure offered by Capital Growth allowed Chironis to retain for himself 60% of the amount of the markups and markdowns paid by his customers. At Advest, Chironis had previously received 42% of markups and markdowns.

10. In December 2005, the Sisters of Charity moved the Charitable Trust from Merrill Lynch to Capital Growth, and Chironis continued to be the registered representative servicing the account. In July 2006, the Sisters of Charity opened a second account, the General Account, at Capital Growth.

11. During the Relevant Period, the Accounts held primarily conservative, income producing assets: MBS issued by Fannie Mae, Freddie Mac, and Ginnie Mae; closed-end bond funds; and a small amount of corporate bonds. The Accounts' primary purpose was income generation, and the Sisters of Charity had a low risk tolerance. During the relevant period, the combined balance of the Accounts totaled approximately $8 million.

12. Although Chironis did not have discretionary authority, Chironis exercised *de facto* control over the Accounts. Chironis recommended transactions to the Chief Financial Officer of the Sisters of Charity (the "CFO"), who, based on their long-standing professional relationship, relied on Chironis and followed his recommendations. The CFO trusted Chironis to make recommendations that were in the best interest of the Congregation.

The Scheme to Defraud

13. Beginning in January 2007, Chironis engaged in an abusive trading pattern that featured churning in the Accounts and charging excessive markups and markdowns on riskless principal bond trades. The Accounts were charged an average markup of 3.68% on the 46 bond purchases, and 3.03% on the 33 closed-end fund purchases. On the 67 bond sales, Capital Growth charged an average markdown of approximately 1.92%. For the 15 closed-end bond fund sales, Capital Growth charged an average markdown of approximately 1.86 %. The markups and

markdowns contained two components: (1) the amount charged by Chironis, which constituted the bulk of the markup and markdown, and (2) the additional markup/markdown charged by the trading desk.

14. Attached as Appendix A is a chart listing the bond transactions Chironis made on behalf of the Sisters of Charity during the Relevant Period.

15. Attached as Appendix B is a chart listing the closed-end bond fund transactions that that Chironis made on behalf of the Sisters of Charity during the Relevant Period.

16. The combined markups and markdowns charged to the Accounts during the Relevant Period totaled $959,027, which was approximately 11.3% of the combined average value of the Accounts.

Churning

17. During the Relevant Period, Chironis purchased 46 bonds for the Accounts – 39 MBS and seven corporate bonds – worth approximately $12.2 million. Of those 46 securities, he sold 38 – worth approximately $9.6 million – within the same period. The average holding period for the 38 securities bought *and* sold during the Relevant Period was 4.3 months.

18. Chironis frequently replaced one bond with a bond or bonds of similar duration and yield. For example, on July 24, 2007, Chironis sold a Ginnie Mae bond with a 6% coupon rate, a maturity date of 2033 and a principal amount of $258,504.43. The very next day, Chironis purchased a Ginnie Mae bond with the same 6% coupon rate, the same 2033 maturity date and a principal amount of $201,636.05, along with a second Ginnie Mae bond with a 6% coupon rate, a 2032 maturity date and principal amount of $199,956.51. Capital Growth, through Chironis, charged the Accounts approximately $18,352 in transaction fees – in the form of markups and markdowns – on these three transactions. On September 26, 2007, Chironis sold one of the two bonds he purchased two months earlier, and on October 24, 2007, he sold the second.

19. In addition to these bond transactions, Chironis purchased 33 closed-end bond funds – worth approximately $6.5 million – for the Accounts. Chironis sold 12 of these positions, – worth approximately $4.3 million – during the same time. The average holding period for these 12 positions was 4.8 months.

20. Given the low-yielding nature of the securities, the transaction costs involved, and the Congregation's investment objectives, Chironis's trading in the Accounts during the Relevant Period was excessive and designed to generate income in the form of transaction fees for Chironis. During the Relevant Period, the Accounts had a combined turnover ratio of approximately 2.2 and an annualized cost-to-equity ratio of approximately 10.51%. Indeed, for securities that Chironis bought and sold within the Relevant Period, the Accounts experienced a *realized loss* of approximately $639,000. The combined unrealized and realized loss for the Accounts as of December 31, 2007 was $1,170,000, and most of these losses were attributable to transaction fees.

21. Chironis's frequent trading of fixed income securities and charging excessive markups and markdowns to Accounts constituted churning. Given the relatively low yield of the securities that Chironis purchased and sold for the Accounts, Chironis's abusive trading caused the Accounts to lose money. In his conversations with the CFO in which he recommended that the Congregation purchase or sell a particular security, Chironis did not disclose the transaction costs and the impact those costs would have on the Accounts. Chironis omitted to disclose that, in light of the transaction costs, the transactions were not in the best interest of the Congregation.

Excessive Markups and Markdowns

22. The impact of Chironis's frequent trading was exacerbated by the excessive amount of the markups and markdowns the Accounts were charged.

23. Capital Growth charged the Accounts on a per-transaction basis by marking down bond sales and marking up bond purchases in "riskless principal" transactions. A "riskless principal" transaction is the economic equivalent of an agency trade. A broker-dealer engaging in such trades has no market making function, buys only to fill orders already in hand, and immediately "books" the shares it buys to its customers. Essentially, the firm serves as an intermediary for others who have assumed the market risk. In other words, the customer purchaser is already lined up before the broker-dealer buys the bond. On such transactions, if a customer wishes to purchase a bond, a broker-dealer locates the bond, purchases it on the open market, and then resells it to its customer at a markup. The reverse is true when a customer sells a bond. Typically, bond broker-dealers charge a higher percentage on markups than they charge on markdowns, because less work is necessary to sell a bond versus buying a bond.

24. Although the markups and markdowns charged on closed-end bond funds were reflected in account statements sent to the Sisters of Charity, the markups and markdowns for bond purchases and sales were not reflected in account statements or otherwise disclosed to the Congregation. As a result, the Congregation was unaware that it was paying approximately 11.3% of the value of the Accounts in transaction fees over 13 months.

25. When Chironis wanted to purchase a bond for the Accounts, he called the Capital Growth trading desk and told the trader the type of bond he wanted to buy. The trader would then bid on offers from the market and reported to Chironis with specific prices. Chironis then confirmed whether he wanted to proceed with the transaction and provided the trader with the amount of markup to charge. In addition to the markups charged by Chironis, which generally ranged from 2.75-3.0%, the Capital Growth trading desk would typically add a small percentage markup or markdown of between 0.25-0.75% to compensate the trading desk. Chironis and the trading desk followed a similar procedure for markdowns on bond sales, though the markdowns were generally lower than the markups. Chironis was aware that the trading desk was adding to the markup and markdowns that he instructed the trading desk to charge.

26. Neither Chironis nor the trading desk did significant work in purchasing or selling bonds and MBS for the Accounts. The market for these securities that Chironis purchased and sold for the Accounts was highly liquid. Chironis did little or no research for the transactions. He

simply instructed the trading desk as to the type of security he was looking to purchase or which security he wanted to sell. Although the trading desk did some work, including locating bids and offers and negotiating with counterparties, because the market was highly liquid, the work performed by the trading desk was minimal.

27. The undisclosed markups and markdowns charged to the Accounts were excessive given the highly liquid nature of the securities and the little work performed by Capital Growth.

VIOLATIONS

28. As a result of the conduct described above, Respondent willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

E. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and whether Respondent should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

By: Jill M. Peterson
Assistant Secretary

Appendix A
Bond Transactions in The Accounts: January 2007-January 2008

Date	Account	Buy Sell	Type of Security	Issuer	Interest Rate	Price	Amount	Markup/ Mark-down
01.04.07	Charitable Trust	Buy	Bond	Wachovia	5.5%	103.58	$274,487.00	3.45%
01.08.07	Charitable Trust	Buy	MBS	Freddie Mac	6%	105.125	$201,588.13	3.44%
01.24.07	General Account	Buy	MBS	Freddie Mac	5.5%	103.625	$169,905.95	3.5%
01.24.07	Charitable Trust	Buy	MBS	Freddie Mac	6%	105	$263,398.46	3.45%
02.02.07	Charitable Trust	Buy	MBS	Fannie Mae	5.5%	103.75	$243,743.66	3.43%
02.13.07	Charitable Trust	Buy	MBS	Fannie Mae	5.5%	102.375	$162,287.34	3.41%
02.22.07	Charitable Trust	Buy	MBS	Ginnie Mae	6%	105	$250,817.47	3.32%
02.27.07	General Account	Sell	MBS	Ginnie Mae	6%	99.25	($337,414.39)	(1.85%)
03.05.07	General Account	Buy	Bond	Bear Stearns		101.991	$356,968.50	2.26%
03.05.07	General Account	Buy	Bond	Bear Stearns		102.704	$369,749.35	Footnote[1]
03.05.07	General Account	Sell	MBS	Wells Fargo	6%	98	($343,000.00)	(0.81%)
03.19.07	Charitable Trust	Sell	MBS	Ginnie Mae	6.5%	101	($208,117.49)	(1.34%)
03.26.07	General Account	Buy	MBS	Ginnie Mae	6.5%	105.5	$100,433.30	4.46%[2]
03.26.07	Charitable Trust	Buy	MBS	Ginnie Mae	6.5%	105.5	$101,423.76	4.46%
03.26.07	General Account	Buy	MBS	Ginnie Mae	6%	104.35	$85,898.01	4.51%
03.26.07	Charitable Trust	Buy	MBS	Ginnie Mae	6.5%	105.75	$251,951.78	4.44%
03.27.07	General Account	Sell	MBS	Fannie Mae	5.5%	93	($162,500.00)	(1.98%)
03.27.07	Charitable Trust	Sell	MBS	Wells Fargo	6%	97.5	($170,625.00)	(1.17)
03.28.07	Charitable Trust	Sell	MBS	Countrywide	6%		($154,800.00)	(1.43%)
03.28.07	Charitable Trust	Buy	MBS	Fannie Mae	5.5%	104.31	$391,420.74	3.34%
04.10.07	General Account	Buy	MBS	Freddie Mac	5.5%	104	$246,478.40	3.35%
04.10.07	General Account	Sell	Treasury Bill	United States	0%	46.4	($232,000.00)	(3.33%)
04.19.09	General Account	Sell	MBS	Ginnie Mae	6%	99.25	($249,148.19)	(1.98%)
04.25.07	General Account	Sell	Bond	Bank of America	5.5%	89.25	($148,155.00)	(2.19%)
04.25.07	General Account	Buy	MBS	Fannie Mae	6%	101.75	$96,662.50	5.44%
04.25.07	General Account	Buy	MBS	Ginnie Mae	6%	104.25	$113,729.55	5.3%
04.25.07	General Account	Buy	MBS	Ginnie Mae	6.5%	105.25	$8,600.51	5.25%
04.25.07	General Account	Buy	MBS	Ginnie Mae	6%	104.75	$34,117.37	5.28%
05.09.07	Charitable Trust	Buy	MBS	Fannie Mae	5.5%	102.875	$198,829.58	3.39%
05.23.07	Charitable Trust	Buy	MBS	Fannie Mae	5.5%	101.94	$318,988.78	3.49%
06.25.07	General Account	Buy	MBS	Fannie Mae	5.5%	100.35	$101,567.05	3.45%
06.25.07	Charitable Trust	Buy	MBS	Fannie Mae	5.5%	100.35	$65,392.48	3.45%
06.27.07	General Account	Sell	Bond	Bear Stearns		97.204	($690,148.40)	(1.52%)

[1] Because Capital Growth's clearing firm was unable to produce data regarding this trade, the Division of Enforcement was unable to determine the markup charged.

[2] As shown in this Appendix, with respect to the 8 trades on March 26 and April 25, 2007 where markups between 4.44-5.44% were charged, MBS were purchased by Capital Growth out of an account unrelated to the Sisters of Charity for which Chironis was the registered representative, and were then resold to the Sisters of Charity. The identified markups are calculated by using the price at which the unrelated account sold, and the price the Sisters of Charity's accounts paid.

06.27.07	General Account	Buy	MBS	Ginnie Mae	6%	103.75	$688,175.23	3.39%
06.28.07	Charitable Trust	Sell	MBS	Ginnie Mae	6%	97	($213,793.11)	(2.11%)
07.24.07	General Account	Sell	MBS	Ginnie Mae	6%	97.5	($257,375.49)	(1.86%)
07.24.07	Charitable Trust	Sell	Bond	Wachovia	5.49%	98	($259,700.00)	(1.74%)
07.25.07	General Account	Buy	MBS	Ginnie Mae	6%	103.33	$200,682.39	3.49%
07.25.07	General Account	Buy	MBS	Ginnie Mae	6%	103.33	$199.010.97	3.49%
07.25.07	Charitable Trust	Buy	MBS	Ginnie Mae	6%	103.62	$404,035.49	3.49%
07.26.07	General Account	Sell	MBS	Ginnie Mae	7%	100.75	($30,223.76)	(1.95%)
07.26.07	General Account	Sell	MBS	Ginnie Mae	6.5%	99.25	($45,436.66)	(1.98%)
07.26.07	General Account	Sell	MBS	Ginnie Mae	6%	97.5625	($101,139.51)	(2.01%)
07.26.07	General Account	Sell	MBS	Ginnie Mae	6%	97.5625	($74,455.94)	(2.01%)
07.31.07	Charitable Trust	Sell	MBS	Freddie Mac	6%	98	($224,430.92)	(2.37%)
08.09.07	General Account	Sell	MBS	Ginnie Mae	6.5%	99.75	($86,724.15)	(2.15%)
08.09.07	General Account	Buy	Bond	General Motors	8.375%	88.23	$105,876.00	3.5%
08.15.07	Charitable Trust	Buy	MBS	Ginnie Mae	5.5%	101.35	$105,525.26	3.48%
08.15.07	Charitable Trust	Buy	MBS	Ginnie Mae	6.5%	106	$99,864.44	3.48%
08.15.07	Charitable Trust	Sell	Bond	Wachovia	4.99%	97.25	($145,875.00)	(1.57%)
08.24.07	General Account	Sell	MBS	Ginnie Mae	6%	98.36	($385,906.39)	(1.99%)
08.28.07	Charitable Trust	Sell	MBS	Fannie Mae	5.5%	97.625	($208,877.03)	(1.98%)
08.30.07	Charitable Trust	Sell	MBS	Ginnie Mae	6.5%	100.03125	($213,386.65)	(1.96%)
09.05.07	General Account	Sell	MBS	Ginnie Mae	6%	98.6875	($253,051.95)	(1.99%)
09.11.07	General Account	Sell	MBS	Freddie Mac	5.5%	98.1875	($120,478.83)	(2%)
09.11.07	General Account	Sell	MBS	Fannie Mae	6%	96.3125	($91,496.88)	(2.03%)
09.11.07	General Account	Buy	MBS	Fannie Mae	6%	104.8	$436,010.34	3.47%
09.11.07	General Account	Sell	MBS	Fannie Mae	5.5%	98.1875	$205,568.15	2%
09.17.07	Charitable Trust	Buy	MBS	Fannie Mae	6%	105.14	$200,175.53	3.46%
09.17.07	Charitable Trust	Sell	MBS	Fannie Mae	5.5%	96.03125	($60,920.28)	(2.04%)
09.17.07	Charitable Trust	Sell	MBS	Fannie Mae	6.214%	96.15625	($62,782.35)	(2.04%)
09.17.07	Charitable Trust	Sell	MBS	Ginnie Mae	6.5%	99.65625	($87,137.92)	(1.97%)
09.26.07	Charitable Trust	Sell	MBS	Freddie Mac	6%	97.75	($168,433.06)	(2.01%)
09.26.07	Charitable Trust	Sell	MBS	Fannie Mae	5.5%	97.46875	($319,916.99)	(2.01%)
09.26.07	Charitable Trust	Sell	MBS	Ginnie Mae	5.5%	96.15625	($113,269.27)	(2.04%)
09.26.07	General Account	Sell	MBS	Ginnie Mae	6%	98.359375	($181,820.69)	(1.99%)
09.26.07	General Account	Buy	MBS	Ginnie Mae	5.5%	102.46	$497,110.75	3.49%
09.26.07	Charitable Trust	Buy	MBS	Ginnie Mae	5.5%	102.46	$510,919.39	3.49%
09.26.07	General Account	Sell	MBS	Ginnie Mae	6.5%	99.53125	($49,132.97)	(1.97%)
09.26.07	General Account	Sell	MBS	Ginnie Mae	6%	98.375	($252,476.81)	(1.99%)
10.03.07	General Account	Buy	MBS	Ginnie Mae	5.5%	102.98	$801,400.06	3.5%
10.03.07	General Account	Sell	MBS	Ginnie Mae	6.5%	99.6875	($38,659.28)	(1.97%)
10.03.07	General Account	Sell	MBS	Ginnie Mae	6.5%	99.75	($48,459.69)	(1.97%)
10.03.07	General Account	Sell	MBS	Ginnie Mae	6%	98.5	($28,646.30)	(1.99%)
10.03.07	General Account	Sell	MBS	Ginnie Mae	7%	100.5	($22,528.03)	(1.95%)
10.03.07	General Account	Sell	MBS	Ginnie Mae	7%	101.28125	($27,839.17)	(1.94%)
10.03.07	General Account	Sell	MBS	Ginnie Mae	6%	98.90625	($633,798.44)	(1.98%)
10.09.07	General Account	Sell	MBS	Fannie Mae	5.5%	95.6875	($94,106.15)	(2.05%)
10.09.07	General Account	Sell	MBS	Fannie Mae	5%	87.25	($61,075.00)	(2.24%)
10.09.07	General Account	Buy	MBS	Ginnie Mae	5.5%	102.85	$250,868.00	3.5%
10.09.07	General Account	Sell	MBS	Ginnie Mae	6.5%	99.6875	($28,758.15)	(1.97%)
10.09.07	General Account	Sell	MBS	Ginnie Mae	7%	101.0625	($26,463.14)	(1.94%)
10.12.07	General Account	Sell	Bond	GM	8.375%	90.125	($108,150.00)	(2.17%)
10.15.07	General Account	Buy	Bond	Ford Motors	7.45%	86.4	$129,600.00	3.47%
10.24.07	General Account	Sell	MBS	Ginnie Mae	6%	99.3125	($191,936.45)	(1.97%)
10.24.07	General Account	Buy	MBS	Ginnie Mae	5.5%	103.875	$820,430.19	3.49%

10.25.07	Charitable Trust	Buy	MBS	Ginnie Mae	5.5%	104	$816,585.60	3.48%
10.25.07	Charitable Trust	Sell	MBS	Ginnie Mae	5%	99.484375	($379,466.14)	(1.97%)
10.25.07	Charitable Trust	Sell	Bond	GE	3.238%	95	($95,000.00)	(2.06%)
10.25.07	Charitable Trust	Sell	Bond	GE	5.354%	96.3	($96,300.00)	(2.03%)
10.25.07	Charitable Trust	Sell	Bond	Morgan Stanley	4 93%	96.05	($96,050.00)	(2.04%)
10.25.07	Charitable Trust	Sell	Bond	PB Nova Scotia	0%	95.875	($143,812.50)	(2.04%)
10.29.07	General Account	Buy	MBS	Ginnie Mae	5.5%	103.79	$650,162.82	3.5%
11.07.07	Charitable Trust	Sell	MBS	Fannie Mae	5.281%	94.90625	($29,143.96)	(1.46%)
11.07.09	Charitable Trust	Sell	MBS	Freddie Mac	5.5%	90.625	($235,625.00)	(2.16%)
11.07.07	Charitable Trust	Sell	MBS	Ginnie Mae	5.5%	97.28125	($100,763.57)	(2.01%)
11.07.07	Charitable Trust	Sell	MBS	Ginnie Mae	6.5%	100.125	($93,929.50)	(1.96%)
11.07.07	Charitable Trust	Buy	MBS	Ginnie Mae	5.5%	103.35	$501,281.65	3.45%
11.19.07	Charitable Trust	Sell	MBS	CitiMortgage	6%	87.125	($152,468.75)	(2.24%)
11.28.07	Charitable Trust	Buy	MBS	Ginnie Mae	5%	102.9	$497,543.80	3.48%
11.28.07	Charitable Trust	Buy	Bond	JP Morgan	6.625	109	$54,500.00	3.39%
11.28.07	General Account	Buy	Bond	Wells Fargo	5.25%	105	$52,500.00	3.45%
11.29.07	General Account	Sell	MBS	Freddie Mac	5%	84.25	($151,650.00)	(2 32)
11.29.07	General Account	Buy	MBS	Ginnie Mae	5%	103.2	$498,994.37	3.47%
12.03.07	General Account	Buy	MBS	Ginnie Mae	5.5%	105.375	$303,072.80	3.5%
12.11.07	Charitable Trust	Sell	MBS	Fannie Mae	5.5%	97.40625	($532,058.51)	(2.01%)
12.18.07	General Account	Sell	MBS	Fannie Mae	6%	99.671875	($401,251.47)	(1.48%)
12.26.07	General Account	Sell	MBS	Ginnie Mae	5.5%	98.625	($1,740,585.31)	(1.25%)
01.03.08	Charitable Trust	Buy	MBS	Ginnie Mae	5.5%	104.92	$376,575.69	3.5%
01.17.08	Charitable Trust	Sell	MBS	Fannie Mae	6%	101	($59,975.37)	(1.46%)
01.17.08	General Account	Sell	MBS	Ginnie Mae	5.5%	100	($466,545.29)	(1.96%)
01.23.08	Charitable Trust	Sell	MBS	Ginnie Mae	5.5%	101.421875	($775,643.27)	(1.46%)
01.23.08	General Account	Sell	MBS	Wells Fargo	5.5%		($612,602.19)	(1.46%)
01.31.08	Charitable Trust	Sell	MBS	Ginnie Mae			($478,991.01)	(1.96%)

Appendix B

Closed-End Bond Fund Transactions in the Accounts: January 2007-January 2008[3]

Date	Account	Buy/Sell	Issuer	Amount	Markup/ Markdown
01.31.07	Charitable Trust	Buy	Nuveen	$234,517.68	2.84%
02.01.07	General Account	Buy	Nuveen	$99,918.78	2.91%
02.05.07	Charitable Trust	Buy	RMK	$186,186.89	2.59%
02.05.07	Charitable Trust	Sell	Eaton Vance	($188,033.00)	(1.57%)
02.06.07	Charitable Trust	Buy	Nuveen	$50,082.00	2.79%
02.09.07	Charitable Trust	Buy	Blackrock Income	$200,114.50	2.95%
02.13.07	Charitable Trust	Sell	Eaton Vance	($162,723.20)	(0.52%)
03.19.07	Charitable Trust	Buy	Blackrock Core	$202,466.00	3.05%
03.28.07	Charitable Trust	Sell	Blackrock Income	$257,277.50	2.83%
04.12.07	Charitable Trust	Sell	Pimco	$103,615.80	2.98%
04.19.07	General Account	Buy	Nuveen	$296,998.00	3.13%
05.02.07	Charitable Trust	Buy	Pimco	$83,886.40	3.26%
05.02.07	Charitable Trust	Sell	Eaton Vance	($39,072.18)	(1.15%)
05.10.07	Charitable Trust	Buy	First Trust	$100,284.80	2.65%
05.21.07	General Account	Sell	Eaton Vance	($55,145.05)	(1.15)
05.23.07	Charitable Trust	Sell	Nuveen	($290,200.00)	(0.68%)
06.06.07	General Account	Buy	Pimco	$134,960.00	3.37%
06.20.07	General Account	Buy	Eaton Vance Ltd.	$94,932.90	2.74%
06.21.07	General Account	Buy	Pimco	$101,811.20	2.99%
06.21.07	Charitable Trust	Buy	Pimco	$57,923.54	2.98%
07.02.07	Charitable Trust	Buy	Pimco	$192,110.00	2.67%
07.26.07	General Account	Buy	Blackrock Opportunity	$219,815.00	2.81%
07.31.07	Charitable Trust	Buy	Blackrock Opportunity	$220,000.00	2.35%
08.22.07	General Account	Buy	Pimco	$151,875.00	3.4%
08.29.07	General Account	Buy	Pimco	$305,687.93	3.43%
08.29.07	Charitable Trust	Buy	Pimco	$249,595.50	3.42%
08.30.07	Charitable Trust	Buy	Nuveen	$167,022.70	3.13%
09.05.07	General Account	Buy	Eaton Vance Ltd.	$239,540.00	3.01%
09.28.07	Charitable Trust	Buy	Nuveen	$143,550.00	3%
11.11.07	Charitable Trust	Sell	Blackrock Core	($141,897.60)	(1.66%)
11.11.07	Charitable Trust	Sell	Nuveen	($92,972.00)	(1.69%)
11.13.07	Charitable Trust	Sell	Pimco	($108,840.00)	(1.42%)

[3] In this Appendix B, the following closed-end bond funds are referenced by shortened versions of their names, as follows: Nuveen Floating Rating Income Opportunity Fund ("Nuveen"), RMK High Income Fund ("RMK"), Eaton Vance Senior Floating Rate Trust ("Eaton Vance"), Eaton Vance Limited Duration Income Fund ("Eaton Vance Ltd."), Blackrock Income Opportunity Trust ("Blackrock Income"), Blackrock Core Bond Trust ("Blackrock Core"), Blackrock PFD Opportunity Trust ("Blackrock Opportunity"), Pimco Corporate Opportunity Fund ("Pimco"), First Trust/Four Corners Senior Floating Rate Income Fund II ("First Trust"), Western Asset Worldwide Income Fund ("Western Asset"), Alpine Global Premier Properties Fund ("Alpine"), Alpine Total Dynamic Dividend Fund ("Alpine Dynamic"), Neurberger Berman Real Estate Securities Fund ("Neuberger Berman"), and Evergreen Global Dividend Opportunity Fund ("Evergreen").

11.14.07	Charitable Trust	Buy	Blackrock Opportunity	$204,150.00	2.75%
11.20.07	General Account	Sell	Nuveen	($133,920.00)	(2.62%)
11.28.07	Charitable Trust	Sell	Pimco	($306,481.90)	(2.91%)
11.30.07	General Account	Sell	Pimco	($331,775.00)	(2.93%)
12.04.07	General Account	Sell	Pimco	($207,150.00)	(2.81%)
12.05.07	General Account	Sell	Pimco	($68,117.00)	(2.1%)
12.07.09	General Account	Buy	Western Asset	$106,720.00	3.98%
12.12.07	Charitable Trust	Buy	Western Asset	$202,200.00	3.85%
12.27.07	General Account	Buy	Blackrock Opportunity	$356,000.00	2.89%
01.02.08	General Account	Buy	Alpine	$207,970.45	2.97%
01.03.08	General Account	Buy	Neuberger Berman	$179,121.00	3%
01.07.08	General Account	Buy	Alpine Dynamic	$215,640.00	2.86%
01.08.08	General Account	Buy	Evergreen	$226,680.00	2.72%
01.14.08	General Account	Buy	Blackrock Opportunity	$227,958.00	2.7%
01.23.08	General Account	Buy	Blackrock Opportunity	$232,631.00	2.6%
01.24.08	Charitable Trust	Buy	Blackrock Opportunity	$355,680.00	2.59%
01.29.08	Charitable Trust	Buy	Pimco	$190,596.00	3.25%

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61973; File No. S7-16-09)

April 23, 2010

ORDER EXTENDING TEMPORARY CONDITIONAL EXEMPTIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934 IN CONNECTION WITH REQUEST ON BEHALF OF ICE CLEAR EUROPE, LIMITED RELATED TO CENTRAL CLEARING OF CREDIT DEFAULT SWAPS, AND REQUEST FOR COMMENTS

I. Introduction

The Securities and Exchange Commission ("Commission") has taken multiple actions[1] designed to address concerns related to the market in credit default swaps ("CDS").[2] The over-

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[1] See generally Securities Exchange Act Release No. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by ICE Clear Europe Limited) ("2009 ICE Clear Europe order"); Securities Exchange Act Release No. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) and Securities Exchange Act Release No. 61975 (Apr. 23, 2010) (temporary exemptions in connection with CDS clearing by Eurex Clearing AG); Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009), Securities Exchange Act Release No. 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009) and Securities Exchange Act Release No. 61803 (Mar. 30, 2010), 75 FR 17181 (Apr. 5, 2010) (temporary exemptions in connection with CDS clearing by Chicago Mercantile Exchange Inc.); Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009), Securities Exchange Act Release No. 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009) and Securities Exchange Act Release No. 61662 (Mar. 5, 2010), 75 FR 11589 (Mar. 11, 2010) (temporary exemptions in connection with CDS clearing by ICE Trust US LLC); Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary exemptions in connection with CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) and other Commission actions discussed in several of these orders.

In addition, we have issued interim final temporary rules that provide exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for CDS to facilitate the operation of one or more central counterparties for the CDS market. See Securities Act Release No. 8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009) (initial approval); Securities Act Release No. 9063 (Sep. 14, 2009), 74 FR 47719 (Sep. 17, 2009) (extension until Nov. 30, 2010).

Further, the Commission provided temporary exemptions in connection with Sections 5 and 6 of the Securities Exchange Act of 1934 for transactions in CDS; these exemptions expired on March 24, 2010. See Securities Exchange Act Release No. 59165 (Dec. 24, 2008), 74 FR 133 (Jan. 2, 2009) (initial exemption); Securities Exchange Act Release No. 60718 (Sep. 25, 2009), 74 FR 50862 (Oct. 1, 2009) (extension until Mar. 24, 2010).

[2] A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity ("reference entity") or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in

the-counter ("OTC") market for CDS has been a source of particular concern to us and other financial regulators, and we have recognized that facilitating the establishment of central counterparties ("CCPs") for CDS can play an important role in reducing the counterparty risks inherent in the CDS market, and thus can help mitigate potential systemic impact. We have therefore found that taking action to help foster the prompt development of CCPs, including granting temporary conditional exemptions from certain provisions of the federal securities laws, is in the public interest.[3]

The Commission's authority over the OTC market for CDS is limited. Specifically, Section 3A of the Securities Exchange Act of 1934 ("Exchange Act") limits the Commission's authority over swap agreements, as defined in Section 206A of the Gramm-Leach-Bliley Act.[4] For those CDS that are swap agreements, the exclusion from the definition of security in Section 3A of the Exchange Act, and related provisions, will continue to apply. The Commission's action today does not affect these CDS, and this Order does not apply to them. For those CDS that are not swap agreements ("non-excluded CDS"), the Commission's action today provides temporary conditional exemptions from certain requirements of the Exchange Act.

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bonds or in segments of the debt market as represented by an index, or to take positions on the volatility in credit spreads during times of economic uncertainty.

Growth in the CDS market has coincided with a significant rise in the types and number of entities participating in the CDS market. CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant to their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms, and hedge funds have entered the CDS market.

3 See generally actions referenced in note 1, supra.

4 15 U.S.C. 78c-1. Section 3A excludes both a non-security-based and a security-based swap agreement from the definition of "security" under Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a "swap agreement" as "any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act . . .) . . . the material terms of which (other than price and quantity) are subject to individual negotiation." 15 U.S.C. 78c note.

The Commission believes that using well-regulated CCPs to clear transactions in CDS provides a number of benefits by helping to promote efficiency and reduce risk in the CDS market, by contributing to the goal of market stability, and by requiring maintenance of records of CDS transactions that would aid the Commission's efforts to prevent and detect fraud and other abusive market practices.[5]

In the 2009 ICE Clear Europe Order, the Commission provided temporary conditional exemptions to ICE Clear Europe, Limited ("ICE Clear Europe") and certain other parties to permit ICE Clear Europe to clear and settle CDS transactions.[6] The current exemptions are scheduled to expire on April 23, 2010, and ICE Clear Europe has requested that the Commission extend those exemptions.[7]

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[5] See generally actions referenced in note 1, supra.

[6] For purposes of this Order, "Cleared CDS" means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Clear Europe, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which: (i) the reference entity, the issuer of the reference security, or the reference security is one of the following: (A) an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; (B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (C) a foreign sovereign debt security; (D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or (E) an asset-backed security issued or guaranteed by the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") or the Government National Mortgage Association ("Ginnie Mae"); or (ii) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (i). See definition in paragraph III.(e)(1) of this Order. As discussed above, the Commission's action today does not affect CDS that are swap agreements under Section 206A of the Gramm-Leach-Bliley Act. See text at note 4, supra.

[7] See Letter from Russell Sacks, Shearman & Sterling LLP, to Elizabeth M. Murphy, Secretary, Commission, April 23, 2010 ("April 2010 Request").

Based on the facts presented and the representations made by ICE Clear Europe,[8] and for the reasons discussed in this Order and subject to certain conditions, the Commission is extending each of the existing exemptions connected with CDS clearing by ICE Clear Europe: the temporary conditional exemption granted to ICE Clear Europe from clearing agency registration under Section 17A of the Exchange Act solely to perform the functions of a clearing agency for certain non-excluded CDS transactions; the temporary conditional exemption of ICE Clear Europe and certain of its clearing members from the registration requirements of Sections 5 and 6 of the Exchange Act solely in connection with the calculation of mark-to-market prices for non-excluded CDS cleared by ICE Clear Europe; the temporary conditional exemption of eligible contract participants and others from certain Exchange Act requirements with respect to non-excluded CDS cleared by ICE Clear Europe; and the temporary exemption from certain Exchange Act requirements granted to registered broker-dealers. This extension is temporary, and the exemptions will expire on November 30, 2010.

II. Discussion

In its request for an extension, ICE Clear Europe represents that there have been no material changes to the operations of ICE Clear Europe and the representations in the 2009 ICE

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[8] See id. The exemptions we are granting today are based on all of the representations made on behalf of ICE Clear Europe, which incorporate representations made on behalf of ICE Clear Europe as part of the request that preceded our earlier exemptions addressing CDS clearing by ICE Clear Europe. We recognize, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if any of these exemptions were to become unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in non-excluded CDS that previously had been cleared pursuant to the exemptions would remain unchanged, but no new positions could be established pursuant to the exemptions until all of the underlying representations were again accurate.

Clear Europe Order remain true in all material respects.[9] These representations are discussed in detail in the 2009 ICE Clear Europe Order.

A. ICE Clear Europe's CDS Clearing Activities to Date

ICE Clear Europe has cleared proprietary CDS transactions of its clearing members since July 2009. As of March 16, 2010, ICE Clear Europe had cleared approximately €1.4 trillion notional amount of CDS contracts based on indices of securities.

In December 2009, ICE Clear Europe commenced clearing CDS contracts based on individual reference entities or securities. As of March 16, ICE Clear Europe had cleared approximately €99 billion notional amount of CDS contracts based on individual reference entities or securities.

B. Extended Temporary Conditional Exemption from Clearing Agency Registration Requirement

On July 23, 2009, in connection with its efforts to facilitate the establishment of one or more central counterparties ("CCP") for Cleared CDS, the Commission issued the 2009 ICE Clear Europe Order, which conditionally exempted ICE Clear Europe from clearing agency registration under Section 17A of the Exchange Act on a temporary basis. Subject to the conditions in the 2009 ICE Clear Europe Order, ICE Clear Europe is permitted to act as a CCP for Cleared CDS by novating trades of non-excluded CDS that are securities and generating money and settlement obligations for participants without having to register with the Commission as a clearing agency. The 2009 ICE Clear Europe Order is effective until April 23, 2010.

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[9] See April 2010 Request, supra note 7.

In the 2009 ICE Clear Europe Order, the Commission recognized the need to facilitate the prompt establishment of ICE Clear Europe as a CCP for CDS transactions. The Commission also recognized the need to ensure that important elements of Section 17A of the Exchange Act,[10] which sets forth the framework for the regulation and operation of the U.S. clearance and settlement system for securities, apply to the non-excluded CDS market. Accordingly, the temporary exemption in the 2009 ICE Clear Europe Order were subject to a number of conditions designed to enable Commission staff to monitor ICE Clear Europe's clearance and settlement of CDS transactions.[11] Moreover, the temporary exemption in the 2009 ICE Clear Europe Order in part was based on ICE Clear Europe's representation that it met the standards set forth in the Committee on Payment and Settlement Systems ("CPSS") and International Organization of Securities Commissions ("IOSCO") report entitled: Recommendations for Central Counterparties ("RCCP").[12] The RCCP establishes a framework that requires a CCP to have: (i) the ability to facilitate the prompt and accurate clearance and settlement of CDS transactions and to safeguard its users' assets; and (ii) sound risk management, including the ability to appropriately determine and collect clearing fund and monitor its users' trading. This framework is generally consistent with the requirements of Section 17A of the Exchange Act.

The Commission believes that continuing to facilitate the central clearing of CDS transactions through a temporary conditional exemption from Section 17A will continue to provide important risk management and systemic benefits by avoiding an interruption in those

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10 15 U.S.C. 78q-1.

11 See Securities Exchange Act Release No. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009)

12 The RCCP was drafted by a joint task force ("Task Force") composed of representative members of IOSCO and CPSS and published in November 2004. The Task Force consisted of securities regulators and central bankers from 19 countries and the European Union. The U.S. representatives on the Task Force included staff from the Commission, the Federal Reserve Board, and the Commodity Futures Trading Commission.

CCP clearance and settlement services. Any interruption in CCP clearance and settlement services for CDS transactions would eliminate in the future the benefits ICE Clear Europe provides to the non-excluded CDS market. Accordingly, and consistent with our findings in the 2009 ICE Clear Europe Order and for the reasons described herein, we find pursuant to Section 36 of the Exchange Act[13] that it is necessary and appropriate in the public interest and is consistent with the protection of investors for the Commission to extend, through November 30, 2010, the relief provided from the clearing agency registration requirements of Section 17A by the 2009 ICE Clear Europe Order.

Our action today balances the aim of facilitating ICE Clear Europe's continued service as a CCP for non-excluded CDS transactions with ensuring that important elements of Commission oversight are applied to the non-excluded CDS market. The temporary conditional exemptions will permit the Commission to continue to develop direct experience with the non-excluded CDS market. During the extended exemptive period, the Commission will continue to monitor closely the impact of the CCPs on the CDS market. In particular, the Commission will seek to assure itself that ICE Clear Europe does not act in an anticompetitive manner or indirectly facilitate anticompetitive behavior with respect to fees charged to members, and the dissemination of market data.

This temporary conditional extension of the 2009 ICE Clear Europe Order also is designed to assure that – as ICE Clear Europe has represented – information will continue to be available to market participants about the terms of the CDS cleared by ICE Clear Europe, the

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[13] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

creditworthiness of ICE Clear Europe or any guarantor, and the clearance and settlement process for CDS.[14] The Commission believes continued operation of ICE Clear Europe consistent with the conditions of this Order will facilitate the availability to market participants of information that should enable them to make better informed investment decisions and better value and evaluate their Cleared CDS and counterparty exposures relative to a market for CDS that is not centrally cleared.

This temporary extension of the 2009 ICE Clear Europe Order is subject to a number of conditions that are designed to enable Commission staff to continue to monitor ICE Clear Europe's clearance and settlement of CDS transactions and help reduce risk in the CDS market. These conditions require that ICE Clear Europe: (i) make available on its Web site its annual audited financial statements; (ii) preserve records related to the conduct of its Cleared CDS clearance and settlement services for at least five years (in an easily accessible place for the first two years); (iii) supply information relating to its Cleared CDS clearance and settlement services to the Commission and provide access to the Commission to conduct on-site inspections of facilities, records and personnel related to its Cleared CDS clearance and settlement services as may be reasonably requested by the Commission and provide access to the Commission to conduct on-site inspections of facilities, records, and personnel related to its Cleared CDS clearance and settlement services, subject to cooperation with the FSA and upon terms and conditions agreed between the FSA and the Commission; (iv) notify the Commission about material disciplinary actions taken against any of its members utilizing its Cleared CDS

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[14] The Commission believes that it is important in the CDS market, as in the market for securities generally, that parties to transactions should have access to financial information that would allow them to evaluate appropriately the risks relating to a particular investment and make more informed investment decisions. See generally Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets, March 13, 2008, available at: http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf.

clearance and settlement services, and about the involuntary termination of the membership of an entity that is utilizing ICE Clear Europe's Cleared CDS clearance and settlement services; (v) notify the Commission not less than one day prior to effectiveness or implementation of changes to rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services, or, in exigent circumstances, as promptly as reasonably practicable under the circumstances; (vi) provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements[15] and its annual audited financial statements prepared by independent audit personnel; and (vii) provide notice to the Commission regarding the suspension of services or inability to operate facilities in connection with Cleared CDS clearance and settlement services at the same time it provides notice to the FSA.

In addition, this temporary extension of the 2009 ICE Clear Europe Order is conditioned on ICE Clear Europe, directly or indirectly, making available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) all end-of-day settlement prices and any other prices with respect to Cleared CDS that ICE Clear Europe may establish to calculate mark-to-market margin requirements for ICE Clear Europe Clearing Members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by ICE Clear Europe.[16]

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[15] See Automated Systems of Self-Regulatory Organizations, Exchange Act Release No. 27445 (November 16, 1989), File No. S7-29-89, and Automated Systems of Self-Regulatory Organizations (II), Exchange Act Release No. 29185 (May 9, 1991), File No. S7-12-91.

[16] As a CCP, ICE Clear Europe collects and processes information about CDS transactions, prices, and positions. Public availability of such information can improve fairness, efficiency, and competitiveness in the market. Moreover, with pricing and valuation information relating to Cleared CDS, market participants would be able to derive information about underlying securities and indices, potentially improving the efficiency and effectiveness of the securities markets.

C. Extended Temporary Conditional Exemption from Exchange Registration Requirements

When we initially provided exemptions in connection with CDS clearing by ICE Clear Europe, we granted a temporary conditional exemption to ICE Clear Europe from the requirements of Sections 5 and 6 of the Exchange Act, and the rules and regulations thereunder, in connection with ICE Clear Europe's calculation of mark-to-market prices for open positions in Cleared CDS. We also temporarily exempted ICE Clear Europe participants from the prohibitions of Section 5 to the extent that they use ICE Clear Europe to effect or report any transaction in Cleared CDS in connection with ICE Clear Europe's calculation of mark-to-market prices for open positions in Cleared CDS. Section 5 of the Exchange Act contains certain restrictions relating to the registration of national securities exchanges,[17] while Section 6 provides the procedures for registering as a national securities exchange.[18]

We granted these temporary exemptions to facilitate the establishment of ICE Clear Europe's end-of-day settlement price process. ICE Clear Europe had represented that in connection with its clearing and risk management process it would calculate an end-of-day settlement price for each Cleared CDS in which an ICE Clear Europe participant has a cleared position, based on prices submitted by the participants. As part of this mark-to-market process, ICE Clear Europe has periodically required its clearing members to execute certain CDS trades

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[17] In particular, Section 5 states:

> It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange . . . to effect any transaction in a security, or to report any such transactions, unless such exchange (1) is registered as a national securities exchange under section 6 of [the Exchange Act], or (2) is exempted from such registration . . . by reason of the limited volume of transactions effected on such exchange . . . .

15 U.S.C. 78e.

[18] 15 U.S.C. 78f. Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

at the price at which certain quotations of the clearing members lock or cross. ICE Clear Europe represents that it continues to periodically require clearing members to execute certain CDS trades in this manner.

As discussed above, we have found in general that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to facilitate continued CDS clearing by ICE Clear Europe. Consistent with that finding – and in reliance on ICE Europe's representation that the end-of-day settlement pricing process, including the periodically required trading, is integral to its risk management – we further find that it is necessary or appropriate in the public interest, and is consistent with the protection of investors that we exercise our authority under Section 36 of the Exchange Act to extend, through November 30, 2010, ICE Clear Europe's temporary exemption from Sections 5 and 6 of the Exchange Act in connection with its calculation of mark-to-market prices for open positions in Cleared CDS, and ICE Clear Europe's clearing members' temporary exemption from Section 5 with respect to such trading activity.

The temporary exemption for ICE Clear Europe will continue to be subject to three conditions. First, ICE Clear Europe must report the following information with respect to its calculation of mark-to-market prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports during the life of the enterprise and of any successor enterprise:

- The total dollar volume of transactions executed during the quarter, broken down by reference entity, security, or index; and
- The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index.

Second, ICE Clear Europe must establish and maintain adequate safeguards and procedures to protect participants' confidential trading information. Such safeguards and procedures shall include: (a) limiting access to the confidential trading information of participants to those employees of ICE Clear Europe who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and (b) establishing and maintaining standards controlling employees of ICE Clear Europe trading for their own accounts. ICE Clear Europe must establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed.[19]

Third, ICE Clear Europe must comply with the conditions to the temporary exemption from Section 17A of the Exchange Act in this Order, given that this exemption is granted in the context of our goal of continuing to facilitate ICE Clear Europe's ability to act as a CCP for non-excluded CDS, and given ICE Clear Europe's representation that the end-of-day settlement pricing process, including the periodically required trading, will enhance the reliability of the submitted end-of-day prices.

The Commission also is continuing to temporarily exempt each ICE Clear Europe clearing member, through November 30, 2010, from the prohibition in Section 5 of the Exchange Act to the extent that such ICE Clear Europe clearing member uses any facility of ICE Clear Europe to effect any transaction in Cleared CDS, or to report any such transaction, in connection with ICE Clear Europe calculation of mark-to-market prices for open positions in Cleared CDS. Absent an exemption, Section 5 would prohibit any ICE Clear Europe clearing member that is a broker or dealer from effecting transactions in Cleared CDS on ICE Clear Europe, which will

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[19] We are making a technical modification to this condition to provide that ICE Clear Europe must "establish and maintain" the applicable safeguards and procedures (in lieu of the current exemption's use of terminology such as "adopt and implement") to reflect the fact that ICE Clear Europe already is relying on this settlement pricing process.

rely on this Order for an exemption from exchange registration. The Commission believes that temporarily exempting ICE Clear Europe clearing members from the restriction in Section 5 is necessary and appropriate in the public interest and is consistent with the protection of investors because it will facilitate their use of ICE Clear Europe's CCP for Cleared CDS, which for the reasons set forth in this Order the Commission believes to be beneficial. Without also temporarily exempting ICE Clear Europe clearing members from this Section 5 requirement, the Commission's temporary exemption of ICE Clear Europe from Sections 5 and 6 of the Exchange Act would be ineffective, because ICE Clear Europe clearing members that are brokers or dealers would not be permitted to effect transactions on ICE Clear Europe in connection with the end-of-day settlement price process.

D. Extended and Revised Temporary Conditional General Exemption for ICE Clear Europe and Certain Eligible Contract Participants

As we recognized when we initially provided temporary exemptions in connection with CDS clearing by ICE Clear Europe, applying the full panoply of Exchange Act requirements to participants in transactions in non-excluded CDS likely would deter some participants from using CCPs to clear CDS transactions. We also recognized that it is important that the antifraud provisions of the Exchange Act apply to transactions in non-excluded CDS, particularly given that OTC transactions subject to individual negotiation that qualify as security-based swap agreements already are subject to those provisions.[20]

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[20] While Section 3A of the Exchange Act excludes "swap agreements" from the definition of "security," certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. See (a) paragraphs (2) through (5) of Section 9(a), 15 U.S.C. 78i(a), prohibiting the manipulation of security prices; (b) Section 10(b), 15 U.S.C. 78j(b), and underlying rules prohibiting fraud, manipulation or insider trading (but not prophylactic reporting or recordkeeping requirements); (c) Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices; (d) Sections 16(a) and (b), 15 U.S.C. 78p(a) and (b), which address disclosure by directors, officers and principal stockholders, and short-swing trading by those persons, and

As a result, we concluded that it is appropriate in the public interest and consistent with the protection of investors to apply temporarily substantially the same framework to transactions by market participants in non-excluded CDS that applies to transactions in security-based swap agreements. Consistent with that conclusion, we temporarily exempted ICE Clear Europe, and certain members and eligible contract participants, from a number of Exchange Act requirements, subject to certain conditions, while excluding certain enforcement-related and other provisions from the scope of the exemption.

We believe that continuing to facilitate the central clearing of CDS transactions by ICE Clear Europe through this type of temporary exemption will provide important risk management benefits and systemic benefits. Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant an exemption through November 30, 2010 from certain requirements under the Exchange Act.

As before, this temporary conditional exemption applies to ICE Clear Europe, any ICE Clear Europe Clearing Member[21] which is not a broker or dealer registered under Section 15(b)

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rules with respect to reporting requirements under Section 16(a); (e) Section 20(d), 15 U.S.C. 78t(d), providing for antifraud liability in connection with certain derivative transactions; and (f) Section 21A(a)(1), 15 U.S.C. 78u-1(a)(1), related to the Commission's authority to impose civil penalties for insider trading violations.

"Security-based swap agreement" is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

[21] For purposes of this Order, an "ICE Clear Europe Clearing Member" means any clearing member of ICE Clear Europe that submits Cleared CDS to ICE Clear Europe for clearance and settlement exclusively (i) for its own account or (ii) for the account of an affiliate that controls, is controlled by, or is under common control with the clearing member of ICE Clear Europe. See definition in paragraph III.(e)(1) of this Order.

of the Exchange Act (other than paragraph (11) thereof), and any eligible contract participants[22] other than: eligible contract participants that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling or holding Cleared CDS positions for other persons;[23] eligible contract participants that are self-regulatory organizations or eligible contract participants that are registered brokers or dealers.[24]

As before, under this temporary conditional exemption, and solely with respect to Cleared CDS, those persons generally are exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. Thus, those persons would still be subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements.[25] In addition, all provisions of the Exchange Act related to the Commission's enforcement authority in connection with

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22 This exemption in general applies to eligible contract participants, as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order, other than persons that are eligible contract participants under paragraph (C) of that section.

23 Solely for purposes of this requirement, an eligible contract participant would not be viewed as receiving or holding funds or securities for purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons, if the other persons involved in the transaction would not be considered "customers" of the eligible contract participant under the analysis used for determining whether certain persons would be considered "customers" of a broker-dealer under Exchange Act Rule 15c3-3(a)(1). For these purposes, and for the purpose of the definition of "Cleared CDS," the terms "purchasing" and "selling" mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a Cleared CDS, as the context may require. This is consistent with the meaning of the terms "purchase" or "sale" under the Exchange Act in the context of security-based swap agreements. See Exchange Act Section 3A(b)(4).

24 A separate temporary exemption addresses the Cleared CDS activities of registered broker-dealers. See Part II.E, infra. Solely for purposes of this Order, a registered broker-dealer, or a broker or dealer registered under Section 15(b) of the Exchange Act, does not refer to someone that would otherwise be required to register as a broker or dealer solely as a result of activities in Cleared CDS in compliance with this Order.

25 See note 20, infra.

violations or potential violations of such provisions would remain applicable.[26] In this way, the temporary conditional exemption would apply the same Exchange Act requirements in connection with non-excluded CDS as apply in connection with OTC credit default swaps.

Consistent with the 2009 ICE Clear Europe Order, this temporary conditional exemption does not extend to: the exchange registration requirements of Exchange Act Sections 5 and 6;[27] the clearing agency registration requirements of Exchange Act Section 17A; the requirements of Exchange Act Sections 12, 13, 14, 15(d), and 16;[28] the Commission's administrative proceeding authority under paragraphs (4) and (6) of Exchange Act Section 15(b),[29] and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission; or certain provisions related to government securities.[30]

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[26] Thus, for example, the Commission retains the ability to investigate potential violations and bring enforcement actions in the federal courts as well as in administrative proceedings, and to seek the full panoply of remedies available in such cases.

[27] These are subject to a separate temporary class exemption. See note 1, supra. A national securities exchange that effects transactions in Cleared CDS would continue to be required to comply with all requirements under the Exchange Act applicable to such transactions. A national securities exchange could form subsidiaries or affiliates that operate exchanges exempt under that order. Any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link, the exempt CDS exchange with the registered exchange including the premises or property of such exchange for effecting or reporting a transaction without being considered a "facility of the exchange." See Section 3(a)(2), 15 U.S.C. 78c(a)(2).

This Order also includes a separate temporary exemption from Sections 5 and 6 in connection with the mark-to-market process of ICE Clear Europe, discussed above, at note 17 and accompanying text.

[28] 15 U.S.C. 78l, 78m, 78n, 78o(d), 78p. Eligible contract participants and other persons instead should refer to the interim final temporary rules issued by the Commission. See note 1, supra.

[29] Exchange Act Sections 15(b)(4) and 15(b)(6), 15 U.S.C. 78o(b)(4) and (b)(6), grant the Commission authority to take action against broker-dealers and associated persons in certain situations.

[30] This exemption specifically does not extend to the Exchange Act provisions applicable to government securities, as set forth in Section 15C, 15 U.S.C. 78o-5, and its underlying rules and regulations. The exemption also does not extend to related definitions found at paragraphs (42) through (45) of Section 3(a), 15 U.S.C. 78c(a). The Commission does not have authority under Section 36 to issue exemptions in connection with those provisions. See Exchange Act Section 36(b), 15 U.S.C. 78mm(b).

We are modifying this temporary conditional exemption by providing that ICE Clear Europe clearing members must be in material compliance with ICE Clear Europe rules to be eligible to take advantage of this exemption from Exchange Act requirements. This should promote compliance with the applicable CCP rules.

E. Extended Temporary General Exemption for Certain Registered Broker-Dealers

The 2009 ICE Clear Europe Order included a limited conditional exemption from Exchange Act requirements to registered broker-dealers in connection with their activities involving Cleared CDS. In crafting this temporary conditional exemption, we balanced the need to avoid creating disincentives to the prompt use of CCPs against the critical role that certain broker-dealers play in promoting market integrity and protecting customers (including broker-dealer customers that are not involved with CDS transactions).

In light of the risk management and systemic benefits in continuing to facilitate CDS clearing by ICE Clear Europe through targeted exemptions to registered broker-dealers, the Commission finds pursuant to Section 36 of the Exchange Act that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to extend this temporary registered broker-dealer exemption from certain Exchange Act requirements through November 30, 2010. [31]

Consistent with the temporary exemptions discussed above, and solely with respect to Cleared CDS, we are temporarily exempting registered broker-dealers from provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap

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[31] The temporary exemption addressed above with regard to ICE Clear Europe, certain clearing members and certain eligible contract participants are not available to persons that are registered as broker-dealers with the Commission (other than those that are notice registered pursuant to Exchange Act Section 15(b)(11)). Exchange Act Section 15(b)(11) provides for notice registration of certain persons that effect transactions in security futures products. 15 U.S.C. 78o(b)(11).

agreements. As discussed above, we are not excluding registered broker-dealers from Exchange Act provisions that explicitly apply in connection with security-based swap agreements or from related enforcement authority provisions.[32] As above, and for similar reasons, we are not exempting registered broker-dealers from: Sections 5, 6, 12, 13, 14, 15(b)(4), 15(b)(6), 15(d), 16 and 17A of the Exchange Act.[33]

Further we are not exempting registered broker-dealers from the following additional provisions under the Exchange Act: (1) Section 7(c),[34] regarding the unlawful extension of credit by broker-dealers; (2) Section 15(c)(3),[35] regarding the use of unlawful or manipulative devices by broker-dealers; (3) Section 17(a),[36] regarding broker-dealer obligations to make, keep and furnish information; (4) Section 17(b),[37] regarding broker-dealer records subject to examination; (5) Regulation T,[38] a Federal Reserve Board regulation regarding extension of credit by broker-dealers; (6) Exchange Act Rule 15c3-1, regarding broker-dealer net capital; (7) Exchange Act Rule 15c3-3, regarding broker-dealer reserves and custody of securities; (8) Exchange Act Rules 17a-3 through 17a-5, regarding records to be made and preserved by broker-dealers and reports

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32 See notes 20 and 26, supra. As noted above, broker-dealers also would be subject to Section 15(c)(1) of the Exchange Act, which prohibits brokers and dealers from using manipulative or deceptive devices, because that provision explicitly applies in connection with security-based swap agreements. In addition, to the extent the Exchange Act and any rule or regulation thereunder imposes any other requirement on a broker-dealer with respect to security-based swap agreements (e.g., requirements under Rule 17h-1T to maintain and preserve written policies, procedures, or systems concerning the broker or dealer's trading positions and risks, such as policies relating to restrictions or limitations on trading financial instruments or products), these requirements would continue to apply to broker-dealers' activities with respect to Cleared CDS.

33 We also are not exempting those members from provisions related to government securities, as discussed above.

34 15 U.S.C. 78g(c).

35 15 U.S.C. 78o(c)(3).

36 15 U.S.C. 78q(a).

37 15 U.S.C. 78q(b).

38 12 CFR 220.1 et seq.

to be made by broker-dealers; and (9) Exchange Act Rule 17a-13, regarding quarterly security counts to be made by certain exchange members and broker-dealers.[39] Registered broker-dealers must comply with these provisions in connection with their activities involving non-excluded CDS because these provisions protect investors, provide safeguards with respect to the financial responsibility and related practices of broker-dealers, and safeguard against fraud and abuse.[40]

G. Solicitation of Comments

When we granted the 2009 ICE Clear Europe Order, we requested comment on all aspects of the exemptions. We received no comments in response. In connection with this Order extending the exemptions granted in connection with CDS clearing by ICE Clear Europe, we reiterate our request for comments on all aspects of the exemptions.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/other.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-16-09 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov/). Follow the instructions for submitting comments.

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[39] Solely for purposes of this temporary exemption, in addition to the general requirements under the referenced Exchange Act sections, registered broker-dealers shall only be subject to the enumerated rules under the referenced Exchange Act sections.

[40] See 15 U.S.C. 78o(c)(3) (directing the Commission to establish minimum financial responsibility requirements for broker-dealers, including rules relating to the acceptance of custody, the use of customers' securities and the carrying and use of customers' deposits or credit balances).

Paper comments:

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

All submissions should refer to File Number S7-16-09. 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. We will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/other.shtml). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

III. Conclusion

IT IS HEREBY ORDERED, pursuant to Section 36(a) of the Exchange Act, that, through November 30, 2010:

(a) Exemption from Section 17A of the Exchange Act.

ICE Clear Europe Limited ("ICE Clear Europe") shall be exempt from Section 17A of the Exchange Act solely to perform the functions of a clearing agency for Cleared CDS (as defined in paragraph (e)(1) of this Order), subject to the following conditions:

(1) ICE Clear Europe shall make available on its Web site its annual audited financial statements.

(2) ICE Clear Europe shall keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other

such records as shall be made or received by it relating to its Cleared CDS clearance and settlement services. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place.

(3) ICE Clear Europe shall supply information and periodic reports relating to its Cleared CDS clearance and settlement services as may be reasonably requested by the Commission and, subject to cooperation with the FSA and upon such terms and conditions as may be agreed between the FSA and the Commission, shall provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to ICE Clear Europe's Cleared CDS clearance and settlement services.

(4) ICE Clear Europe shall notify the Commission, on a monthly basis, of any material disciplinary actions taken against any of its members using its Cleared CDS clearance and settlement services, including the denial of services, fines, or penalties. ICE Clear Europe shall notify the Commission promptly when ICE Clear Europe terminates on an involuntary basis the membership of an entity that is using ICE Clear Europe's Cleared CDS clearance and settlement services. Both notifications shall describe the facts and circumstances that led to the ICE Clear Europe's disciplinary action.

(5) ICE Clear Europe shall notify the Commission of all changes to its rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services, including its fee schedule and changes to risk management practices, not less than one day prior to effectiveness or implementation of such changes or, in exigent circumstances, as promptly as reasonably practicable under the circumstances. If ICE Clear Europe gives notice to, or seeks approval from, the FSA regarding any other

changes to its rules regarding its Cleared CDS clearance and settlement services, ICE Clear Europe will also provide notice to the Commission. All such rule changes will be posted on ICE Clear Europe's Web site. Such notifications will not be deemed rule filings that require Commission approval.

(6) ICE Clear Europe shall provide the Commission with reports prepared by independent audit personnel concerning its Cleared CDS clearance and settlement services that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements. ICE Clear Europe shall provide the Commission with annual audited financial statements for ICE Clear Europe prepared by independent audit personnel.

(7) ICE Clear Europe shall notify the Commission at the same time it notifies the FSA in accordance with FSA REC 3.15 and FSA REC 3.16 regarding the suspension of services or inability to operate its facilities in connection with its Cleared CDS clearance and settlement services.

(8) ICE Clear Europe, directly or indirectly, shall make available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) all end-of-day settlement prices and any other prices with respect to Cleared CDS that ICE Clear Europe may establish to calculate mark-to-market margin requirements for ICE Clear Europe Clearing Members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by ICE Clear Europe.

(b) Exemption from Sections 5 and 6 of the Exchange Act

(1) ICE Clear Europe shall be exempt from the requirements of Sections 5 and 6 of the Exchange Act and the rules and regulations thereunder in connection with its

calculation of mark-to-market prices for open positions in Cleared CDS, subject to the following conditions:

(i) ICE Clear Europe shall report the following information with respect to the calculation of mark-to-market prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports during the life of the enterprise and of any successor enterprise:

(A) The total dollar volume of transactions executed during the quarter, broken down by reference entity, security, or index; and

(B) The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index;

(ii) ICE Clear Europe shall establish and maintain adequate safeguards and procedures to protect members' confidential trading information. Such safeguards and procedures shall include: (A) limiting access to the confidential trading information of members to those employees of ICE Clear Europe who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and (B) establishing and maintaining standards controlling employees of ICE Clear Europe trading for their own accounts. ICE Clear Europe must establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed; and

(iii) ICE Clear Europe shall satisfy the conditions of the temporary exemption from Section 17A of the Exchange Act set forth in paragraphs (a)(1) – (8) of this Order.

(2) Any ICE Clear Europe Clearing Member shall be exempt from the requirements of Section 5 of the Exchange Act to the extent such ICE Clear Europe Clearing Member uses any facility of ICE Clear Europe to effect any transaction in Cleared CDS, or to report any such transaction, in connection with ICE Clear Europe's clearance and risk management process for Cleared CDS.

(c) Exemption for ICE Clear Europe, ICE Clear Europe Clearing Members, and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (c)(2) is available to:

(i) ICE Clear Europe;

(ii) Any ICE Clear Europe Clearing Member (as defined in paragraph (e)(2) of this Order), which is not a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof); and

(iii) Any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), other than: (A) an eligible contract participant that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons; (B) an eligible contract participant that is a self-regulatory organization, as that term is defined in Section 3(a)(26) of the Exchange Act; or (C) a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof).

(2) Scope of exemption.

(i) In general. Subject to the conditions specified in paragraph (c)(3) of this subsection, such persons generally shall, solely with respect to Cleared CDS, be exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply in connection with security-based swap agreements. Accordingly, under this exemption, those persons would remain subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements (i.e., paragraphs (2) through (5) of Section 9(a), Section 10(b), Section 15(c)(1), paragraphs (a) and (b) of Section 16, Section 20(d) and Section 21A(a)(1) and the rules thereunder that explicitly are applicable to security-based swap agreements). All provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions also remain applicable.

(ii) Exclusions from exemption. The exemption in paragraph (c)(2)(i), however, does not extend to the following provisions under the Exchange Act:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;

(D) Section 12 and the rules and regulations thereunder;

(E) Section 13 and the rules and regulations thereunder;

(F) Section 14 and the rules and regulations thereunder;

(G) Paragraphs (4) and (6) of Section 15(b);

(H) Section 15(d) and the rules and regulations thereunder;

(I) Section 15C and the rules and regulations thereunder;

(J) Section 16 and the rules and regulations thereunder; and

(K) Section 17A (other than as provided in paragraph (a)).

(3) Conditions for ICE Clear Europe Clearing Members. Any ICE Clear Europe Clearing Members relying on this exemption must be in material compliance with the rules of ICE Clear Europe.

(d) Exemption for certain registered broker-dealers.

A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, except:

(1) Section 7(c);

(2) Section 15(c)(3);

(3) Section 17(a);

(4) Section 17(b);

(5) Regulation T, 12 CFR 200.1 et seq.;

(6) Rule 15c3-1;

(7) Rule 15c3-3;

(8) Rule 17a-3;

(9) Rule 17a-4;

(10) Rule 17a-5; and

(11) Rule 17a-13.

(e) Definitions.

For purposes of this Order:

(1) "Cleared CDS" shall mean a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Clear Europe, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which:

(i) The reference entity, the issuer of the reference security, or the reference security is one of the following:

(A) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(B) A foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(C) A foreign sovereign debt security;

(D) An asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(E) An asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae; or

(ii) The reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (i).

(2) "ICE Clear Europe Clearing Member" shall mean any clearing member of ICE Clear Europe that submits Cleared CDS to ICE Clear Europe for clearance and settlement exclusively (i) for its own account or (ii) for the account of an affiliate that controls, is controlled by, or is under common control with the clearing member of ICE Clear Europe.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

Commissioner Aguilar not participating

SECURITIES AND EXCHANGE COMMISSION
(Release No. 61975; File No. S7-17-09)

April 23, 2010

ORDER EXTENDING AND MODIFYING TEMPORARY CONDITIONAL EXEMPTIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934 IN CONNECTION WITH REQUEST ON BEHALF OF EUREX CLEARING AG RELATED TO CENTRAL CLEARING OF CREDIT DEFAULT SWAPS, AND REQUEST FOR COMMENT

I. Introduction

Over the past year, the Securities and Exchange Commission ("Commission") has taken multiple actions to protect investors and ensure the integrity of the nation's securities markets, including actions[1] designed to address concerns related to the market in credit default swaps

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[1] See generally Securities Exchange Act Release No. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009) and Securities Exchange Act Release No. 61973 (Apr. 23, 2010) (temporary exemptions in connection with CDS clearing by ICE Clear Europe Limited); Securities Exchange Act Release No. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by Eurex Clearing AG) (hereinafter, the "July Eurex Order"); Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009), Securities Exchange Act Release No. 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009) and Securities Exchange Act Release No. 61803 (Mar. 30, 2010), 75 FR 17181 (Apr. 5, 2010) (temporary exemptions in connection with CDS clearing by Chicago Mercantile Exchange Inc.); Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009), Securities Exchange Act Release No. 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009) and Securities Exchange Act Release No. 61662 (Mar. 5, 2010), 75 FR 11589 (Mar. 11, 2010) (temporary exemptions in connection with CDS clearing by ICE Trust U.S. LLC); Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary exemptions in connection with CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) and other Commission actions discussed in several of these orders.

In addition, we have issued interim final temporary rules that provide exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for CDS to facilitate the operation of one or more central counterparties for the CDS market. See Securities Act Release No. 8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009) (initial approval); Securities Act Release No. 9063 (Sep. 14, 2009), 74 FR 47719 (Sep. 17, 2009) (extension until Nov. 30, 2010).

Further, the Commission provided temporary exemptions in connection with Sections 5 and 6 of the Securities Exchange Act of 1934 for transactions in CDS; these exemptions expired on March 24, 2010. See Securities Exchange Act Release No. 59165 (Dec. 24, 2008), 74 FR 133 (Jan. 2, 2009) (initial exemption); Securities Exchange Act Release No. 60718 (Sep. 25, 2009), 74 FR 50862 (Oct. 1, 2009) (extension until Mar. 24, 2010).

("CDS").[2] The over-the-counter ("OTC") market for CDS has been a source of particular concern to us and other financial regulators, and we have recognized that facilitating the establishment of central counterparties ("CCPs") for CDS can play an important role in reducing the counterparty risks inherent in the CDS market, and thus can help mitigate potential systemic impact. We have therefore found that taking action to help foster the prompt development of CCPs, including granting temporary conditional exemptions from certain provisions of the federal securities laws, is in the public interest.[3]

The Commission's authority over the OTC market for CDS is limited. Specifically, Section 3A of the Securities Exchange Act of 1934 ("Exchange Act") limits the Commission's authority over swap agreements, as defined in Section 206A of the Gramm-Leach-Bliley Act.[4] For those CDS that are swap agreements, the exclusion from the definition of security in Section 3A of the Exchange Act, and related provisions, will continue to apply. The Commission's action today does not affect these CDS, and this Order does not apply to them. For those CDS

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[2] A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity ("reference entity") or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in bonds or in segments of the debt market as represented by an index, or to take positions on the volatility in credit spreads during times of economic uncertainty.

Growth in the CDS market has coincided with a significant rise in the types and number of entities participating in the CDS market. CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant to their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms, and hedge funds have entered the CDS market.

[3] See generally actions referenced in note 1, supra.

[4] 15 U.S.C. 78c-1. Section 3A excludes both a non-security-based and a security-based swap agreement from the definition of "security" under Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a "swap agreement" as "any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act . . .) . . . the material terms of which (other than price and quantity) are subject to individual negotiation." 15 U.S.C. 78c note.

that are not swap agreements ("non-excluded CDS"), the Commission's action today provides temporary conditional exemptions from certain requirements of the Exchange Act.

The Commission believes that using well-regulated CCPs to clear transactions in CDS provides a number of benefits, by helping to promote efficiency and reduce risk in the CDS market and among its participants, contributing generally to the goal of market stability, and by requiring maintenance of records of CDS transactions that would aid the Commission's efforts to prevent and detect fraud and other abusive market practices.[5]

Earlier this year, the Commission granted temporary conditional exemptions to Eurex Clearing AG ("Eurex") and certain related parties to permit Eurex to clear and settle CDS transactions.[6] Those exemptions are scheduled to expire on April 23, 2010. Eurex has requested that the Commission extend the temporary conditional exemptions and expand them to address activities in connection with: (a) Eurex requiring its clearing members to execute certain transactions associated with Eurex's process for determining daily settlement prices used in marking positions to market, and (b) Eurex clearing CDS transactions of its members' customers

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5 See generally actions referenced in note 1, supra.

6 For purposes of this Order, "Cleared CDS" means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to Eurex, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which: (i) the reference entity, the issuer of the reference security, or the reference security is one of the following: (A) an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; (B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (C) a foreign sovereign debt security; (D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or (E) an asset-backed security issued or guaranteed by the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") or the Government National Mortgage Association ("Ginnie Mae"); or (ii) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (i). See definition in paragraph III.(f)(1) of this Order. As discussed above, the Commission's action today does not affect CDS that are swap agreements under Section 206A of the Gramm-Leach-Bliley Act. See text at note 4, supra.

(in addition to clearing CDS transactions of members and their affiliates, as permitted by the current exemption).[7]

Based on the facts presented and the representations made on behalf of Eurex,[8] and for the reasons discussed in this Order, and subject to certain conditions, the Commission is extending the existing temporary conditional exemptions. In addition, the Commission is expanding the existing temporary conditional exemptions to accommodate those required trading processes and customer clearing. Specifically, this Order conditionally exempts Eurex and certain clearing members of Eurex, on a temporary basis, from the registration requirements of Sections 5 and 6 of the Exchange Act solely in connection with the calculation of mark-to-market prices for non-excluded CDS cleared by Eurex. This Order also conditionally exempts Eurex clearing members from broker-dealer registration requirements and related requirements in connection with using Eurex to clear CDS transactions of their customers. This Order also makes certain related changes to the temporary exemption of eligible contract participants and others from certain Exchange Act requirements with respect to non-excluded CDS cleared by Eurex. The other exemptions connected with CDS clearing by Eurex – granted to Eurex in connection with clearing agency registration requirements, as well as granted to registered broker-dealers – are largely unchanged. The Commission is extending the exemptive relief provided in connection with CDS clearing by Eurex through November 30, 2010.

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[7] See Letter from Paul Architzel, Alston & Bird, to Elizabeth Murphy, Secretary, Commission, Apr. 23, 2010 ("April 2010 request").

[8] See id. The exemptions we are granting today are based on all of the representations made in the April 2010 request on behalf of Eurex, which incorporate representations made on behalf of Eurex as part of the request that preceded our earlier relief in connection with CDS clearing by Eurex. We recognize, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if any of these exemptions were to become unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in non-excluded CDS that previously had been cleared pursuant to the exemptions would remain unchanged, but no new positions could be established pursuant to the exemptions until all of the underlying representations were again accurate.

II. Discussion

A. Description of Eurex's Activities to Date and Proposed Expansion of Activities

Eurex's request for an extension of its current temporary exemptions and their expansion to accommodate clearing of CDS transactions by its clearing members' customers and to accommodate an auction process for determining CDS settlement prices describes how Eurex has cleared CDS to date and how the proposed arrangements for central clearing of customer CDS transactions would operate.[9] The request also makes representations about the safeguards associated with those arrangements, as described below.[10]

1. Eurex Proposed Use of Settlement Price Auction Process

Eurex proposes to alter its procedures for determining daily settlement prices that will be used in marking positions to market, by calculating a daily mark-to-market price based on end of day prices submitted by participating members. Under these procedures, Eurex will rank the bid and ask prices submitted by members, and then pair any locking or crossing bid/ask prices to reveal the first non-crossed, non-locked bid/offer pair and determine the point in that range at which the most trade volume will occur. If the ranking does not result in any crossed orders or locked interests, the mark-to-market price will be the midpoint of the range.

To ensure the reliability of the process, Eurex will randomly require clearing members whose prices lock or cross to execute transactions at the locked or crossed prices farthest from the mark-to-market price. This trading will be required on a limited basis, with no more than

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[9] See April 2010 request, supra note 7. The description in this Order of Eurex's proposed activities also is based on the provisions of Eurex's rules ("clearing conditions").

[10] Eurex's April 2010 request incorporates by reference the representations of its earlier letter, supplementing those representations with respect to customer clearing, segregation and requiring trading in connection with settlement price calculation. See April 2010 request, supra note 7.

three such trades in any 30 day period and limited to no more than ten percent of a dealer's quote participation.

2. Proposed Activity Clearing CDS Transactions of Members' Customers

Eurex requests an exemption for customer access to CDS clearing it provides, similar to its existing exemptions for clearing members' proprietary CDS transactions. Eurex requests an exemption to accommodate two types of customers: "Registered Customers" and other customers.

Registered Customers are customers that will enter into a tri-party agreement with Eurex and the clearing member, in which the clearing member agrees to guarantee the Registered Customer's position and the Registered Customer agrees to be bound by Eurex's Clearing Conditions. Registered Customers' positions are carried in Eurex's systems on a fully disclosed basis. Clearing members will retain, with Eurex, separate accounts for each Registered Customer, with positions being separately booked and margined and separately disclosed on Eurex reports (which can be directly provided to the Registered Customers). Other customers, in contrast, do not enter into separate agreements with Eurex, and their positions will be comingled in a clearing member's customer omnibus clearing account with Eurex.

Customer clearing by Eurex will accommodate CDS transactions that Registered Customers enter directly into with the Eurex members that clear those customers' CDS transactions, as well as Registered Customers' CDS transactions with other counterparties. For transactions that a Registered Customer enters into with its clearing member, novation will result in two CDS positions between that clearing member and Eurex (one trade being booked to the clearing member's agent account for the benefit of customers ("Agent account") at Eurex, and one booked to its proprietary account), in addition to the original CDS position between that clearing member and the Registered Customer. For transactions that a Registered Customer

enters into with a clearing member counterparty other than the firm that clears transactions for the Registered Customer, novation will result in the original trade being replaced with three trades, one between that clearing member counterparty and Eurex (in that counterparty's proprietary account at Eurex), another between the Registered Customer's clearing member and Eurex (in that member's agent account), and another trade between the Registered Customer and its clearing member.[11] Registered Customers also may enter into CDS transactions with a counterparty that is not a Eurex clearing member, in which case the transaction will be cleared through the Registered Customer's and the counterparty's respective clearing members.

For customers that are not Registered Customers, the clearing mechanics will differ in that the customer position between the clearing member and Eurex will be in an omnibus account (rather than being reflected in Eurex's system as for a Registered Customer). The clearing member's internal recordkeeping system will identify the contracts with particular customers, and Eurex will rely on the clearing member's records if it is necessary to identify the beneficial owners of those positions.

Under Eurex customer clearing, the clearing relationship and Eurex's guarantee extends only between Eurex and the clearing member. Eurex states that clearing of CDS transactions will benefit customers, among other reasons, by protecting customer collateral in case of default by the customer's clearing member, and by offering customers the ability to transfer positions in the event of clearing member default.

The customer relationship would be governed by an agreement between the customer and the clearing member, and clearing members and their customers generally will have in place International Swaps and Derivatives Association ("ISDA") Master Agreements governing their

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[11] This process is designed to ensure that Eurex maintains a matched book of offsetting CDS contracts.

transactions prior to submission for clearing. These agreements would address, among other issues, procedures whereby an executing dealer may "give up" a contract to the customer's clearing member, and the treatment of CDS transactions that are not accepted for clearing by Eurex.[12]

Eurex has no rule requiring an executing broker to be a clearing member. Eurex expects that transactions will be submitted to Eurex through one or more "third party confirmation platform providers" that will facilitate the matching and confirmation of the trade terms by the parties, as well as the electronic submission of the affirmed trade to Eurex for clearing.[13] Eurex also expects that the platform will submit, to the relevant parties, notice of Eurex's acceptance or rejection of the trade. Third party confirmation platform providers may provide additional back-office or similar services to clearing members or clients. Eurex is currently in negotiations to enable it to accept transactions from one or more third party confirmation platform providers.[14]

3. Framework for Collection and Protection of Customer Margin

a. Margin requirements for clearing members and customers

Eurex's clearing conditions will require clearing members to collect, from their customers, collateral that is no less than the amount required to meet the margin calculated by

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[12] A transaction may not be accepted for clearing by Eurex, for example, if sufficient initial margin is not posted.

[13] Under this approach, for example, when a Registered Customer and executing broker agree to terms of the transaction (including that the transaction should be submitted to Eurex for clearing), the executing broker will submit the trade terms to the third party confirmation platform provider, which will forward those terms to the Registered Customer for affirmation. Once the Registered Customer has affirmed the trade, the platform will forward those terms to the clearing member designated by the Registered Customer for affirmation. Once all three parties have affirmed the transaction, it will be submitted to Eurex for clearing. Eurex will determine whether to accept or reject the submitted trade in accordance with its risk management policies and procedures.

[14] Eurex Clearing Conditions permits any execution venue or trade confirmation platform that meets the technical requirements to participate in its clearance and settlement architecture. Eurex represents that it is committed to work with reasonably qualified execution venues and trade processing platforms to facilitate functionality for submission of trades by non-member dealers if there is interest in such functionality.

Eurex. Clearing members may require customers to post additional margin above the Eurex requirements.

Margin is separately calculated for each clearing member with respect to its different proprietary and agent accounts. As noted above, clearing members will have separate accounts at Eurex for each of their Registered Customers. Each clearing member will use omnibus accounts to hold collateral posted by the clearing member's other customers. The margin requirement for Registered Customers is additive with respect to each Registered Customer, and does not net across the positions of multiple Registered Customers. For other customers, in contrast, the margin required by Eurex to collateralize the clearing member's positions is calculated on a net basis among all of those customers' positions.

b. Treatment of customer margin

Eurex states that its framework for segregation of customer margin will be available to all customers, and will be required for cleared CDS transactions of all customers of Eurex's U.S. clearing members and for all U.S. customers of other Eurex clearing members. Eurex will offer buy-side customers individual segregation of positions and collateral for Registered Customers, and will offer segregation of positions and collateral of other customers using customer omnibus accounts.[15]

i. Individual segregation for Registered Customers

Eurex's procedures for protecting collateral posted by Registered Customers in connection with Cleared CDS will distinguish between collateral that is posted by customers as

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[15] Eurex states that it expects that its clearing members may also include futures commission merchants ("FCMs") registered with the Commodity Futures Trading Commission ("CFTC"). As discussed below, such FCM clearing members may rely on this Order's exemption from certain broker-dealer related requirements to the extent those clearing members comply with the conditions of the exemption, including conditions related to the segregation of customer collateral. See note 38, infra.

required by Eurex to margin a customer's position, and additional collateral that clearing members may choose to collect from those customers.

In the case of securities collateral that a Registered Customer posts to satisfy Eurex's margin requirement, a tri-party agreement among Eurex, the clearing member and the customer will provide that the customer will directly transfer the collateral to Eurex, to be maintained in a separate "RC Margin Collateral Account" specific to that Registered Customer.[16] Eurex will give the Registered Customer a pledge for the return of an amount equivalent to the net value of the securities (after the customer's obligations have been satisfied) in the event of the clearing member's insolvency.

Cash collateral posted by a Registered Customer to satisfy the Eurex-required margin obligation will be deposited by the customer into a dedicated trust account of the clearing member at a third-party bank; this cash will immediately be forwarded to Eurex, to be separately booked and recorded in Eurex's accounts as customer funds and held in a depository.[17] This cash would be subject to a pledge back from Eurex to the Registered Customer.[18]

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[16] Securities collateral pledged to Eurex for the purpose of margining CDS positions will be deposited with Clearstream Banking Frankfurt and Sega Intersettle.

[17] Cash collateral in the form of euros will be deposited by Eurex in the Deutsche Bundesbank; cash collateral in the form of Swiss Francs will be deposited by Eurex in the Swiss National Bank; cash collateral in the form of other currencies, such as U.S. dollars or pounds sterling, will be deposited by Eurex in a commercial bank. These amounts will be held for the benefit of customers.

[18] Eurex may invest cash collateral only in certain "approved instruments" described in Part 2.2 of the Eurex Organizational Manual under the Eurex investment guidelines. In particular, Part 2.2.1 addresses "secured money market investments," and provides that, as a general principle, placements would be made on a secured basis to the largest possible extent, using reverse repurchase agreements as the preferred instrument. It further provides that securities accepted as collateral should be issued or guaranteed by central or regional governments, agencies, multilateral development banks, the International Monetary Fund, the European Community or the Bank for International Settlements; if, however, there is not a sufficient volume of such securities, certain covered bonds or bank bonds may be used. Eligible securities need to meet certain credit rating criteria. Part 2.2.2 provides that certain unsecured money market placements are allowed in certain situations where part 2.2.1 is not available. Eurex states that these approved instruments are similarly conservative to those instruments in which

A clearing member may require a Registered Customer to deposit collateral in excess of the amount of collateral required by Eurex in connection with that customer's position. Unless Eurex provides otherwise, this "Excess Customer Collateral" will be deposited with Eurex (to be held in the RC Margin Collateral Account specific to that Registered Customer in the case of collateral in the form of securities, or with a depository in the case of collateral in the form of cash).[19] Alternatively, in response to market demand, Eurex may provide that clearing members and Registered Customers can agree that a clearing member will deposit the customer's Excess Customer Collateral with an independent third-party custodian that provides a written acknowledgement that it will hold the funds separately from other assets explicitly for the benefit of each of the clearing member's individual customers, and that has over $1 billion in regulatory capital.[20]

ii. Segregation of collateral posted by customers that are not Registered Customers

Eurex will protect the collateral posted by customers that are not Registered Customers in a way that differs from the procedures used with respect to Registered Customers. In contrast to Registered Customers, each clearing member will only need to post with Eurex sufficient collateral to satisfy the net CDS position associated with that clearing member's non-Registered

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customer funds may be invested under CFTC Rule 1.25, with the distinction that Rule 1.25 is focused on investments available in the U.S. domestic market.

[19] Eurex would exercise its primary lien over only so much of the deposited collateral as is required to satisfy Eurex's margin requirement.

[20] The Commission notes that this Order's exemption for Eurex clearing members in connection with certain Exchange Act broker-dealer related requirements includes conditions that impose additional requirements for the holding of customer collateral. Clearing members must comply with those additional requirements to rely on that broker-dealer related exemption.

customers.[21] Also, in contrast to Registered Customers, Eurex will not separately record non-Registered customers' collateral that is posted with Eurex.

A. Initial framework

Initially, Eurex will provide that clearing members may only post cash as collateral to satisfy the margin requirement of customers that are not Registered Customers. The customers will transfer, to the clearing member, title to collateral posted to satisfy this requirement; the clearing member then will immediately deposit, with Eurex, an amount of cash necessary to address the net margin requirement associated with these customers' positions. Eurex will hold a primary pledge with respect to the deposited cash.[22]

The collateral that a clearing member will be required to collect from these customers will exceed the amount of net margin (reflecting the net exposure associated with those customers' positions) that the clearing member must forward to Eurex. Clearing members also may collect from these customers additional amounts of collateral in excess of the Eurex-required margin. This excess collateral will not be held at Eurex; instead, clearing members must post this collateral as soon as possible to a third-party custodian, consistent with the use of third-party custodians discussed above in the context of Registered Customers.[23] Clearing members must grant back, to these customers (such as through the use of an independent

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21 In other words, the amount the clearing member is required to post to Eurex in connection with these customers is determined by reference to all of the positions of those customers. For Registered Customers, in contrast, clearing members must post with Eurex at least all of the collateral that the clearing member collects pursuant to Eurex requirements; this amount does not account for netting across the positions of different Registered Customers.

22 The clearing member would grant back to an independent collateral agent for the benefit of these customers an interest in any collateral returned to the third-party custodian (as described below) by Eurex in the event of the clearing member's insolvency or default.

23 As noted above, this Order's broker-dealer related exemptions include conditions that impose additional requirements as to the use of third-party depositories. See note 20, supra.

collateral agent) a pro rata security interest in the customer collateral on deposit with the third-party custodian.

B. Future framework

Eurex anticipates that in the near future it will make changes to the segregation framework for non-Registered customers. Under the revised framework, these customers will transfer cash or securities collateral required by the clearing member into one of two trust accounts at a third-party custodian, consistent with the use of third-party custodians discussed above. The Omnibus Customer Margin Account at this custodian will secure the clearing member's net obligation in respect of these customers; the clearing member will grant a first priority pledge in favor of Eurex over this account, and will notify the third-party custodian of that pledge.[24] The Segregated Customer Custody Account at this custodian will hold additional collateral that the clearing member collects from these customers (as required by Eurex, or in addition to the Eurex-required collateral). The clearing member would be required to take steps, such as through the use of granting a security interest to an independent collateral agent, to enable these non-Registered customers to segregate this collateral away from the clearing member's insolvency estate.

C. Risk of customer loss in connection with default

If a default by a customer other than a Registered Customer results in a shortfall, Eurex may, after first exhausting the clearing member's available assets, use the net margin as necessary to satisfy that shortfall. As a result, under both Eurex's initial framework and its future framework regarding the collateral posted by these non-Registered customers, the

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[24] Interest or distributions on this account will be paid to the clearing member; the party that benefits from those amounts will be determined by agreement between the clearing member and the customer (as also is the case for the initial framework with regard to interest earned on cash posted with the third-party custodian).

customers whose collateral is commingled (at Eurex or at a third-party depository) are subject to the risk of loss resulting from the default of another non-Registered customer of that clearing member, up to the amount of the net margin associated with the positions of that clearing members' non-Registered customers.

c. Treatment of variation margin

Eurex states that losses and gains caused by the relative change in the value of contracts are reflected in mark-to-market margin that is calculated daily. Such variation margin would be calculated as a debit against deposited collateral or as a credit to the customer's collateral account. Eurex anticipates, however, that in the future it will enhance this framework by providing for cash flows of these amounts.

Eurex states that its rules require clearing members to segregate all funds accruing from their customer's positions, in addition to funds received from their customers to margin those positions. In other words, the rules require that clearing members segregate all mark-to-market margin that accrues to customers, as well as any funds paid to the clearing member on behalf of the clearing member's customers.[25]

4. Default and Portability Rules

a. Portability of positions and collateral

Prior to clearing member default, Registered Customers and other customers would be able to instruct that positions and collateral be moved to another clearing member. This would be subject to: (i) the approval of all involved parties, (ii) a release by the clearing member with respect to any outstanding obligations of the customer to the clearing member, and (iii) a release by Eurex.

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[25] Sections 1.83 through 1.8.6 of Eurex's rules.

In the case of Registered Customers, following clearing member default but prior to the filing of formal insolvency proceedings the security agreements would provide that the collateral would be returned to the Registered Customer, facilitating the transfer of the collateral to a new clearing member. In the case of customer omnibus accounts, Eurex would be able to ascertain the beneficial owners of positions with the clearing member's cooperation, allowing the collateral to be transferred with the agreement of the affected entities.

b. Shortfalls and liquidation procedures

If a clearing member were to become insolvent as the result of a Registered Customer, Eurex would have the right to use the collateral in that Registered Customer's account to satisfy the shortfall. In that event, Eurex would not be able to use the collateral posted by other customers to make up the shortfall. If a clearing member became insolvent due to a shortfall associated with a customer other than a Registered Customer, as noted above Eurex could use collateral in the account up to the amount of net omnibus position, causing loss to non-defaulting customers.[26]

In the event of a clearing member's default, the clearing member would be required to close its cleared CDS transactions; otherwise Eurex could close the positions on behalf of the clearing members.[27] If Eurex cannot close those transactions within a reasonable period, it may use a voluntary auction process to liquidate the position in whole or in part, and assign the remaining positions among non-defaulting clearing members pro rata.

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[26] Eurex states that the individually segregated collateral of Registered Customers will never be used to cover any shortfall caused by any other customer.

[27] These procedures may be subject to the action of the receiver of the clearing member, such as the Federal Deposit Insurance Corp. in the case of a U.S. bank clearing member.

5. Other Clearing Member Requirements Related to Customer Clearing

Eurex states that before offering CDS clearance and settlement services to U.S. customers of non-U.S. clearing members, it will adopt a requirement that the clearing member be regulated by: (i) a signatory to the International Organization of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, (ii) a signatory to a bilateral arrangement with the Commission for enforcement cooperation, or (iii) a financial regulatory authority in Ireland or Sweden.

B. Temporary Conditional Exemption from Exchange Registration Requirements

Eurex represents that, in connection with its clearing and risk management process, it will calculate an end-of-day settlement price for each Cleared CDS in which a Eurex clearing member has a cleared position, based on prices submitted by Eurex clearing members. As part of this mark-to-market process, Eurex will periodically require Eurex clearing members that submit quotes that lock or cross to execute certain CDS trades. Requiring Eurex clearing members to trade CDS periodically in this manner is designed to help ensure that such submitted prices reflect each Eurex clearing member's best assessment of the value of each of its open positions in Cleared CDS on a daily basis, thereby reducing risk by allowing Eurex to impose appropriate margin requirements.

Section 5 of the Exchange Act states that "[i]t shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange . . . to effect any transaction in a security, or to report any such transactions, unless such exchange (1) is registered as a national securities exchange under section 6 of [the Exchange Act], or (2) is exempted from such registration . . . by reason of the limited volume of transactions effected on such

exchange...."[28] Section 6 of the Exchange Act sets forth a procedure whereby an exchange[29] may register as a national securities exchange.[30] To facilitate the establishment of Eurex's end-of-day settlement price process, including the periodically required trading described above, the Commission is exercising its authority under Section 36 of the Exchange Act to temporarily exempt Eurex and Eurex clearing members, through November 30, 2010, from Sections 5 and 6 of the Exchange Act and the rules and regulations thereunder in connection with Eurex's calculation of mark-to-market prices for open positions in Cleared CDS. This temporary exemption is subject to the following conditions:

First, Eurex must report the following information with respect to the calculation of mark-to-market prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports during the life of the enterprise and of any successor enterprise:

- The total volume of transactions, expressed in the currency of the underlying instrument, executed during the quarter, broken down by reference entity, security, or index; and
- The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index.

Second, Eurex must establish and maintain adequate safeguards and procedures to protect members' confidential trading information. Such safeguards and procedures shall include: (a)

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28 15 U.S.C. 78e.

29 Section 3(a)(1) of the Exchange Act, 15 U.S.C. 78c(a)(1), defines "exchange." Rule 3b-16 under the Exchange Act, 17 CFR 240.3b-16, defines certain terms used in the statutory definition of exchange. See Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (adopting Rule 3b-16 in addition to Regulation ATS).

30 15 U.S.C. 78f. Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

limiting access to the confidential trading information of members to those employees of Eurex who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and (b) establishing and maintaining standards controlling employees of Eurex trading for their own accounts. Eurex must establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed.

Third, Eurex must comply with the conditions to the temporary exemption from to the temporary exemption from registration as a clearing agency extended by this Order,[31] given that this exemption is granted in the context of our goal of continuing to facilitate Eurex's ability to act as a CCP for non-excluded CDS, and given Eurex's representation that it must require periodic trading of Cleared CDS positions by Eurex clearing members whose submitted end-of-day prices lock or cross, to enhance the reliability of end-of-day settlement prices submitted as part of the daily mark-to-market process.

The Commission is also temporarily exempting each Eurex clearing member, through November 30, 2010, from the prohibition in Section 5 of the Exchange Act to the extent that such Eurex clearing member uses any facility of Eurex to effect any transaction in Cleared CDS, or to report any such transaction, in connection with Eurex's calculation of mark-to-market prices for open positions in Cleared CDS. Absent an exemption, Section 5 would prohibit any Eurex clearing member that is a broker or dealer from effecting transactions in Cleared CDS on Eurex, which will rely on this Order for an exemption from exchange registration. The Commission believes that temporarily exempting Eurex clearing members from the restriction in Section 5 is necessary and appropriate in the public interest and is consistent with the protection of investors because it will facilitate their use of Eurex's CCP for Cleared CDS, which for the

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[31] See Part II.E, infra.

reasons set forth in this Order the Commission believes to be beneficial. Without also temporarily exempting Eurex clearing members from this Section 5 requirement, the Commission's temporary exemption of Eurex from Sections 5 and 6 of the Exchange Act would be ineffective, because Eurex clearing members that are brokers or dealers would not be permitted to effect transactions on Eurex in connection with the end-of-day settlement price process.

C. Temporary Conditional Exemption from Broker-Dealer Related Requirements for Certain Clearing Members of Eurex and Others

The July Eurex Order did not address clearing of customer transactions by Eurex, and that order thus did not provide Eurex clearing members that hold customer collateral in connection with cleared CDS transactions with an exemption from broker-dealer requirements under the Exchange Act. Absent an exception or exemption, persons that effect transactions in non-excluded CDS that are securities may be required to register as broker-dealers pursuant to Section 15(a)(1) of the Exchange Act.[32] Moreover, certain other requirements of the Exchange Act could apply to such persons, as broker-dealers, regardless of whether they are registered with the Commission.

It is consistent with our investor protection mandate to require securities intermediaries that receive or hold funds and securities on behalf of others to comply with standards that

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[32] Section 15(a)(1) generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission.

Section 3(a)(4) of the Exchange Act generally defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," but excludes certain bank securities activities. 15 U.S.C. 78c(a)(4). Section 3(a)(5) of the Exchange Act generally defines a "dealer" as "any person engaged in the business of buying and selling securities for his own account," but includes exceptions for certain bank activities. 15 U.S.C. 78c(a)(5). Exchange Act Section 3(a)(6) defines a "bank" as a bank or savings association that is directly supervised and examined by state or federal banking authorities (with certain additional requirements for banks and savings associations that are not chartered by a federal authority or a member of the Federal Reserve System). 15 U.S.C. 78c(a)(6).

safeguard the interests of their customers. For example, a registered broker-dealer is required to segregate assets held on behalf of customers from proprietary assets because segregation will assist customers in recovering assets in the event the broker-dealer fails. To the extent that funds and securities are not segregated, they could be used by an intermediary to fund its own business and could be attached to satisfy debts of the intermediary if it were to fail. Moreover, the maintenance of adequate capital and liquidity protects customers, CCPs and other market participants. Adequate books and records (including both transactional and position records) are necessary to facilitate day to day operations as well as to help resolve situations in which an intermediary fails and either a regulatory authority, receiver, trustee or other entity is forced to liquidate the firm. Appropriate records also are necessary to allow examiners to review for improper activities, such as insider trading or other fraud.

At the same time, requiring intermediaries that receive or hold funds and securities on behalf of customers in connection with transactions in non-excluded CDS to register as broker-dealers may deter the use of CCPs in customer CDS transactions, which would cause customers to lose the counterparty risk benefits of central clearing, and would lessen the systemic risk reduction benefits associated with central clearing.

Those factors argue in favor of flexibility in applying the requirements of the Exchange Act to these intermediaries, conditioned on requiring the intermediaries to take reasonable steps to help increase the likelihood that their customers would be protected in the event the intermediary became insolvent, even if those safeguards are as not as strong as those required of registered broker-dealers. This requires us to balance the goals of promoting the central clearing of customer CDS transactions against the goal of protecting customers, and to be mindful that

these conditions cannot provide legal certainty that customer collateral in fact would be protected in the event an Eurex clearing member were to become insolvent.

In granting the temporary exemption, we also are relying on Eurex's representation that before offering the Non-Member Framework, it will adopt a requirement that non-U.S. clearing members subject to the framework are regulated by: (i) a signatory to the International Organization of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, (ii) a signatory to a bilateral arrangement with the Commission for enforcement cooperation, or (iii) a financial regulatory authority in Ireland or Sweden.[33]

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to grant a conditional exemption through November 30, 2010, with respect to certain Exchange Act requirements related to broker-dealers. This exemption is available to Eurex clearing members other than registered broker-dealers. This exemption also is available to any eligible contract participant, other than a registered broker-dealer, that does not receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons.[34] Solely with respect to Cleared CDS, those persons

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[33] Non-U.S. clearing members that do not meet these criteria would not be eligible to rely on this exemption.

The Commission has established informal relationships with securities authorities in Ireland and Sweden and cooperates with them on an ad hoc basis. Also, the securities regulators in both Ireland and Sweden have applied to become signatories to the IOSCO Multilateral Memorandum of Understanding for Consultation, Cooperation and the Exchange of Information.

[34] In some circumstances, an eligible contract participant that does not hold customer funds or securities nonetheless may act as a dealer in securities transactions, or as a broker (such as an inter-dealer broker).

Solely for purposes of this requirement, an eligible contract participant would not be viewed as receiving or holding funds or securities for purpose of purchasing, selling, clearing, settling, or holding

temporarily will be exempt from the broker-dealer registration requirements of Section 15(a)(1), and the other requirements of the Exchange Act (other than paragraphs (4) and (6) of Section 15(b)[35]) and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission.

For all Eurex clearing members – regardless of whether they receive or hold customer collateral in connection with Cleared CDS – this temporary exemption is conditioned on the clearing member being in material compliance with Eurex's rules, as well as on the clearing member being in compliance with applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS.

For Eurex clearing members that receive or hold funds or securities of U.S. persons (or who receive or hold funds or securities of any person in the case of a U.S. clearing member) – other than for an affiliate that controls, is controlled by, or is under common control with the clearing member – in connection with Cleared CDS, this temporary exemption further is

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Cleared CDS positions for other persons, if the other persons involved in the transaction would not be considered "customers" of the eligible contract participant under the analysis used for determining whether certain persons would be considered "customers" of a broker-dealer under Exchange Act Rule 15c3-3(a)(1). For these purposes, and for the purpose of the definition of "Cleared CDS," the terms "purchasing" and "selling" mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a Cleared CDS, as the context may require. This is consistent with the meaning of the terms "purchase" or "sale" under the Exchange Act in the context of security-based swap agreements. See Exchange Act Section 3A(b)(4).

[35] Exchange Act Sections 15(b)(4) and 15(b)(6) grant the Commission authority to take action against broker-dealers and associated persons in certain situations. Accordingly, while this exemption from broker-dealer requirements generally extends to persons that act as broker-dealers in the market for Cleared CDS (potentially including inter-dealer brokers that do not hold funds or securities for others), such persons may be subject to actions under Sections 15(b)(4) and (b)(6) of the Exchange Act.

In addition, such persons may be subject to actions under Exchange Act Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices. As noted above, Section 15(c)(1) explicitly applies to security-based swap agreements. Sections 15(b)(4), 15(b)(6) and 15(c)(1), of course, would not apply to persons subject to this exemption who do not act as broker-dealers or associated persons of broker-dealers.

conditioned on the customer not being a natural person, and on the clearing member providing certain risk disclosures to the customer.[36]

Also, those clearing members that receive or hold such customer funds or securities must transfer those funds and securities, as promptly as practicable after receipt, to either the appropriate customer account at Eurex[37] or an account held by a third-party custodian, as described below.[38]

Collateral that is held at a third-party custodian, moreover, must either be held: (1) in the name of the customer, subject to an agreement in which the customer, the clearing member and the custodian are parties, acknowledging that the assets held therein are customer assets used to collateralize obligations of the customer to the clearing member, and that the assets held in the account may not otherwise be pledged or rehypothecated by the clearing member or the custodian; or (2) in an omnibus account for which the clearing member maintains daily records as to the amount owing to each customer, and which is subject to an agreement between the clearing member and the custodian specifying: (i) that all account assets are held for the exclusive benefit of the clearing member's customers and are being kept separate from any other

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[36] The clearing member must disclose that it is not regulated by the Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply, that the insolvency law of the applicable jurisdiction may affect the customer's ability to recover funds and securities or the speed of any such recovery, and (if applicable) that non-U.S. members may be subject to an insolvency regime that is materially different from that applicable to U.S. persons.

[37] Cash collateral transferred to Eurex may be invested in certain "approved instruments," as discussed above. See note 18, supra.

[38] Eurex anticipates that registered FCMs may become clearing members of Eurex; Eurex thus may apply to the CFTC for an order, under Section 4d of the Commodity Exchange Act ("CEA"), to allow FCM clearing members to segregate the collateral posted by customers as margin for Cleared CDS transactions and positions in an account established in accordance with Section 4d and underlying rules.

This Order does not preclude Eurex clearing members that are FCMs (and that are not registered broker-dealers) from relying on this exemption from broker-dealer related requirements under the Exchange Act, provided such members comply with the conditions of this exemption, including conditions related to segregation of customer collateral. The Commission intends to monitor developments that may form the basis for alternative segregation conditions for FCM members of Eurex.

accounts that the clearing member maintains with the custodian; (ii) that the account assets may not be used as security for a loan to the clearing member by the custodian, and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the custodian or any person claiming through the custodian; and (iii) that the assets may not otherwise be pledged or rehypothecated by the clearing member or the custodian.[39] Under either approach, the third-party custodian cannot be affiliated with the clearing member.[40] Moreover, if the third-party custodian is a U.S. entity, it must be a bank (as that term is defined in Section 3(a)(6) of the Exchange Act), have total regulatory capital of at least $1 billion,[41] and have been approved to engage in a trust business by its appropriate regulatory agency. A custodian that is not a U.S. entity must have regulatory capital of at least $1 billion,[42] and must provide the clearing member, the customer and Eurex with a legal opinion[43] providing that the account assets are subject to

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[39] We do not contemplate that either of these approaches involving the use of a third-party custodian would interfere with the ability of a clearing member and its customer to agree as to how any return or losses earned on those assets would be distributed between the clearing member and its customer.

Also, the restriction in both approaches on the clearing member's and the custodian's ability to rehypothecate these customer funds and securities does not preclude that collateral from being transferred to Eurex as necessary to satisfy variation margin requirements in connection with the customer's CDS position.

[40] For purposes of the Order, an "affiliated person" of a clearing member mean any person who directly or indirectly controls a clearing member or any person who is directly or indirectly controlled by or under common control with a clearing member; ownership of 10 percent or more of an entity's common stock will be deemed prima facie control of that entity. See definition in paragraph III.(f)(2) of this Order. This standard is analogous to the standard used to identify affiliated persons of broker-dealers under Exchange Act Rule 15c3-3(a)(13), 17 CFR 240.15c3-3(a)(13).

[41] In particular, custodians that are U.S. entities must have total capital, as calculated to meet the applicable requirements imposed by the entity's appropriate regulatory agency of at least $1 billion. The term "appropriate regulatory agency" is defined in Section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34)).

[42] Custodians that are non-U.S. entities must have total capital, as calculated to meet the applicable requirements imposed by the foreign financial regulatory authority of at least $1 billion. The term "foreign financial regulatory authority" is defined in Section 3(a)(52) of the Exchange Act, 15 U.S.C. 78c(a)(52)).

[43] This condition requiring that Eurex receive a legal opinion as a repository for regulators, and other conditions of this Order that require clearing members to convey information (e.g., an audit report

regulatory requirements in the custodian's home jurisdiction designed to protect, and provide for the prompt return of, custodial assets in the event of the custodian's insolvency, and that the assets held in that account reasonably could be expected to be legally separate from the clearing member's assets in the event of the clearing member's insolvency. Also, cash collateral posted with the third-party custodian may be invested in other assets that constitute "approved instruments" pursuant to part 2.2 under the Eurex Organizational Manual.[44] Finally, a clearing member that uses a third-party custodian to hold customer collateral must notify Eurex of that use.

To the extent there is any delay in the clearing member transferring such funds and securities to Eurex or a third-party custodian,[45] the clearing member must effectively segregate the collateral in a way that, pursuant to applicable law, could reasonably be expected to effectively protect the collateral from the clearing member's creditors. The clearing member may not permit such persons to "opt out" of such segregation even if applicable regulations or laws otherwise would permit such "opt out."

To facilitate compliance with the segregation practices that are required as a condition to this temporary exemption, the clearing member also must annually provide Eurex with a self-assessment that it is in compliance with the requirements, along with a report by the clearing member's independent third-party auditor that attests to that assessment. The report must be dated the same date as the clearing member's annual audit report (but may be separate from it),

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related to the clearing member's compliance with exemptive conditions) to Eurex, does not impose upon Eurex any independent duty to audit or otherwise review such information. These conditions also do not impose on Eurex any independent fiduciary or other obligation to any customer of a clearing member.

[44] See note 18, supra.

[45] This provision is intended to address short-term technology or operational issues.

and must be produced in accordance with the standards that the auditor follows in auditing the clearing member's financial statements.[46]

Finally, to support these segregation practices and enhance the ability to detect and deter circumstances in which clearing members fail to segregate customer collateral consistent with the exemption, this temporary exemption is conditioned on the clearing member agreeing to provide the Commission with access to information related to Cleared CDS transactions.[47] In particular, the clearing member would provide the Commission (upon request and subject to agreements reached between the Commission or the U.S. Government and an appropriate foreign securities authority[48]) with information or documents within the clearing member's possession, custody, or control, as well as testimony of clearing member personnel and assistance in taking the evidence of other persons, that relates to Cleared CDS transactions. If, after the clearing member has exercised its best efforts to provide this information (including requesting the appropriate governmental body and, if legally necessary, its customers), the clearing member nonetheless is prohibited from providing the information by applicable foreign law or regulations, this temporary conditional exemption would no longer be available to the clearing member.[49]

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[46] As the self-assessment is intended to serve as the basis for the third-party auditor's report, we expect the self-assessment to be generally contemporaneous with that report.

[47] This requirement for clearing members to make information available to the Commission is consistent with a requirement in Exchange Act Rule 15a-6(a)(3)(i)(B), which exempts certain foreign broker-dealers from registering with the Commission. See Exchange Act Rule 15a-6(a)(3)(i)(B).

[48] The term "foreign securities authority" is defined in Section 3(a)(50) of the Exchange Act, 15 U.S.C. 78c(a)(50).

[49] Consistent with the discussion above as to the loss of an exemption due to an underlying representation no longer being accurate, see note 8, supra, if a clearing member were to lose the benefit of this exemption due to the failure to provide information to the Commission as the result of a prohibition by an applicable foreign law or regulation, the legal status of existing open positions in non-excluded CDS associated with those clearing members and its customers would remain unchanged, but the clearing member could not establish new CDS positions pursuant to the exemption.

We recognize that requiring clearing members that receive or hold customer collateral to satisfy these conditions will not guarantee that a customer would receive the return of its collateral in the event of a clearing member's insolvency, particularly in light of the fact-specific nature of the insolvency process and the multiplicity of insolvency regimes that may apply to Eurex's members clearing for U.S. customers. We believe, however, that these are reasonable steps for increasing the likelihood that customers would be able to access collateral in such an insolvency event. We also recognize that these customers generally may be expected to be sophisticated market participants that should be able to weigh the risks associated with entering into arrangements with intermediaries that are not registered broker-dealers, particularly in light of the disclosure required as a condition to this temporary exemption.

D. Modified and Extended Temporary Conditional General Exemption for Eurex and Certain Eligible Contract Participants

The existing order on behalf of Eurex temporarily exempted Eurex, and certain members and eligible contract participants from a number of Exchange Act requirements, subject to certain conditions, recognizing that applying the full panoply of Exchange Act requirements to participants in transactions in non-excluded CDS likely would deter some participants from using CCPs to clear CDS transactions. That temporary conditional exemption, however, did not extend to the antifraud provisions of the Exchange Act, in light of the importance of continuing to apply those antifraud provisions to transactions in non-excluded CDS.[50]

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[50] OTC transactions subject to individual negotiation that qualify as security-based swap agreements are subject to those provisions. While Section 3A of the Exchange Act excludes "swap agreements" from the definition of "security," certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. See (a) paragraphs (2) through (5) of Section 9(a), 15 U.S.C. 78i(a), prohibiting the manipulation of security prices; (b) Section 10(b), 15 U.S.C. 78j(b), and underlying rules prohibiting fraud, manipulation or insider trading (but not prophylactic reporting or recordkeeping requirements); (c) Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices; (d) Sections 16(a) and (b), 15 U.S.C. 78p(a) and (b), which address disclosure by directors, officers and principal stockholders, and short-swing trading by

We are modifying the existing temporary conditional exemption to accommodate customer CDS clearing by Eurex. As revised, this temporary conditional exemption applies to Eurex and to any eligible contract participants[51] – including any Eurex clearing member[52] – other than eligible contract participants that are self-regulatory organizations, or eligible contract participants that are registered brokers or dealers.[53]

In light of the temporary conditional exemption that we are granting from certain Exchange Act requirements related to broker-dealers, we also are modifying this temporary conditional exemption by excluding from its scope the broker-dealer registration requirements of Section 15(a)(1),[54] and the other requirements of the Exchange Act, including paragraphs (4) and

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those persons, and rules with respect to reporting requirements under Section 16(a); (e) Section 20(d), 15 U.S.C. 78t(d), providing for antifraud liability in connection with certain derivative transactions; and (f) Section 21A(a)(1), 15 U.S.C. 78u-1(a)(1), related to the Commission's authority to impose civil penalties for insider trading violations.

"Security-based swap agreement" is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

51 This exemption in general applies to eligible contract participants, as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order, other than persons that are eligible contract participants under paragraph (C) of that section.

52 The current exemption specifically applies to any "Eurex U.S. Clearing Member" and "Eurex Non-U.S. Clearing Members." These terms were defined to exclude U.S. members that submitted customer CDS trades for clearing, and to exclude non-U.S. members that submitted customer CDS trades for clearing for the account of any other person except a U.S. person. In light of our expansion of the Eurex exemptions to accommodate customer clearing, we no longer are limiting the exemption in that way, and are not using those definitions.

53 The current exemption also excludes persons that hold funds and securities for others. This restriction no longer is necessary in light of the exemption from broker-dealer related requirements.

Also, a separate temporary exemption addresses the Cleared CDS activities of registered broker-dealers. See Part II.E, infra. Solely for purposes of this Order, a "registered broker-dealer," or a "broker or dealer registered under Section 15(b) of the Exchange Act," does not refer to someone that would otherwise be required to register as a broker or dealer solely as a result of activities in Cleared CDS in compliance with this Order.

54 15 U.S.C. 78o(a)(1).

(6) of Section 15(b), and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission.[55]

Eurex clearing members relying on this temporary conditional exemption must be in material compliance with Eurex rules. Moreover, to help promote compliance with the temporary conditional exemption that we are granting from certain Exchange Act requirements specifically related to broker-dealers, any Eurex clearing member relying on this exemption that participates in the clearing of Cleared CDS transactions on behalf of other persons must annually provide a certification to Eurex that attests to whether the clearing member is relying on the temporary exemption from broker-dealer related requirements described below.[56]

As before, this temporary conditional exemption, solely with respect to Cleared CDS, generally addresses the provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. Thus, persons relying on the exemption would still be subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements.[57] Also, as before, this temporary conditional exemption does not extend to: the exchange registration requirements of Exchange Act Sections 5 and 6;[58] the clearing agency registration requirements of Exchange Act Section 17A; the

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55 Currently, this exemption only excludes paragraphs (4) and (6) of Section 15(b) from its scope.

56 We expect the clearing member to initially provide this certification to Eurex around the time it commences relying on this exemption. To the extent we extend this temporary conditional exemption and include the same type of certification requirement, the clearing member then would annually renew the certification.

57 See note 50, supra. In addition, all provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions would remain applicable. Thus, for example, the Commission retains the ability to investigate potential violations and bring enforcement actions in the federal courts as well as in administrative proceedings, and to seek the full panoply of remedies available in such cases.

58 These are subject to a separate temporary class exemption. See note 1, supra. A national securities exchange that effects transactions in Cleared CDS would continue to be required to comply with all requirements under the Exchange Act applicable to such transactions. A national securities

requirements of Exchange Act Sections 12, 13, 14, 15(d), and 16;[59] or certain provisions related to government securities.[60] This revised temporary exemption will be in effect through November 30, 2010.

E. Extension of Other Temporary Exemptions Associated with CDS Clearing by Eurex

The order we previously granted to facilitate CDS clearing by Eurex conditionally exempts Eurex, until April 23, 2010, from the clearing agency registration requirements of Section 17A of the Exchange Act in connection with Cleared CDS. Subject to the conditions in that exemption, Eurex is permitted to act as a CCP for Cleared CDS without having to register with the Commission as a clearing agency. In granting that exemption, the Commission recognized the need to ensure the prompt establishment of Eurex as a CCP for CDS transactions, while also ensuring that important elements of Section 17A of the Exchange Act, which sets forth the framework for the regulation and operation of the U.S. clearance and settlement system for securities, apply to the non-excluded CDS market. The temporary exemption is subject to a number of conditions designed to enable Commission staff to monitor Eurex's clearance and

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exchange could form subsidiaries or affiliates that operate exchanges exempt under that order. Any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link, the exempt CDS exchange with the registered exchange including the premises or property of such exchange for effecting or reporting a transaction without being considered a "facility of the exchange." See Section 3(a)(2), 15 U.S.C. 78c(a)(2).

The revised exemptions connected with CDS clearing by Eurex also includes a separate temporary exemption from Sections 5 and 6 in connection with the mark-to-market process of Eurex.

[59] 15 U.S.C. 78l, 78m, 78n, 78o(d), 78p. Eligible contract participants and other persons instead should refer to the interim final temporary rules issued by the Commission. See note 1, supra.

[60] This exemption specifically does not extend to the Exchange Act provisions applicable to government securities, as set forth in Section 15C, 15 U.S.C. 78o-5, and its underlying rules and regulations. The exemption also does not extend to related definitions found at paragraphs (42) through (45) of Section 3(a), 15 U.S.C. 78c(a). The Commission does not have authority under Section 36 to issue exemptions in connection with those provisions. See Exchange Act Section 36(b), 15 U.S.C. 78mm(b).

settlement of CDS transactions.[61] The temporary exemption, moreover, in part is based on Eurex's representation that it met the standards set forth in the Committee on Payment and Settlement Systems ("CPSS") and IOSCO report entitled: Recommendation for Central Counterparties ("RCCP").[62] The exemption expires on April 23, 2010. For consistency with the other exemptions we are granting in connection with CDS clearing by Eurex, and consistent with our earlier findings, we find pursuant to Section 36 of the Exchange Act that it is necessary and appropriate in the public interest and is consistent with the protection of investors for the Commission to extend, through November 30, 2010, the conditional relief provided from the clearing agency registration requirements of Section 17A we previously granted to Eurex.

Finally, the earlier order also exempts registered broker-dealers, until April 23, 2010, from certain Exchange Act requirements in connection with their activities involving Cleared CDS. In crafting these temporary exemptions, we balanced the need to avoid creating disincentives to the prompt use of CCPs against the critical role that certain broker-dealers play in promoting market integrity and protecting customers (including broker-dealer customers that are not involved with CDS transactions). Accordingly, we exempted registered broker-dealers from provisions of the Exchange Act and the rules and regulations thereunder that do not apply

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61 See July Eurex order.

62 The RCCP was drafted by a joint task force ("Task Force") composed of representative members of IOSCO and CPSS and published in November 2004. The Task Force consisted of securities regulators and central bankers from 19 countries and the European Union. The U.S. representatives on the Task Force included staff from the Commission, the Federal Reserve Board, and the Commodity Futures Trading Commission.

The RCCP establishes a framework that requires a CCP to have (i) the ability to facilitate the prompt and accurate clearance and settlement of CDS transactions and to safeguard its users' assets; and (ii) sound risk management, including the ability to appropriately determine and collect clearing fund and monitor its users' trading. This framework is generally consistent with the requirements of Section 17A of the Exchange Act.

to security-based swap agreements, subject to certain exceptions.[63] For consistency with the other exemptions we are granting in connection with CDS clearing by Eurex, and consistent with our earlier findings, we find pursuant to Section 36 of the Exchange Act that it is necessary and appropriate in the public interest and is consistent with the protection of investors for the Commission to extend, through November 30, 2010, the conditional relief previously provided to registered broker-dealers in connection with Cleared CDS.

F. Solicitation of Comments

When we granted our initial temporary conditional exemptions in connection with CDS clearing by Eurex, we solicited comment on all aspects of the exemptions, and specifically requested comment as to the duration of the temporary exemptions, the appropriateness of the exemptive conditions, and whether Eurex should be required to register as a clearing agency under the Exchange Act. We received no comments in response this request.

In connection with this Order extending the temporary conditional exemptions granted in connection with CDS clearing by Eurex, and expanding that relief to accommodate central clearing of customer CDS transactions, we reiterate our request for comments on all aspects of the exemptions. We particularly request comments as to the relief we are granting in connection with customer clearing, including whether Eurex members that clear customer CDS transactions should be required to register as broker-dealers, whether the conditions that we have placed on the relief adequately protect customer funds and securities from the threat posed by clearing member insolvency, whether additional conditions or requirements are appropriate to promote compliance with the requirements of the exemptions, and what, if any, additional conditions would be appropriate.

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63 See July Eurex order.

We also particularly request comment as to whether the segregation conditions of this Order should extend to certain transfers of variation margin associated with Cleared CDS, as well as whether CDS customers are able to easily access mark-to-market profits associated with Cleared CDS. Do any practices (such as, for example, negotiated "thresholds" in credit support annexes between clearing members and customers) impede customers from demanding and receiving the timely return of such mark-to-market profits? Should the Commission condition any future exemptions on segregating the mark-to-market profits associated with Cleared CDS if they are not returned to customers within a certain amount of time following demand (subject to provisions regarding reasonable minimum transfer amounts, and provisions permitting offset against amounts owing from the customer directly to the clearing member)? Would such a condition impose significant operational or other costs that may deter the clearing of customer CDS transactions? Are there other factors (e.g., costs, benefits, market conditions, economic considerations, or availability of credit hedges) that may reduce the significance of any customer protection benefits provided by requiring segregation of such mark-to-market profits? We also invite comment on whether differences among CDS CCPs regarding protection of mark-to-market profits may have competitive impacts.

In addition, we request comment on how clearing members intend to comply with this Order's condition requiring the segregation of all margin posted by customers connected with purchasing, selling, clearing, settling or holding Cleared CDS positions – not only the gross margin required by Eurex rules. To what extent would clearing firms typically require certain customers to post such "excess" margin above the Eurex requirements in connection with Cleared CDS transactions?

Finally, to what extent do clearing members and customers seek to include Cleared CDS positions within portfolio margining calculations that include other instruments (e.g., non-cleared CDS, other OTC derivatives or securities)? If portfolio margining is used, how do clearing members allocate the total collateral required by a clearing member from a customer between the portion posted in connection with Cleared CDS (and hence subject to this Order's segregation conditions) and the portion attributable to other derivatives transactions involving that clearing member and customer? To the extent a clearing member's portfolio margin calculations include a customer's Cleared CDS positions, is it reasonable to conclude that any portion of the customer margin is not connected with Cleared CDS, and thus does not need to be segregated? Would a dealer's inclusion of Cleared CDS positions in its portfolio margin calculation interfere with the customer protection benefits of CDS clearing in the event of a dealer's insolvency? In other words, would the dealer's cleared CDS customer positions be portable to another dealer if collateralized solely by the Eurex-required margin, or would the dealer's cleared CDS customers be placed at a disadvantage in an insolvency situation because of this practice? Should the Commission provide firms with further guidance regarding the inclusion of Cleared CDS in portfolio margin calculations?

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/other.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-17-09 on the subject line; or

- Use the Federal eRulemaking Portal (http://www.regulations.gov/). Follow the instructions for submitting comments.

Paper comments:

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

All submissions should refer to File Number S7-17-09. 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. We will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/other.shtml). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 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.

III. Conclusion

IT IS HEREBY ORDERED, pursuant to Section 36(a) of the Exchange Act, that, through November 30, 2010:

(a) Exemption from Section 17A of the Exchange Act.

Eurex Clearing AG ("Eurex") shall be exempt from Section 17A of the Exchange Act solely to perform the functions of a clearing agency for Cleared CDS (as defined in paragraph (f)(1) of this Order), subject to the following conditions:

(1) Eurex shall make available on its Web site its annual audited financial statements.

(2) Eurex shall keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts and other such records as shall be made or received by it relating to its Cleared CDS clearance and settlement services. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place.

(3) Eurex shall supply information and periodic reports relating to its Cleared CDS clearance and settlement services as may be reasonably requested by the Commission, and shall provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to Eurex's Cleared CDS clearance and settlement services.

(4) Eurex shall notify the Commission, on a monthly basis, of any material disciplinary actions taken against any of its members using its Cleared CDS clearance and settlement services, including the denial of services, fines, or penalties. Eurex shall notify the Commission promptly when it terminates on an involuntary basis the membership of an entity that is using Eurex's Cleared CDS clearance and settlement services. Both notifications shall describe the facts and circumstances that led to Eurex's disciplinary action.

(5) Eurex shall notify the Commission of all changes to its rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services, including its fee schedule and changes to risk management practices, not less than one day prior to effectiveness or implementation of such changes or, in exigent circumstances, as promptly as reasonably practicable under the circumstances. All such

rule changes will be posted on Eurex's Web site. Such notifications will not be deemed rule filings that require Commission approval.

(6) Eurex shall provide the Commission with reports prepared by independent audit personnel concerning its Cleared CDS clearance and settlement services that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements. Eurex shall provide the Commission with annual audited financial statements for Eurex prepared by independent audit personnel.

(7) Eurex shall report all significant systems outages to the Commission. If it appears that the outage may extend for 30 minutes or longer, Eurex shall report the systems outage immediately. If it appears that the outage will be resolved in fewer than 30 minutes, Eurex shall report the systems outage within a reasonable time after the outage has been resolved.

(8) Eurex, directly or indirectly, shall make available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) all end-of-day settlement prices and any other prices with respect to Cleared CDS that Eurex may establish to calculate mark-to-market margin requirements for Eurex clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by Eurex.

(b) Exemption from Sections 5 and 6 of the Exchange Act

(1) Eurex shall be exempt from the requirements of Sections 5 and 6 of the Exchange Act and the rules and regulations thereunder in connection with its calculation of mark-to-market prices for open positions in Cleared CDS, subject to the following conditions:

(i) Eurex shall report the following information with respect to the calculation of mark-to-market prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports during the life of the enterprise and of any successor enterprise:

(A) The total volume of transactions, expressed in the currency of the underlying instrument, executed during the quarter, broken down by reference entity, security, or index; and

(B) The total unit volume and/or notional amount executed during the quarter, broken down by reference entity, security, or index;

(ii) Eurex shall establish and maintain adequate safeguards and procedures to protect clearing members' confidential trading information. Such safeguards and procedures shall include: (A) limiting access to the confidential trading information of clearing members to those employees of Eurex who are operating the system or responsible for its compliance with this exemption or any other applicable rules; and (B) establishing and maintaining standards controlling employees of Eurex trading for their own accounts. Eurex must establish and maintain adequate oversight procedures to ensure that the safeguards and procedures established pursuant to this condition are followed; and

(iii) Eurex shall satisfy the conditions of the temporary exemption from Section 17A of the Exchange Act set forth in paragraphs (a)(1) – (8) of this Order.

(2) Any Eurex clearing member shall be exempt from the requirements of Section 5 of the Exchange Act to the extent such Eurex clearing member uses any facility of

Eurex to effect any transaction in Cleared CDS, or to report any such transaction, in connection with Eurex's clearance and risk management process for Cleared CDS.

(c) Exemption for Eurex, Eurex clearing members, and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (c)(2) is available to:

(i) Eurex; and

(ii) Any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), including any Eurex clearing member, other than:

(A) an eligible contract participant that is a self-regulatory organization, as that term is defined in Section 3(a)(26) of the Exchange Act; or

(B) a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof).

(2) Scope of exemption.

(i) In general. Subject to the conditions specified in paragraph (c)(3) of this subsection, such persons generally shall, solely with respect to Cleared CDS, be exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply in connection with security-based swap agreements. Accordingly, under this exemption, those persons remain subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements (i.e., paragraphs (2) through (5) of Section 9(a),

Section 10(b), Section 15(c)(1), paragraphs (a) and (b) of Section 16, Section 20(d) and Section 21A(a)(1) and the rules thereunder that explicitly are applicable to security-based swap agreements). All provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions also remain applicable.

(ii) Exclusions from exemption. The exemption in paragraph (c)(2)(i), however, does not extend to the following provisions under the Exchange Act:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;

(D) Section 12 and the rules and regulations thereunder;

(E) Section 13 and the rules and regulations thereunder;

(F) Section 14 and the rules and regulations thereunder;

(G) The broker-dealer registration requirements of Section 15(a)(1), and the other requirements of the Exchange Act (including paragraphs (4) and (6) of Section 15(b)) and the rules and regulations thereunder that apply to a broker or dealer that is not registered with the Commission;

(H) Section 15(d) and the rules and regulations thereunder;

(I) Section 15C and the rules and regulations thereunder;

(J) Section 16 and the rules and regulations thereunder; and

(K) Section 17A (other than as provided in paragraph (a)).

(3) Conditions for Eurex clearing members.

(i) Any Eurex clearing member relying on this exemption must be in material compliance with the rules of Eurex.

(ii) Any Eurex clearing member relying on this exemption that participates in the clearing of Cleared CDS transactions on behalf of other persons must annually provide a certification to Eurex that attests to whether the clearing member is relying on the exemption from broker-dealer related requirements set forth in paragraph (d) of this Order.

(d) Exemption from broker-dealer related requirements for Eurex clearing members and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (d)(2) is available to:

(i) Any Eurex clearing member (other than one that is registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)); and

(ii) Any eligible contract participant that does not receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons (other than one that is registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)).

(2) Scope of exemption. The persons described in paragraph (d)(1) shall, solely with respect to Cleared CDS, be exempt from the broker-dealer registration requirements of Section 15(a)(1) and the other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)) and the rules and regulations thereunder that apply to a broker or

dealer that is not registered with the Commission, subject to the conditions set forth in paragraph (d)(3) with respect to Eurex clearing members.

(3) Conditions for Eurex clearing members.

(i) General condition for Eurex clearing members. A Eurex clearing member relying on this exemption must be in material compliance with the rules of Eurex, and also must be in material compliance with applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS.

(ii) Additional conditions for Eurex clearing members that receive or hold customer funds or securities. Any Eurex clearing member that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for U.S. persons (or for any person if the clearing member is a U.S. clearing member) – other than for an affiliate that controls, is controlled by, or is under common control with the clearing member – also shall comply with the following conditions with respect to such activities:

(A) The U.S. person (or any person if the clearing member is a U.S. clearing member) for whom the clearing member receives or holds such funds or securities shall not be natural persons;

(B) The clearing member shall disclose to such U.S. person (or to any such person if the clearing member is a U.S. clearing member) that the clearing member is not regulated by the Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by

the clearing member, that the insolvency law of the applicable jurisdiction may affect such persons' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding, and, if applicable, that non-U.S. clearing members may be subject to an insolvency regime that is materially different from that applicable to U.S. persons;

(C) As promptly as practicable after receipt, the clearing member shall transfer such funds and securities (other than those promptly returned to such other person) to:

(I) the appropriate customer margin account at Eurex; or

(II) an account held by a third-party custodian, subject to the following requirements:

(a) the funds and securities must be held either:

(1) in the name of a customer, subject to an agreement to which the customer, the clearing member and the custodian are parties, acknowledging that the assets held therein are customer assets used to collateralize obligations of the customer to the clearing member, and that the assets held in that account may not otherwise be pledged or rehypothecated by the clearing member or the custodian; or

(2) in an omnibus account for which the clearing member maintains a daily record as to the amount held in the account that is owed to each customer, and which is subject to an agreement between the clearing member and the custodian specifying that:

(i) all assets in that account are held for the exclusive benefit of the clearing member's customers and are being kept separate from any other accounts maintained by the clearing member with the custodian;

(ii) the assets held in that account shall at no time be used directly or indirectly as security for a loan to the clearing member by the custodian and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the custodian or any person claiming through the custodian; and

(iii) the assets held in that account may not otherwise be pledged or rehypothecated by the clearing member or the custodian;

(b) the custodian may not be an affiliated person of the clearing member (as defined at paragraph (f)(2)); and

(1) if the custodian is a U.S. entity, it must be a bank (as that term is defined in section 3(a)(6) of the Exchange Act), have total capital, as calculated to meet the applicable requirements imposed by the entity's appropriate regulatory agency (as defined in section 3(a)(34) of the Exchange Act), of at least $1 billion, and have been approved to engage in a trust business by its appropriate regulatory agency;

(2) if the custodian is not a U.S. entity, it must have total capital, as calculated to meet the applicable requirements imposed by the foreign financial regulatory authority (as defined in section 3(a)(52) of the Exchange Act) responsible for setting capital requirements for the entity, equating to at least $1 billion, and provide the clearing member, the customer and Eurex with a legal opinion providing that the assets held in the account are subject to regulatory requirements in the custodian's home jurisdiction designed to protect, and provide for the prompt return of, custodial

assets in the event of the insolvency of the custodian, and that the assets held in that account reasonably could be expected to be legally separate from the clearing member's assets in the event of the clearing member's insolvency;

(c) such funds may be invested in investments that constitute "approved instruments" pursuant to part 2.2 under the Eurex Organizational Manual; and

(d) the clearing member must provide notice to Eurex that it is using the third-party custodian to hold customer collateral.

(D) To the extent there is any delay in transferring such funds and securities to the third-parties identified in paragraph (C), the clearing member shall effectively segregate the collateral in a way that, pursuant to applicable law, is reasonably expected to effectively protect such funds and securities from the clearing member's creditors. The clearing member shall not permit such persons to "opt out" of such segregation even if regulations or laws otherwise would permit such "opt out."

(E) The clearing member annually must provide Eurex with:

(I) an assessment by the clearing member that it is in compliance with all the provisions of paragraphs (d)(3)(ii)(A) through (D) in connection with such activities, and

(II) a report by the clearing member's independent third-party auditor that attests to, and reports on, the clearing member's assessment described in paragraph (d)(3)(ii)(E)(I) and that is

(a) dated as of the same date as, but which may be separate and distinct from, the clearing member's annual audit report;

(b) produced in accordance with the auditing standards followed by the independent third party auditor in its audit of the clearing member's financial statements.

(F) The clearing member shall provide the Commission (upon request or pursuant to agreements reached between the Commission or the U.S. Government and any foreign securities authority (as defined in Section 3(a)(50) of the Exchange Act)) with any information or documents within the possession, custody, or control of the clearing member, any testimony of personnel of the clearing member, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to Cleared CDS transactions, except that if, after the clearing member has exercised its best efforts to provide the information, documents, testimony, or assistance, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the clearing member to provide the information, documents, testimony, or assistance to the Commission, the clearing member is prohibited from providing this

information, documents, testimony, or assistance by applicable foreign law or regulations, then this exemption shall not longer be available to the clearing member.

(e) Exemption for certain registered broker-dealers.

A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, except:

(1) Section 7(c);

(2) Section 15(c)(3);

(3) Section 17(a);

(4) Section 17(b);

(5) Regulation T, 12 CFR 200.1 et seq.;

(6) Rule 15c3-1;

(7) Rule 15c3-3;

(8) Rule 17a-3;

(9) Rule 17a-4;

(10) Rule 17a-5; and

(11) Rule 17a-13.

(f) Definitions.

For purposes of this Order:

(1) "Cleared CDS" shall mean a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to Eurex, that is offered only to,

purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)); and in which:

(i) The reference entity, the issuer of the reference security, or the reference security is one of the following:

(A) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(B) A foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(C) A foreign sovereign debt security;

(D) An asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(E) An asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae; or

(ii) The reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (i).

(2) For purposes of this Order, the term "Affiliated Person of the Clearing Member" shall mean any person who directly or indirectly controls a clearing member or any person who is directly or indirectly controlled by or under common control with the

clearing member. Ownership of 10 percent or more of the common stock of the relevant entity will be deemed prima facie control of that entity.

IV. Paperwork Reduction Act

Certain provisions of this Order contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.[64] The Commission has submitted the proposed amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Collection of Information

As discussed above, the Commission has found it to be necessary or appropriate in the public interest and consistent with the protection of investors to grant the temporary conditional exemptions discussed in this Order through November 30, 2010. Among other things, the Order would require a Eurex clearing member that receives or holds customers' funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions to; (i) provide Eurex with certain certifications/notifications, (ii) make certain disclosures to Cleared CDS customers, (iii) enter into certain agreements to protect customer assets, (iv) maintain a record of each customer's share of assets maintained in an omnibus account, and (v) obtain a separate report, as part of its annual audit report, as to its compliance with the conditions of the Order regarding protection of customer assets.

B. Proposed Use of Information

These collection of information requirements are designed to, among other things, inform Cleared CDS customers that their ability to recover assets placed with the clearing member are

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[64] 44 U.S.C. 3501 et seq.

dependent on the applicable insolvency regime, provide Commission staff with access to information regarding whether clearing members are complying with the conditions of this Order, and provide documentation helpful for the protection of Cleared CDS customers' funds and securities.

C. Respondents

Based on conversations with industry participants, the Commission understands that approximately 12 firms may be presently engaged as CDS dealers and thus may seek to be a clearing member of Eurex. In addition, 8 more firms may enter into this business. Consequently, the Commission estimates that Eurex, like the other CCPs that clear CDS transactions, may have up to 20 clearing members.

D. Total Annual Reporting and Recordkeeping Burden

Paragraph III.(c)(3)(ii) of the Order requires any Eurex clearing member relying on the exemptive relief specified in paragraph (c) that participates in the clearing of Cleared CDS transactions on behalf of other persons to annually provide a certification to Eurex that attests to whether the clearing member is relying on the exemption from broker-dealer related requirements set forth in paragraph (d) of this Order. The Commission estimates that it would take a clearing member approximately one half hour each year to complete the certification and provide it to Eurex, resulting in an aggregate burden of 10 hours per year for all 20 clearing members to comply with this requirement on an annual basis.[65]

Paragraph III.(d)(3)(ii)(C)(II)(d) of the Order requires that a clearing member notify Eurex if it is using a third-party custodian to hold customer collateral. The Commission

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[65] 10 hours = (20 clearing members x ½ hour per clearing member). This estimate is based on burden estimates published with respect to other Commission actions that contained similar certification requirements (see e.g., Exchange Act Release No. 41661 (Jul 27, 1999), 64 FR 42012 (Aug. 3, 1999), and the burden associated with the Year 2000 Operational Capability Requirements, including notification and certifications required by Rule 15b7-3T(e)).

estimates that it would take a clearing member approximately one half hour each year to draft a notification and provide it to Eurex, which would result in an aggregate burden of 10 hours per year for all 20 clearing members to comply with this requirement on an annual basis.[66]

Paragraph III.(d)(3)(ii)(B) of the Order requires an Eurex clearing member to disclose to its U.S. customers[67] that it is not regulated by the Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities it holds, that the insolvency law of the applicable jurisdiction may affect the customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding, and, if it is not a U.S. entity, that it may be subject to an insolvency regime that is materially different from that applicable to U.S. persons. The Commission believes that clearing members could use the language in the Order that describes the disclosure that must be made as a template to draft the disclosure. Consequently the Commission estimates, based on staff experience, that it would take a clearing member approximately one hour to draft the disclosure. Further, the Commission believes clearing members will include this disclosure with other documents or agreements provided to cleared CDS customers and a clearing member may take approximately one half hour to determine how the disclosure should be integrated into those other documents or agreements, resulting in a one-time aggregate burden of 30 hours for all 20 clearing members to comply with this requirement.[68]

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66. Id.

67 If the clearing member is a U.S. entity, it must make this disclosure to all of its customers.

68 30 hours = (1 hour per clearing member to draft the disclosure + ½ hour per clearing member to determine how the disclosure should be integrated into those other documents or agreements) x 20 clearing members.

Paragraph III.(d)(3)(ii)(C)(II)(a)(1) of the Order requires that, if an Eurex clearing member chooses to segregate each of its customers' funds and securities in a separate account, it must obtain a tri-party agreement for each such account acknowledging that the assets held in the account are customer assets used to collateralize obligations of the customer to the clearing member, and that the assets held in the account may not otherwise be pledged or re-hypothecated by the clearing member or the custodian. Paragraph III.(d)(ii)(C)(II)(a)(2) of the Order requires that, if an Eurex clearing member chooses to segregate its customers' funds and securities on an omnibus basis, it must obtain an agreement with the custodian with respect to the omnibus account acknowledging that the assets held in the account (i) are customer assets and are being kept separate from any other accounts maintained by the clearing member with the custodian, (ii) may at no time be used directly or indirectly as security for a loan to the clearing member by the custodian and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the custodian or any person claiming through the custodian, and (iii) may not otherwise be pledged or re-hypothecated by the clearing member or the custodian. Opening a bank account generally includes discussions regarding the purpose for the account and a determination as to the terms and conditions applicable to such an account. We understand that most banks presently maintain omnibus and other similar types of accounts that are designed to recognize legally that the assets in the account may not be attached to cover debts of the account holder. Thus the standard agreement for this type of account used by banks should contain the representations and disclosures required by the proposed amendment. However, a small percentage of clearing members may need to work with a bank to modify its standard agreement. We estimate that 5% of the 20 clearing members, or 1 firm, may use a bank with a standard agreement that does not contain the required language.[69] We further estimate each clearing

[69] This estimate is based on burden estimates published with respect to other Commission actions

member that uses a bank with a standard agreement that does not contain the required language would spend approximately 20 hours of employee resources working with the bank to update its standard agreement template.[70] Therefore, we estimate that the total one-time burden to the industry as a result of this proposed requirement would be approximately 20 hours.[71]

Paragraph III.(d)(3)(ii)(C)(II)(a)(2) of the Order further requires that the clearing member maintain a daily record as to the amount held in the omnibus account that is owed to each customer. The Commission included this requirement in the Order to stress the importance of such a record. However it believes that a prudent clearing member likely would create and maintain such a record for business purposes. Consequently, the Commission believes this requirement would not create any additional paperwork burden.

Paragraph III.(d)(3)(ii)(E) of the Order requires Eurex clearing members that receive or hold customers' funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions annually to provide Eurex with an assessment that it is in compliance with all the provisions of paragraphs III.(d)(3)(ii)(A) through (D) of the Order in connection with such activities, and a report by the clearing member's independent third-party auditor, as of the same date as the firm's annual audit report,[72] that attests to, and reports on, the clearing member's assessment. The Commission estimates that it will take each clearing member approximately five hours each year to assess its compliance with the requirements of the

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that contained similar certification requirements (see e.g., Exchange Act Release No. 55431 (Mar. 9, 2007), 72 FR 12862 (Mar. 19, 2007), and the burden associated with the amendments to the financial responsibility rules, including language required in securities lending agreements).

[70] Id.

[71] 20 hours = (20 clearing members x 5%) x 20 hours to work with a bank to update its standard agreement template to include the necessary language.

[72] The Commission intends for this requirement to be performed in conjunction with the firm's annual audit report.

order relating to segregation of customer assets and attest that it is in compliance with those requirements.[73] Further, the Commission estimates that it will cost each clearing member approximately $200,000 more each year to have its auditor prepare this special report as part of its audit of the clearing member.[74] Consequently, the Commission estimates that compliance with this requirement will result in an aggregate annual burden of 100 hours for all 20 clearing members, and that the total additional cost of this requirement will be approximately $4,000,000 each year.[75]

In sum, the Commission estimates that the total additional burden associated with all of the conditions contained in the exemptive order would be approximately 170 hours,[76] and that

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[73] This estimate is based on burden estimates published with respect to other Commission actions that contained similar certification requirements (see e.g., Securities Act Release No. 8138 (Oct. 9, 2002) (67 FR 66208 (Oct. 30, 2002)), and the burden associated with the Disclosure Required by the Sarbanes-Oxley Act of 2002, including requirements relating to internal control reports).

[74] This estimate is based on staff conversations with an audit firm. That firm suggested that the cost of such an audit report could range from $10,000 to $1 million, depending on the size of the clearing member, the complexity of its systems, and whether the work included a review of other systems already being reviewed as part of audit work the firms is already providing to the clearing member. The staff understands that it would be less costly to perform this type of audit if the clearing member chooses to forward all customer collateral to Eurex (an option allowed by the order) and does not use any third party. Finally, the staff understands that most Eurex clearing members are large dealers whose audits likely include internal control reviews and SAS 70 reports regarding custody of customer assets, which would require a review of the same or similar systems used to comply with the audit report requirement in this order.

[75] 100 hours = (5 hours for each clearing member to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements x 20 clearing members). $4 million = $200,000 per clearing member x 20 clearing members.

[76] 170 hours = (10 hours per year to complete the certification and provide it to Eurex + 10 hours per year to prepare the notification + 30 hours to draft the disclosure and determine how the disclosure should be integrated into those other documents or agreements + 20 hours to work with the bank to update its standard account agreement template to include the necessary language + 100 hours per year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements). This total burden includes one-time burdens of 50 hours (= 30 hours to draft the disclosure and determine how the disclosure should be integrated into those other documents or agreements + 20 hours to work with the bank to update its standard account agreement template to include the necessary language) and annual burdens of 120 hours (=10 hours per year to complete the certification and provide it to Eurex + 10 hours per year to prepare the notification +

the total additional cost associated with compliance with the exemptive order would be approximately $4 million.[77]

E. Collection of Information is Mandatory

The collections of information contained in the conditions to the Order are mandatory for any entity wishing to rely on the exemptions granted by the Order.

F. Confidentiality

Certain of the conditions of this Order that address collections of information require Eurex clearing members to make disclosures to their customers, or to provide other information to Eurex (and in some cases also to customers). Apart from those requirements, the provisions of this Order that address collections of information do not address or restrict the confidentiality of the documentation prepared by Eurex clearing members under the exemptive conditions. Accordingly, Eurex clearing members would have to make the applicable information available to regulatory authorities or other persons to the extent otherwise provided by law.

G. Request for Comment on Paperwork Reduction Act

The Commission requests, pursuant to 44 U.S.C. 3506(c)(2)(B), comment on the collections of information contained in the Order to:

(i) evaluate whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;

(ii) evaluate the accuracy of the Commission's estimates of the burden of the collections of information;

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100 hours per year to assess its compliance with the requirements of the order relating to segregation of customer assets and attest that it is in compliance with those requirements).

[77] The estimated cost of the additional audit report. See footnote 75 and accompanying text.

(iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) evaluate whether there are ways to minimize the burden of the collections of information on those required to respond, including through the use of automated collection techniques or other forms of information technology.

Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, and refer to File No. S7-17-09. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this document in the Federal Register; therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication. The Commission has submitted the proposed collections of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-17-09, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE, Washington, DC 20549-0213.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61976 / April 23, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3129 / April 23, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13870

In the Matter of	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**
DAVID R. COSGROVE, CMA	
Respondent.	

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against David R. Cosgrove ("Respondent" or "Cosgrove") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings and the findings contained in paragraph 3 of Section III below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Cosgrove, age 51, is a certified management accountant ("CMA") licensed to practice in Canada. At all times relevant to this matter, he was employed by Collins & Aikman Corporation ("C&A") in Troy, Michigan. From February 2002 until August 2002, Cosgrove was the Vice President of Finance in the North American Plastics Division. From August 2002 until October 2004, Cosgrove was the Vice President for Financial Planning and Analysis. From October 2004 until September 2005, Cosgrove was the Corporate Controller.

2. C&A, a Delaware corporation headquartered in Michigan, manufactured and assembled parts used in automobile production. Prior to May 2005, C&A's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and was traded on the New York Stock Exchange. C&A entered bankruptcy in May 2005. On June 29, 2005, the Commission deregistered C&A's common stock and granted a New York Stock Exchange petition to delist C&A. C&A has subsequently dissolved.

3. On March 26, 2007, the Commission filed a complaint against Cosgrove and others in SEC v. Collins & Aikman et al (S.D.N.Y.) Civil Action No. 07-2419. On April 20, 2010, the Court entered an order permanently enjoining Cosgrove, by consent, from future violation of Sections 17(a)(2) and (3) of the Securities Act of 1933, Section 13(b)(5) of the Exchange Act, and Rules 13b2-1 and 13b2-2 under the Exchange Act, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1, 13a-11, and 13a-13 under the Exchange Act. The Court also required Cosgrove to pay a civil penalty of $40,000.

4. The Commission's complaint alleged, among other things, that from the second quarter of 2002 through the third quarter of 2004 C&A and several of its officers and employees, including Cosgrove, engaged in accounting fraud by improperly accounting for rebates demanded from suppliers in exchange for future business from C&A. The Commission also alleged that C&A induced suppliers to provide false or misleading documentation regarding the rebates. The Complaint asserts that Cosgrove advised C&A employees on the language to be used in false documents regarding the rebates, knowing that these documents would be used to improperly account for the rebates.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Respondent is suspended from appearing or practicing before the Commission as an accountant.

B. After three years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he/she is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he/she is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his/her responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission as an accountant provided that he is in possession of an accounting license in good standing and he has resolved any disciplinary

issues with any applicable licensing authority. However, if the resolution of any disciplinary action by a licensing authority is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

Chairman Schapiro not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9121 / April 27, 2010

SECURITIES EXCHANGE ACT OF 1934
Release No. 61988 / April 27, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13871

In the Matter of **RONALD S. BLOOMFIELD, ROBERT GORGIA, VICTOR LABI, JOHN EARL MARTIN, SR., and EUGENE MILLER,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Ronald S. Bloomfield, Robert Gorgia, Victor Labi, John Earl Martin, Sr., and Eugene Miller ("Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. Respondents

1. Ronald S. Bloomfield was a registered representative and the supervisor from July 2005 to May 2007 of an Office of Supervisory Jurisdiction ("OSJ") for Leeb Brokerage Services, Inc. ("Leeb"), a defunct brokerage firm that had been registered with the Commission. Bloomfield participated in offerings of penny stocks, including

NEWS DIGEST

In the Matter of Ronald S. Bloomfield, Robert Gorgia, Victor Labi, John Earl Martin, Sr., and Eugene Miller

On April 27, 2010, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934 against Ronald S. Bloomfield, Robert Gorgia, Victor Labi, John Earl Martin, Sr., and Eugene Miller.

In the Order, the Division of Enforcement alleges that while associated with Leeb Brokerage Services, Inc., registered representatives Bloomfield, Martin, and Labi failed to conduct a "reasonable inquiry" before allowing their customers to sell stock to the public in violation of the registration provisions of the federal securities laws; Leeb supervisors Miller and Gorgia failed reasonably to supervise with respect to such conduct; and all of the individuals aided and abetted and caused their firm's failure to file Suspicious Activity Reports (SARs).

The Division alleges that the Leeb representatives ignored obvious red flags indicating that their customers were violating securities laws by engaging in illegal distributions of securities through their Leeb accounts. One group of customer accounts was affiliated with an individual who had previously been involved in a pump-and-dump scheme, and with a stock promoter who routinely received shares in compensation for promotional services for penny stock companies. The accounts earned more than $20 million in proceeds while repeatedly depositing privately obtained shares and then selling them to the public, raising the constant specter that Leeb was facilitating "scalping." Another Leeb customer wired more than $30 million in penny stock proceeds to a bank in Liechtenstein, a tax haven.

The Division alleges that, as a result of the conduct described above: (i) Bloomfield, Labi and Martin willfully violated Sections 5(a) and 5(c) of the Securities Act; (ii) Gorgia and Miller failed reasonably to supervise Bloomfield, Labi and Martin, within the meaning of Sections 15(b)(4) and 15(b)(6) of the Exchange Act, with a view to preventing and detecting their willful violations of the federal securities laws; and (iii) Bloomfield, Gorgia, Labi, Martin and Miller willfully aided and abetted and caused violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

A hearing will be scheduled before an administrative law judge to determine whether the allegations of the Division contained in the Order are true, to provide Respondents an opportunity to respond to such allegations, and to determine what, if any, remedial action is appropriate in the public interest. As directed by the Commission, the Administrative Law Judge shall issue an initial decision in this matter not later than 300 days from the date of service of the Order. (Rels. 33-9121; 34-61988; File No. 3-13871)

Adrenaline Nation Entertainment, Inc., China Gold Corp., Equipment and Systems Engineering, Inc., Golden Apple Oil and Gas, Inc., Goldmark Industries, Inc., iPackets International, Inc., LOM Logistics, Inc., Nanoforce, Inc., Spooz, Inc., and Viyya Technologies, Inc. Bloomfield, 62 years old, is a resident of Westlake Village, California.

2. Robert Gorgia was the Chief Compliance Officer at Leeb from February 2005 to July 2006. Gorgia supervised Bloomfield and activity at Leeb that included participation in offerings of penny stocks, including Adrenaline Nation Entertainment, Inc., Aegis Assessments, Inc., CDI Developments, Inc., China Gold Corp., Deep Blue Marine, Inc., Equipment and Systems Engineering, Inc., Golden Apple Oil and Gas, Inc., iPackets International, Inc., Lifeline Biotechnologies, Inc., Nanoforce, Inc., Spooz, Inc., and Viyya Technologies, Inc. Gorgia, 60 years old, is a resident of Succasunna, New Jersey.

3. Victor Labi was a registered representative at Leeb from September 2002 to May 2007. Labi participated in offerings of penny stocks, including Aegis Assessments, Inc., CDI Developments, Inc., Deep Blue Marine, Inc., and Lifeline Biotechnologies, Inc. Labi, 42 years old, is a resident of Eastchester, New York.

4. John Earl Martin, Sr. was a registered representative at Leeb from November 2004 to May 2007. Martin participated in offerings of penny stocks, including Adrenaline Nation Entertainment, Inc., China Gold Corp., Equipment and Systems Engineering, Inc., Golden Apple Oil and Gas, Inc., Goldmark Industries, Inc., iPackets International, Inc., LOM Logistics, Inc., Nanoforce, Inc., Spooz, Inc., and Viyya Technologies, Inc. Martin, 67 years old, is a resident of South Pasadena, California.

5. Eugene Spencer Miller was the President of Leeb from April 2004 to April 2007. Miller supervised Labi and activity at Leeb that included participation in offerings of penny stocks, including Adrenaline Nation Entertainment, Inc., Aegis Assessments, Inc., CDI Developments, Inc., China Gold Corp., Deep Blue Marine, Inc., Equipment and Systems Engineering, Inc., Golden Apple Oil and Gas, Inc., Goldmark Industries, Inc., iPackets International, Inc., Lifeline Biotechnologies, Inc., LOM Logistics, Inc., Nanoforce, Inc., Spooz, Inc., and Viyya Technologies, Inc. Miller, 52 years old, resides in Park Ridge, New Jersey.

B. Other Relevant Entities

6. Leeb Brokerage Services, Inc., was a broker-dealer incorporated under New York law, with a main office in New York and an OSJ in California. Leeb was registered with the Commission from March 1999 to July 20, 2007, when the firm filed a Broker-Dealer Withdrawal form ("BDW"). Although Leeb has not been dissolved, it is not conducting business and is insolvent.

C. Background

7. From April 2005 through mid-2007 (the "Relevant Period"), customers of Leeb routinely delivered into their accounts large blocks of privately obtained shares of penny stocks, which Leeb then sold to the public on their behalf, without any registration statements being in effect.

8. The Leeb customers engaging in this conduct included: (i) an individual with a prior pump-and-dump related consent judgment; (ii) persons whom Leeb registered representatives knew or should have known were engaged in promotional activity in the stocks they were selling; (iii) persons who controlled more than one brokerage account under different names and engaged in questionable trading behavior; and (iv) an offshore corporation controlled by persons who advertised themselves as experts in private financial transactions and who wired millions of dollars to Liechtenstein.

9. The selling of privately obtained shares to the public, without registration statements in effect, included instances in which Leeb's customers started selling their stock within weeks of its receipt; in which promotional activity was occurring during the sales; and in which the number of shares being sold represented a significant percentage of an issuer's outstanding share balance.

10. Despite such obvious red flags indicating that their customers were violating Section 5 of the Securities Act by engaging in illegal distributions of securities through their accounts at Leeb, Bloomfield, Martin and Labi failed to conduct a reasonable inquiry regarding the securities delivered into Leeb customer accounts.

11. Leeb supervisors Gorgia and Miller failed reasonably to supervise Bloomfield, Martin and Labi to address whether they conducted a reasonable inquiry into the circumstances of their customers' penny stock sales. Those supervisory failures occurred despite suspicious customer activity that should have led to additional scrutiny of the registered representatives' inquiries, despite repeated communications from Leeb's clearing firm emphasizing the importance of conducting due diligence into customer penny stock activity, despite regulatory inquiries regarding certain customer accounts, and despite the fact that customer sales of privately obtained penny stock shares constituted a significant portion of Leeb's overall business. Indeed, Gorgia and Miller's failure to monitor adequately the registered representatives' handling of customer penny stock trading left intact a revenue stream that in 2006 amounted to almost half of the firm's commission income.

12. In addition to allowing customers to sell large blocks of penny stock to the public without sufficiently investigating whether they were facilitating illegal underwriting, the Respondents failed to address whether Leeb fulfilled its obligations, under the Bank Secrecy Act,[1] to file Suspicious Activity Reports concerning their customers' conduct. For

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[1] Currency and Financial Transactions Reporting Act of 1970 (the "Bank Secrecy Act"), 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311-5330. The Bank Secrecy Act was most recently amended by the USA PATRIOT Act. See Uniting

example, one group of customer accounts was affiliated with a stock promoter who routinely received shares in compensation for promotional services for penny stock companies, and the accounts earned over $20 million in proceeds while repeatedly depositing privately obtained shares and then selling them to the public, raising the constant spectre that Leeb was facilitating "scalping." Another Leeb customer that routinely delivered in shares of privately obtained penny stocks wired over $30 million in penny stock proceeds to Liechtenstein, a tax haven. At no time did anyone at Leeb even discuss their obligation to report such conduct to the authorities. Such disregard of the firm's reporting requirements enabled Leeb's customer activity, and the commissions it generated, to continue unfettered.

13. The Respondents' actions occurred over an extended period of time, involved multiple customers and stocks, and involved the core part of their business. Their violations of the securities laws and rules exposed the public to repeated risk of unlawful distributions of penny stocks.

D. Failure to Conduct a Reasonable Inquiry Before Selling Stock to the Public Without a Registration Statement in Effect

14. At various times during the Relevant Period, Bloomfield, Labi, and Martin made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, sell and deliver after sale certain securities to the public when no registration statement was filed or in effect pursuant to the Securities Act, when no exemption from registration was available, and without conducting a reasonable inquiry regarding the securities to determine whether their customers were underwriters or were otherwise engaged in an illegal distribution of securities.

15. Leeb and Bloomfield, Labi and Martin generated significant commissions by executing penny stock sales on behalf of customers who regularly transferred in privately-obtained shares and sold them to the public without a registration statement being in effect, and without an available registration exemption.

16. Under Securities Act Rule 144(g)(3), a registered representative's reasonable inquiry before selling stock to the public "should include, but not necessarily be limited to, inquiry as to the following matters: (a) The length of time the securities have been held by the [customer]; (b) The nature of the transaction in which the securities were acquired by [the customer]; (c) The amount of securities of the same class sold during the past three months by all persons whose sales are required to be taken into consideration pursuant to [Rule 144(e)]; (d) Whether [the customer] intends to sell additional securities of the same class through any other means; (e) Whether [the customer] has solicited or made any arrangement for the solicitation of buy orders in connection with the proposed sale of securities; (f) Whether [the customer] has made any payment to any other person in

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and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 296 (2001).

connection with the proposed sale of the securities; and (g) The number of shares or other units of the class outstanding, or the relevant trading volume."

17. Leeb's clearing firm provided Leeb with a "Low Priced Security Questionnaire" to be filled out in connection with penny stock transactions. Although that form would have assisted Leeb and Bloomfield, Labi and Martin in conducting a "reasonable inquiry," and despite requests from the clearing firm, the questionnaires were not completed on a regular basis.

18. During the Relevant Period, Bloomfield, Labi and Martin routinely failed to conduct a reasonable inquiry before selling large amounts of penny stock to the public on behalf of their customers. Examples of such conduct include the following customers and securities:

Bloomfield and Martin: Trading in
Equipment Systems Engineering, Inc. ("EQSE")

19. In October 2005, an entity controlled by two Leeb customers contracted to provide consulting services to EQSE. The agreement provided that as part of the entity's compensation, EQSE would arrange to have a shareholder "issue" 700,000 shares of freely-tradable stock to the entity. Three weeks later, an EQSE affiliate transferred 700,000 shares of EQSE to the entity in a private transaction. This transaction constituted an attempt to evade the requirement that shares issued as compensation to a consultant be deemed restricted.

20. Leeb's customers deposited the shares at Leeb in early November 2005. Bloomfield and Martin sold the entire position to the market from November 28, 2005 through January 27, 2006, without a registration statement being in effect, and no exemption from registration was available.

21. Bloomfield and Martin failed to conduct a reasonable inquiry into the origin and ownership of the stock prior to selling the stock to the market, despite several red flags. The customers used five separate LLC or LLP accounts, had regulatory histories, and engaged in significant penny stock trading. Both Bloomfield and Martin knew that these customers were in the business of obtaining stock from issuers in exchange for promotional services. Further, with regard to the specific transactions described above, only two days before the customers delivered the EQSE shares into the Leeb account, EQSE issued a press release notifying the public that its shares had begun trading publicly. The customers' sales represented 33% and 45% of the trading volume on the first two days that EQSE trading volume exceeded 200,000 shares.

22. In October 2006, another entity controlled by the same Leeb customers obtained 3.75 million restricted shares of EQSE from EQSE affiliates in a private transaction. Those shares equaled 24.5% of all free-trading EQSE stock, and 5% of the total outstanding share balance.

23. The customers deposited the shares at Leeb in October 2006. Bloomfield and Martin sold the entire position to the public between December 1 and 8, 2006, without a registration statement being in effect, and no exemption from registration was available.

24. Bloomfield and Martin failed to conduct a reasonable inquiry into the origin and ownership of the customers' stock prior to selling it to the public, despite several red flags. In addition to the red flags surrounding the customers and their accounts generally, described above, after delivering in the large block of stock in October 2006, the customers began buying more EQSE stock through accounts held at Leeb, contributing from 26% to 100% of the daily volume on certain days in November 2006. On both November 29 and November 30, one of the customers' accounts bought 150,000 shares of EQSE from another of their accounts through a cross trade, helping to take trading volume from 1,000 shares on November 28 to 193,155 shares on November 29 and 415,000 shares on November 30. The very next day, on December 1, 2006, a press release and spam email were circulated and the customers began selling out their block of privately-obtained stock.

Bloomfield and Martin: Trading in
Golden Apple Oil and Gas, Inc. ("GAPJ")

25. In February 2006, a Leeb customer received 1.2 million shares of GAPJ in a direct issuance from the issuer, and deposited the shares in its Leeb account on February 9, 2006. Although the shares had just been issued, Golden Apple papered the transaction with a convertible promissory note that had purportedly been issued in December 2004. The customer had not been incorporated at the time of the purported promissory note, and Golden Apple's financial records do not reflect either the receipt of consideration for the note or the existence of a liability on the note.

26. On February 13, 2006, only four days after delivering the initial block of GAPJ stock into its Leeb account, the customer received into its Leeb account another 390,000 shares of GAPJ from a third party via DTC. The transferor was controlled by the person who had been Golden Apple's secretary until one month prior to transfer. The transferor had received its shares in November 2005 based on a sham promissory note. The promissory note bears the name of a Golden Apple corporate predecessor that had not yet been incorporated as of the date of the note, and Golden Apple's financial records do not reflect the receipt of consideration or the obligation on the note.

27. From February 24, 2006 to May 18, 2007, Bloomfield and Martin sold 1,170,000 of the customer's GAPJ shares to the public without a registration statement being in effect, and no exemption from registration was available.

28. Bloomfield and Martin failed to conduct a reasonable inquiry into the origin and ownership of the customer's stock prior to selling it to the public, despite several red flags. The customer was incorporated in Nevis, but operated out of Vancouver and regularly delivered penny stocks into its Leeb account and wired sales proceeds to Liechtenstein. In addition, with specific regard to the customer's transactions in GAPJ, at the time the customer delivered the two blocks of shares into its Leeb account, the financial information about Golden Apple available to the public was outdated, and the company had

not disclosed publicly the issuance of 1.2 million shares to the customer. Further, the customer's initial sales of GAPJ stock occurred during a spam campaign, and its sales accounted for 32% of the daily trading volume on March 2, 2006.

Labi: Trading in Lifeline Biotechnologies, Inc. ("LBTN")

29. During 2006, a Labi customer delivered more than 1 billion shares of LBTN stock into two accounts held at Leeb in the name of entities the customer controlled. The customer was a stock promoter and LBTN affiliate, who had sent Labi an instant message in the fall of 2005 communicating information about the timing of a promotional campaign. The customer obtained 2 billion shares out of 6.5 billion shares that LBTN had issued from March through December 2006, representing 31.7% of all newly-issued shares. Labi's customer obtained the stock by having entities he controlled participate in Rule 504 offerings, which under certain circumstances can provide issuers with a means of issuing unrestricted stock without registering the offering. Here, however, Labi's customer was acting as an underwriter, and his entities' immediate resales of the stock violated investment intent representations contained in subscription agreements and referred to in the Rule 504 legal opinion letters.

30. From January 4, 2006 through March 28, 2007, Labi sold in excess of 1 billion of the customer's shares of LBTN to the public without a registration statement being in effect, and no exemption from registration was available.

31. Labi failed to conduct a reasonable inquiry into the origin and ownership of the customer's stock prior to selling it to the public, despite several red flags. The customer had sent Labi instant messages and emails informing Labi of his connection to the issuer and his knowledge of forthcoming news and promotional activity. Accounts controlled by the customer repeatedly transferred into Leeb large blocks of LBTN stock comprising a significant percentage of the company's share balance. Although the customer directed all trading in the accounts held in entity names, the sole proprietor and officer of the entities was actually the customer's daughter.

Labi: Trading in CDI Developments, Inc. ("CDIJ")

32. In April 2005, a Leeb customer received 500,000 shares of CDIJ in a private transfer. The transferor had been issued the shares in February 2005, based on a November 2004 Rule 504 offering in which the subscription agreement contained false statements that the purchaser was not an affiliate and was purchasing for investment purposes and not with a view towards distribution. Further, CDIJ did not have a bona fide business plan, a prerequisite for an effective Rule 504 offering.

33. On May 5, 2005, the customer delivered in its block of CDIJ shares and Labi began selling them immediately to the public, without a registration statement being in effect, and no exemption from registration was available.

34. Labi failed to conduct a reasonable inquiry into the origin and ownership of the customer's stock prior to selling the customer's stock to the public, despite several red

flags. At the time the customer delivered the shares into its Leeb account, there had been no publicly reported trading in CDIJ other than 10,000 shares on May 3. According to CDIJ's financial disclosures posted on the internet on May 5, 10 million out of the 15 million shares issued by CDIJ were held by its president, and Labi's customer's 500,000 share block represented 10% of the remaining 5 million shares of CDIJ. The customer opened its account at Leeb on the same day it began selling the CDIJ stock, and on its first day trading, Labi's customer accounted for 105,000 shares of the entire 155,100 share daily trading volume for CDIJ. Further, the customer's activity on that day included not only selling 70,000 shares but purchasing 35,000 shares at a higher price. From May 9 through May 17, Labi's customer sold 166,900 shares while another affiliated corporate account holder at Leeb purchased 145,000 shares, both accounting for over 50% of the entire reported volume during that period. This trading helped take CDIJ's stock's price from $.15 on May 5 to $.75 on May 17, 2006.

E. Failure to Supervise

35. During the Relevant Period, Miller was President of Leeb and supervisor of Leeb's home office. In addition to supervising registered representative Labi, he was the trade desk supervisor, was responsible for supervising firm-wide "penny stocks/microcap" activity, and was responsible for reviewing all trading activity for the firm, including activity at the OSJ.

36. As indicated in the examples detailed above, Leeb customer trading activity, as well as the absence of Low-Priced Securities Questionnaires for numerous penny stocks traded through customer accounts, reflected numerous red flags concerning whether the firm's registered representatives had made adequate inquiry into facts that could indicate unlawful distributions of stock, such as the length of time the customers had held stock, the nature of the underlying transactions in which purportedly "free-trading" stock had been obtained, the customer's intent to sell additional shares, and how the customer activity compared with the issuer's outstanding share balance and trading volume. Although Miller regularly reviewed the firm's penny stock trading activity, he never identified such red flags or questioned the source of any stock sold through the firm.

37. Moreover, Miller ignored other red flags he was aware of, such as repeated regulatory inquiries concerning either Bloomfield, Martin and Labi's customer accounts or specific penny stocks traded through Leeb's customer accounts handled by these three registered representatives. Despite concern over the number of such inquiries, Miller did not subject any registered representative or customer account to heightened scrutiny, did not question Bloomfield, Martin and Labi regarding whether they conducted inquiries into the customers' penny stocks, and did not conduct additional account reviews.

38. Had Miller responded reasonably to the red flags reflected in the trading activity and regulatory inquiries, he would have prevented or detected the underlying Section 5 violations being committed by Labi, Martin and Bloomfield.

39. From the beginning of the Relevant Period until July 2006, Gorgia was Leeb's Chief Compliance Officer, the head of Leeb's Supervisory Control System and was responsible for developing and maintaining appropriate supervisory procedures. He also was responsible for supervising OSJ branch manager Bloomfield; for monthly reviews of all customer account activity, for supervising the firm's AML program, which in turn relied on review of customer activity, and for reviewing registered representatives' emails.

40. Gorgia recognized the compliance concerns raised by the firm's penny stock business, calling it a "compliance nightmare." He also viewed Miller's attitude about compliance as "weak, at best," with a primary concern on production and revenues. Nonetheless, Gorgia did not regularly review customer account activity, did not scrutinize the ongoing practice of Bloomfield and Martin's customers to deliver in privately obtained penny stocks and sell them to the public, and did not undertake additional reviews of customer activity brought to his attention by the clearing firm or regulatory inquiries. Had he performed such tasks, he would have uncovered the red flags detailed above and detected and prevented facilitation of unregistered distributions by Leeb's registered representatives.

41. Further, Gorgia failed to develop reasonable procedures and systems to implement requirements for registered representatives to conduct a reasonable inquiry regarding customers' penny stocks. Despite a request from Leeb's clearing firm for low priced security transaction procedures and an outline of Leeb's due diligence process, there is no indication that any such documents were drafted. Meanwhile, Leeb registered representatives did not consistently fill out the Low Priced Security Questionnaire developed by the clearing firm, and no one at the firm adequately monitored Leeb's customers' penny stock activity despite repeated inquiries and concerns received from the clearing firm and regulators.

42. Had Gorgia developed procedures for insuring that the firm's registered representatives conducted a reasonable inquiry into their customers' penny stock sales, he would have detected and prevented Section 5 violations.

F. Failure To File Suspicious Activity Reports

43. The Bank Secrecy Act ("BSA"), as amended by the USA PATRIOT Act, and implemented under rules promulgated by the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN"), requires that broker-dealers file Suspicious Activity Reports ("SARs") with FinCEN to report a transaction (or a pattern of transactions of which the transaction is a part) involving or aggregating to at least $5,000 that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or is conducted to disguise funds derived from illegal activities; (2) is designed to evade any requirements of the Bank Secrecy Act; (3) has no business or apparent lawful purpose and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 103.19(a)(2) ("SAR Rule").

44. Exchange Act Rule 17a-8 requires broker-dealers to comply with the reporting, recordkeeping and record retention requirements of the Bank Secrecy Act. The failure to file a SAR as required by the SAR Rule is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, and is enforceable by the Commission.

45. Leeb's Anti Money Laundering ("AML") program enumerates examples of suspicious activity that could be indicative of the need to file a SAR, including (i) a history of criminal, civil or regulatory violations by the customer or an associate; (ii) multiple LLCs with the same address; (iii) multiple transfers of funds to or from bank secrecy jurisdictions, tax havens, or non-cooperative jurisdictions as identified by the Financial Action Task Force ("FATF") or FinCEN; and (iv) penny stock activity.

46. The AML program charges all Leeb employees, including registered representatives, with responsibility for AML compliance. Moreover, Bloomfield, as a producing manager at the OSJ, understood himself to be the "first line of defense" for AML compliance. Gorgia, as the firm's AML officer and Chief Compliance Officer, had responsibility for reviewing customer activity and electronic communications of the firm's registered representatives. And Miller, as firm President, trade desk supervisor, and supervisor of penny stock activity, had responsibility for reviewing customer activity.

47. During the Relevant Period, the Bloomfield and Martin customers who engaged in the EQSE transactions described above controlled accounts at Leeb that delivered in more than 65 different penny stocks that had been obtained in private transactions, and sold those stocks to the public for approximately $20.5 million. In addition to the specific trading activity described above by these customers, the accounts controlled by these customers and their transaction histories were suspicious in many respects. As Bloomfield and Martin were aware, one of the accounts was in the name of a stock promotion entity that was compensated for its services by receiving stock from issuer clients. The entity's website, part of which was printed out and maintained in Leeb's files, advertised its services as a "Non-Broker/Dealer 'Private Market Maker'" and promised issuer-clients that it would commit its own capital to provide market support for its clients' stock. The customers also tripped red flags identified by Leeb's AML program. They used five separate accounts held by LLCs and limited partnerships, had regulatory histories, including a consent judgment against one of them resolving SEC charges alleging participation in a pump-and-dump scheme, and two sanctions by the NASD against the other, and engaged in significant penny stock trading. Under Leeb's policies and procedures, Bloomfield, Martin, Miller, and Gorgia had responsibility to detect and report suspicious activity in these accounts.

48. During 2006 alone, the Bloomfield and Martin customer that engaged in the GAPJ transactions described above delivered in more than 50 stocks, and 91% of its trading activity was selling. The customer's sales of penny stocks generated over $30 million in proceeds, which the customer wired to Liechtenstein in 39 separate wire transfers. In addition to the specific trading activity described above, the customer's account and transaction history were suspicious in many respects. Although the customer is incorporated in Nevis, it was operated by persons in Vancouver, with orders being submitted by traders in Costa Rica, and proceeds being wired to a bank in Liechtenstein.

The customer's Vancouver address and phone number are connected to an entity that advertises its business as providing clients with "confidential global services." The customer's principal identified on Leeb's account documents had previously opened a separate account at Leeb, in the name of a Belize-incorporated entity that wired its money to the same Liechtenstein bank as the customer and, for a three-month period, used the same bank account number as the customer. Under Leeb's AML program, Nevis was to be considered a jurisdiction of primary concern for money laundering, and wires to bank secrecy jurisdictions and tax havens such as Liechtenstein constituted red flags. Under Leeb's policies and procedures, Bloomfield, Martin, Miller, and Gorgia had responsibility to detect and report suspicious activity in this account.

49. The Labi customer who engaged in the LBTN transactions described above controlled two corporate accounts at Leeb. In addition to the specific trading activity described above, the customer's account and transaction history were suspicious in many respects. The account opening documents for both accounts listed the customer's daughter as the corporate officer, and transactional documents indicated that the daughter was the sole proprietor and officer of both companies. However, Labi understood that the securities traded in the accounts were those of his customer, whom he allowed to direct all trading in the accounts without a power of attorney or corporate resolution authorizing him to do so. In addition to the suspicious activity that occurred in LBTN, the customer also used one of the two Leeb accounts to trade in a security called Deep Blue Marine, Inc. ("DPBM") based on advance notice of promotional activity. In February 2006, Labi purchased 10,000 shares of DPBM at $.78 for the customer on the same day that the customer sent Labi an instant message advising him that promotional activity for the stock would begin that evening. The customer sold the stock three days later at $.92. These trades, based on advance notice of promotional activity, were suspicious. Under Leeb's policies and procedures, Labi, Miller, and Gorgia had responsibility to detect and report suspicious activity in this customer's accounts.

50. The Labi customer who engaged in the CDIJ transactions described above, together with an associate, opened five separate corporate accounts at Leeb. Disbursement instructions on one of the new account forms provided for payments to be made in the name of one of the other accounts. As indicated above, trading activity in CDIJ reflects the use of two accounts to engage in suspicious trading that accounted for a large percentage of the newly-traded stock's trading volume and helped move the stock's price up dramatically in a span of two weeks. Under Leeb's policies and procedures, Labi, Miller, and Gorgia had responsibility to detect and report suspicious activity in these accounts.

51. Another Labi client engaged in suspicious buying and selling of stock in Aegis Assessments, Inc. ("AGSI") timed to promotional activity that Labi's customer advised Labi of in advance. On December 2, 2005, AGSI issued a press release announcing that it had retained an investor relations firm that was run by Labi's customer. Shortly thereafter and continuing into early 2006, Labi repeatedly received instant messages from his customer's son tipping Labi about upcoming promotional activities in the stock. The messages prompted timely buying and selling by Labi on behalf of other customers. Labi also communicated with the customer and his son regarding whether he should be a buyer in the stock and reporting trades made by Labi. Under Leeb's policies

and procedures, Labi, Miller, and Gorgia had responsibility to detect and report suspicious activity in Labi's customers' accounts.

52. The transactions described above were suspicious and Respondents should have caused Leeb to file SARs. The Respondents knew of their obligations to assist Leeb in fulfilling its requirement to file SARs, and knew or were reckless in not knowing that significant suspicious activity was not being reported by Leeb as a result of their actions.

G. Violations

53. As a result of the conduct described above, Bloomfield, Labi and Martin willfully violated Sections 5(a) and 5(c) of the Securities Act.

54. As a result of the conduct described above, Gorgia and Miller failed reasonably to supervise Bloomfield, Labi and Martin, within the meaning of Sections 15(b)(4) and 15(b)(6) of the Exchange Act, with a view to preventing and detecting their violations of Section 5 of the Securities Act.

55. As a result of the conduct described above, Bloomfield, Gorgia, Labi, Martin and Miller willfully aided and abetted and caused violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondents Bloomfield, Labi and Martin should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 5(a) and 5(c) of the Securities Act, Section 17(a) of the Exchange Act and Rule 17a-8 thereunder and whether Respondents Bloomfield, Labi and Martin should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act.

D. Whether, pursuant to Section 21C of the Exchange Act, Respondents Gorgia and Miller should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder and whether Respondents Gorgia and Miller should be ordered to pay disgorgement pursuant to Section 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that each Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If a Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61998 / April 28, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3130 / April 28, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13872

In the Matter of **MARLIN R. BRINSKY, CPA,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Marlin R. Brinsky ("Respondent" or "Brinsky") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Brinsky, age 53, is a certified public accountant licensed to practice in the State of Illinois as of March 2007. He previously was licensed to practice in that state in approximately 1979 until his license lapsed. Brinsky was employed by Merdinger, Fruchter, Rosen & Corso, P.C. (later Merdinger, Fruchter, Rosen & Company, P.C.)("MFRC") as a senior accountant from September 2000 until December 2002. In that capacity, he participated in MFRC's audit and other engagements concerning Exotics.com, Inc. ("Exotics.com") in 2001.

2. Exotics.com was, at all relevant times, a Nevada corporation with its principal place of business in Vancouver, British Columbia, Canada. Exotics.com was engaged in the business of owning, operating, and licensing adult-oriented websites. At all relevant times, Exotics.com's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934, and was approved for quotation on the OTC Bulletin Board.

3. On April 21, 2010, a final judgment was entered against Brinsky, permanently enjoining him from future violations of Rule 2-02 of Regulation S-X in the civil action entitled Securities and Exchange Commission v. Exotics.com, Inc., et. al, Civil Action Number 2:05-cv-00531-PMP-GWF, in the United States District Court for the District of Nevada. Brinsky was also ordered to pay a $20,000 civil money penalty.

4. The Commission's complaint alleged, among other things, that Brinsky and others participated in a scheme that resulted in Exotics.com filing materially false and misleading financial statements in its Commission filings, including, among others, an amended current report on Form 8-K filed on September 24, 2001, a quarterly report on Form 10-QSB for the quarter ended September 30, 2001, and an annual report on Form 10-KSB for the fiscal year ended December 31, 2001. The complaint further alleged that Brinsky and other members of the MFRC audit staff committed acts and/or omissions that caused them to become non-independent during audits of Exotics.com and caused audit reports issued by MFRC, among other things, to falsely state that the audits had been conducted by an independent auditor and in accordance with generally accepted auditing standards ("GAAS"). The complaint also alleged that Brinsky

engaged in a number of improper accounting practices that caused Exotics.com's financial statements to depart from generally accepted accounting principles ("GAAP").

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Brinsky's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Brinsky is suspended from appearing or practicing before the Commission as an accountant.

B. After two years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 62002 / April 29, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13873

In the Matter of	:	
	:	**ORDER OF FORTHWITH SUSPENSION**
Marc S. Dreier, Esq.	:	**PURSUANT TO RULE 102(e)(2) OF THE**
	:	**COMMISSION'S RULES OF PRACTICE**
Respondent.	:	

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Marc S. Dreier pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. 200.102(e)(2)].[1]

II.

The Commission finds that:

1. Dreier was an attorney admitted to practice law in New York.

2. On May 11, 2009, Dreier pled guilty to having engaged in a variety of criminal activities, including securities fraud.

3. On July 17, 2009, the District Court for the Southern District of New York entered a judgment against Dreier sentencing him to, *inter alia*, federal incarceration for twenty (20) years as a result of his criminal activities.

4. On October 8, 2009, the New York Supreme Court, Appellate Division, disbarred Dreier from the practice of law, effective *nunc pro tunc* to May 11, 2009.

[1]Rule 102(e)(2) provides in pertinent part that "[a]ny attorney who has been suspended or disbarred by a court of the United States or of any State; * * * or any person who has been convicted of a felony or a misdemeanor involving moral turpitude *shall* be forthwith suspended from appearing or practicing before the Commission" (emphasis added).

III.

In view of the foregoing, the Commission finds that Dreier is an attorney who has been disbarred by the state of New York and convicted of a felony involving moral turpitude, both within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that Marc S. Dreier is forthwith suspended from appearing or practicing as an attorney before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.

Elizabeth M. Murphy
Secretary

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-9122; 34-62005 / April 29, 2010]

Order Making Fiscal Year 2011 Annual Adjustments to the Fee Rates Applicable under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b), and 31(c) of the Securities Exchange Act of 1934

I. Background

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 ("Securities Act") requires the Commission to collect fees from issuers on the registration of securities.[1] Section 13(e) of the Securities Exchange Act of 1934 ("Exchange Act") requires the Commission to collect fees on specified repurchases of securities.[2] Section 14(g) of the Exchange Act requires the Commission to collect fees on proxy solicitations and statements in corporate control transactions.[3] Finally, Sections 31(b) and (c) of the Exchange Act require national securities exchanges and national securities associations, respectively, to pay fees to the Commission on transactions in specified securities.[4]

The Investor and Capital Markets Fee Relief Act ("Fee Relief Act")[5] amended Section 6(b) of the Securities Act and Sections 13(e), 14(g), and 31 of the Exchange Act to require the Commission to make annual adjustments to the fee rates applicable under

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1 15 U.S.C. 77f(b).

2 15 U.S.C. 78m(e).

3 15 U.S.C. 78n(g).

4 15 U.S.C. 78ee(b) and (c). In addition, Section 31(d) of the Exchange Act requires the Commission to collect assessments from national securities exchanges and national securities associations for round turn transactions on security futures. 15 U.S.C. 78ee(d).

5 Pub. L. No. 107-123, 115 Stat. 2390 (2002).

these sections for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates under these sections for fiscal year 2012 and beyond.[6]

II. Fiscal Year 2011 Annual Adjustment to the Fee Rates Applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act

Section 6(b)(5) of the Securities Act requires the Commission to make an annual adjustment to the fee rate applicable under Section 6(b) of the Securities Act in each of the fiscal years 2003 through 2011.[7] In those same fiscal years, Sections 13(e)(5) and 14(g)(5) of the Exchange Act require the Commission to adjust the fee rates under Sections 13(e) and 14(g) to a rate that is equal to the rate that is applicable under Section 6(b). In other words, the annual adjustment to the fee rate under Section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act.

Section 6(b)(5) sets forth the method for determining the annual adjustment to the fee rate under Section 6(b) for fiscal year 2011. Specifically, the Commission must adjust the fee rate under Section 6(b) to a "rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2011], is reasonably likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target offsetting collection amount for [fiscal year 2011]." That is, the adjusted rate is

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6 See 15 U.S.C. 77f(b)(5), 77f(b)(6), 78m(e)(5), 78m(e)(6), 78n(g)(5), 78n(g)(6), 78ee(j)(1), and 78ee(j)(3). Section 31(j)(2) of the Exchange Act, 15 U.S.C. 78ee(j)(2), also requires the Commission, in specified circumstances, to make a mid-year adjustment to the fee rates under Sections 31(b) and (c) of the Exchange Act in fiscal years 2002 through 2011.

7 The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering price at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the "target offsetting collection amount" specified in Section 6(b)(11)(A) for that fiscal year.

determined by dividing the "target offsetting collection amount" for fiscal year 2011 by the "baseline estimate of the aggregate maximum offering prices" for fiscal year 2011.

Section 6(b)(11)(A) specifies that the "target offsetting collection amount" for fiscal year 2011 is $394,000,000. Section 6(b)(11)(B) defines the "baseline estimate of the aggregate maximum offering price" for fiscal year 2011 as "the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal year 2011] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget . . . ."

To make the baseline estimate of the aggregate maximum offering price for fiscal year 2011, the Commission is using the same methodology it developed in consultation with the Congressional Budget Office ("CBO") and Office of Management and Budget ("OMB") to project aggregate offering price for purposes of the fiscal year 2010 annual adjustment. Using this methodology, the Commission determines the "baseline estimate of the aggregate maximum offering price" for fiscal year 2011 to be $3,394,310,932,374.[8] Based on this estimate, the Commission calculates the fee rate for fiscal 2011 to be $116.10 per million. This adjusted fee rate applies to Section 6(b) of the Securities Act, as well as to Sections 13(e) and 14(g) of the Exchange Act.

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[8] Appendix A explains how we determined the "baseline estimate of the aggregate maximum offering price" for fiscal year 2011 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2011 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its "baseline estimate of the aggregate maximum offering price" for fiscal year 2011.

III. Fiscal Year 2011 Annual Adjustment to the Fee Rates Applicable under Sections 31(b) and (c) of the Exchange Act

Section 31(b) of the Exchange Act requires each national securities exchange to pay the Commission a fee at a rate, as adjusted by our order pursuant to Section 31(j)(2),[9] which currently is $16.90 per million of the aggregate dollar amount of sales of specified securities transacted on the exchange. Similarly, Section 31(c) requires each national securities association to pay the Commission a fee at the same adjusted rate on the aggregate dollar amount of sales of specified securities transacted by or through any member of the association otherwise than on an exchange. Section 31(j)(1) requires the Commission to make annual adjustments to the fee rates applicable under Sections 31(b) and (c) for each of the fiscal years 2003 through 2011.[10]

Section 31(j)(1) specifies the method for determining the annual adjustment for fiscal year 2011. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a "uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for [fiscal year 2011], is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under [Section 31(d)]) that are equal to the target offsetting collection amount for [fiscal year 2011]."

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9 Order Making Fiscal 2010 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934, Rel. No. 34-61605 (March 1, 2010), 75 FR 9964 (March 4, 2010).

10 The annual adjustments, as well as the mid-year adjustments required in specified circumstances under Section 31(j)(2) in fiscal years 2002 through 2011, are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under Section 31 equal to the "target offsetting collection amount" specified in Section 31(l)(1) for that fiscal year.

Section 31(l)(1) specifies that the "target offsetting collection amount" for fiscal year 2011 is $1,321,000,000. Section 31(l)(2) defines the "baseline estimate of the aggregate dollar amount of sales" as "the baseline estimate of the aggregate dollar amount of sales of securities . . . to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during [fiscal year 2011] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget . . . ."

To make the baseline estimate of the aggregate dollar amount of sales for fiscal year 2011, the Commission is using the same methodology it developed in consultation with the CBO and OMB to project dollar volume for purposes of prior fee adjustments.[11] Using this methodology, the Commission calculates the baseline estimate of the aggregate dollar amount of sales for fiscal year 2011 to be $69,588,660,831,911. Based on this estimate, and an estimated collection of $17,950 in assessments on security futures transactions under Section 31(d) in fiscal year 2011, the uniform adjusted rate for fiscal year 2011 is $19.20 per million.[12]

IV. Effective Dates of the Annual Adjustments

Section 6(b)(8)(A) of the Securities Act provides that the fiscal year 2011 annual adjustment to the fee rate applicable under Section 6(b) of the Securities Act shall take

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[11] Appendix B explains how we determined the "baseline estimate of the aggregate dollar amount of sales" for fiscal year 2011 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2011 annual adjustment based on that estimate. The appendix also includes the data used by the Commission in making its "baseline estimate of the aggregate dollar amount of sales" for fiscal year 2011.

[12] The calculation of the adjusted fee rate assumes that the current fee rate of $16.90 per million will apply through October 31, 2011, due to the operation of the effective date provision contained in Section 31(j)(4)(A) of the Exchange Act.

effect on the later of October 1, 2010, or five days after the date on which a regular appropriation to the Commission for fiscal year 2011 is enacted.[13] Sections 13(e)(8)(A) and 14(g)(8)(A) of the Exchange Act provide for the same effective date for the annual adjustments to the fee rates applicable under Sections 13(e) and 14(g) of the Exchange Act.[14]

Section 31(j)(4)(A) of the Exchange Act provides that the fiscal year 2011 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2010, or 30 days after the date on which a regular appropriation to the Commission for fiscal year 2011 is enacted.

V. Conclusion

Accordingly, pursuant to Section 6(b) of the Securities Act and Sections 13(e), 14(g), and 31 of the Exchange Act,[15]

IT IS HEREBY ORDERED that the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act shall be $116.10 per million effective on the later of October 1, 2010, or five days after the date on which a regular appropriation to the Commission for fiscal year 2011 is enacted; and

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[13] 15 U.S.C. 77f(b)(8)(A).

[14] 15 U.S.C. 78m(e)(8)(A) and 78n(g)(8)(A).

[15] 15 U.S.C. 77f(b), 78m(e), 78n(g), and 78ee(j).

IT IS FURTHER ORDERED that the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall be $19.20 per million effective on the later of October 1, 2010, or 30 days after the date on which a regular appropriation to the Commission for fiscal year 2011 is enacted.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

APPENDIX A

With the passage of the Investor and Capital Markets Relief Act, Congress has, among other things, established a target amount of monies to be collected from fees charged to issuers based on the value of their registrations. This appendix provides the formula for determining such fees, which the Commission adjusts annually. Congress has mandated that the Commission determine these fees based on the "aggregate maximum offering prices," which measures the aggregate dollar amount of securities registered with the Commission over the course of the year. In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected aggregate maximum offering prices. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected aggregate maximum offering prices.

For 2011, the Commission has estimated the aggregate maximum offering prices by projecting forward the trend established in the previous decade. More specifically, an ARIMA model was used to forecast the value of the aggregate maximum offering prices for months subsequent to March 2010, the last month for which the Commission has data on the aggregate maximum offering prices.

The following sections describe this process in detail.

A. Baseline estimate of the aggregate maximum offering prices for fiscal year 2011.

First, calculate the aggregate maximum offering prices (AMOP) for each month in the sample (March 2000 - March 2010). Next, calculate the percentage change in the AMOP from month to month.

Model the monthly percentage change in AMOP as a first order moving average process. The moving average approach allows one to model the effect that an exceptionally high (or low) observation of AMOP tends to be followed by a more "typical" value of AMOP.

Use the estimated moving average model to forecast the monthly percent change in AMOP. These percent changes can then be applied to obtain forecasts of the total dollar value of registrations. The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for AMOP. The sample spans ten years, from March 2000 to March 2010.

2. Divide each month's AMOP (column C) by the number of trading days in that month (column B) to obtain the average daily AMOP (AAMOP, column D).

3. For each month t, the natural logarithm of AAMOP is reported in column E.

4. Calculate the change in log(AAMOP) from the previous month as $\Delta_t = \log(AAMOP_t) - \log(AAMOP_{t-1})$. This approximates the percentage change.

5. Estimate the first order moving average model $\Delta_t = \alpha + \beta e_{t-1} + e_t$, where e_t denotes the forecast error for month t. The forecast error is simply the difference between the one-month ahead forecast and the actual realization of Δ_t. The forecast error is expressed as $e_t = \Delta_t - \alpha - \beta e_{t-1}$. The model can be estimated using standard commercially available software such as SAS or Eviews. Using least squares, the estimated parameter values are $\alpha = -0.0034456$ and $\beta = -0.78509$.

6. For the month of April 2010 forecast $\Delta_{t=4/10} = \alpha + \beta e_{t=3/10}$. For all subsequent months, forecast $\Delta_t = \alpha$.

7. Calculate forecasts of log(AAMOP). For example, the forecast of log(AAMOP) for June 2010 is given by $FLAAMOP_{t=6/10} = \log(AAMOP_{t=3/10}) + \Delta_{t=4/10} + \Delta_{t=5/10} + \Delta_{t=6/10}$.

8. Under the assumption that e_t is normally distributed, the n-step ahead forecast of AAMOP is given by $\exp(FLAAMOP_t + \sigma_n^2/2)$, where σ_n denotes the standard error of the n-step ahead forecast.

9. For June 2010, this gives a forecast AAMOP of $13.4 Billion (Column I), and a forecast AMOP of $295.9 Billion (Column J).

10. Iterate this process through September 2011 to obtain a baseline estimate of the aggregate maximum offering prices for fiscal year 2011 of $3,394,310,932,374.

B. Using the forecasts from A to calculate the new fee rate.

1. Using the data from Table A, estimate the aggregate maximum offering prices between 10/1/10 and 9/30/11 to be $3,394,310,932,374.

2. The rate necessary to collect the target $394,000,000 in fee revenues set by Congress is then calculated as: $394,000,000 ÷ $3,394,310,932,374 = 0.00011608.

3. Round the result to the seventh decimal point, yielding a rate of 0.0001161 (or $116.10 per million).

Table A. Estimation of baseline of aggregate maximum offering prices.

Fee rate calculation.

a. Baseline estimate of the aggregate maximum offering prices, 10/1/10 to 9/30/11 ($Millions)	3,394,311
b. Implied fee rate ($394 Million / a)	$116.10

Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Maximum Offering Prices, in $Millions	(D) Average Daily Aggregate Max Offering Prices (AAMOP) in $Millions	(E) log(AAMOP)	(F) Change in AAMOP	(G) Forecast log(AAMOP)	(H) Standard Error	(I) Forecast AAMOP, in $Millions	(J) Forecast Aggregate Maximum Offering Prices, in $Millions
Mar-00	23	550,107	23,918	23.898					
Apr-00	19	244,510	12,869	23.278	-0.620				
May-00	22	269,774	12,262	23.230	-0.048				
Jun-00	22	406,409	18,473	23.640	0.410				
Jul-00	20	230,894	11,545	23.169	-0.470				
Aug-00	23	257,797	11,209	23.140	-0.030				
Sep-00	20	332,120	16,606	23.533	0.393				
Oct-00	22	362,493	16,477	23.525	-0.008				
Nov-00	21	317,653	15,126	23.440	-0.086				
Dec-00	20	246,006	12,300	23.233	-0.207				
Jan-01	21	462,726	22,035	23.816	0.583				
Feb-01	19	388,304	20,437	23.741	-0.075				
Mar-01	22	523,443	23,793	23.893	0.152				
Apr-01	20	289,212	14,461	23.395	-0.498				
May-01	22	274,298	12,468	23.246	-0.148				
Jun-01	21	348,268	16,584	23.532	0.285				
Jul-01	21	264,590	12,600	23.257	-0.275				
Aug-01	23	245,591	10,678	23.091	-0.165				
Sep-01	15	178,524	11,902	23.200	0.108				
Oct-01	23	260,719	11,336	23.151	-0.049				
Nov-01	21	286,199	13,629	23.335	0.184				
Dec-01	20	395,230	19,762	23.707	0.372				
Jan-02	21	401,290	19,109	23.673	-0.034				
Feb-02	19	476,837	25,097	23.946	0.273				
Mar-02	20	380,160	19,008	23.668	-0.278				
Apr-02	22	282,947	12,861	23.277	-0.391				
May-02	22	215,645	9,802	23.006	-0.272				

Jun-02	20	277,757	13,888	23.354	0.348				
Jul-02	22	208,638	9,484	22.973	-0.381				
Aug-02	22	265,750	12,080	23.215	0.242				
Sep-02	20	109,565	5,478	22.424	-0.791				
Oct-02	23	179,374	7,799	22.777	0.353				
Nov-02	20	243,590	12,179	23.223	0.446				
Dec-02	21	212,838	10,135	23.039	-0.184				
Jan-03	21	201,839	9,611	22.986	-0.053				
Feb-03	19	144,642	7,613	22.753	-0.233				
Mar-03	21	444,331	21,159	23.775	1.022				
Apr-03	21	142,373	6,780	22.637	-1.138				
May-03	21	328,792	15,657	23.474	0.837				
Jun-03	21	281,580	13,409	23.319	-0.155				
Jul-03	22	304,383	13,836	23.351	0.031				
Aug-03	21	328,351	15,636	23.473	0.122				
Sep-03	21	459,563	21,884	23.809	0.336				
Oct-03	23	285,039	12,393	23.240	-0.569				
Nov-03	19	257,779	13,567	23.331	0.091				
Dec-03	22	244,998	11,136	23.133	-0.197				
Jan-04	20	369,784	18,489	23.640	0.507				
Feb-04	19	221,517	11,659	23.179	-0.461				
Mar-04	23	448,543	19,502	23.694	0.514				
Apr-04	21	260,029	12,382	23.240	-0.454				
May-04	20	227,239	11,362	23.154	-0.086				
Jun-04	21	370,668	17,651	23.594	0.441				
Jul-04	21	305,519	14,549	23.401	-0.193				
Aug-04	22	179,688	8,168	22.823	-0.577				
Sep-04	21	357,007	17,000	23.556	0.733				
Oct-04	21	254,489	12,119	23.218	-0.338				
Nov-04	21	363,406	17,305	23.574	0.356				
Dec-04	22	570,918	25,951	23.979	0.405				
Jan-05	20	375,484	18,774	23.656	-0.324				
Feb-05	19	338,922	17,838	23.605	-0.051				
Mar-05	22	590,862	26,857	24.014	0.409				

Apr-05	21	282,018	13,429	23.321	-0.693				
May-05	21	323,652	15,412	23.458	0.138				
Jun-05	22	517,022	23,501	23.880	0.422				
Jul-05	20	457,487	22,874	23.853	-0.027				
Aug-05	23	605,534	26,328	23.994	0.141				
Sep-05	21	312,281	14,871	23.423	-0.571				
Oct-05	21	258,956	12,331	23.235	-0.187				
Nov-05	21	192,736	9,178	22.940	-0.295				
Dec-05	21	308,134	14,673	23.409	0.469				
Jan-06	20	526,550	26,328	23.994	0.585				
Feb-06	19	301,446	15,866	23.487	-0.506				
Mar-06	23	1,211,344	52,667	24.687	1.200				
Apr-06	19	407,345	21,439	23.788	-0.899				
May-06	22	260,121	11,824	23.193	-0.595				
Jun-06	22	375,296	17,059	23.560	0.367				
Jul-06	20	232,654	11,633	23.177	-0.383				
Aug-06	23	310,050	13,480	23.325	0.147				
Sep-06	20	236,782	11,839	23.195	-0.130				
Oct-06	22	213,342	9,697	22.995	-0.200				
Nov-06	21	292,456	13,926	23.357	0.362				
Dec-06	20	349,512	17,476	23.584	0.227				
Jan-07	20	372,740	18,637	23.648	0.064				
Feb-07	19	278,753	14,671	23.409	-0.239				
Mar-07	22	862,786	39,218	24.392	0.983				
Apr-07	20	562,103	28,105	24.059	-0.333				
May-07	22	470,843	21,402	23.787	-0.272				
Jun-07	21	586,822	27,944	24.053	0.267				
Jul-07	21	326,612	15,553	23.468	-0.586				
Aug-07	23	369,172	16,051	23.499	0.032				
Sep-07	19	241,059	12,687	23.264	-0.235				
Oct-07	23	239,652	10,420	23.067	-0.197				
Nov-07	21	458,654	21,841	23.807	0.740				
Dec-07	20	410,200	20,510	23.744	-0.063				
Jan-08	21	354,433	16,878	23.549	-0.195				

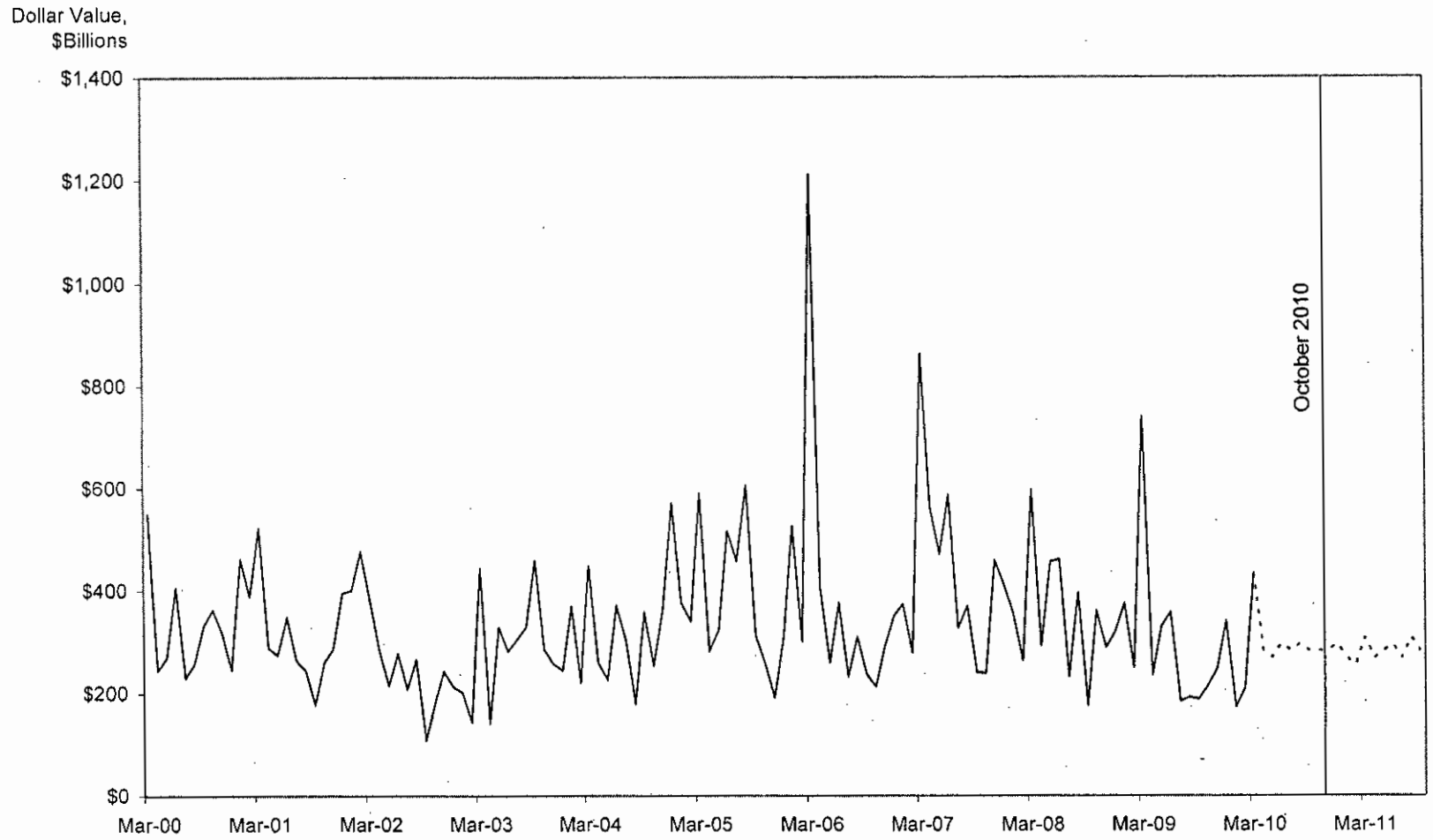
Feb-08	20	263,410	13,171	23.301	-0.248				
Mar-08	20	596,923	29,846	24.119	0.818				
Apr-08	22	292,534	13,297	23.311	-0.809				
May-08	21	456,077	21,718	23.801	0.491				
Jun-08	21	461,087	21,957	23.812	0.011				
Jul-08	22	232,896	10,586	23.083	-0.730				
Aug-08	21	395,440	18,830	23.659	0.576				
Sep-08	21	177,636	8,459	22.858	-0.800				
Oct-08	23	360,494	15,674	23.475	0.617				
Nov-08	19	288,911	15,206	23.445	-0.030				
Dec-08	22	319,584	14,527	23.399	-0.046				
Jan-09	20	375,065	18,753	23.655	0.255				
Feb-09	19	249,666	13,140	23.299	-0.356				
Mar-09	22	739,931	33,633	24.239	0.940				
Apr-09	21	235,914	11,234	23.142	-1.097				
May-09	20	329,522	16,476	23.525	0.383				
Jun-09	22	357,524	16,251	23.511	-0.014				
Jul-09	22	185,187	8,418	22.854	-0.658				
Aug-09	21	192,726	9,177	22.940	0.086				
Sep-09	21	189,224	9,011	22.922	-0.018				
Oct-09	22	215,720	9,805	23.006	0.085				
Nov-09	20	248,353	12,418	23.242	0.236				
Dec-09	22	340,464	15,476	23.463	0.220				
Jan-10	19	173,235	9,118	22.933	-0.529				
Feb-10	19	209,963	11,051	23.126	0.192				
Mar-10	23	432,934	18,823	23.658	0.533				
Apr-10	21					23.253	0.372	13,454	282,542
May-10	20					23.250	0.381	13,451	269,021
Jun-10	22					23.246	0.389	13,448	295,851
Jul-10	21					23.243	0.397	13,444	282,334
Aug-10	22					23.240	0.405	13,441	295,705
Sep-10	21					23.236	0.413	13,438	282,195
Oct-10	21					23.233	0.421	13,435	282,125
Nov-10	21					23.229	0.428	13,431	282,056

Dec-10	22					23.226	0.436	13,428	295,414
Jan-11	20					23.222	0.443	13,425	268,492
Feb-11	19					23.219	0.450	13,421	255,005
Mar-11	23					23.215	0.457	13,418	308,614
Apr-11	20					23.212	0.464	13,415	268,294
May-11	21					23.209	0.471	13,411	281,639
Jun-11	22					23.205	0.478	13,408	294,978
Jul-11	20					23.202	0.484	13,405	268,096
Aug-11	23					23.198	0.491	13,402	308,235
Sep-11	21					23.195	0.497	13,398	281,362

Figure A

Aggregate Maximum Offering Prices Subject to Securities Act Section 6(b)

(Dashed Line Indicates Forecast Values)



APPENDIX B

With the passage of the Investor and Capital Markets Relief Act, Congress has, among other things, established a target amount of monies to be collected from fees charged to investors based on the value of their transactions. This appendix provides the formula for determining such fees, which the Commission adjusts annually, and may adjust semi-annually.[16] In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected dollar transaction volume on the securities exchanges and certain over-the-counter markets over the course of the year. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected dollar transaction volume.

For 2011, the Commission has estimated dollar transaction volume by projecting forward the trend established in the previous decade. More specifically, dollar transaction volume was forecasted for months subsequent to March 2010, the last month for which the Commission has data on transaction volume.

The following sections describe this process in detail.

A. Baseline estimate of the aggregate dollar amount of sales for fiscal year 2011.

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (March 2000 - March 2010). The monthly aggregate dollar amount of sales (exchange plus certain over-the-counter markets) is presented in column C of Table B.

Next, calculate the change in the natural logarithm of ADS from month to month. The average monthly percentage growth of ADS over the entire sample is 0.0025 and the standard deviation is 0.124. Assuming the monthly percentage change in ADS follows a random walk,

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[16] Congress requires that the Commission make a mid-year adjustment to the fee rate if four months into the fiscal year it determines that its forecasts of aggregate dollar volume are reasonably likely to be off by 10% or more.

calculating the expected monthly percentage growth rate for the full sample is straightforward. The expected monthly percentage growth rate of ADS is 1.0 %.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for March 2010 ($241,886,611,540) to forecast ADS for April 2010 ($244,367,079,739 = $241,886,611,540 x 1.010).[17] Multiply by the number of trading days in April 2010 (21) to obtain a forecast of the total dollar volume for the month ($5,131,708,674,527). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume are in column G of Table B. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month t, calculate the change in ADS from the previous month as $\Delta_t = \log (ADS_t / ADS_{t-1})$, where log (x) denotes the natural logarithm of x.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, \ldots, \Delta_{120}\}$. These are given by $\mu = 0.0025$ and $\sigma = 0.124$, respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t.

5. Under the assumption that Δ_t is normally distributed, the expected value of ADS_t / ADS_{t-1} is given by $\exp (\mu + \sigma^2/2)$, or on average $ADS_t = 1.010 \times ADS_{t-1}$.

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[17] The value 1.010 has been rounded. All computations are done with the unrounded value.

6. For April 2010, this gives a forecast ADS of 1.010 × $241,886,611,540 = $244,367,079,739. Multiply this figure by the 21 trading days in April 2010 to obtain a total dollar volume forecast of $5,131,708,674,527.

7. For May 2010, multiply the April 2010 ADS forecast by 1.010 to obtain a forecast ADS of $246,872,984,330. Multiply this figure by the 20 trading days in May 2010 to obtain a total dollar volume forecast of $4,937,459,686,603.

8. Repeat this procedure for subsequent months.

B. Using the forecasts from A to calculate the new fee rate.

1. Use Table B to estimate fees collected for the period 10/1/10 through 10/31/10. The projected aggregate dollar amount of sales for this period is $5,455,658,813,145. Projected fee collections at the current fee rate of 0.0000161 are $92,200,634.

2. Estimate the amount of assessments on securities futures products collected during 10/1/10 and 9/30/11 to be $17,950 by projecting a 1.0% monthly increase from a base of $1,316 in March 2010.

3. Subtract the amounts $92,200,634 and $17,950 from the target offsetting collection amount set by Congress of $1;321,000,000 leaving $1,228,781,416 to be collected on dollar volume for the period 11/1/10 through 9/30/11.

4. Use Table B to estimate dollar volume for the period 11/1/10 through 9/30/11. The estimate is $64,133,002,018,766. Finally, compute the fee rate required to produce the additional $1,228,781,416 in revenue. This rate is $1,228,781,416 divided by $64,133,002,018,766 or 0.0000191599.

5. Round the result to the seventh decimal point, yielding a rate of .0000192 (or $19.20 per million).

Table B. Estimation of baseline of the aggregate dollar amount of sales.

Fee rate calculation.

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/10 to 10/31/10 ($Millions)	5,455,659
b. Baseline estimate of the aggregate dollar amount of sales, 11/1/10 to 9/30/11 ($Millions)	64,133,002
c. Estimated collections in assessments on securities futures products in FY 2011 ($Millions)	0.018
d. Implied fee rate (($1,321,000,000 - 0.0000169*a - c) /b)	$19.20

Data

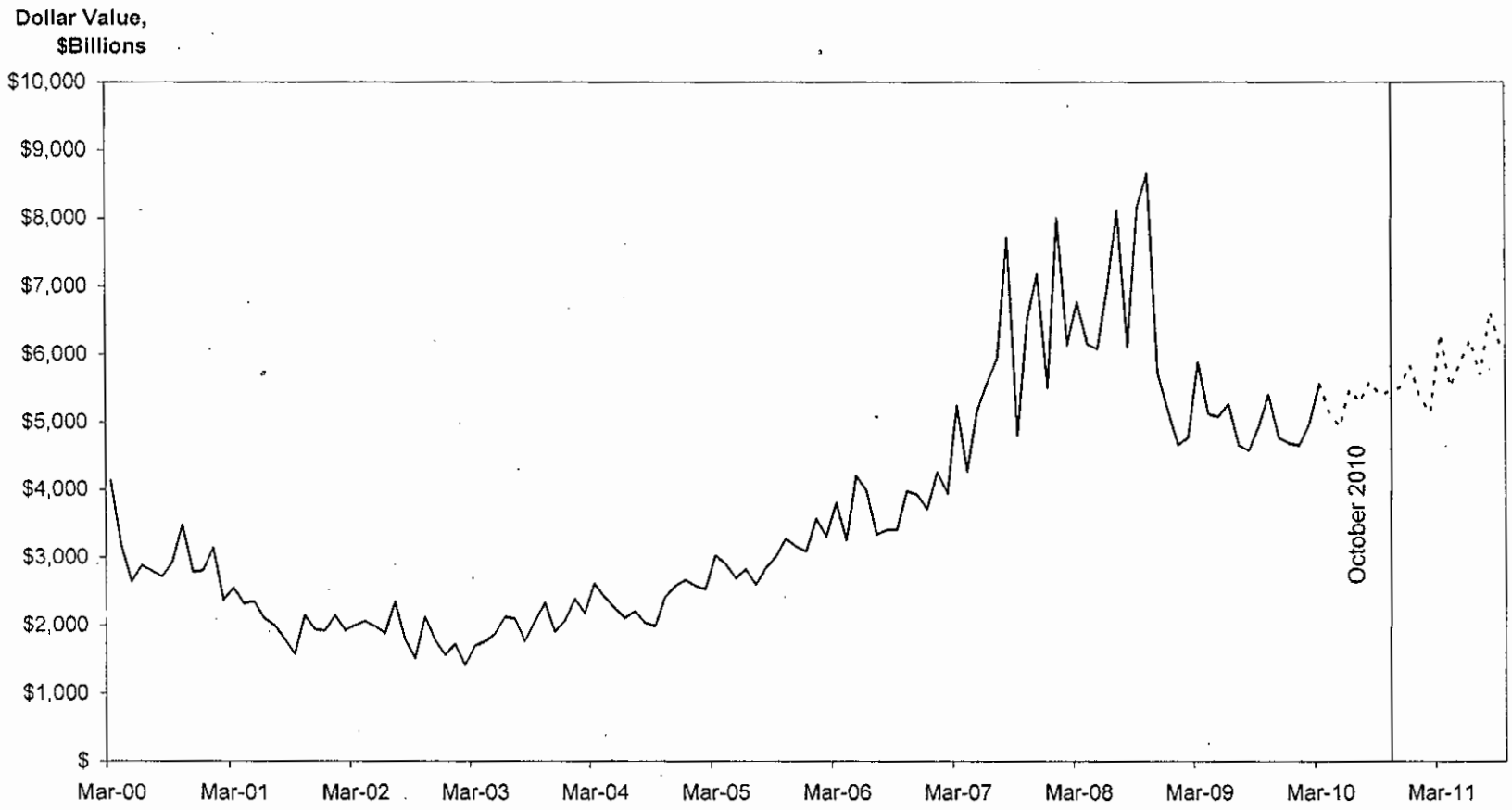
(A) Month	(B) # of Trading Days in Month	(C) Aggregate Dollar Amount of Sales	(D) Average Daily Dollar Amount of Sales (ADS)	(E) Change in LN of ADS	(F) Forecast ADS	(G) Forecast Aggregate Dollar Amount of Sales
Mar-00	23	4,135,152,366,234	179,789,233,315	-		
Apr-00	19	3,174,694,525,687	167,089,185,562	-0.073		
May-00	22	2,649,273,207,318	120,421,509,424	-0.328		
Jun-00	22	2,883,513,997,781	131,068,818,081	0.085		
Jul-00	20	2,804,753,395,361	140,237,669,768	0.068		
Aug-00	23	2,720,788,395,832	118,295,147,645	-0.170		
Sep-00	20	2,930,188,809,012	146,509,440,451	0.214		
Oct-00	22	3,485,926,307,727	158,451,195,806	0.078		
Nov-00	21	2,795,778,876,887	133,132,327,471	-0.174		
Dec-00	20	2,809,917,349,851	140,495,867,493	0.054		
Jan-01	21	3,143,501,125,244	149,690,529,774	0.063		
Feb-01	19	2,372,420,523,286	124,864,238,068	-0.181		
Mar-01	22	2,554,419,085,113	116,109,958,414	-0.073		
Apr-01	20	2,324,349,507,745	116,217,475,387	0.001		
May-01	22	2,353,179,388,303	106,962,699,468	-0.083		
Jun-01	21	2,111,922,113,236	100,567,719,678	-0.062		
Jul-01	21	2,004,384,034,554	95,446,858,788	-0.052		
Aug-01	23	1,803,565,337,795	78,415,884,252	-0.197		
Sep-01	15	1,573,484,946,383	104,898,996,426	0.291		
Oct-01	23	2,147,238,873,044	93,358,211,871	-0.117		
Nov-01	21	1,939,427,217,518	92,353,677,025	-0.011		
Dec-01	20	1,921,098,738,113	96,054,936,906	0.039		
Jan-02	21	2,149,243,312,432	102,344,919,640	0.063		
Feb-02	19	1,928,830,595,585	101,517,399,768	-0.008		
Mar-02	20	2,002,216,374,514	100,110,818,726	-0.014		
Apr-02	22	2,062,101,866,506	93,731,903,023	-0.066		
May-02	22	1,985,859,756,557	90,266,352,571	-0.038		
Jun-02	20	1,882,185,380,609	94,109,269,030	0.042		
Jul-02	22	2,349,564,490,189	106,798,385,918	0.126		
Aug-02	22	1,793,429,904,079	81,519,541,095	-0.270		
Sep-02	20	1,518,944,367,204	75,947,218,360	-0.071		
Oct-02	23	2,127,874,947,972	92,516,302,086	0.197		
Nov-02	20	1,780,816,458,122	89,040,822,906	-0.038		
Dec-02	21	1,561,092,215,646	74,337,724,555	-0.180		
Jan-03	21	1,723,698,830,414	82,080,896,686	0.099		
Feb-03	19	1,411,722,405,357	74,301,179,229	-0.100		
Mar-03	21	1,699,581,267,718	80,932,441,320	0.085		
Apr-03	21	1,759,751,025,279	83,797,667,870	0.035		
May-03	21	1,871,390,985,678	89,113,856,461	0.062		
Jun-03	21	2,122,225,077,345	101,058,337,016	0.126		
Jul-03	22	2,100,812,973,956	95,491,498,816	-0.057		
Aug-03	21	1,766,527,686,224	84,120,366,011	-0.127		
Sep-03	21	2,063,584,421,939	98,265,924,854	0.155		
Oct-03	23	2,331,850,083,022	101,384,786,218	0.031		
Nov-03	19	1,903,726,129,859	100,196,112,098	-0.012		
Dec-03	22	2,066,530,151,383	93,933,188,699	-0.065		
Jan-04	20	2,390,942,905,678	119,547,145,284	0.241		
Feb-04	19	2,177,765,594,701	114,619,241,826	-0.042		
Mar-04	23	2,613,808,754,550	113,643,858,893	-0.009		
Apr-04	21	2,418,663,760,191	115,174,464,771	0.013		
May-04	20	2,259,243,404,459	112,962,170,223	-0.019		

Jun-04	21	2,112,826,072,876	100,610,765,375	-0.116		
Jul-04	21	2,209,808,376,565	105,228,970,313	0.045		
Aug-04	22	2,033,343,354,640	92,424,697,938	-0.130		
Sep-04	21	1,993,803,487,749	94,943,023,226	0.027		
Oct-04	21	2,414,599,088,108	114,980,908,958	0.191		
Nov-04	21	2,577,513,374,160	122,738,732,103	0.065		
Dec-04	22	2,673,532,981,863	121,524,226,448	-0.010		
Jan-05	20	2,581,847,200,448	129,092,360,022	0.060		
Feb-05	19	2,532,202,408,589	133,273,810,978	0.032		
Mar-05	22	3,030,474,897,226	137,748,858,965	0.033		
Apr-05	21	2,906,386,944,434	138,399,378,306	0.005		
May-05	21	2,697,414,503,460	128,448,309,689	-0.075		
Jun-05	22	2,825,962,273,624	128,452,830,619	0.000		
Jul-05	20	2,604,021,263,875	130,201,063,194	0.014		
Aug-05	23	2,846,115,585,965	123,744,155,912	-0.051		
Sep-05	21	3,009,640,645,370	143,316,221,208	0.147		
Oct-05	21	3,279,847,331,057	156,183,206,241	0.086		
Nov-05	21	3,163,453,821,548	150,640,658,169	-0.036		
Dec-05	21	3,090,212,715,561	147,152,986,455	-0.023		
Jan-06	20	3,573,372,724,766	178,668,636,238	0.194		
Feb-06	19	3,314,259,849,456	174,434,728,919	-0.024		
Mar-06	23	3,807,974,821,564	165,564,122,677	-0.052		
Apr-06	19	3,257,478,138,851	171,446,217,834	0.035		
May-06	22	4,206,447,844,451	191,202,174,748	0.109		
Jun-06	22	3,995,113,357,316	181,596,061,696	-0.052		
Jul-06	20	3,339,658,009,357	166,982,900,468	-0.084		
Aug-06	23	3,410,187,280,845	148,269,012,211	-0.119		
Sep-06	20	3,407,409,863,673	170,370,493,184	0.139		
Oct-06	22	3,980,070,216,912	180,912,282,587	0.060		
Nov-06	21	3,933,474,986,969	187,308,332,713	0.035		
Dec-06	20	3,715,146,848,695	185,757,342,435	-0.008		
Jan-07	20	4,263,986,570,973	213,199,328,549	0.138		
Feb-07	19	3,946,799,860,532	207,726,308,449	-0.026		
Mar-07	22	5,245,051,744,090	238,411,442,913	0.138		
Apr-07	20	4,274,665,072,437	213,733,253,622	-0.109		
May-07	22	5,172,568,357,522	235,116,743,524	0.095		
Jun-07	21	5,586,337,010,802	266,016,048,133	0.123		
Jul-07	21	5,938,330,480,139	282,777,641,911	0.061		
Aug-07	23	7,713,644,229,032	335,375,836,045	0.171		
Sep-07	19	4,805,676,596,099	252,930,347,163	-0.282		
Oct-07	23	6,499,651,716,225	282,593,552,879	0.111		
Nov-07	21	7,176,290,763,989	341,728,131,619	0.190		
Dec-07	20	5,512,903,594,564	275,645,179,728	-0.215		
Jan-08	21	7,997,242,071,529	380,821,051,025	0.323		
Feb-08	20	6,139,080,448,887	306,954,022,444	-0.216		
Mar-08	20	6,767,852,332,381	338,392,616,619	0.098		
Apr-08	22	6,150,017,772,735	279,546,262,397	-0.191		
May-08	21	6,080,169,766,807	289,531,893,657	0.035		
Jun-08	21	6,962,199,302,412	331,533,300,115	0.135		
Jul-08	22	8,104,256,787,805	368,375,308,537	0.105		
Aug-08	21	6,106,057,711,009	290,764,652,905	-0.237		
Sep-08	21	8,156,991,919,103	388,428,186,624	0.290		
Oct-08	23	8,644,538,213,244	375,849,487,532	-0.033		
Nov-08	19	5,727,998,341,833	301,473,596,939	-0.221		
Dec-08	22	5,176,041,317,640	235,274,605,347	-0.248		
Jan-09	20	4,670,249,433,806	233,512,471,690	-0.008		
Feb-09	19	4,771,470,184,048	251,130,009,687	0.073		

Mar-09	22	5,885,594,284,780	267,527,012,945	0.063		
Apr-09	21	5,123,665,205,517	243,984,057,406	-0.092		
May-09	20	5,086,717,129,965	254,335,856,498	0.042		
Jun-09	22	5,271,742,782,609	239,624,671,937	-0.060		
Jul-09	22	4,659,599,245,583	211,799,965,708	-0.123		
Aug-09	21	4,582,102,295,783	218,195,347,418	0.030		
Sep-09	21	4,929,155,364,888	234,721,684,042	0.073		
Oct-09	22	5,410,025,301,030	245,910,240,956	0.047		
Nov-09	20	4,770,928,103,032	238,546,405,152	-0.030		
Dec-09	22	4,688,555,313,171	213,116,150,599	-0.113		
Jan-10	19	4,661,795,433,843	245,357,654,413	0.141		
Feb-10	19	4,969,811,812,741	261,569,042,776	0.064		
Mar-10	23	5,563,392,065,417	241,886,611,540	-0.078		
Apr-10	21				244,367,079,739	5,131,708,674,527
May-10	20				246,872,984,330	4,937,459,686,603
Jun-10	22				249,404,586,154	5,486,900,895,390
Jul-10	21				251,962,148,728	5,291,205,123,285
Aug-10	22				254,545,938,271	5,600,010,641,951
Sep-10	21				257,156,223,731	5,400,280,698,352
Oct-10	21				259,793,276,816	5,455,658,813,145
Nov-10	21				262,457,372,020	5,511,604,812,419
Dec-10	22				265,148,786,650	5,833,273,306,292
Jan-11	20				267,867,800,857	5,357,356,017,147
Feb-11	19				270,614,697,668	5,141,679,255,686
Mar-11	23				273,389,763,008	6,287,964,549,176
Apr-11	20				276,193,285,736	5,523,865,714,727
May-11	21				279,025,557,675	5,859,536,711,175
Jun-11	22				281,886,873,637	6,201,511,220,021
Jul-11	20				284,777,531,460	5,695,550,629,206
Aug-11	23				287,697,832,035	6,617,050,136,808
Sep-11	21				290,648,079,339	6,103,609,666,110

Figure B.

Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)[1]
Methodology Developed in Consultation With OMB and CBO
(Dashed Line Indicates Forecast Values)



[1]Forecasted line is not smooth because the number of trading days varies by month.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 62007 / April 29, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13874

In the Matter of

Bart A. Thielbar

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Bart A. Thielbar ("Thielbar" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order") , as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

1. From approximately April 2000 through approximately mid-June, 2002, Thielbar was a Vice President of NorthWestern Services Group, Inc., a wholly owned subsidiary of NorthWestern Corporation ("NorthWestern") that oversaw an operating division of NorthWestern known as NorthWestern Communications Solutions ("NCS"). Part of Thielbar's duties included oversight of the operations of NCS.

2. NCS misstated its margins for the fourth quarter of 2001, the first quarter of 2002 and the first half of 2002. As a result of accounting errors at NCS and other subsidiaries and divisions at NorthWestern, NorthWestern materially misstated its income in its annual report on Form 10-K for the fiscal year ended December 31, 2001, in its quarterly reports on Form 10-Q for the first two quarters of fiscal year 2002, and in its reports on Form 8-K containing income statements for the fourth quarter of 2001, the first quarter of 2002, and the first half of 2002.

3. NCS misstated its margins as a result of improper revenue recognition, whereby revenue was recorded for transactions (a) in some cases, before NCS had obtained commitments from customers, and (b) in some cases, in percentage amounts greater than the percentage of work actually completed. During the period that Thielbar had oversight responsibility over NCS, Thielbar failed to identify these accounting problems. As a result of this and failures by others with responsibility for the accounting at NCS, the accounting problems were not corrected by NCS on a timely basis.

4. As a result of the conduct described above, NorthWestern violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13 and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission such information, documents, and annual, quarterly and current reports as the Commission may require, and which mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

5. As a result of the conduct described above, NorthWestern violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

6. Thielbar's conduct described above was a cause of these violations by NorthWestern.

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Thielbar's Offer.

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Thielbar cease and desist from causing any violations and any future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

By the Commission.

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 62020 / April 30, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13876

In the Matter of	
Tal Wireless Networks, Inc., TCT Financial Group A, Inc., Telechips Corp., Tellus Industries, Inc., Telnet Go 2000, Inc., TMCI Electronics, Inc., TMP Inland Empire, Ltd., TMP Inland Empire V, Ltd., and TMP Inland Empire VI, Ltd.,	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**
Respondents.	

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Tal Wireless Networks, Inc., TCT Financial Group A, Inc., Telechips Corp., Tellus Industries, Inc., Telnet Go 2000, Inc., TMCI Electronics, Inc., TMP Inland Empire, Ltd., TMP Inland Empire V, Ltd., and TMP Inland Empire VI, Ltd.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Tal Wireless Networks, Inc. (CIK No. 934924) is a void Delaware corporation located in Portola Valley, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Tal Wireless is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 1997, which reported a net loss of over $9.8 million for the prior nine months. On October 6, 1997, the company filed a Chapter

11 petition in the U.S. Bankruptcy Court for the Northern District of California, which was terminated on April 11, 2003.

2. TCT Financial Group A, Inc. (CIK No. 1096647) is a permanently revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TCT Financial Group A is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported a net loss of $300 for the prior three months.

3. Telechips Corp. (CIK No. 873979) is a permanently revoked Nevada corporation located in Reno, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Telechips is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 1997, which reported a net loss of over $2.84 million for the prior three months. On June 3, 1997, the company filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Nevada, and the case was terminated on July 28, 2004.

4. Tellus Industries, Inc. (CIK No. 217365) is a dissolved Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Tellus is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 1994, which reported a net loss of $996,822 for the prior three months. As of April 30, 2010, the company's stock (symbol "TLLS") was traded on the over-the-counter markets.

5. Telnet Go 2000, Inc. (CIK No. 94776) is a void Delaware corporation located in Phoenix, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Telnet is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2000, which reported a net loss of over $2.24 million since the company's January 1, 1989 inception.

6. TMCI Electronics, Inc. (CIK No. 1005509) is a void Delaware corporation located in San Jose, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TMCI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1998, which reported a net loss of over $3.66 million for the prior nine months. On December 21, 1998, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of California which was still pending as of January 8, 2010.

7. TMP Inland Empire, Ltd. (CIK No. 885392) is a canceled California limited partnership located in Santa Ana, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TMP Inland Empire is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it

filed a Form 10-K for the period ended December 31, 1993, which reported a net loss of $724,702 for the prior twelve months.

8. TMP Inland Empire V, Ltd. (CIK No. 885049) is a canceled California limited partnership located in Santa Ana, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TMP Inland Empire V is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended December 31, 2003, which reported a net loss of $344,174 for the prior twelve months.

9. TMP Inland Empire VI, Ltd. (CIK No. 885046) is a canceled California limited partnership located in Irvine, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TMP Inland Empire VI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2005, which reported a net loss of $7,632 for the prior three months.

B. DELINQUENT PERIODIC FILINGS

10. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission, have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

11. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

12. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each

class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 62018 / April 30, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13875

In the Matter of	
United Vanguard Homes, Inc., Universal Life Holding Corp., Universal Standard Medical Laboratories, Inc. (n/k/a Universal Standard Healthcare, Inc.), Universe2U, Inc., U.S. Harvest Medical Technologies Corp., U.S. Homecare Corp., and USA Classic, Inc.,	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**
Respondents.	

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents United Vanguard Homes, Inc., Universal Life Holding Corp., Universal Standard Medical Laboratories, Inc. (n/k/a Universal Standard Healthcare, Inc.), Universe2U, Inc., U.S. Harvest Medical Technologies Corp., U.S. Homecare Corp., and USA Classic, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. United Vanguard Homes, Inc. (CIK No. 21221) is a dissolved Delaware corporation located in Glen Cove, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). United Vanguard is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1999.

2. Universal Life Holding Corp. (CIK No. 102043) is a dissolved Illinois corporation located in Olney, Maryland with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Universal Life is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB/A for the period ended September 30, 2004, which reported a net loss of $140,523 for the prior nine months.

3. Universal Standard Medical Laboratories, Inc. (n/k/a Universal Standard Healthcare, Inc.) (CIK No. 889187) is a dissolved Michigan corporation located in Southfield, Michigan with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Universal Standard is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 1999.

4. Universe2U, Inc. (CIK No. 1094089) is a permanently revoked Nevada corporation located in Thornhill, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Universe2U is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported a net loss of over $4.31 million for the prior nine months.

5. U.S. Harvest Medical Technologies Corp. (CIK No. 1100580) is a forfeited Maryland corporation located in Baltimore, Maryland with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). U.S. Harvest is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on August 4, 2000. A Form SE filed by the company on October 19, 2000 reported a net loss of $648,741 for the nine months ended September 30, 2000.

6. U.S. Homecare Corp. (CIK No. 874507) is an inactive New York corporation located in Hartford, Connecticut with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). U.S. Homecare is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1999, which reported a net loss of $160,000 for the prior three months. The company announced that it ceased operations on April 28, 2000.

7. USA Classic, Inc. (CIK No. 892957) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). USA Classic is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended February 28, 1994, which reported a net loss of over $3.45 million for the prior three months. As of April 29, 2010, the company's stock (symbol "USCLQ") was traded on the over-the-counter markets.

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

9. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities registered pursuant to Section 12 of the Exchange Act of the Respondents identified in Section II, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents, and any successor under Exchange Act Rules 12b-2 or 12g-3, and any new corporate names of any Respondents, may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy

Elizabeth M. Murphy
Secretary