

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-65148; File No. S7-02-11]

RIN 3235-AK89

SUSPENSION OF THE DUTY TO FILE REPORTS FOR CLASSES OF ASSET-BACKED SECURITIES UNDER SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Section 942(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Securities Exchange Act of 1934 for asset-backed securities issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty. We are adopting rules to provide certain thresholds for suspension of the reporting obligations for asset-backed securities issuers. We are also amending our rules relating to the Exchange Act reporting obligations of asset-backed securities issuers in light of these statutory changes.

EFFECTIVE DATE: September 22, 2011

FOR FURTHER INFORMATION CONTACT: Steven Hearne, Special Counsel, in the Office of Rulemaking, at (202) 551-3430 or Kathy Hsu, Chief, Office of Structured Finance, Division of Corporation Finance, at (202) 551-3850, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rules 12h-3, 12h-6, and 15d-22¹ and Form 15² under the Securities Exchange Act of 1934 (“Exchange Act”).³

I. Background and Overview of the Amendments

Section 942(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”)⁴ eliminated the automatic suspension of the duty to file under Section 15(d)⁵ of the Exchange Act for asset-backed securities (“ABS”) issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty. We proposed amendments on January 6, 2011 to provide for the suspension of reporting obligations for ABS issuers under certain circumstances and to revise our rules in light of the amendment of Exchange Act Section 15(d).⁶ In this release, we are adopting the rule amendments with some changes to reflect comments we received on the proposed amendments.

Exchange Act Section 15(d) generally requires an issuer with a registration statement that has become effective pursuant to the Securities Act of 1933⁷ (“Securities Act”) to file ongoing Exchange Act reports with the Commission. Prior to enactment of the Act, Exchange Act Section 15(d) provided that for issuers without a class of securities registered

¹ 17 CFR 240.12h-3, 17 CFR 240.12h-6, and 17 CFR 240.15d-22.

² 17 CFR 249.323.

³ 15 U.S.C. 78a et seq.

⁴ Pub. L. No. 111-203 (July 21, 2010).

⁵ 15 U.S.C. 78o(d).

⁶ Suspension of the Duty to File Reports for Classes of Asset-Backed Securities Under Section 15(d) of the Securities Exchange Act of 1934, Release No. 34-63652 (Jan. 6, 2011) [76 FR 2049] (the “Proposing Release”).

⁷ 15 U.S.C. 77a et seq.

under the Exchange Act the duty to file ongoing reports is automatically suspended as to any fiscal year, other than the fiscal year within which the registration statement for the securities became effective, if the securities of each class to which the registration statement relates are held of record by less than 300 persons. As a result, the reporting obligations of ABS issuers,⁸ other than those with master trust structures,⁹ were generally suspended after the ABS issuer filed one annual report on Form 10-K because the number of record holders was below, often significantly below, the 300 record holder threshold.¹⁰

The Act removed any class of ABS from the automatic suspension provided in Exchange Act Section 15(d) by inserting the phrase, “other than any class of asset-backed securities.” Consequently, ABS issuers no longer automatically suspend reporting under Exchange Act Section 15(d). Instead, the Act granted the Commission authority to “provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the

⁸ ABS offerings are typically registered on shelf registration statements and each ABS offering is typically sold in a separate “takedown” off of the shelf. In 2004, the Commission adopted Exchange Act Rule 15d-22 relating to ABS reporting under Exchange Act Section 15(d). Exchange Act Rule 15d-22 codified the staff position regarding the starting and suspension dates for any reporting obligation with respect to a takedown of ABS and clarified that a new takedown for a new ABS offering off the same shelf registration statement did not necessitate continued reporting for a class of securities from a prior takedown that was otherwise eligible to suspend reporting. See Asset-Backed Securities, Release No. 33-8518 (Dec. 22, 2004) [70 FR 1506] (the “ABS Adopting Release”).

⁹ In a securitization using a master trust structure, the ABS transaction contemplates future issuances of ABS backed by the same, but expanded, asset pool that consists of revolving assets. Pre-existing and newly issued securities would therefore be backed by the same expanded asset pool. Thus, given their continued issuance, master trust ABS issuers typically continue to report, even after the first annual report is filed.

¹⁰ 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, The Global Financial Crisis: A Plan for Regulatory Reform, May 2009, at fn. 349.

Commission deems necessary or appropriate in the public interest or for the protection of investors.”¹¹

We proposed new Exchange Act Rule 15d-22(b) to provide for suspension of the reporting obligations for a given class of ABS pursuant to Exchange Act Section 15(d) under certain limited circumstances. In addition, we proposed to update Exchange Act Rule 15d-22 to indicate when annual and other reports need to be filed and when starting and suspension dates are determined with respect to a takedown.

We received seven comment letters in response to the proposed amendments.¹² These letters came from four professional associations, a law firm, an individual and an institutional investor. We have reviewed and considered all of the comments that we received on the proposed amendments. Most commentators supported the Commission’s goal of providing full and transparent disclosure to investors in ABS. Comments on the proposal were mixed. Two commentators supported the proposed standard without revisions.¹³ Other commentators suggested revisions to the proposed standard, which are described below.¹⁴ Further, two commentators recommended permitting commercial mortgage-backed securities to suspend reporting after one year.¹⁵ The adopted rules reflect

¹¹ 15 U.S.C. 78o(d)(2).

¹² The public comments we received are available on our website at <http://www.sec.gov/comments/s7-02-11/s70211.shtml>. See letters from the American Securitization Forum (“ASF”), Chris Barnard (“Barnard”), Cleary, Gottlieb, Steen, & Hamilton LLP (“Cleary”), CRE Finance Council (“CREFC”), Investment Company Institute (“ICI”), MetLife, Inc. (“MetLife”), and Mortgage Bankers Association (“MBA”).

¹³ See letters from ICI and Barnard.

¹⁴ See letters from ASF, Cleary and Metlife.

¹⁵ See letters from CREFC and MBA. These commentators recommended that such securities be permitted to suspend reporting under the old Section 15(d) standard, which previously allowed issuers of securities to suspend Exchange Act reporting typically after the first year of reporting. In support of differential treatment, the commentators pointed to the “Annex A” initial disclosure package and the “Investor Reporting Package” used in the commercial mortgage-backed securities market, suggesting these materials, along with certain “best practices” projects, provide most, if not all, of the information

changes made in response to comments. We explain our revisions with respect to each proposed rule amendment in more detail throughout this release.

II. Discussion of the Amendments

As indicated above, Exchange Act Section 15(d), as amended by the Act, establishes an ongoing reporting obligation for each class of ABS for which an issuer has filed a registration statement that has become effective pursuant to the Securities Act. Exchange Act Section 15(d) also grants the Commission authority to provide for the suspension or termination of the duty to file. We are adopting amendments with changes made in response to comments to provide limited relief from these reporting obligations in a manner that we believe is appropriate in the public interest and consistent with the protection of investors. In addition, we are adopting rule and form amendments, substantially as proposed, to update our rules relating to ABS takedowns under a shelf registration statement.

A. Suspension of Exchange Act Section 15(d) Reporting Obligation

1. Proposed Amendments

In the Proposing Release, we proposed amended Exchange Act Rule 15d-22(b) to provide for suspension of the reporting obligations for a given class of ABS pursuant to Exchange Act Section 15(d) under certain limited circumstances.¹⁶ As revised by the Act, Exchange Act Section 15(d) no longer provides for the automatic suspension of the duty to file periodic and other reports for issuers of a class of ABS. Without action by the Commission, ABS issuers that have filed a registration statement that has become effective

that would be required to be included in the Section 15(d) reports, and such materials are required to be provided to investors on a timely basis under the Investor Reporting Package standards.

¹⁶ See the Proposing Release supra note 6.

pursuant to the Securities Act or that have conducted a takedown off of a shelf registration statement, would be obligated to continue to file such reports for the life of the security.

In the Proposing Release, we noted that post-issuance reporting of information by an ABS issuer provides investors and the market with transparency regarding many aspects of the ongoing performance of the securities and the servicer in complying with servicing criteria and that such transparency is valuable in evaluating transaction performance and making ongoing investment decisions. We also indicated our belief that the benefits of ongoing reporting to investors and the market where there are only affiliated holders of the ABS are limited and would not justify the burden of reporting by those issuers. Consequently, we proposed amended Exchange Act Rule 15d-22(b), which would provide that the reporting obligation regarding any class of ABS is suspended for any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year there are no longer any securities of such class held by non-affiliates of the depositor that were sold in the registered transaction. We also proposed to amend Form 15 to add a checkbox for ABS issuers to indicate that they are relying on proposed Exchange Act Rule 15d-22(b) to suspend their reporting obligation alerting the market and the Commission of the change in reporting status.

2. Comments on the Proposed Amendments

Commentators generally supported an amendment that would provide for the suspension of the reporting obligation for ABS.¹⁷ The commentators expressed varying levels of support for the Commission's proposed Exchange Act Rule 15d-22(b):

¹⁷ See letters from ASF, Barnard, Cleary, CREFC, ICI, MetLife, and MBA.

- Two commentators supported the proposal without changes;¹⁸
- One commentator recommended a more stringent standard;¹⁹
- One commentator expressed general support for the proposal subject to specific comments on the language of the proposal;²⁰
- One commentator suggested expanding the set of circumstances when ABS issuers may suspend reporting;²¹ and
- Two commentators suggested allowing suspension for commercial mortgage-backed securities issuers after one year in keeping with the Section 15(d) standard as it existed prior to the adoption of Section 942(a) of the Act amending Exchange Act Section 15(d).²²

The proposed rule would have required an issuer to assess whether there were any securities held by non-affiliates of the depositor at the beginning of the fiscal year. One commentator recommended accelerating the timing of when an issuer may assess whether it may suspend reporting to enable an issuer to suspend reporting once there are no non-affiliated holders or in the alternative, monthly.²³ In addition, this commentator

¹⁸ See letters from Barnard and ICI.

¹⁹ See letter from MetLife recommending permitting suspension “only if (a) ABS of a particular class are no longer held by non-affiliates of the depositor and (b) the transaction has matured (i.e. the collateral has been liquidated from the trust or otherwise been fully amortized) or been redeemed or called by the servicer.”

²⁰ See letter from ASF recommending various changes to the proposed language discussed in more detail below.

²¹ See letter from Cleary recommending permitting suspension or termination of reporting in two additional circumstances: (1) where an ABS is backed by a sufficient concentration of obligations of an entity (e.g., repackagings) and reference information under Item 1100(c)(2) of Regulation AB (17 CFR 229.1100(c)(2)) is unavailable and (2) where investors voted for termination after a period of public reporting.

²² See letters from CREFC and MBA.

²³ See letter from ASF.

recommended that the Commission amend the proposed rule to clarify that, at such time as none of an issuer's registered ABS remain outstanding, the issuer may immediately cease ongoing Exchange Act reporting.²⁴ In contrast, some commentators supported the timing of the assessment,²⁵ and one commentator recommended requiring an issuer to re-assess its reporting obligation, including after suspension, every six months and further recommended including an anti-avoidance provision.²⁶

Some commentators recommended specific revisions to the proposed text of the rule. The proposed rule would have provided that the issuer may not suspend reporting in the “fiscal year within which the registration statement became effective.” One commentator recommended that the Commission revise the language to instead refer to the “fiscal year within which the takedown occurred” to provide additional clarity on the application of the rule as it relates to shelf offerings.²⁷ In addition, the proposed rule would provide for suspension of reporting obligations in any fiscal year when there “are no longer any securities of such class held by non-affiliates of the depositor.” Two commentators noted that ABS are often held of record by a custodian or broker on behalf of underlying beneficial owners and suggested that the test should look to the underlying beneficial owners of the securities.²⁸ In addition, one commentator recommended using the term “are not” rather than saying there “are no longer” any securities of such class held by non-affiliates of the

²⁴ Id.

²⁵ See letters from Barnard and ICI.

²⁶ See letter from MetLife. MetLife expressed concern that there are possible scenarios where a depositor or its affiliates could potentially acquire all registered ABS securities of a particular class that were not held by such entities prior to the Section 15(d) re-assessment determination date and then re-sell such securities to non-affiliates in secondary transactions during the course of the fiscal year.

²⁷ See letter from ASF.

²⁸ See letters from ASF and MetLife.

depositor that were sold in the registered transaction to avoid any implication that the ABS must have been previously held by one or more non-affiliates.²⁹

3. Final Rule

After considering the comments, we are adopting amendments to our rules to provide for suspension of the reporting obligations for a given class of ABS pursuant to Exchange Act Section 15(d) as proposed with some changes as recommended by commentators. As adopted, Exchange Act Rule 15d-22(b) provides that the duty to file annual and other reports under Section 15(d) is suspended:

- As to any semi-annual fiscal period, if, at the beginning of the semi-annual fiscal period, other than a period in the fiscal year within which the registration statement became effective or, for shelf offerings, the takedown occurred, there are no ABS of such class that were sold in a registered transaction held by non-affiliates of the depositor and a certification on Form 15 has been filed,³⁰ or
- When there are no ABS of such class that were sold in a registered transaction still outstanding, immediately upon the filing with the Commission of a certification on Form 15 if the issuer has filed all required reports for the most recent three fiscal years.³¹

²⁹ See letter from ASF.

³⁰ The final rule clarifies that the issuer must make its determination as of the beginning of the semi-annual fiscal period and file a certification on Form 15 in the semi-annual fiscal period within which the issuer suspends its reporting obligation.

³¹ The final rule, consistent with Exchange Act Rule 12h-3, also states that if the certification on Form 15 is withdrawn or denied, the issuer is obligated, within 60 days, to file all reports that would have been required if such certification had not been filed. The final rule provides conditions for the immediate suspension of reporting that are not required when the issuer suspends reporting after its semi-annual assessment that may help to reduce confusion or gaps in reporting upon immediate suspension and are consistent with the conditions established under Exchange Act Rule 12h-3.

In addition, the final rule amends Form 15 to add a checkbox for ABS issuers to indicate that they are relying on Exchange Act Rule 15d-22(b) to suspend their reporting obligation and adds two Notes to paragraph (b). Note 1 indicates that securities held of record by a broker, dealer, bank or nominee shall be considered as held by the separate accounts for which the securities are held. Note 2 includes an anti-avoidance provision, as described below.

In response to comments, Exchange Act Rule 15d-22(b) has been changed from the proposal in the following ways:

- The final rule provides for the timing of the suspension of the duty to file to be tested at the beginning of the semi-annual fiscal period rather than annually as proposed. The semi-annual assessment provided in the final rule requires an issuer to assess whether it is required to report more often than the proposed rule. The increased frequency of the required assessment seeks to alleviate concerns regarding reporting and information gaps that could occur with annual assessments by making it harder to evade the reporting requirements as well as reduce costs imposed by requiring reporting for the remainder of the year when the ABS are held solely by affiliates of the depositor.³² We do not believe more frequent assessments to allow suspension are appropriate because if conducted more frequently, these assessments might result in an ABS issuer frequently changing its reporting status and thereby result in less continuity in its annual and other reports and the creation of disclosure gaps that could be detrimental to investors' ability to evaluate ABS performance and make ongoing investment decisions.

³² See letters from ASF and MetLife. The final rule requires ABS issuers, like other issuers that must comply with Section 15(d), to assess periodically whether they may suspend their duty to file. Pursuant to Section 15(d) and our rules, issuers may be permitted to suspend their duty to file after one assessment, but may be required to recommence reporting after a subsequent assessment.

- The final rule provides that an issuer of ABS may not suspend reporting “in the fiscal year within which the registration statement became effective, or, for offerings conducted pursuant to §230.415(a)(1)(vii) or §230.415(a)(1)(x), the takedown for the offering occurred.” The language was revised in response to comments to provide additional clarity on the application of the rule as it relates to shelf offerings.³³
- The final rule uses the term “there are no asset-backed securities” rather than the proposed “there are no longer any asset-backed securities” to avoid any implication that the ABS must have been held by one or more non-affiliates.³⁴
- The final rule specifically provides for the immediate suspension upon filing of a Form 15 of the duty to file when there are no ABS of a class that were sold in a registered transaction still outstanding subject to conditions that are consistent with similar conditions in Exchange Act Rule 12h-3.³⁵ As requested, the final rule makes clear that an issuer may immediately suspend reporting when the securities have been retired or fully paid. In providing for immediate suspension in our rules, we have also added obligations that are consistent with similar conditions in Exchange Act Rule 12h-3 and may help reduce possible confusion or gaps in reporting that could occur with an immediate suspension of reporting.
- The final rule adds a Note to paragraph (b) of Exchange Act Rule 15d-22 clarifying that securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers are considered held by the separate accounts for which they are held. Thus, if an investment bank is an ABS issuer and holds securities in its

³³ See letter from ASF.

³⁴ See letter from ASF.

³⁵ See letter from ASF.

name for the benefit of other non-affiliated investors, it cannot suspend reporting. Conversely, if an unaffiliated bank or broker holds ABS for affiliates of the ABS issuer, the unaffiliated status of the broker or bank will not preclude suspension of reporting.³⁶

- The final rule adds a Note to paragraph (b) of Exchange Act Rule 15d-22(b) providing that an issuer may not suspend reporting if securities are acquired and resold by affiliates as part of a plan or scheme to evade the reporting obligations of Section 15(d).³⁷

The proposal and the final rules that we are adopting today sought to provide for the suspension of the reporting obligation for a given class of ABS under limited circumstances. Two commentators requested that commercial mortgage-backed securities issuers be permitted to suspend reporting based on the use of their industry reporting standards.³⁸ We are not adopting those recommendations because we believe that there are benefits to investors and the market of uniform disclosure standards provided by Regulation AB and public access to such uniform disclosure, and that such an approach is more consistent with Exchange Act Section 15(d), as amended by the Act. In addition, we are not adopting another commentator's recommendations to permit suspension of reporting for repackaging ABS where reference issuers stop reporting or to permit suspension where requested by a majority of holders.³⁹ We are not adopting the recommendation regarding repackaging transactions because the concentration of the significant obligor in the asset pool makes the

³⁶ See letter from ASF and MetLife.

³⁷ See letter from MetLife and note 26. This change should address the concern described by MetLife.

³⁸ See letters from CREFC and MBA.

³⁹ See letter from Cleary.

information material. The need for the information about the underlying issuer in the reports for the ABS does not change due to a change in the reporting status of the underlying issuer.⁴⁰ In addition, we are not adopting the recommendation to permit suspension where requested by a majority of investors because any such suspension would limit the information available to investors and the marketplace for ABS with non-affiliated holders and could result in a reduction of the minority holders ability to sell and the price at which they may be able to sell their securities.

B. Revisions to Existing Exchange Act Rule Provisions

In light of the statutory changes to Exchange Act Section 15(d), we proposed to revise Exchange Act Rule 15d-22 to indicate when annual and other reports need to be filed and when starting and suspension dates are determined with respect to a takedown. We also proposed to amend Exchange Act Rule 12h-3(b)(1) to conform the rule to the language of amended Exchange Act Section 15(d) and to add a clarifying note.

1. Proposed Amendments

We proposed to amend Exchange Act Rule 15d-22 to retain the approach relating to separate takedowns in current Exchange Act Rules 15d-22(a) and 15d-22(b) in a revised Exchange Act Rule 15d-22(a). Under the amendments we proposed, Exchange Act Rule 15d-22(a)(1) would provide that with respect to an offering of ABS sold off the shelf pursuant to Securities Act Rule 415(a)(1)(x),⁴¹ the requirement to file annual and other reports pursuant to Exchange Act Section 15(d) regarding a class of securities commences upon the first bona fide sale in a takedown of securities under the registration statement.

⁴⁰ See the ABS Adopting Release at 1554.

⁴¹ 17 CFR 230.415(a)(1)(x).

Under the amendments we proposed, Exchange Act Rule 15d-22(a)(2) would establish that the requirement to file annual and other reports pursuant to Exchange Act Section 15(d) regarding a class of securities is determined separately for each takedown of securities under the registration statement. Exchange Act Rule 15d-22(c) would remain substantially unchanged, except for minor revisions to reflect the amendments discussed above. Finally, under the amendments we proposed, Exchange Act Rule 12h-3(b)(1) would exclude ABS from the classes of securities eligible for suspension (tracking the language of the Exchange Act) and a note would be added to Exchange Act Rule 12h-3 to direct ABS issuers to Exchange Act Rule 15d-22 for the requirements regarding suspension of reporting for ABS.

2. Comments on the Proposed Amendments

Commentators expressed general support, and no commentators provided specific comment on these proposed revisions.⁴²

3. Final Rule

After further consideration, we are adopting the amendments to our rules relating to when annual and other reports need to be filed and when starting and suspension dates are determined with respect to a takedown substantially as proposed.⁴³ We are also adopting the changes to Exchange Act Rule 12h-3(b)(1) to conform the rule to the language of amended Exchange Act Section 15(d), and provide a clarifying note to Exchange Act Rule 12h-3(b)(1) as proposed. In addition to the changes to Exchange Act Rule 12h-3 that we proposed, we are adding a clarifying note to Exchange Act Rule 12h-6 directing foreign private issuers that

⁴² See letters from ASF and Barnard.

⁴³ As adopted we are including a reference to Securities Act Rule 415(a)(1)(vii).

are ABS issuers to Exchange Act Rule 15d-22 for the requirements regarding suspension of reporting of ABS.

III. Paperwork Reduction Act

A. Background

Certain provisions of the disclosure rules and forms applicable to ABS issuers contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).⁴⁴ The Commission published a notice requesting comment on the collection of information requirements in the Proposing Release for the amendments, and submitted these requirements to the Office of Management and Budget for review in accordance with the PRA.⁴⁵ 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 affected collections of information are:

- (1) “Form 10-K” (OMB Control No. 3235-0063);
- (2) “Form 10-D” (OMB Control No. 3235-0604);
- (3) “Form 8-K” (OMB Control No. 3235-0288); and
- (4) “Form 15” (OMB Control No. 3235-0167).

Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the collections of information.

Our PRA burden estimate for Form 10-K, Form 8-K and Form 15 is based on an average of the time and cost incurred by all types of public companies, not just ABS issuers,

⁴⁴ 44 U.S.C. 3501 *et seq.*

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

to prepare the collection of information. Form 10-D is a form that is only prepared and filed by ABS issuers. Form 10-D is filed within 15 days of each required distribution date on the ABS, as specified in the governing documents for such securities, containing periodic distribution and pool performance information.

Our PRA burden estimates for the collections of information are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used by ABS issuers, as well as information from outside data sources.⁴⁶ In the Proposing Release, we based our estimates on an average of the data that we have available for years 2004 through 2009. In some cases, our estimates for the number of ABS issuers that file Form 10-D with the Commission are based on an average of the number of ABS offerings in 2006 through 2009.⁴⁷

In the Proposing Release we requested comment on the PRA analysis. No commentators responded to our request for comment on the PRA analysis. Subsequent to the enactment of the Act, the number of Forms 10-K, 8-K and 10-D filed by ABS issuers is expected to increase each year by the number of ABS registered offerings and the number of Forms 15 filed by ABS issuers is expected to decrease by a similar number.

The amendments provide for ABS issuers to suspend their reporting obligation under certain circumstances. While we expect that some issuers will be able to suspend their reporting obligations in the future as a result of the rules we adopt today, for purposes of the PRA, we estimated that the proposal will not affect our PRA estimates over the next three

⁴⁶ 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).

⁴⁷ Form 10-D was not implemented until 2006. Before implementation of Form 10-D, ABS issuers often filed their distribution reports under cover of Form 8-K.

years.⁴⁸ We also estimated that the amendments to Exchange Act Rule 15d-22 relating to reporting and shelf registration and Exchange Act Rule 12h-3 to conform the rule to Exchange Act Section 15(d) will not affect our PRA estimates.

The amendments are generally consistent with our proposals, although the amendments do provide for semi-annual assessment, rather than an annual assessment, and provide for immediate suspension of reporting when there are no outstanding ABS. We do not believe that the changes from our proposal will affect our PRA estimates.

As indicated above, we do not estimate that the final rules will affect our PRA estimates over the next three years, however, as explained in further detail in the Proposing Release, the Act's amendment to Section 15(d) is expected to effect the number of periodic and current reports and Forms 15 filed by ABS issuers each year.

We are revising our estimates to reflect 2010 data regarding ABS filings. In the Proposing Release we based our estimates for the number of ABS issuers on an average of the data that we have available for years 2004 through 2009. The yearly average of ABS registered offerings with the Commission over the period from 2004 to 2009 was 958. The yearly average of ABS registered offerings with the Commission over the period from 2005 to 2010, a similar 6-year period, was 751.⁴⁹ As a result, for PRA purposes, we are updating

⁴⁸ Since historical data on the numbers of classes of ABS that reduce their non-affiliated holders to zero is not generally available, we are using statistics relating to average expected deal life to establish our PRA estimate. Statistics compiled from SDC Platinum suggest that the average expected deal life of a class of ABS is over 5 years.

⁴⁹ We have chosen to continue using a six year average to estimate the number of ABS registered offerings despite the significant drop off in filings after 2007. As discussed in the Proposing Release, in order to estimate the number of Forms 10-K, Forms 10-D, Forms 8-K, and Forms 15 filed by ABS issuers for PRA purposes, we average the estimate of the number of those forms over three years. For the first year of our average, we are using an updated number of 751 as an estimate for the number of issuers we expect to file Forms 10-K, Forms 10-D and Forms 8-K. In the second year, we increase our estimate by 751 to a total of 1,502 and in the third year, the addition of another 751 brings the total to 2,253. The average number of issuers that we expect to file forms over three years would, therefore, be 1,502, however 751 of those issuers would have filed forms prior to the statutory change. We

our estimates of annual increases in Form 10-K filings to 751 filings,⁵⁰ in Form 10-D filings to 4,506 filings,⁵¹ and in Form 8-K to 1,127 filings⁵² and reducing the annual decrease in Form 15 filings to 751 filings.⁵³ In addition, consistent with our estimate in the Proposing Release that an average of six Form 10-D filings will be filed annually instead of ten Form 10-D filings, which forms the basis of the current PRA inventory for Form 10-D, we are reducing our current inventory of annual responses to Form 10-D to reflect the new annual estimate.

In summation, we estimate, for PRA purposes, increases of 90,120 total burden hours for Form 10-K (751 Forms 10-K times 120 burden hours per filing), 135,180 total burden hours for Form 10-D (4,506 Forms 10-D times 30 burden hours per filing), and 5,635 total burden hours for Form 8-K (1,127 Forms 8-K times 5 burden hours per filing), as well as a decrease of 1,127 total burden hours for Form 15 (751 Forms 15 times 1.5 burden hours per filing) as a result of the statutory changes to Exchange Act Section 15(d).⁵⁴ We allocate 75% of those hours (an increase of 67,590 hours for Form 10-K, 101,385 hours for Form 10-D, and 4,226 hours for Form 8-K) to internal burden and the remaining 25% to external costs

reduce the estimated increase by 751 to account for those issuers. We are therefore increasing our estimate by 751 issuers to account for the increase in the number of issuers that will be required to file reports as a result of the statutory change. See the Proposing Release supra note 6 at note 30.

⁵⁰ As discussed above, we estimate that an additional 751 issuers will be required to file reports as a result of the statutory change. We continue to estimate that each ABS issuer would have one annual Form 10-K filing.

⁵¹ We continue to estimate that each ABS issuer would have six annual Form 10-D filings resulting in 4,506 additional Form 10-D filings (751 ABS issuers x 6 filings) as a result of the statutory change.

⁵² We continue to estimate that each ABS issuer would have 1.5 annual Form 8-K filings resulting in 1,127 additional Form 8-K filings (751 ABS issuers x 1.5 filings) as a result of the statutory change.

⁵³ As indicated in the Proposing Release, we assume that in any given year the issuers of all registered ABS issued in the prior year would have suspended reporting using Form 15. After the implementation of the Act, issuers are no longer able to automatically suspend reporting; therefore, Form 15 will no longer be used by these ABS issuers as it was in the past. As a result, for the purposes of PRA, we estimate a decrease in Form 15 filings of 751.

⁵⁴ We allocate all of the burden for Form 15 filings to internal burden hours.

using a rate of \$400 per hour (an increase of \$9,012,000 for Form 10-K, \$13,518,000 for Form 10-D and \$563,500 for Form 8-K). In addition, we estimate, for PRA purposes, a decrease in total burden hours due to a change in agency estimate of the number of annual Form 10-D filings of 120,000 (4,000 Form 10-D filings times 30 burden hours per filing). We allocate 75% of those hours to internal burden (a decrease of 90,000) and the remaining 25% to external costs using a rate of \$400 per hour (a decrease of \$12,000,000).

The table below illustrates the changes in annual compliance burden in the collection of information in hours and costs for existing reports for ABS issuers as a result of the statutory changes mandated by the Act as well as the reduction in the estimated number of Form 10-D filings described above.

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
10-K	13,545	14,296	21,363,548	67,590	21,431,138	2,848,473,000	9,012,000	2,857,485,000
10-D	10,000	10,506	225,000	11,385	236,385	30,000,000	1,518,000	31,518,000
8-K	115,795	116,922	493,436	4,226	497,662	54,212,000	563,500	54,775,500
15	3,000	2,249	4,500	(1,127)	3,373	0	0	0

IV. Benefit-Cost Analysis

Exchange Act Section 15(d) generally establishes an ongoing reporting obligation for issuers with a registration statement that has become effective pursuant to the Securities Act. Prior to enactment of the Act, Exchange Act Section 15(d) provided that for issuers without a class of securities registered under the Exchange Act the duty to file ongoing reports is automatically suspended as to any fiscal year, other than the fiscal year within which the registration statement for the securities became effective, if the securities of each class to which the registration statement relates are held of record by less than 300 persons. The Act amended Exchange Act Section 15(d) to eliminate the automatic suspension of the duty to

file ongoing Exchange Act reports for ABS issuers and granted the Commission authority to issue rules providing for the suspension or termination of such duty. The Commission is exercising its authority under the Exchange Act, as amended by the Act, by amending Exchange Act Rules 12h-3, 12h-6 and 15d-22 to provide for the suspension of the duty to file for certain ABS issuers and reduce their compliance costs as discussed in this release.⁵⁵

The Commission is sensitive to the benefits and costs imposed by the rules it is amending. The discussion below focuses on the benefits and costs of the decisions made by the Commission in the exercise of its new exemptive authority provided by the Act, rather than the costs and benefits of the Act itself.

A. Benefits

The amendments the Commission is adopting allow an issuer to suspend reporting under certain circumstances and update certain provisions relating to reporting obligations under a shelf registration statement. Providing for issuers to suspend reporting would provide the benefit of allowing those issuers that are now required by the Act to continue reporting to avoid the costs of preparing and filing annual and periodic reports with the Commission when only affiliates of the depositor hold any outstanding securities of the classes sold in registered transactions.

We believe that reporting of the ongoing performance of an ABS is useful to investors and the market by providing readily accessible information upon which investors may evaluate performance and make ongoing investment decisions. We also recognize, however, that there are circumstances where the costs do not justify the benefits of reporting

⁵⁵ The proposed amendments to Exchange Act Rules 12h-3, 12h-6 and 15d-22(a) and (c) do not substantively alter the current requirements and should help issuers comply with their obligations and avoid confusion.

to investors and the market. In adopting rules to provide for the suspension or termination of the duty to file for certain ABS issuers, we have sought to balance the value of the information to investors and the market with the burden on the issuers of preparing the reports. More specifically, we believe that when there are only affiliated holders of the ABS, those affiliates will generally be able to receive relevant information because of their relationship with the depositor. Therefore, we are adopting new Exchange Act Rule 15d-22(b) to provide for issuers to suspend their reporting obligation under Section 15(d), as to any semi-annual fiscal period, if, at the beginning of the semi-annual fiscal period, there are no longer ABS of the class that were sold in a registration statement held by non-affiliates of the depositor and a certification on Form 15 has been filed.

We originally proposed that ABS issuers assess annually whether non-affiliates hold the ABS sold in registered transactions. We recognize that there is a trade-off between allowing the assessment to take place too frequently or not frequently enough. If the assessment is conducted frequently, it might result in an ABS issuer changing its reporting status often with the effect of less continuity in its annual and other reports. Reporting gaps could be detrimental to investors' ability to evaluate ABS performance and make ongoing investment decisions. However, more frequent assessments will allow an ABS issuer to report less and cease reporting as soon as non-affiliates no longer hold its securities, thus reducing the issuer's reporting burden and associated costs. Less frequent assessment of whether only affiliates hold the registered ABS issued, might result in unnecessary continued reporting until the assessment is made, up to 12 months for an annual assessment. The new Exchange Act Rule 15d-22(b) allows for semi-annual assessment, which we believe appropriately balances these competing interests.

B. Costs

In revising Exchange Act Section 15(d), Congress exhibited an intent to increase the continued reporting by ABS issuers, but gave the Commission authority to place limitations on that reporting in the public interest. The Commission exercised this authority and is adopting amendments allowing ABS issuers to suspend their reporting obligation under certain limited conditions. Providing for the suspension of reporting limits the ability of market participants to access and review information for those ABS that suspend reporting. We believe that this cost is mitigated under these conditions, since affiliates will generally be able to receive relevant information because of their relationship with the depositor. Thus, only non-holders of a particular ABS are affected. Furthermore, the utility of the information to market participants is limited since ABS owned solely by affiliates generally have no public market.

We recognize that there are additional costs to assessing holders semi-annually and preparing ongoing disclosure for registered transactions relative to the costs of issuing in the private markets. An issuer's decision about whether to issue registered ABS may be affected by the threshold at which issuers may suspend their reporting obligations under Section 15(d). We solicited comments on whether an alternative suspension threshold might mitigate this effect or be more appropriate for other reasons. Although three commentators responded to our request with suggested alternatives, we are not adopting those alternatives, as discussed in Section II.A.3. above. No commentator provided us with data or analysis that would support an alternative threshold. Thus, we continue to believe that a threshold of zero non-affiliates is consistent with the Act and presents an appropriate balance between the

value of the reported information to investors and the market, and the costs of preparing the reports.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a) of the Exchange Act⁵⁶ 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 3(f) of the Exchange Act⁵⁷ requires 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. The discussion below focuses on the effects of the decisions made by the Commission in the exercise of its new exemptive authority provided by the Act, rather than the effects of the Act itself.

The Act amended Exchange Act Section 15(d) to eliminate the automatic suspension of the duty to file ongoing Exchange Act reports for ABS issuers and granted the Commission authority to issue rules providing for the suspension or termination of such duty. The Commission is exercising its authority under the Act by amending Exchange Act Rules 12h-3, 12h-6 and 15d-22 to provide for the suspension of the duty to file for certain ABS issuers and reduce their compliance costs as discussed in this release.

⁵⁶ 15 U.S.C. 78w(a).

⁵⁷ 15 U.S.C. 78c(f).

The amendments update the reporting requirements for takedowns from shelf registration in Exchange Act Rule 15d-22 and provide for the suspension of the duty to file for certain ABS issuers as discussed in this release. Providing for ABS issuers with only affiliated holders to suspend their duty to file decreases transparency regarding those issuers. The suspension of the duty to file reduces compliance costs for issuers, which could increase efficiency and facilitate capital formation.

An inability to suspend the duty to file may encourage some issuers to offer ABS privately or not to issue ABS at all, rather than registering those ABS and incurring the ongoing reporting costs. If issuers register fewer ABS, this would reduce liquidity, decrease transparency in the ABS market and decrease capital formation. The amendments provide for ABS issuers to suspend their duty to file when they have only affiliated investors remaining and provide issuers certainty regarding when they may suspend reporting, which may encourage some ABS issuers to register ABS and offer ABS in the public markets. These changes are intended to mitigate the aforementioned incentives to offer ABS privately or not to issue ABS at all.

The clarifications provided in Exchange Act Rule 15d-22, 12h-3, and 12h-6 may have a beneficial effect on the efficiency of managing ABS offerings, especially takedowns from ABS shelf registration, by providing issuers with a better understanding of their Exchange Act reporting obligations and facilitating compliance.

We do not believe the amendments will have an impact or burden on competition.

VI. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act, we certified that, when adopted, the proposals would not have a significant economic impact on a substantial number

of small entities. We included the certification in Part IX of the Proposing Release, but received no comment.

VII. Statutory Authority and Text of Rule and Form Amendments

We are adopting the amendments contained in this document under the authority set forth in Sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act.

List of Subjects

17 CFR Parts 240 and 249

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 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read 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, 78 l, 78m, 78n, 78n-1, 78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78 ll, 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 and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

2. Amend § 240.12h-3 by:

- a. In paragraph (b)(1) introductory text adding “, other than any class of asset-backed securities,” in the first sentence after “Any class of securities”; and
- b. Adding a Note to paragraph (b).

The addition to read as follows:

§ 240.12h-3 Suspension of duty to file reports under section 15(d).

* * * * *

(b) * * *

(2) * * *

NOTE TO PARAGRAPH (b): The suspension of classes of asset-backed securities is addressed in § 240.15d-22.

* * * * *

3. Amend § 240.12h-6 by adding a Note after paragraph (i) to read as follows:

§ 240.12h-6 Certification by a foreign private issuer regarding the termination of registration of a class of securities under section 12(g) or the duty to file reports under section 13(a) or section 15(d).

* * * * *

(i) * * *

NOTE TO § 240.12h-6: The suspension of classes of asset-backed securities is addressed in § 240.15d-22.

* * * * *

4. Revise § 240.15d-22 to read as follows:

§ 240.15d-22 Reporting regarding asset-backed securities under section 15(d) of the Act.

(a) With respect to an offering of asset-backed securities registered pursuant to §230.415(a)(1)(vii) or §230.415(a)(1)(x) of this chapter:

(1) Annual and other reports need not be filed pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) regarding any class of securities to which such registration statement

relates until the first bona fide sale in a takedown of securities under the registration statement; and

(2) The starting and suspension dates for any reporting obligation under section 15(d) of the Act (15 U.S.C. 78o(d)) with respect to a takedown of any class of asset-backed securities are determined separately for each takedown of securities under the registration statement.

(b) The duty to file annual and other reports pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) regarding any class of asset-backed securities is suspended:

(1) As to any semi-annual fiscal period, if, at the beginning of the semi-annual fiscal period, other than a period in the fiscal year within which the registration statement became effective, or, for offerings conducted pursuant to §230.415(a)(1)(vii) or §230.415(a)(1)(x), the takedown for the offering occurred, there are no asset-backed securities of such class that were sold in a registered transaction held by non-affiliates of the depositor and a certification on Form 15 (17 CFR 249.323) has been filed; or

(2) When there are no asset-backed securities of such class that were sold in a registered transaction still outstanding, immediately upon filing with the Commission a certification on Form 15 (17 CFR 249.323) if the issuer of such class has filed all reports required by Section 13(a), without regard to Rule 12b-25 (17 CFR 249.322), for the shorter of its most recent three fiscal years and the portion of the current year preceding the date of filing Form 15, or the period since the issuer became subject to such reporting obligation. If the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days, file with the Commission all reports which would have been required if such certification had not been filed.

NOTE 1 TO PARAGRAPH (b): Securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers shall be considered as held by the separate accounts for which the securities are held.

NOTE 2 TO PARAGRAPH (b): An issuer may not suspend reporting if the issuer and its affiliates acquire and resell securities as part of a plan or scheme to evade the reporting obligations of Section 15(d).

(c) This section does not affect any other reporting obligation applicable with respect to any classes of securities from additional takedowns under the same or different registration statements or any reporting obligation that may be applicable pursuant to section 12 of the Act (15 U.S.C. 78l).

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

5. Amend Form 15 (referenced in § 249.323) by:
 - a. Adding a checkbox referring to “Rule 15d-22(b)” after the checkbox referring to “Rule 15d-6”; and
 - b. By revising the first sentence of the Instruction to read: “This form is required by Rules 12g-4, 12h-3, 15d-6 and 15d-22 of the General Rules and Regulations under the Securities Exchange Act of 1934.”

By the Commission.

Elizabeth M. Murphy
Secretary

Dated: August 17, 2011