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Summary of Proposed SEC Rule Changes Relating to Asset-Backed Securities

The Securities and Exchange Commission (the "SEC") is proposing significant revisions to Regulation AB and other rules under the Securities Act of 1933, as amended (the "Securities Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), regarding the offering process, disclosure and reporting for asset-backed securities and other structured finance products. Set forth below is a summary of some of the more significant changes.

I. Securities Act Registration

A. New Forms: SF-1 and SF-3

1. Form SF-1 replaces Form S-1 for non-shelf registration of individual ABS. The proposed differences are:
   a) Form SF-1 removes ability to use a summary prospectus (SEC deemed this inapplicable to ABS).
   b) Form SF-1 limits ability to incorporate by reference to only certain disclosures applicable to ABS — e.g. to static pool data filed under Item 6.08 of Form 8-K, asset data filed under Item 6.06 of Form 8-K, waterfall computer programs filed under Item 6.07 of Form 8-K[1].
2. Form SF-3 replaces Form S-3 for shelf registration of ABS. The proposed differences are:
   a) **Investment-grade requirement would be repealed**. Requirement that ABS securities offered by shelf registration be rated investment grade by at least one nationally recognized statistical rating organization was replaced by the **four new shelf eligibility criteria s**et forth in Section I. B. below that would apply to mortgage related securities and other ABS.
   b) Rule 415 (shelf-registration rule) will be amended (i) to provide that ABS offerings can only be done on a continuous basis pursuant to "all or none" offerings (no best efforts or "mini-max"), (ii) to provide that delayed offerings of mortgage related securities (as defined in Section 3(a)(41) of the Exchange Act) must be registered on Form SF-3 and must meet all eligibility requirements of that form, similar to other ABS[2], and (iii) to provide that all ABS offerings on Form SF-3 done on a delayed basis are covered by Rule 415(a)(1)(vii) and must be accompanied by the requisite depositor CEO certification.
   c) **Failure to file Form 8-K upon 1% or more change in asset pool now results in 1 year penalty:** Item 6.05 of Form 8-K: Repealing the existing exception from the filing timeliness requirement for Item 6.05 Form 8-K

[1] Revolving Asset Master Trusts can also incorporate by reference asset-level disclosure previously filed under Form 10-Ds.

[2] Currently, offerings of mortgage related securities that don't meet the requirements of Form S-3 can be registered on a delayed basis on Form S-1. This provision was added to Rule 415 contemporaneously with the enactment of SMMEA. New rule will be enumerated in Rule 415(a)(1)(vii).

reports (which are required to be filed if there is a 1% or more change in the asset pool characteristics from final prospectus) so that untimely filing under Item 6.05 for a class of ABS involving the same asset class during the prior 12 months and any portion of the month immediately preceding filing results in loss of Form SF-3 eligibility for up to 12 months from the time the Item 6.05 report was due. Also, the threshold for Item 6.05 Form 8-K reports will be lowered from 5% to 1% of any material pool characteristic.[3]

B. Four New Criteria for Eligibility for Shelf Registration on Form SF-3 (in Lieu of Investment Grade Rating Requirement)

1. Continued 5% Risk Retention — At Issuance and Afterwards

a) Sponsor (or affiliate of sponsor) will be required to retain a 5% "net economic interest" in the securities offered:

(1) For an ABS, **retention of a minimum of 5% of the nominal amount of each tranche sold to investors**, net of any hedge positions "directly related" to the securities or exposures taken by such sponsor or affiliate.

(2) For a revolving-asset master trust, retention of the originator's interest of a minimum of 5% of the nominal amount of securitized exposures, net of any hedge positions "directly related" to the securities or exposures taken by such sponsor or affiliate (provided that payments on the originator's interest are not less than 5% of payments on the securities held by the investors).

b) "Net economic interest" is measured at the issuance of the securities (or at origination in the case of an originator's interest) and needs to be retained for as long as **non-affiliates of the depositor hold any of the issuer's securities** that were sold in the offering.

c) No need to net out hedges that are not "directly related" to the sponsor's retained exposure, including: 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 ABS (ABX ok as long as those securities are not included in the ABX).

2. Quarterly Third Party Review of Repurchase Obligations

a) Pooling and servicing agreement (or other filed transaction agreement) would need to require that a party who is required to repurchase pool assets (i.e. representing and warranting party) must furnish a third party opinion relating to any asset for which the trustee asserted a breach and the asset was not repurchased or replaced on the basis of an assertion that the asset did not violate the representations and warranties in the PSA.

(1) Opinion would need to be furnished to trustee on quarterly basis.

3. Undertaking for Ongoing Exchange Act Reporting

[3] Currently, to use Form SF-3, can't use S-3 if depositor or affiliate thereof with respect to same asset class of ABS has not filed Exchange Act reports required to be filed or has not filed such reports timely for a period of 12 months prior to the filing of the S-3.

a) Prospectus would be required to include a statement that the registrant undertakes to file the periodic reports required by Section 15(d) of the Exchange Act for as long as any non-affiliate of the depositor holds any of the issuer's registered securities.

(1) Currently, the obligation to file Exchange Act periodic reports is suspended at the start of the issuer's second fiscal year if the securities are held of record by fewer than 300 persons (which typically is the case for ABS).

b) Prospectus would also be required to specify any failure to file a timely report in the previous year for any affiliate of the depositor or issuer entity established by the depositor, whether the unfiled report had been required by statute or by the undertaking described above. This will be contained in Item 1106 of Regulation AB.

4. Certification by Depositor's CEO

a) For each shelf offering, the issuer would be required to file a certificate signed by the depositor's CEO certifying 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."

(1) The CEO would also be required to certify that he or she has "reviewed the prospectus and the necessary documents to make such certification."

(2) The certification would be based on the knowledge of the certifying CEO.

(3) Language of certification cannot be altered. Similar to SOX certifications required to be filed in accordance with Exchange Act Rules 13a-14 and 15d-14. Must handle qualifications through disclosure in the prospectus.

(4) Certification must be filed with the final prospectus under Rule 424.

C. Other Proposed Form SF-3 Requirements Pertaining to Compliance with the Four New Criteria in Section B Above[4]

1. **Shelf Eligibility**: The following requirements would be new shelf eligibility conditions to filing a registration statement on Form SF-3:

a) Retained Risk: First, to the extent the sponsor, with respect to the depositor or an issuing entity previously established by the depositor or an affiliate of the depositor, for a prior ABS offering involving the same asset class was required to retain risk with respect to a previous ABS offering involving the same asset class, such sponsor or affiliate of sponsor must be holding the required percentage of retained risk at the time of filing the registration statement (however, sponsor is not required to insure that risk was retained at all times during that period).

b) Other Shelf Requirements: Second, to the extent the depositor, or an issuing entity previously established by the depositor or an affiliate of the

[4] Contained in Amendments to Rule 401 and in the instructions to Form SF-3.

depositor, were at any time in the previous 12 months or in the month preceding the filing of a registration statement required to comply with other shelf requirements with respect to a previous offering of securities involving the same asset class, the following requirements would apply:

(1) Depositor and each such issuing entity must have **timely** filed all transaction agreements containing the required provision relating to third party review of repurchase demands (as described in II.B.2 above).[5]

(2) Depositor and each such issuing entity must have **timely** filed all required certifications of depositor's CEO (as described in II.B.4 above).

(3) Depositor and each such issuing entity must have filed (not necessarily timely) all periodic reports under Section 15(d) of the Exchange Act that they had undertaken to file during the previous 12 months (as described in II.B.3 above).

c) [Old requirement: Depositor and its affiliates must have been timely for the preceding 12 months with respect to all reports required to be filed under Section 15(d) of the Exchange Act (i.e. in the first year of the trust or trust has more than 300 holders) with respect to the same asset class.]

d) Third, registration statement must contain disclosure that the above registrant requirements set forth in clauses (a) and (b) immediately above have been complied with.

2. **Take-Down Eligibility**: The following would be eligibility conditions to be evaluated prior to conducting a take-down offering off an effective Form SF-3 shelf registration statement (contained in Rule 401):

a) On an annual basis, as of the 90th day after the end of a depositor's fiscal year end prior to the subject offering[6], whether all required Section 13(a) and 15(d) Exchange Act reports[7] have been timely filed by the depositor or (with respect to asset-backed securities backed by the same asset class) any issuing entity established by the depositor or any of its affiliates.

(1) Untimely filing of even one report would result in the inability to use the related registration statement for at least one year from the date the issuer that failed to file the reports became current (and other requirements were met).

b) On a quarterly basis, as of the last day of the most recent fiscal quarter, evaluate whether the ABS issuer has satisfied the registrant requirements related to risk retention, third party opinions relating to repurchase demands, depositor CEO certification and the undertaking to file ongoing reports (all described above).

[5] Must be filed by the date of the final prospectus.

[6] It is unclear how the 12 month look-back is applied on an annual basis 90 days after the fiscal year end. For example, what would occur if there was a filing violation in February 2011 and a takedown in January 2012. Are you permitted to conduct your takedown because as of April 2012 you are no longer in violation, and you were not in violation in April 2011.

[7] This requirement applies to reports required to be filed under the Exchange Act, i.e. if it is the first year of a CMBS trust or the trust has more than 300 holders, not to reports filed pursuant to the undertaking.

(1) Risk Retention to be evaluated as of the last day of the most recent fiscal quarter: Failure to retain the required risk (e.g. sold off or hedged) by a sponsor, with respect to the depositor or an issuing entity previously established by the depositor or an affiliate of the depositor, for a prior ABS offering involving the same asset class, would result in disallowing use of the related shelf registration statement for subsequent offerings until the fiscal quarter after the sponsor has reacquired the required risk amount (by removing the disqualifying hedge or open market purchases) and that amount remained on the sponsor's books at the end of the quarter.[8]

(2) Transaction Agreements and Officer Certifications as of the last day of each fiscal quarter, but based on the preceding 12 months: Failure by the depositor **or its affiliates** to file required transaction agreements containing third party opinion provision or failure by the depositor's CEO to file officer certification's, in each case on a timely basis for the previous 12 months, disallows use of the related registration statement, or filing of a new registration statement on Form SF-3, until one year after the required filings were filed.

(3) Undertaking to file Exchange Act Reports to be evaluated as of the last day of each fiscal quarter: Failure of the depositor or affiliates of the depositor to file reports they undertook to file during the previous twelve months as of the last day of the most recent fiscal quarter would result in loss of ability to use an effective shelf for takedowns until the following fiscal quarter.[9]

D. New Rule 430D; New Rule 424(h) Filing — Advance Filing and Delivery of Preliminary Prospectus

1. New Rule 430D: SEC is proposing new Rule 430D to provide the framework for delayed shelf offerings of ABS pursuant to Rule 415(a)(1)(vii).[10]

2. **Asset-backed issuers using Form SF-3 must now file a preliminary prospectus** containing substantially all required disclosure [transaction specified information] **five business days prior to the first sale** in the offering. In particular, with respect to any takedown in a shelf offering of ABS, where information is omitted from an effective registration statement in reliance on newly proposed Rule 430D, a Rule 424(h) prospectus or a Rule 424(h) filing must be filed/made at least five business days prior to the first sale of securities in the offering (time of contract of sale — see SOR). This will be referred to as the "**Rule 424(h) filing" or the "Rule 424(h) prospectus.**"

   a) Under proposed new Rule 430D, the Rule 424(h) preliminary prospectus filing in a shelf registration of ABS (i) could only omit information

[8] Even though the risk retention is only evaluated at specified times, if there were periods where the requisite risk was not retained it would be subject to proposed periodic reporting disclosure requirements related to the sponsor's interest.

[9] So reports required under Section 13(a) or 15(d) of the Exchange Act must continue to be timely for shelf eligibility (including takedowns), evaluated on an annual basis, but reports required pursuant to the undertaking must only be current as of the end of the quarter.

[10] If Rule 430D is adopted, Rule 430B would no longer apply to ABS. Under Rule 430B, a form of prospectus for ABS may omit information unknown or not reasonably available pursuant to Rule 409.

related to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent on the offering price, and (ii) must contain substantially all information for the specific ABS takedown previously omitted (including asset specific information and the waterfall computer program).

b) Rule 430D would provide that if a material change occurred in the information contained in the preliminary prospectus, other than price, an updated preliminary prospectus would have to be filed by the issuer and another five days would have to pass prior to the first sale.

c) So long as a form of prospectus has been filed under Rule 430D, ABS issuers could continue to use FWPs (Rules 405, 164 and 433) or ABS informational and computational materials (Rules 167 and 426)in accordance with existing rules. (Rule 159 remains unchanged).

d) A final prospectus under Rule 424(b) must be filed and such filing would trigger a new effective date for the registration statement for purposes of Section 11 liability.

3. If preliminary prospectus is used earlier than such five business days before the first sale in the offering, then it must be filed by the second business day after the first use.

4. For purposes of liability under the Securities Act, the Rule 424(h) preliminary prospectus would be deemed part of the registration statement on the earlier of the day it was filed with the SEC (5 business days prior) and the date it is first used (Rule 430D(e)(2).

5. Exchange Act Rule 15c2-8(b): Preliminary prospectus for ABS, including master trust securitizations, would be required to be delivered by a broker or dealer to an investor at least 48 hours prior to confirmation of sale.

a) Currently, Exchange Act Rule 15c2-8(b) contains an exception to the 48-hour preliminary prospectus delivery requirement for ABS offerings eligible for Form S-3 registration. This exception would be repealed.

E. Information to be Included in the Form of Prospectus in the Registration Statement; Requirement of an Integrated Prospectus; Prospectus Content Limitations

1. Pursuant to new Rule 430D and an instruction to proposed Form SF-3, ABS shelf registrants would be required to file a single form of integrated prospectus before a registration statement becomes effective, followed by a single preliminary prospectus and a single final prospectus for each shelf takedown.

a) Would replace, for ABS shelf offerings, previous disclosure scheme in which (i) base prospectus describing possible future offerings, general types of assets that may be securitized and structures that may be used, together with general risk factors and other disclosures, is filed with the SEC prior to the effectiveness of the registration statement, and (ii) prospectus supplement describing the specific terms of the securities being offered, is filed before each shelf takedown.

2. Each registration statement would be limited to a single asset class and a single depositor.

a) Previously, multiple asset classes and multiple depositors were permitted in the same registration statement.

3. Issuers would be required to file post-effective amendments to add new structural features or credit enhancements.

F. Registration Statement Signatures

1. Registration statements for ABS would need to be signed by the depositor's senior officer in charge of securitization. Asset backed issuers would now be exempt from the requirement that the depositor's controller or principal accounting officer sign the registration statement.

G. Pay-As-You-Go Registration Fees

1. Issuer would be permitted to pay registration fees for ABS at the time preliminary prospectus is filed with SEC under Rule 424(h), rather than prior to the time the registration statement becomes effective (as currently required).[11]
    a) This is a concession by the SEC in consideration of the more burdensome requirement to file a separate registration statement for each different asset class.

II. Disclosure Requirements Applicable to all Registered Offerings of ABS (Shelf or Non-Shelf)[12]

A. Asset Level Disclosure in the Prospectus

1. Standardized Asset-Level Disclosure: Proposed rules greatly expand the data required to be made available to investors both at time of offering and on ongoing basis. There will be a new Item 1111(h) and Schedule L as part of Regulation AB which enumerate all of the data points that must be provided for each asset in the pool. Schedule L will be an integral part of the prospectus.
    a) General Disclosure: Schedule L will provide 28 specified data fields of required general standardized information for all asset types (other than credit cards, charge cards and stranded costs).
        (1) Designed to provide information about the characteristics of the receivable and any related collateral, and the borrower's ability to pay, e.g. payment stream and terms, prepayment information, quality of obligor and asset origination, information on each property, etc.
    b) Asset-Specific Disclosure: Schedule L will also be subdivided based on asset classes, and will provide additional asset specific data fields for each of 10 asset classes: (i) residential mortgage loans (137 additional data points); (ii) commercial mortgage loans (61 additional data points)[13]; (iii) automobile loans (31 additional data points); (iv) automobile leases (33 additional data points); (v) equipment loans (5 additional data points); (vi) equipment leases (8 additional data points); (vii) student loans (28 additional data points); (viii) floorplan financings (6 additional data points); (ix) corporate debt (9 additional data points);

[11] When you file a Rule 424(h) prospectus, include a calculation of registration fee table on cover page and page appropriate fee calculated under Rule 457.

[12] Note that the substantive disclosure requirements for the various asset classes discussed below will also be relevant to private offerings. See discussion under Section V below.

[13] CMBS data points are primarily based on definitions included in the CRE Finance Counsel Investor Reporting Package, current Regulation AB requirements and staff review of current disclosure.

and (x) resecuritizations (additional data points dependent on type of underlying assets).

c) Resecuritizations: For resecuritizations, the following disclosure would be required: (i) for each ABS in the asset pool, all disclosure that would be required for a corporate debt security; (ii) the asset-level data that would be required for the assets underlying the resecuritized ABS as would have been required in a primary securitization of those same pool assets (regardless of whether the underlying issuer is reporting); and (iii) the waterfall program for each underlying security (Item 1113(h) of Regulation AB).

(1) This would apply both for the initial offering and for ongoing reporting requirements.

(2) Applies to resecuritizations after the effective date of the amendments without regard to whether the underlying securities were issued prior to the effective date.

d) For ABS backed by credit cards, charge cards and stranded costs, asset-level data would not be required; rather, issuers would need to provide grouped account data based on aggregating the asset-level data into groups organized by combinations of account characteristics.

e) Some asset-level data would only be required to be provided in ranges or categories, in order to protect privacy of obligors.

(1) Example: Range in which obligor's credit score falls would be disclosed, rather than specific credit score.

f) Asset-level data to be filed using XML data formatting on EDGAR. See Section II.D.2 below.

2. Timing of asset-level data on Schedule L to be provided:

a) at time of filing of Rule 424(h) preliminary prospectus (in case of issuance under a shelf registration) or effectiveness of stand-alone registration statement — such information to be provided as of a recent practicable date defined as the "measurement date".

b) an updated Schedule L at filing of the Rule 424(b) final prospectus — such information to be provided as of the cut-off date for the securitization.

c) at time filing of a Form 8-K pursuant to Item 6.05 disclosing changes to the pool after final prospectus is filed.

d) new Item 6.06 of Form 8-K will be used for issuers to file the XML data file.

B. Asset-Level Ongoing Reporting Requirements

1. Proposed Schedule L-D and Items 1121(d) and 1121A of Regulation AB would be required at the time of each Form 10-D for all assets (other than credit cards, charge cards and stranded costs). Asset-level performance data is required to be disclosed on a monthly basis in issuer's Form 10-D distribution report required under Sections 13 and 15(d) of the Exchange Act (including those required pursuant to the undertaking to continue reporting).

a) Ongoing reporting of asset-level performance on Form 10-D would differ significantly from information provided at initial offering, and would include information related to whether an obligor is making

payments as scheduled, servicer's efforts to collect past due payments and losses that may be incurred by investors.

b) General Disclosure: There will be 46 standardized data points listed under Item 1. General of Schedule L-D for all asset classes (other than credit cards, charge cards and stranded costs).

c) Asset Specific Disclosure: There will be asset-class-specific data points in addition — 151 additional data points for RMBS, 47 additional data points for CMBS. The following additional data points also apply: 5 for auto loans, 9 for auto leases, 2 for equipment loans, 5 for equipment leases, 6 for student loans; 5 for floorplan financings. For resecuritizations, disclosure is required under Item 1. General of Schedule L-D, in addition to Schedule L-D data for the asset pool of the underlying securities (even if the issuer of the underlying security suspends its reporting obligation and stops reporting).

2. Asset-level information to be filed on EDGAR in XML, which would allow investors to download the data directly into spreadsheets for evaluation, in accordance with proposed Item 6.06 of Form 8-K.

C. Grouped Account Data for Credit Cards

1. Proposed Schedule CC and Item 1111(i) of Regulation AB would be required and would describe the standardized distributional groups and the information provided for each group. Schedule CC would be an integral part of the prospectus, to be filed as of the measurement date at the time of the Rule 424(h) prospectus, at the time of the final Rule 424(b) prospectus, together with any reported changes to the pool under Item 6.05 of Form 8-K, and at the time of each periodic report on Form 10-D. Issuers would file the XML data file under Item 6.06 of Form 8-K.

2. Date would be grouped by a combination of the following characteristics: credit scores; number of days past due; account age; state; adjustable rate index;

D. Waterfall Computer Program; Asset Data File

1. **Waterfall Computer Program**: ABS issuers would be required to file with the SEC a Waterfall Computer Program in XML — must be filed on EDGAR in the form of downloadable source code in Python, an open-source format that gives effect to the flow of funds in transaction agreements.

   a) Waterfall Computer Program must give user the ability to input their assumptions regarding cash flows from the pool assets, including interest rates, default rates and prepayment speeds, loss-given-default rates, and other assumptions.

   b) Waterfall Computer Program must give user the ability to input the current state and performance of underlying pool assets by uploading directly into the computer program the initial XML Asset Data File filed with EDGAR and any subsequent monthly updates thereto.

   c) Program would produce a machine-readable output of all resulting cash flows associated with the ABS, including amount and timing of principal and interest payments made to holders of each class of securities.

   d) Issuers would be required to provide a sample output data file, disclosing the sample input assumptions for the expected output, for each class of securities in an ABS transaction, in order to verify that users of the

waterfall program could generate the same outputs, based on the Asset Data File filed with the Waterfall Computer Program.

e) Prospectus must state that the Waterfall Computer Program information provided is provided as a downloadable source code for a computer program in the Python language, is available on the SEC website, and provide the CIK and file number of filing.

f) When to File: Waterfall Computer Program must be filed under Form 8-K (new Item 607) on the date of effectiveness of a Form SF-1, and for a Form SF-3 (i) on the same date of the filing of the preliminary prospectus under Rule 424(h), and (ii) on the same date of the filing of a final prospectus under Rule 424(b).

2. **Asset Data File**: Asset Data File must be filed in XML, a machine-readable language, which will enable investors to use standard commercial off-the-shelf software for analysis of underlying loan level data.[14]

a) Ten blank data tags will be provided to present additional asset-level data not required by Schedule L or L-D. These could also be used to provide information regarding assets as to which a prescribed set of disclosure items has not been provided, however, the issuer would need to provide a narrative explanation of the definitions or formulas for the additional tagged data and file it as an exhibit on Form 8-K or Form 10-D.

b) When to File: Asset Data File must be filed under Form 8-K (new Item 606) on the date of effectiveness of a Form SF-1, and (i) on the same date of the filing of the preliminary prospectus under Rule 424(h), (ii) on the same date of the filing of a final prospectus under Rule 424(b), (iii) on the date a report is filed under Item 6.05 of Form 8-K (Securities Act Updating Disclosure), and (iv) on an ongoing basis as an exhibit to the Form 10-D distribution report.

3. **Hardship Exemption**: There is a proposed self-executing temporary hardship exemption for filing the Asset-Data File (Rule 201 of Regulation S-T). If the registrant experiences unanticipated technical difficulties preventing the timely filing of an Asset Data File or the Waterfall Computer Program, a registrant will still be considered timely if (i) the Asset Data File or Waterfall Computer Program is posted on a Web site on the same day it was due to be filed on EDGAR, (ii) the Web site address is specified in the required exhibit, (iii) a specified legend is provided in the appropriate exhibit claiming the hardship exemption, and (iv) the Asset Data File or Waterfall Computer Program is filed on EDGAR within 6 business days.[15]

E. Static Pool Information

1. Increased disclosure for prior securitized pools of the sponsor for that asset type, partly due to perceived inconsistencies among ABS issuers in disclosure of static pool information. Required disclosure to include:

a) narrative introductory and explanatory information introducing the characteristics of the static pool;

[14] CRE Finance Council is moving toward requiring issuers to provide the Investor Reporting Package in XML. Changes are proposed 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 (L, L-D and CC).

[15] Removed from the Rule 201 and Rule 202 under regulation S-T hardship exemptions.

b) methodology used in calculating the characteristics of the static pool;

c) terms or abbreviations used;

d) description of how the static pool differs from the pool underlying the securities being offered;

e) graphic presentation of information, if it would aid understanding;

f) delinquencies, cumulative loss and prepayment data for each prior securitized pool or vintage origination year in graphic form, specifically for amortizing asset pools;

g) historical delinquency and loss information in accordance with Item 1100(b) of Regulation B, requiring (among other things), delinquencies to be reported in 30 or 31 day increments through the date the assets are written off or charged off (as opposed to in quarterly increments as currently reported for amortizing asset pools); and

h) **an explanation of why any specified static pool information has not been included or why any alternative information has been provided. [this is new]**

2. Static pool disclosure requirements would no longer be met by issuers posting information on a website; filing on EDGAR would be required instead, either in prospectus or in Form 8-K incorporated by reference into prospectus.

a) Static pool information could, however, be filed on EDGAR as a PDF.

F. Pool Asset Disclosure

1. Scope of pool asset information to be expanded to include (Item 1111 of Regulation AB):

a) Description of the underwriting criteria used to originate or purchase the pool assets.

b) Information on the underwriting of assets that deviated from the specified criteria, including amount and characteristics of those assets.

c) Compensating or other factors used to determine that those assets should be included in the pool, and data as to which other assets in the pool do and do not meet those factors.

d) Description of the steps taken by the originator to verify the information used in the underwriting of the pool assets.

e) Summary of representations and warranties made concerning pool assets by sponsor, transferor, originator or other party to transaction, and what remedies are available for breach thereof.

f) Description of any representation or warranty relating to fraud that was made, or explicit statement if none was made.

g) Description of provisions in transaction documents relating to modification of the terms of any asset, including how modification may affect cash flows.

2. Reporting threshold for required disclosure (under Item 6.05 on Form 8-K) of change to material characteristics of the asset pool between the date of final prospectus and issuance date would be 1% of asset pool.

a) Currently, only changes to 5% of the asset pool or greater requires disclosure under Item 6.05 on Form 8-K.

G. Disclosure Concerning Transaction Parties

1. Sponsor/Originator Pool Asset Repurchase Information: disclosure required:
   a) For the sponsor and each originator that originated at least 20% of the pool assets, the amount (if material), on a pool-by-pool basis, of publicly securitized assets originated or sold by such sponsor or originator that were the subject of a demand to repurchase or replace for breach of representations or warranties concerning the pool assets that had been made in the prior three years.
   b) Percentage of that amount that was not repurchased or replaced by the sponsor or originator.
   c) Whether the opinion of an unaffiliated third party had been furnished to the trustee confirming that the assets did not violate the representations/ warranties.
   d) Financial condition of the sponsor or 20% originator, to the extent there is a material risk that the party's financial condition could have a material impact on (i) with respect to the sponsor or 20% originator, such party's ability to comply with repurchase obligations for the assets, (ii) with respect to a 20% originator, the originator's origination of the assets in the pool, or (iii) with respect to the sponsor, the pool assets.
2. Identification of Non-Sponsor Originators
   a) If the aggregate amount of pool assets originated by parties other than the sponsor is 10% or more, every originator would need to be identified.
   b) Previously, only originators of 10% or more were required to be identified in disclosure.
3. Expanded Servicer Disclosure
   a) Servicing Noncompliance Disclosure
      (1) Disclosure concerning material instances of non-compliance by servicers, which had already been required to be disclosed in Form 10-K annual reports of issuers, would need to include whether identified instances of noncompliance with servicing criteria involved the servicing of the assets backing the ABS covered in that particular annual report.
      (2) Steps taken to remedy any material instance of noncompliance with respect to ABS transactions taken as a whole involving such issuer, as well as those that are backed by the same asset type backing the asset-backed securities covered in that particular annual report.
   b) An additional servicing criterion would be added to Item 1122 of Regulation AB, requiring that the aggregation of information is mathematically accurate and the information conveyed by a servicer accurately reflects the information

H. Filing of Exhibits: Pooling and Servicing and Other Transaction Agreements

1. All final transaction documents that would be required to be filed as exhibits to, and incorporated as part of, a registration statement by the date the final prospectus is required to be filed under Securities Act Rule 424.[16]

I. Disclosure of Parties' Economic Interest in Transaction

1. Disclosure is required describing any interest retained in the transaction by sponsor, servicer or 20% originator, including amount and nature of that interest. This would be required for both shelf and non-shelf offerings.
2. For non-shelf offerings, the prospectus would be required to specify that the sponsor is not required to retain any risk in the securities, and that the sponsor may, at any time, sell any interest that is initially retained.

J. Prospectus Summary

1. Item 1103(a)(2) of Regulation AB would contain a new instruction clarifying that the summary disclosure in the prospectus should provide statistical information regarding the types of underwriting or origination programs, the exceptions to underwriting or origination criteria and, if applicable, modifications to the pool assets after origination. SEC wants to make sure summary highlights the material characteristics and risks of the ABS being offered.

III. Definition of an Asset-Backed Security[17]

A. Current Definition Of "Asset-Backed Security" under Regulation AB: *An "asset-backed security" is a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases; and provided, further, that:*

1. *Neither the depositor nor the issuing entity is an investment company under the Investment Company Act of 1940 nor will become an investment company as a result of the asset-backed securities transaction.*
2. *The activities of the issuing entity for the asset-backed securities are limited to passively owning or holding the pool of assets, issuing the asset-backed securities supported or serviced by those assets, and other activities reasonably incidental thereto.*
3. *No non-performing assets are part of the asset pool as of the measurement date.*
4. *Delinquent assets do not constitute 50% or more, as measured by dollar volume, of the asset pool as of the measurement date.*
5. *With respect to securities that are backed by leases, the portion of the securitized pool balance attributable to the residual value of the physical property*

[16] However, finalized agreements at the time of offering may be filed in preliminary form as provided by Instruction 1 to Item 601 of Regulation S-K (can omit pricing, signatures and similar matters).

[17] The various public offering processes and disclosure requirements of Regulation AB, as amended, apply to offering of "asset-backed securities," within the meaning of Regulation AB.

underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute:

a) For motor vehicle leases, 65% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

b) *For all other leases, 50% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.*

B. Discrete Pool of Assets Requirement: Notwithstanding the requirement in III.A. above that the asset pool be a discrete pool of assets, the following are currently considered to be a discrete pool of assets for purposes of any securities being considered "asset-backed securities"***:***

1. Master Trusts: The offering related to the subject 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. The offering related to the securities also may contemplate additions to the asset pool, to the extent consistent with III.B.2. and III.B.3. below, in connection with maintaining minimum pool balances in accordance with the transaction agreements for master trusts with revolving periods or receivables or other financial assets that arise under revolving accounts.
2. Prefunding Periods: The offering related to the subject securities contemplates a prefunding account where a portion of the proceeds of that offering is to be used for the future acquisition of additional pool assets, if the duration of the prefunding period does not extend for more than one year from the date of issuance of the securities and the portion of the proceeds for such prefunding account does not involve in excess of:
   a) For master trusts, 50% of the aggregate principal balance of the total asset pool whose cash flows support the securities; and
   b) For other offerings, 50% of the proceeds of the offering.
3. Revolving Periods: The offering related to the subject securities contemplates a revolving period where cash flows from the pool assets may be used to acquire additional pool assets, provided, that for securities backed by receivables or other financial assets that do not arise under revolving accounts, 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.

C. Under the SEC proposal, the definition of "asset-backed security" would be changed to further limit what qualifies as an asset-backed security or "ABS" under Regulation AB.[18]

1. In the case of master trust structures, the subject securities may only be backed by receivables or other financial assets that arise under revolving accounts.
2. In cases where there is a revolving period and the subject securities are backed by receivables or other financial assets that do not arise under revolving accounts, the permissible duration of that revolving period would be reduced from three years to one year following the date of initial issuance of the securities.

[18] For issuers not meeting the definition of "asset-backed security" could still use public registration under the general Form S-1 (non-shelf).

3. In cases where there is a prefunding account, the maximum amount of proceeds that could be used for the prefunding account would be reduced from 50% to 10% of the offering proceeds, or in the case of a master trust, the aggregate principal balance of the total asset pool whose cash flows support the ABS.

IV. Exchange Act Reporting Proposals

A. Exchange Act Report Form 10-D

1. If information required by an Item of Form 10-D has been previously reported, then a report on Form 10-D does not need to repeat the information. The proposed changes would require disclosure of a reference to the Central Index Key number, file number and date of the previously reported information.
2. Item 1121 of Regulation AB
   a) Item 1 of Form 10-D currently provides for disclosure of the information required by Item 1121 of Regulation AB.
   b) Proposed changes to Item 1121 of Regulation AB would require, among other things:
      (1) if the sponsor or an originator is required to repurchase or replace any of the pool assets for a breach of a representation and warranty pursuant to the transaction agreements, disclosure in the report on Form 10-D of −
         (a) 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 documents,
         (b) the percentage of the amount described in the immediately preceding clause (a) that were not then repurchased or replaced by the obligor, and
         (c) of those assets that were not then repurchased or replaced, 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, and
      (2) disclosure in the report on Form 10-D of delinquency and loss information for the period covered by the report, presented in a manner consistent with Item 1100(b) of Regulation AB.
3. The cover page of Form 10-D is to be revised to include the name and phone number of the person to contact in connection with the filing of the applicable report.

B. Exchange Act Report Form 10-K

1. The annual report on Form 10-K of an asset-backed issuer is currently required to contain, among other things, an assessment of compliance with the servicing criteria that is set forth in Item 1122(d) of Regulation AB (the "Servicing Criteria") by each party participating in the servicing function (within the meaning of the instructions to Item 1122 of Regulation AB) (each, a "Servicing Function Participant") with respect to the assets underlying the ABS covered by

such annual report. A Servicing Function Participant's assessment is to be filed as an exhibit to the report, and the body of the Form 10-K report must also contain disclosure regarding material instances of a Servicing Function Participant's non-compliance with the Servicing Criteria as a platform matter.

2. Proposed changes to Item 1122 of Regulation AB, would require disclosure in an annual report on Form 10-K :
   a) as to whether any identified instance of a Servicing Function Participant's non-compliance with the Servicing Criteria involves the servicing of the assets backing the particular ABS covered by such Form 10-K report, and
   b) as to what steps, if any, a Servicing Function Participant has taken to remedy a material instance of non-compliance previously identified thereby for its activities with respect to ABS transactions taken as a whole involving such party and that are backed by the same asset type backing the particular ABS covered by such Form 10-K report.
3. The SEC is also proposing to:
   a) add as one of the Servicing Criteria 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; and
   b) add a new instruction to Item 1122 of Regulation AB that states that the assessment contemplated thereby should cover all ABS transactions involving the asserting party and that are backed by the same asset type backing the class of ABS which are the subject of the applicable Exchange Act filing, provided that, if the asserting party (after taking into account divisions among transactions that are consistent with actual practices) includes in its platform less than all of the transactions backed by the same asset type that it services, the asserting party will describe the scope of the platform included in the assessment.

C. Item 6.05 of Exchange Act Report Form 8-K

1. Currently requires updating disclosure regarding an offering of ABS registered on Form S-3 if any material pool characteristic of the actual asset pool at the time of issuance of such ABS differs (other than as a result of the pool assets converting into cash in accordance with their terms) by 5% or more from the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424.
2. Proposed changes:
   a) the reference to ABS registered on Form S-3 would change to ABS registered on Form SF-3; and
   b) the reference to 5% or more would change to 1% or more.
3. Under proposed Form SF-3, the untimely filing of an Item 6.05 Form 8-K report by the depositor or an affiliate of the depositor, with respect to a class of ABS involving the same asset class, during the twelve (12) 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 (12) months from the

time the report was due. Currently, under Form S-3, untimely filing of reports on Form 8-K do not result in a loss of eligibility to use Form S-3.

D. Central Index Key Numbers for Depositor, Sponsor and Issuing Entity

1. The cover pages of Form 10-D, Form 10-K and Form 8-K for ABS issuers would include the CIK number of the depositor and of the issuing entity, and if applicable, the CIK number of the sponsor.

V. Privately-Issued Structured Finance Products

A. Introduction

1. The SEC is proposing to amend Rule 144, Rule 144A and Regulation D under the Securities Act, insofar as they relate to the sale or resale, as the case may be, of "structured finance products", and to add new Rule 192 under the Securities Act. The amendments would affect the resale of "structured finance products" under Rule 144 and Rule 144A, as well as the initial offer and sale of "structured finance products" by the issuer pursuant to Rule 506 of Regulation D.
2. Rule 144 creates a safe harbor for the sale of securities under the exemption from registration set forth in Section 4(1) of the Securities Act.
3. Rule 144A creates a "resale" safe harbor for the sale of securities under the exemption from registration set forth in Section 4(1) of the Securities Act, if the seller is other than the issuer or dealer, and Section 4(3) of the Securities Act, if the seller is a dealer.
4. Rule 506, which is part of Regulation D, creates a safe harbor for the sale of securities by the issuer under the exemption from registration set forth in Section 4(2) of the Securities Act.

B. Definition of a Structured Finance Product

1. Definition of "structured finance product" would be broader than what is considered an asset-backed security under Regulation AB, and would include the following:
   a) a synthetic asset backed security; and
   b) any 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 flows from the assets, including:
      (1) an asset-backed security as used in item 1101(c) of Regulation AB;
      (2) a collateralized mortgage obligation;
      (3) a collateralized debt obligation;
      (4) a collateralized bond obligation;
      (5) a collateralized debt obligation of asset-backed securities;
      (6) a collateralized debt obligation of collateralized debt obligations; or
      (7) 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.

2. SEC also clarified in a footnote that asset-backed commercial paper and any residual tranche of any other ABS transaction would be included as a "structured finance product."[19]

C. Expanded Reporting/Disclosure

1. Rule 144A would be revised to provide that for a reseller of a structured finance product to sell a security in reliance on Rule 144A:
   a) The underlying transaction agreement would be required to grant any initial purchaser, security holder and prospective purchaser designated by a security holder the right to obtain from the issuer promptly, upon request, information that would be required to be disclosed if the offering were registered on a Form S-1 or Form SF-1 (see V.C.3. below) and information that would have been required by Section 15(d) of the Exchange Act if the issuer had been obligated to report under that section; and
   b) The issuer would be required to represent that it would provide such information as required upon request of the purchaser or holder.
2. Rule 502 of Regulation D would be revised to provide that for an issuer of a structured finance product to sell a security in reliance on Rule 506 of Regulation D:
   a) The underlying transaction agreement would be required to grant any purchaser in the offering a right to obtain from the issuer promptly, upon request, information that would be required to be disclosed if the offering were registered on a Form S-1 or Form SF-1 (see V.C.3. below); and
   b) The issuer would be required to represent that it would provide such information to any purchaser in the offering upon request of the purchaser.
3. For a structured finance product that would have qualified as an ABS under Regulation AB, the disclosure requirements of Form SF-1 would apply. If the structured finance product would not have qualified as an ABS under Regulation AB, then the requirements of Form S-1 would apply, and in addition, the issuer would be required to provide information required under Regulation AB concerning the pool assets and transaction parties, as well as additional information required under Regulation S-K.
   a) SEC specified that for a managed CDO offering, it would expect disclosure regarding the asset and collateral managers, including:
      (1) fees and related party transaction information;
      (2) their objectives and strategies;
      (3) any interest that they have retained in the transaction or underlying assets; and
      (4) substitution, reinvestment and management parameters.
   b) SEC specified that for a synthetic CDO offering, it would expect, among other things, disclosure of:

[19] The SEC also noted that asset-backed commercial paper is not typically issued and resold under the Regulation D and Rule 144A exemptions that are addressed in the SEC proposal, but rather under the Section 4(2) statutory issuer sale exemption and the so-called 4 (1 ½) resale exemption.

(1) the differences between the spreads on synthetic assets and the market prices for the assets;

(2) the process for obtaining the credit default swap or other synthetic assets; and

(3) the internal rate of return to equity if that was a consideration in the structuring of the transaction.

c) SEC did not provide specific disclosure guidelines as to other "structured finance product" asset classes or structures not generally issued publicly and not falling within the Regulation AB "asset-backed security" definition, such as securitizations of operating assets, e.g. aircraft, railcars, containers, aircraft engines, etc. However, see Section II.D.2(a) above regarding blank data tags which allow for the inclusion of information on asset classes not contemplated under the proposed rules, together with narrative explanations file on Form 8-K or Form 10-D.

4. One of the conditions of Rule 144 requires the availability of adequate current public information. The SEC is proposing to conform the informational requirement of Rule 144 to the proposed revisions to Rule 144A described above (see V.C.1. above) in circumstances where (a) the securities to be sold in reliance on Rule 144 are structured finance products and (b) the issuer of such securities is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

5. Proposed new Rule 192 imposes an affirmative obligation on an issuer of a structured finance product to provide, upon the request of a purchaser or security holder, the information that it represented and covenanted to provide under the new provisions of Rule 144A, Rule 144 or Rule 502, as applicable. Proposed new Rule 192 further states that a failure to provide the required information "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."

a) Section 17 of the Securities Act makes it unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, "[t]o engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser".

b) SEC would be able to bring enforcement action pursuant to proposed new Rule 192.

c) Investor would be able to sue issuer under transaction documents for breach of its representation requiring such information to be provided.

d) In the commentary of the proposing release, the SEC states that 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. See, however, proposed change to Rule 502(b)(1).

6. Transactions relying on the statutory exemption in Section 4(2) of the Securities Act, or the "Rule 4(1 ½) exemption" would not need to comply with these new requirements. The SEC solicited comments as to whether similar changes should be adopted for transactions relying on the offshore Regulation S exemption.

D. Notice Requirements under Rule 144A and Regulation D

1. If the securities offered or sold are structured finance products, and if such securities are represented as eligible for resale in reliance on Rule 144A, then (within 15 calendar days after the first sale of securities in the offering or, if such 15-day period ends on a non-business day, by the first business day thereafter), the issuer would be required to file a notice of the initial placement of such securities on Form 144A-SF.
    a) Required information on Form 144A-SF:
        (1) identity, principal place of business and contact information of the issuer;
        (2) identity of sponsor for the offering, principal originators for the assets in the underlying pool and servicer or collateral manager;
        (3) CUSIP number of the issuance, if reasonably available;
        (4) description of type of security being sold;
        (5) brief description of structure of securities, including number of tranches, and whether any portion of the tranches are being retained by sponsor or originator;
        (6) brief description of asset pool, including types of assets included, and if the assets are securities, the identity of the issuer of the underlying securities;
        (7) principal amount of securities offered or sold in the initial placement; and
        (8) respective dates of initial placement and initial resale in reliance on Rule 144A.
    b) Issuer is required, on Form 144A-SF, to undertake to provide the SEC, upon request, the offering documents used in connection with the initial placement.
    c) Failure to file Form 144A-SF results in the Rule 144A safe harbor not being available for subsequent resales of newly issued structured finance products of the issuer or its affiliates until the Form 144A-SF has been filed.
2. Form D would be revised to include the same information that would be required pursuant to Form 144A-SF, and there would be a checkbox on Form D for an issuer to indicate if it is offering or selling structured finance products.