P/N 08–32005–2 following Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/094, Issue 1, dated August 14, 2008. Installation of vertical stabilizer P/N 08–32005–2 terminates the repetitive inspection requirements of paragraphs (f)(1) and (f)(2) of this AD.

(g) For airplanes that have been modified by installation of vertical stabilizer P/N 08–32005–2, do the following actions:

(1) Within 300 hours TIS after installation of vertical stabilizer P/N 08–32005–2 or within 50 hours TIS after the effective date of this AD, whichever occurs later, and repetitively thereafter at intervals not to exceed 300 hours TIS, do a detailed visual inspection of the vertical stabilizer following paragraph 2.B.i) of Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/094, Issue 1, dated August 14, 2008.

(2) Within 3,000 hours TIS after installation of vertical stabilizer P/N 08–32005–2 or within 50 hours TIS after the effective date of this AD, whichever occurs later, and repetitively thereafter at intervals not to exceed 3,000 hours TIS, do an eddy current inspection following paragraph 2.B.ii) of Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/094, Issue 1, dated August 14, 2008.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) The inspections required in paragraph (f)(1) of this AD must be performed by a person authorized under 14 CFR part 43 to perform inspections, as opposed to the MCAI, which allows the holder of a pilot license to perform the inspections.

(2) The 50-hour inspection required in the MCAI is not applicable because the "before the first flight of the day" inspection captures the intent.

(3) The MCAI does not require the inspections listed in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/094, Issue 1, dated August 14, 2008. To require compliance with these inspections for U.S. owners and operators we are requiring the inspections through this AD action.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI Civil Aviation Authority of New Zealand AD DCA/FU24/178, dated April 30, 2009; and Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/094, Issue 1, dated August 14, 2008, for related information. For service information contact Pacific Aerospace Limited, Hamilton Airport, Private Bag HN3027, Hamilton, New Zealand; telephone: + (64) 7–843–6144; fax + (64) 7–843–6134; email: *pacific@aerospace.co.nz.*

Issued in Kansas City, Missouri, on October 6, 2010.

Christina L. Marsh,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25700 Filed 10–12–10; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 240, and 249

[Release Nos. 33–9148; 34–63029; File No. S7–24–10]

RIN 3235–AK75

Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: Pursuant to Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] we are proposing rules related to representations and warranties in asset-backed securities offerings. Our proposals would require securitizers of asset-backed securities to disclose fulfilled and unfulfilled repurchase requests across all transactions. Our proposals would also require nationally recognized statistical rating organizations to include information regarding the representations, warranties and enforcement mechanisms available to investors in an asset-backed securities offering in any report accompanying a credit rating issued in connection with such offerings, including a preliminary credit rating.

DATES: Comments should be received on or before November 15, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–24–10 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–24–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Rolaine Bancroft, Attorney-Advisor, in the Office of Rulemaking, at (202) 551–3430, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628 or, with respect to proposed Rule 17g–7, Joseph I. Levinson, Special Counsel, at (202) 551–5598; Division of Trading and Markets, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Items 1104 and 1121 [2] of Regulation AB [3] (a subpart

[1] Public Law 111–203 (July 21, 2010).

[2] 17 CFR 229.1104 and 17 CFR 229.1121.

[3] 17 CFR 229.1100 through 17 CFR 229.1123.

of Regulation S–K) under the Securities Act of 1933 ("Securities Act").[4] We also are proposing to add Rules 15Ga–1[5] and 17g–7[6] and Form ABS–15G[7] under the Securities Exchange Act of 1934 ("Exchange Act").[8]

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I. Background

This release is one of several that the Commission is required to issue to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") related to asset-backed securities ("ABS"). In this release, we propose rules to implement Section 943 of the Act, which requires the Commission to prescribe regulations on the use of representations and warranties in the market for asset-backed securities:

(1) To require any securitizer to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by securitizer, so that investors may identify asset originators with clear underwriting deficiencies; and

(2) To require each nationally recognized statistical rating organization ("NRSRO") to include, in any report accompanying a credit rating for an asset-backed securities offering, a description of (A) the representations, warranties and enforcement mechanisms available to investors; and (B) how they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities.[9]

The Act requires us to adopt these rules within 180 days of enactment of the Act.

In April of 2010, we proposed rules that would revise the disclosure, reporting and offering process for asset-backed securities (the "2010 ABS Proposing Release").[10] Among other things, the 2010 ABS Proposing Release proposed new disclosure requirements with respect to repurchase requests. Specifically, we proposed that issuers disclose in prospectuses the repurchase demand and repurchase and replacement activity for the last three years of sponsors of asset-backed transactions or originators of underlying pool assets if they are obligated to repurchase assets pursuant to the transaction agreements.[11] These disclosure requirements would apply to offerings of ABS registered under the Securities Act or ABS offered and sold without registration in reliance upon Securities Act rules, which includes both offerings eligible for Rule 144A resales and other offerings conducted in reliance on exemptions from registration. We also proposed that issuers disclose the repurchase demand and repurchase and replacement activity concerning the asset pool on an ongoing basis in periodic reports.[12] As described in Section II.B. below, we are re-proposing the disclosure requirements with respect to repurchase requests in Regulation AB in order to conform the disclosures to those required by Section 943 of the Act.

In the underlying transaction agreements for an asset securitization, sponsors or originators typically make representations and warranties relating to the pool assets and their origination, including about the quality of the pool assets. For instance, in the case of residential mortgage-backed securities, one typical representation and warranty is that each of the loans has complied with applicable federal, state and local laws, including truth-in-lending, consumer credit protection, predatory and abusive laws and disclosure laws. Another representation that may be included is that no fraud has taken place in connection with the origination of the assets on the part of the originator or any party involved in the origination of the assets. Upon discovery that a pool asset does not comply with the representation or warranty, under transaction covenants, an obligated party, typically the sponsor, must repurchase the asset or substitute a different asset that complies with the representations and warranties for the non-compliant asset. The effectiveness of the contractual provisions related to representations and warranties has been questioned and lack of responsiveness by sponsors to potential breaches of the representations and warranties relating to the pool assets has been the subject of investor complaint.[13]

[4] 15 U.S.C. 77a *et seq.*

[5] 17 CFR 240.15Ga–1.

[6] 17 CFR 240.17g–7.

[7] 17 CFR 249.1300.

[8] 15 U.S.C. 78a *et seq.*

[9] *See* Section 943 of the Act.

[10] *See Asset Backed Securities*, SEC Release No. 33–9117 (April 7, 2010) [75 FR 23328] (the "2010 ABS Proposing Release").

[11] Depending on the transaction, the originator of the assets or, most typically, the sponsor of the securities—who could also function as the originator—would be the obligated party. *See* previously proposed Items 1104(f) and 1110(c) of Regulation AB in the 2010 ABS Proposing Release.

[12] *See* previously proposed Item 1121(c) of Regulation AB in the 2010 ABS Proposing Release.

[13] As we noted in the 2010 ABS Proposing Release, transaction agreements typically have not included specific mechanisms to identify breaches of representations and warranties or to resolve a question as to whether a breach of the representations and warranties has occurred. Thus, these contractual agreements have frequently been ineffective because, without access to documents relating to each pool asset, it can be difficult for the trustee, which typically notifies the sponsor of an alleged breach, to determine whether or not a representation or warranty relating to a pool asset has been breached. In the 2010 ABS Proposing Release, the Commission proposed a condition to shelf eligibility that would require a provision in the pooling and servicing agreement that would require the party obligated to repurchase the assets for breach of representations and warranties to periodically furnish an opinion of an independent third party regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement with respect to any loans that the trustee put back to the obligated party for violation of representations and warranties and which were not repurchased. *See* Section II.A.3.b. of the 2010 ABS Proposing Release. *See also* the Committee on Capital Markets Regulation, *The Global Financial Crisis: A Plan for Regulatory Reform*, May 2009, at 135 (noting that contractual provisions have proven to be of little practical value to investors during the crisis); *see also Investors Proceeding with Countrywide Lawsuit*, Mortgage Servicing News, Feb. 1, 2009 (describing class action investor suit against Countrywide in which investors claim that language in the pooling and servicing agreements requires the seller/servicer to repurchase loans that were originated with "predatory" or abusive lending practices) and American Securitization Forum, *ASF Releases Model Representations and Warranties to Bolster Risk Retention and Transparency in Mortgage Securitizations*, (Dec. 15, 2009), available at

Continued

II. Discussion of Proposals

A. Proposed Disclosure Requirements for Securitizers

We are proposing to add new Rule 15Ga–1 to implement Section 943(2) of the Act. This proposed rule would require any securitizer of asset-backed securities to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by securitizer, so that investors may identify asset originators with clear underwriting deficiencies. Under our proposals, a securitizer would provide the disclosure by filing new proposed Form ABS–15G.

1. Definition of Exchange Act-ABS for Purposes of Rule 15Ga–1

The Act amended the Exchange Act to include a definition of an "asset-backed security" and Section 943 of the Act references that definition.[14] The statutory definition of an asset-backed security ("Exchange Act-ABS") is much broader than the definition of an asset-backed security in Regulation AB ("Reg AB–ABS").[15] The definition of an Exchange Act-ABS includes securities that are typically sold in transactions that are exempt from registration under the Securities Act, such as collateralized debt obligations ("CDOs"), as well as securities issued or guaranteed by a government sponsored entity, such as Fannie Mae and Freddie Mac.[16] Similarly, if a municipal entity issues securities collateralized by a self-liquidating pool of loans that allow holders of the securities to receive payments that depend primarily on cash flow from those loans, that security would fall within the definition of an Exchange Act-ABS.[17] Since Section 943 uses the broader Exchange Act-ABS definition, our proposed Rule 15Ga–1 would require a securitizer to provide disclosures relating to all asset-backed securities that fall within the statutory definition, whether or not sold in Securities Act registered transactions. However, as we discuss further below, even if a security meets the definition of an Exchange Act-ABS, the new disclosure requirement would not be triggered if the underlying transaction agreements do not contain a covenant to repurchase or replace an asset.

Request for Comment:

1. Is it clear what types of securities a securitizer would have to provide representation and warranty repurchase disclosure about under proposed Rule 15Ga–1? If not, please identify which securities are not clearly covered and the reasons why those securities are not clearly included or excluded by the proposal.

2. Should we provide further guidance regarding the application of proposed Rule 15Ga–1 to securities issued by municipal entities that would fall within the definition of Exchange Act-ABS? Is it clear what types of municipal securities a municipal securitizer would have to provide representation and warranty repurchase disclosure about under proposed Rule 15Ga–1? If not, please identify those types of municipal securities that are not clearly covered and explain why they are not clearly included or excluded by the proposal.

2. Definition of Securitizer for Purposes of Rule 15Ga–1

Section 943 and proposed Rule 15Ga–1 impose the disclosure obligation on a "securitizer" as defined in the Exchange Act. The Act amended the Exchange Act to include the definition of a "securitizer." Under the Exchange Act, a securitizer is either:

(A) An issuer of an asset-backed security; or

(B) A person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer.[18]

The definition of securitizer is not specifically limited to entities that undertake transactions that are registered under the Securities Act or conducted in reliance upon any particular exemption. Consequently, we believe it is intended to apply to any entity or person that issues or organizes an Exchange Act-ABS as specified in Section 15G(a)(3) of the Exchange Act. As a result, proposed Rule 15Ga–1 would require any entity coming within the Section 15G(a)(3) definition of securitizer, including government sponsored entities such as Fannie Mae, Freddie Mac, or a municipal entity, to provide the proposed disclosures. Further, as noted above, Section 943 and Section 15G(a)(3) do not distinguish between securitizers of Exchange Act-ABS in registered or unregistered transactions, and our proposed Rule 15Ga–1 would apply equally to registered and unregistered transactions.

With respect to registered transactions and the definitions of transaction parties in Regulation AB, sponsors and depositors[19] both fall within the statutory definition of securitizer. A sponsor typically initiates a securitization transaction by selling or pledging to a specially created issuing entity a group of financial assets that the sponsor either has originated itself or has purchased in the secondary market.[20] In some instances, the transfer

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http://www.americansecuritization.com. It has been reported that only large ABS investors, such as Fannie Mae and Freddie Mac, have been able to effectively exercise repurchase demands. *See* Aparajita Saha-Bubna, "Repurchased Loans Putting Banks in Hole," *Wall Street Journal* (Mar. 8, 2010) (noting that most mortgages put back to lenders are coming from Fannie Mae and Freddie Mac).

[14] Section 3(a)(77) of the Exchange Act provides that the term "asset backed security" means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including a collateralized mortgage obligation; a collateralized debt obligation; a collateralized bond obligation; a collateralized debt obligation of asset-backed securities; a collateralized debt obligation of collateralized debt obligations; and a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company. Section 3(a)(77) of the Exchange Act, as amended by the Act.

[15] In 2004, we adopted the definition of "asset-backed security" in Regulation AB. The definition and our interpretations of it are intended to establish parameters for the types of securities that are appropriate for the alternate disclosure and regulatory regime provided in Regulation AB and the related rules for Form S–3 registration of ABS. The definition does not mean that public offerings of securities outside of these parameters, such as synthetic securitizations, may not be registered with the Commission, but only that the alternate regulatory regime is not designed for those securities. The definition does mean that such securities must rely on non-ABS form eligibility for registration, including shelf registration. *See* Section III.A.2 of *Asset-Backed Securities*, SEC Release 33–8518 (January 7, 2005) [70 FR 1506] (the "2004 ABS Adopting Release") and Item 1101(c) of Regulation AB [17 CFR 1101(c)].

[16] Government sponsored enterprises (GSEs) such as Fannie Mae and Freddie Mac purchase mortgage loans and issue or guarantee mortgage-backed securities (MBS). MBS issued or guaranteed by these GSEs have been and continue to be exempt from registration under the Securities Act and reporting under the Exchange Act. For more information regarding GSEs, *see* Task Force on Mortgage-Backed Securities Disclosure, "Staff Report: Enhancing Disclosure in the Mortgage-Backed Securities Markets" (Jan. 2003) available at *http://www.sec.gov/news/studies/mortgagebacked.htm.*

[17] For a discussion of municipal ABS, *see generally* Robert A. Fippinger, The Securities Law of Public Finance vol. 1, § 1:6.2[B], 1–70—1–72 (2d ed., Practicing Law Institute 2009).

[18] *See* Section 15G(a)(3) of the Exchange Act, as amended by the Act.

[19] Securities Act Rule 191 [17 CFR 230.191] generally defines an issuer as the depositor.

[20] A sponsor, as defined in Regulation AB, is the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity. *See* Item 1101(l) of Regulation AB [17 CFR 229.1101(l)]. Sponsors of asset-backed securities often include banks, mortgage companies, finance companies, investment banks and other entities that originate or acquire and package financial assets for resale as

of assets is a two-step process: the financial assets are transferred by the sponsor first to an intermediate entity, often a limited purpose entity created by the sponsor for a securitization program and commonly called a depositor, and then the depositor will transfer the assets to the issuing entity for the particular asset-backed transaction.[21] Because both sponsors and depositors fit within the statutory definition of securitizers, both entities would have the disclosure responsibilities under proposed Rule 15Ga–1. However, if a sponsor filed all disclosures proposed to be required under Rule 15Ga–1, which would include disclosures of the activity of affiliated depositors, Rule 15Ga–1 would provide that those affiliated depositors would not have to separately provide and file the same disclosures. Such disclosure would be duplicative and would not provide any additional useful information, since as noted above, the depositor usually serves as an intermediate entity of a transaction initiated by a sponsor.[22]

Request for Comment:

3. Is it clear which entities or persons would have disclosure responsibilities under proposed Rule 15Ga–1? If not, please identify those possible entities or persons, describe their role in the transaction, and explain why they are not clearly included or excluded by the definition of a securitizer.

4. Should we provide further guidance regarding the application of proposed Rule 15Ga–1 to municipal issuers that are within the definition of securitizers? Is it clear which municipal entities would have disclosure responsibilities under proposed Rule 15Ga–1? If not, please identify those municipal entities that are not clearly covered and explain why they are not clearly included or excluded by the proposal.

3. Disclosures Required by Proposed Rule 15Ga–1

In accordance with Section 943 of the Act, we are proposing new Rule 15Ga–1[23] to require any securitizer of an Exchange Act-ABS to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by securitizer, so that investors may identify asset originators with clear underwriting deficiencies. We are proposing that, if the underlying transaction agreements provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty, then a securitizer would be required to provide the information described below for all assets originated or sold by the securitizer that were the subject of a demand for repurchase or replacement with respect to all outstanding Exchange Act-ABS held by non-affiliates of the securitizer. If the underlying agreements of an Exchange Act-ABS do not contain a covenant to repurchase or replace an underlying asset, then no transaction party would be entitled to demand repurchase or replacement. Requiring securitizers to report the activity of those Exchange Act-ABS with no demands might give an incorrect impression of sound underwriting. As discussed further below, initially, we are proposing that a securitizer provide the repurchase history for the last five years by filing Form ABS–15G at the time a securitizer first offers an Exchange Act-ABS or organizes and initiates an offering of Exchange Act-ABS, registered or unregistered, after the effective date of the proposed rules, as adopted. Going forward, a securitizer would be required to provide the disclosures for all outstanding Exchange Act-ABS on a monthly basis by filing Form ABS–15G. Information would not be required for the time period prior to the five-year look back period of the initial filing.

Section 943(2) requires disclosure of fulfilled and unfulfilled repurchase requests. It does not limit the required disclosure to those relating only to demands successfully made by the trustee. Therefore our proposal would require tabular disclosure of assets subject to any and all demands for repurchase or replacement of the underlying pool assets as long as the transaction agreements provide a covenant to repurchase or replace an underlying asset. For instance, we note that demands for repurchase may not ultimately result in a repurchase or replacement pursuant to the terms of the transaction agreement, either because of withdrawn demands or incomplete demands that did not meet the requirements of a valid demand pursuant to the transaction agreements.[24] Furthermore, it may be the case that a repurchase or replacement may occur whether or not it is determined that the obligated party was required to repurchase the asset pursuant to the terms of the transaction agreement.[25] Securitizers would be permitted to footnote the table to provide additional explanatory disclosures to describe the data disclosed. We also note that investors have demanded that trustees enforce repurchase covenants because transaction agreements do not typically contain a provision for an investor to directly make a repurchase demand.[26] As we stated earlier, Section 943(2) does not limit the required disclosures to those demands successfully made by the trustee; therefore our proposals would

ABS. *See* Section II. of the 2004 ABS Adopting Release.

[21] A depositor receives or purchases and transfers or sells the pool assets to the issuing entity. *See* Item 1101(e) of Regulation AB [17 CFR 229.1101(e)]. For asset-backed securities transactions where there is not an intermediate transfer of assets from the sponsor to the issuing entity, the term depositor refers to the sponsor. For asset-backed securities transactions where the person transferring or selling the pool assets is itself a trust, the depositor of the issuing entity is the depositor of that trust.

[22] There may be other situations where multiple affiliated securitizers would have individual reporting obligations under proposed Rule 15Ga–1 with respect to a particular transaction. Therefore, we propose that if one securitizer has filed all the disclosures required in order to meet the obligations under Rule 15Ga–1, which would include disclosures of the activity of affiliated securitizers, those affiliated securitizers would not be required to separately provide and file the same disclosures.

[23] We propose to adopt this rule as an Exchange Act rule because of the relationship with other requirements under the Exchange Act and other statutory requirements we are implementing.

[24] *See e.g.*, comment letters of ASF, Bank of America, Community Mortgage Banking Project, CRE Finance Council and Mortgage Bankers Association on the 2010 ABS Proposing Release. The public comments are available at *http://www.sec.gov/comments/s7-08-10/s70810.shtml.*

[25] See Section XI.C.2. of the 2010 ABS Proposing Release where we note that disclosures about an originator's or sponsor's refusal to repurchase or replace assets put back to them for breach of representations and warranties might create incentives for originators to agree to repurchase or replace such assets even in cases where these assets were not in breach. We explained that if investors regard such disclosures as indicative of a willingness to comply with representations and warranties in the future, then originators and sponsors might try to preserve their reputation by taking back assets even when they do not have to do so. This might create an incentive for sponsors and possibly trustees to ask for repurchase or replacement of poorly performing assets that represent no breach of representations and warranties. However, a commentator on the 2010 ABS Proposing Release stated that in certain situations, it may have the opposite effect, where the threat of a disclosure requirement may make a sponsor worry that a large number of successful repurchase claims could indicate that its initial due diligence, or the originator's loan quality was poor. *See* letter from Commonwealth of Massachusetts Attorney General.

[26] *See* Jody Shenn, "BNY Won't Investigate Countrywide Mortgage Securities," *Bloomberg Business Week* (Sep. 13, 2010) available at *http://www.businessweek.com/news/2010-09-13/bny-won-t-investigate-countrywide-mortgage-securities.html* (noting the difficulties that investors are facing to enforce contracts with respect to repurchase demands) and Al Yoon, "NY Fed joins other investors on loan repurchase bid," Reuters (Aug. 4, 2010) available at *http://www.reuters.com/article/idUSTRE6736DZ20100804* (noting that investors have been frustrated with trustees and servicers and are banding together to force trustees to act on repurchase requests). See also Kevin J. Buckley, "Securitization Trustee Issues," The Journal of Structured Finance (Summer 2010) (discussing investors demands upon trustees to enforce sellers' repurchase obligations).

require investor demands upon a trustee be included in the table, irrespective of the trustee's determination to make a repurchase demand on a securitizer based on the investor request. We are concerned, however, that initially a securitizer may not be able to obtain complete information from a trustee because it may not have tracked investor demands. Because securitizers may not have access to historical information about investor demands made upon the trustee prior to the effective date of the proposed rules, we are proposing an instruction that a securitizer may disclose in a footnote, if true, that a securitizer requested and was able to obtain only partial information or unable to obtain any information with respect to investor demands to a trustee that occurred prior to the effective date of the proposed rules and state that the disclosures do not contain all demands made prior to the effective date.[27]

We are proposing that securitizers provide the information in the following tabular format in order to aid understanding:

Name of issuing entity	Check if registered	Name of originator	Assets that were subject of demand			Assets that were repurchased or replaced			Assets that were not repurchased or replaced			Assets pending repurchase or replacement		
			(#)	($)	(% of pool)	(#)	($)	(% of pool)	(#)	($)	(% of pool)	(#)	($)	(% of pool)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)
Asset Class X														
Issuing Entity A ..... CIK #	X	Originator 1												
		Originator 2												
Issuing Entity B		Originator 3												
Total	.....	.....	#	$		#	$		#	$		#	$	
Asset Class Y														
Issuing Entity C	.....	Originator 2												
		Originator 3												
Issuing Entity D CIK#.	X	Originator 1												
Total	.....	.....	#	$		#	$		#	$		#	$	

A single securitizer may have several securitization programs to securitize different types of asset classes. Therefore, in order to organize the information in a manner that would be useful for investors, we are proposing that the securitizer disclose the asset class and group the information in the table by asset class (column (a)). We are also proposing that securitizers list the names of all the issuing entities[28] of Exchange Act-ABS, listed in order of the date of formation of the issuing entity in column (a) so that investors may identify the securities that contain the assets subject to the demands for repurchase and when the issuing entity was formed.[29] Because the Act requires disclosure with respect to all Exchange Act-ABS, Rule 15Ga–1 would require securitizers to provide disclosure for all Exchange Act-ABS where the underlying agreements include a repurchase covenant, regardless of whether the transaction was registered with the Commission. Additionally, if any of the Exchange Act-ABS of the issuing entity were registered under the Securities Act, the Central Index Key ("CIK") number of the issuing entity would be required so that investors may locate additional publicly available disclosure, if applicable.

So that investors may distinguish between transactions that were registered, and those that were not, we are also proposing that securitizers check the box in column (b) to indicate whether any Exchange Act-ABS of the issuing entity were registered under the Securities Act. We believe this indicator would provide important information so an investor may locate additional publicly available disclosure for registered transactions, if applicable.

The Act also provides that the disclosure is required "so that investors may identify asset originators with clear underwriting deficiencies."[30] Therefore, we are proposing that securitizers further break out the information by originator of the underlying assets in column (c).

Because the Act requires disclosure of all "fulfilled and unfulfilled" repurchase requests, we are proposing in Rule 15Ga–1 that securitizers disclose the assets that were subject of the demand, the assets that were repurchased or replaced and the assets that were not repurchased or replaced. In order to provide investors with useful information about the repurchase requests in relation to the overall pool of assets, we are proposing that securitizers present the number, outstanding principal balance and percentage by principal balance of the assets that were subject of demand to repurchase or replace for breach of representations and warranties (columns (d) through (f)); the number, outstanding principal balance and percentage by principal balance of assets that were repurchased or replaced for breach of representations and warranties (columns (g) through (i)); and the number, outstanding principal balance and percentage by principal balance of assets that were not repurchased or replaced for breach of representations and warranties (columns (j) through (l)).[31]

[27] This situation, as well as others, may arise where the disclosures required by proposed Rule 15Ga–1 alone may necessitate the disclosure of additional information in order to render the information not misleading. Securitizers would need to consider the antifraud provisions under the federal securities laws to determine what other information, if any, may need to be provided in offering materials given to an investor.

[28] Issuing entity is defined in Item 1101(f) of Regulation AB [17 CFR 229.1101(f)] as the trust or other entity created at the direction of the sponsor or depositor that owns or holds the pool assets and in whose name the asset-backed securities supported or serviced by the pool assets are issued.

[29] In a stand-alone trust structure, usually backed by a pool of amortizing loans, a separate issuing entity is created for each issuance of ABS backed by a specific pool of assets. The date of formation of the issuing entity would most likely be at the same time of the issuance of the ABS. In a securitization using a master trust structure, the ABS transaction contemplates future issuances of ABS by the same issuing entity, backed by the same, but expanded, asset pool. Master trusts would organize the data using the date the issuing entity was formed, which would most likely be earlier than the date of the most recent issuance of securities.

[30] *See* Section 943(2) of the Act.

[31] If the ABS were offered in a registered transaction, an investor may be able to locate additional detailed information. In the 2010 ABS

Additionally, we are proposing to require disclosure of the number, outstanding principal balance and percentage by principal balance of the assets that are pending repurchase or replacement and proposing an instruction to include a footnote to the table that provides narrative disclosure of the reasons why repurchase or replacement is pending (columns (m) through (o)). For example, the securitizer would indicate by footnote if pursuant to the terms of a transaction agreement, assets have not been repurchased or replaced pending the expiration of a cure period. Without these additional columns, the disclosures about fulfilled and unfulfilled repurchase requests of a securitizer alone may not provide clear and complete disclosure about the repurchase request history. For instance, some transaction agreements specify a cure period that typically lasts 60–90 days.[32] Including those repurchase requests that are within a cure period as assets that were not repurchased or replaced (columns (j) through (l)) would provide inaccurate disclosure about the current pending status of those repurchase requests.

Lastly, we are proposing that the table include totals by asset class for columns that require numbers of assets and principal amounts (columns (d), (e), (g), (h), (j), (k), (m) and (n)).[33]

The Act does not specify when the disclosure should first be provided, or the frequency with which it should be updated. We are proposing to require that securitizers first be required to file Form ABS–15G at the time a securitizer first offers an Exchange Act-ABS or organizes and initiates an offering of Exchange Act-ABS, registered or unregistered, after the effective date of the proposed rules, as adopted.[34] The initial filing would include the repurchase demand and repurchase and replacement history of all outstanding Exchange Act-ABS of the securitizer with respect to which the underlying transaction agreements provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty for the last five years. The initial filing would be required to include all of the information in proposed Rule 15Ga–1, even if there had been no demands to repurchase or replace assets to report with respect to any issuing entity of an Exchange-Act ABS securitized by a securitizer. We believe that the ability to compare all issuing entities and the originators of the underlying pools would provide useful information for investors by making the disclosures comparable across securitizers, so that consistent with the purposes of Section 943, an investor may identify originators with clear underwriting deficiencies.

While Section 943 does not limit the time period for disclosure, we have proposed in Rule 15Ga–1 to limit the disclosure to Exchange Act-ABS that remain outstanding and are held by non-affiliates because we believe securitizers would more likely have ready access to this information, and it is more likely to be relevant to investors than information about securities that are no longer outstanding and held by non-affiliates. While we believe that Congress intended to provide investors with historical information about repurchase activity so that investors may identify asset originators with clear underwriting deficiencies,[35] we also recognize that securitizers may not have historically collected the information required under our proposal.[36] We are proposing that the initial disclosures be limited to the last five years of activity in order to balance the requirements of Section 943 and the burden on securitizers to provide the historical disclosures. Therefore, any demand, repurchase or replacement that had occurred within the five years immediately preceding the initial filing, as of the end of the preceding month, would need to be disclosed in the table.[37]

We are also proposing that securitizers file proposed Form ABS–15G, periodically on a monthly basis with updated information so that, consistent with the purpose of Section 943 of the Act, an investor may monitor the demand, repurchase and replacement activity across all Exchange Act-ABS issued by a securitizer.[38] For registered transactions, most ABS distribute payments monthly and file Forms 10–D on a monthly basis. Similarly, given the established frequency of reporting, we believe proposed Rule 15Ga–1 disclosure should be provided to investors on a monthly basis and filed on Form ABS–15G on EDGAR within 15 calendar days after the end of each calendar month.[39]

Under the proposal, securitizers would be required to continue periodic reporting through and until the last payment on the last Exchange Act-ABS outstanding held by a non-affiliate that was issued by the securitizer or an affiliate. We are also proposing that securitizers be required to file Form ABS–15G to provide a notice to terminate the reporting obligation and disclose the date the last payment was made.

Request for Comment:

5. Is the proposed requirement to require that any securitizer of an Exchange Act-ABS transaction disclose fulfilled and unfulfilled repurchase requests in a table appropriate? Would

Proposing Release, the Commission also proposed that issuers be required to provide loan-level disclosure of repurchase requests on an ongoing basis. Under the proposal, an issuer, with each periodic report on a Form 10–D, would have to indicate whether a particular asset has been repurchased from the pool. If the asset has been repurchased, then the registrant would have to indicate whether a notice of repurchase has been received, the date the asset was repurchased, the name of the repurchaser and the reason for the repurchase. *See* previously proposed Item 1(i) of Schedule L–D [Item 1121A of Regulation AB] in the 2010 ABS Proposing Release.

[32] In response to our ABS 2010 Proposing Release, some commentators expressed concern about the timing of providing repurchase disclosures, noting that the person preparing repurchase disclosures may not be in a position to know what percentage of demands made in a period did not result in repurchase due to cure periods provided in the transaction agreements that typically last 60–90 days. See letters from the American Securitization Forum ("ASF") and Wells Fargo & Company on the 2010 ABS Proposing Release.

[33] *See* letter from Association of Mortgage Investors on the 2010 ABS Proposing Release (requesting that disclosure of information regarding claims made and satisfied under representation and warranties provisions of the transaction documents be broken down by securitization and then aggregated).

[34] Filing proposed Form ABS–15G would not foreclose the reliance of an issuer on the private offering exemption in the Securities Act of 1933 and the safe harbor for offshore transactions from the registration provisions in Section 5 [15 U.S.C. 77e]. However, the inclusion of information beyond that required in proposed Rule 15Ga–1 may jeopardize such reliance by constituting a public offering or conditioning the market for the ABS being offered under an exemption.

[35] *See* letter from Securities Industry Financial Markets Association ("SIFMA") on the 2010 ABS Proposing Release (noting that their investor members believe that issuers should be required to make disclosures about repurchase requests regardless of the date of the securitization).

[36] *See e.g.,* comment letters from ASF, Bank of America, Financial Services Roundtable and the Mortgage Bankers Association on the 2010 ABS Proposing Release.

[37] For the initial filing, we recognize that demands may have been made prior to the initial five-year look back date and that resolution may have occurred after that date. In this case, a securitizer would need to disclose that a demand was made, even though it occurred prior to the five-year look back date.

[38] *See* letter from Prudential Fixed Income Management on the 2010 ABS Proposing Release (noting that claims made against a sponsor should be included in offering materials and regularly reported, together with detail that clarifies the number of such claims that were accepted by the sponsor and the number of claims that were and were not approved).

[39] Form 10–Ds are required to be filed within 15 days of each required distribution date on the asset-backed securities. *See* General Instruction A.2. of Form 10–D [17 CFR 249.312]. Because securitizers may sponsor various asset classes, we believe it would be difficult to tie the timing requirements of Rule 15Ga–1 disclosure to the timing of payments on the securities.

another format be more appropriate or useful to investors?

6. Should we require, as proposed, that securitizers list all previous issuing entities with currently outstanding ABS where the underlying transaction agreements include a repurchase covenant, even if there were no demands to repurchase or replace assets in that particular pool? Should we require, as proposed, that securitizers with currently outstanding Exchange Act-ABS held by non-affiliates list all originators related to every issuing entity even if there were no demands to repurchase or replace assets related to that originator for that particular pool? Put another way, would it be useful for investors to compare all the issuing entities and originators, related to one securitizer, listed in the table, so that investors may identify asset originators with clear underwriting deficiencies, as provided in the Act?

7. Would it be appropriate for securitizers to omit the table if a securitizer had no prior demands for repurchases or replacements? If so, how would an investor be able to know why the securitizer omitted the disclosure? In lieu of a table that displayed no demands for repurchases or replacements, would it be appropriate for a securitizer to provide narrative or check box disclosure stating that no demands were made for any asset securitized by the securitizer?

8. Is it appropriate to limit disclosure to Exchange Act-ABS that remain outstanding and held by non-affiliates, as proposed? Would such a limitation be consistent with the Act? Alternatively, should disclosure be required with respect to Exchange Act-ABS that are no longer outstanding? Would such disclosure reveal potentially important information? Would it be appropriate to require disclosure regarding Exchange Act-ABS that were outstanding during a recent period, such as one, three, or five years?

9. Should the disclosure requirement only be applied prospectively, *i.e.,* disclosure would be required only with respect to repurchase demands and repurchases and replacements beginning with Exchange Act-ABS issued after the effective date of the rule? Should disclosure only be required with respect to repurchase activity after the effective date? If so, please explain why limiting disclosure to activity regarding Exchange Act-ABS issued after the effective date would be consistent with the Act, as it specifies that the disclosure be provided by any securitizer across all trusts.

10. In implementing the requirements of Section 943, should the disclosure requirement initially be limited to the last five years, as proposed? Would a different time frame be more appropriate, *e.g.,* the last three, seven or ten years of activity? Underwriting standards of originators may change over time. While information regarding repurchases within a recent time period may assist investors in identifying originators with current underwriting deficiencies, is older information, such as information about repurchases within a time period of ten years, less useful in identifying current underwriting deficiencies? [40] Would information that covers the last three, five, seven or ten years of repurchase activity provide investors with the information they need so that they "may identify asset originators with clear underwriting deficiencies"? To what extent would disclosure older than such a period add significant burdens and costs and produce information that would be of marginal utility to investors?

11. Is our proposed instruction to permit securitizers to omit disclosure of investor demands made upon the trustee prior to the effective date of the proposed rules if the information is unavailable and provide footnote disclosure, if true, that the table omits such demands and that the securitizer requested and was unable to obtain the information appropriate? If not, how would securitizers obtain the information about investor demands upon a trustee prior to the effective date of the proposed rules, as adopted?

12. Should the requirement only cover the last three, five, seven or ten years of repurchase requests on an ongoing basis? Would this format on an ongoing basis provide information in a more easily understandable manner? Would it still allow an investor to "identify asset originators with clear underwriting deficiencies"?

13. Are there any other agreements, outside of the related transaction agreements for an asset-backed security that provide for repurchase demands and repurchases and replacements? If so, please tell us what those agreements are and why securitizers should be required to report the information, including why that information would be material to an investor in a particular asset-backed security.[41]

14. Is the information proposed to be required in the table appropriate? Is there any other information that should be presented in the table that would be useful to investors? Is the proposed disclosure regarding pending repurchase requests appropriate? Should we specify that securitizers provide more detail about the reasons why the assets were not repurchased or why the assets are pending repurchase or replacement? For example, should we require more detail such as the date of claim, the date of repurchase, whether claims have been referred to arbitration, whether the claims are in a cure period, and the costs associated and expenses born by each issuing entity? [42] Should we require securitizers to provide narrative disclosure of the reasons why repurchase or replacement is pending, as proposed? If so, should we specify the level of detail to be provided regarding pending asset repurchase or replacement requests? For instance, should we specify categories for the reasons why the request is pending, *e.g.,* cure period, arbitration, etc.

15. Section 943 of the Act requires that "all fulfilled and unfulfilled repurchase requests across all trusts" be disclosed. Should we require, as proposed, that all demands for repurchase be disclosed in the table? Some commentators on the 2010 ABS Proposing Release expressed concerns about disclosing demands for repurchase that ultimately did not result in a repurchase or replacement pursuant to the terms of the transaction agreement, either because of withdrawn demands or incomplete demands that did not meet the requirements of the transaction agreements.[43] In order to address commentator's concerns, should we also require, by footnote to the table, disclosure of whether the repurchase or replacement was required by the transaction agreements or whether it occurred for some other reason? Should the disclosure indicate the type of representation or warranty that led to the repurchase or replacement?

[40] In a response to our 2010 ABS Proposing Release, the ASF noted in its comment letter that "the requirement to report three years worth of repurchase activity would potentially result in a flood of unhelpful disclosure about transactions involving unrelated asset classes, particularly with respect to sponsors or originators that are large, diversified financial institutions engaging in securitization and sales of multiple asset classes through affiliated but often separately managed business units."

[41] *See* comment letter from Massachusetts Office of Attorney General on the 2010 ABS Proposing Release (noting that side letter agreements between a sponsor and an originator may contain early payment default warranties and that the existence of such warranties often have an effect upon the performance of a securitization).

[42] *See e.g.,* comment letters of Metropolitan Life Insurance Company and the SIFMA on the 2010 ABS Proposing Release.

[43] *See e.g.,* comment letters of ASF, Bank of America, Community Mortgage Banking Project, CRE Finance Council and Mortgage Bankers Association on the 2010 ABS Proposing Release.

16. Is our proposal to require a securitizer to file its initial Form ABS–15G at the time it first offers Exchange-Act ABS or organizes and initiates an offering of Exchange Act-ABS after the implementation date of the proposed rules appropriate? What are other possible alternatives to trigger the initial filing obligation?

17. Is our proposal to require the disclosure on a monthly basis appropriate? If not, what would be the appropriate interval for the disclosures, *e.g.,* quarterly or annually?

18. Is our proposal to require that Form ABS–15G be filed within 15 calendar days after the end of each calendar month appropriate? If not, would a shorter or longer timeframe be more appropriate, *e.g.,* four days or twenty days? Please tell us why.

19. We note that the transaction agreements for certain types of ABS, such as CDOs, may not typically contain a covenant to repurchase or replace an underlying asset. Is it appropriate to exclude, as proposed, those Exchange Act-ABS with transaction agreements that do not contain a covenant to repurchase or replace the underlying assets?

20. Should the data in the table be tagged? If so, should the tagging be in XML or is a different tagging schema appropriate? If tagging is appropriate, would a phase-in period in which the disclosure would be provided without tagging pending completion of necessary technical specifications be appropriate? In order to tag the data, we would need to develop definitions that would result in consistent and comparable data across all issuing entities of all securitizers. For instance, how should we specify that securitizers tag the identity of an originator to provide consistency across disclosures provided by all securitizers? Should we assign codes that would specifically identify each originator? Or would text entry of the name of the originator be sufficient? Similarly, should we specify a unique code for all the issuing entities? For example, registered transactions would have a CIK number assigned for the issuing entity; however, unregistered transactions may not have a unique method of identification. What other definitions or responses would we need to specify in order to make the disclosure comparable across originators and securitizers?

4. Proposed Form ABS–15G

The disclosures required by proposed Rule 15Ga–1 do not fit neatly within the framework of existing Securities Act and Exchange Act Forms because those forms relate to registered ABS transactions and unregistered ABS transactions are not required to file those forms.[44] Therefore, we are proposing new Form ABS–15G to be filed on EDGAR so that parties obligated to make disclosures related to Exchange Act-ABS under Rule 15Ga–1 could file the disclosures on EDGAR. As discussed above, proposed Rule 15Ga–1 would require securitizers to disclose repurchase demand and repurchase and replacement history with respect to registered and unregistered Exchange Act-ABS transactions for as long as the securitizer has ABS outstanding and held by non-affiliates. Consistent with current filing practices for other ABS forms,[45] we are proposing, for purposes of making the disclosures required by Rule 15Ga–1, that Form ABS–15G be signed by the senior officer of the securitizer in charge of the securitization.

Request for Comment:

21. Is our proposal to require proposed Rule 15Ga–1 disclosures on new Form ABS–15G appropriate?

22. Securitizers would be required, as proposed, to file Form ABS–15G on EDGAR. If a securitizer has already been issued a CIK number, we would expect Form ABS–15G to be filed under that number. However, a securitizer may already be a registrant that has other reporting requirements under the Securities Act or the Exchange Act. Should we assign a different file number to Form ABS–15G filings in order to differentiate Form ABS–15G filings made by a registrant in its capacity as a securitizer, from other filings made pursuant to its own reporting requirements under the Securities Act and the Exchange Act? Should we also provide on the SEC website the ability to exclude, include or show only Form ABS–15G for a particular CIK number in order make it easier to locate these filings on EDGAR?

23. Instead of requiring, as proposed, that securitizers provide the Rule 15Ga–1 disclosures on Form ABS–15G, should we instead require that securitizers provide all the disclosures required by Section 943 of the Act in a manner consistent with disclosures in prospectuses and ongoing reports in a registered transaction? For instance, for registered offerings, would it be appropriate to permit issuers to satisfy their disclosure obligation by including all of the information required by proposed Rule 15Ga–1 in prospectuses and periodic reports on behalf of the securitizer for all of the affiliated trusts of a securitizer? Assuming that some securitizers offer several ABS across many asset classes, would taking this approach result in a prospectus that would be unwieldy considering the volume of information that would be required? If we took this approach, then how would that information be conveyed to investors in unregistered offerings, both initially and on an ongoing basis? Would securitizers be able to identify all of the investors that would be entitled to receive the information pursuant to Section 943 of the Act? How often should the information be conveyed to investors? What method would be used to convey the information to investors? Would securitizers post the disclosures on a Web site?

24. We are proposing that for purposes of making the disclosures required by Rule 15Ga–1 that Form ABS–15G be signed by the senior officer in charge of the securitization of the securitizer. Is there a more appropriate party to sign the form? If so, please tell us who and why.

5. Offshore Sales of Exchange-Act ABS

The market for Exchange Act-ABS is global.[46] Securitizers in the United States may sell ABS to offshore purchasers as part of a registered or unregistered offering. Under the proposal, these transactions would be subject to the requirements of proposed Rule 15Ga–1. In addition, U.S. investors may participate in offerings of ABS that primarily are offered by foreign securitizers to purchasers outside of the

[44] However, a portion of the information required by proposed Rule 15Ga–1 would be required in a registration statement and in periodic reports. We discuss those proposals below.

[45] The Form 10–K report for ABS issuers must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor, or on behalf of the issuing entity by the senior officer in charge of the servicing. *See* General Instruction J.3. of Form 10–K [17 CFR 249.310] In addition, the certifications for ABS issuers that are required under Section 302 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. 7241] must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor if the depositor is signing the Form 10–K report, or on behalf of the issuing entity by the senior officer in charge of the servicing function of the servicer if the servicer is signing the Form 10–K report. In our 2010 ABS Proposing Release, we also proposed to require that the senior officer in charge of securitization of the depositor sign the registration statement (either on Form SF–1 or Form SF–3) for ABS issuers. *See* Section II.F. of the 2010 ABS Proposing Release.

[46] Indeed, the International Organization of Securities Commissions (IOSCO) cites the recent crisis in the subprime markets, stemming from defaulted mortgage loans in the United States and affected by issues related to liquidity and transparency, as evidence of the interrelation of today's global markets. See the *Report on the Subprime Crisis—Final Report,* Report of the Technical Committee of IOSCO, May 2008, available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD273.pdf.*

United States. For example, a small proportion of a primarily offshore offering of ABS may be made available to U.S. investors pursuant to Section 4(2) of the Securities Act [47] or Securities Act Rule 144A.[48]

We recognize that Section 943 does not specify how its requirements apply to offshore transactions. As noted, consistent with Section 943, proposed Rule 15Ga–1 would require securitizers to disclose information about unregistered transactions, including those sold in unregistered transactions outside the United States. Securities that are sold in foreign markets and assets originated in foreign jurisdictions may be subject to different laws, regulations, customs and practices which can raise questions as to the appropriateness of the disclosures called for under Form ABS–15G. Although our proposed rules are required by the Act, and we believe the added protections of our rules would benefit investors who purchase securities in these offerings, we are mindful that the imposition of a filing requirement in connection with private placements of ABS in the United States may result in foreign securitizers seeking to avoid the filing requirement by excluding U.S. investors from purchasing portions of ABS primarily offered outside the United States, thus depriving U.S. investors of diversification and related investment opportunities.

Request for Comment:

25. Are there any extra or special considerations relating to these circumstances that we should take into account in our rules? Should our rules permit securitizers to exclude information from Form ABS–15G with respect to "foreign-offered ABS," and if so, should foreign-offered ABS be defined to include Exchange Act-ABS that were initially offered and sold in accordance with Regulation S, the payment to holders of which are made in non-U.S. currency, and have foreign assets (*i.e.,* assets that are not originated in the U.S.) that comprise at least a majority of the value of the asset pool? For this purpose, should the foreign asset composition threshold be higher or lower (*e.g.,* 40%, 60%, or 80%)? Would another definition be more appropriate?

26. Should our rules require securitizers that are foreign private issuers [49] to provide information on Form ABS–15G for those Exchange Act-ABS that are to be offered and sold in the United States pursuant to an exemption in an unregistered offering, as proposed? Instead should our rules only require disclosure about Exchange Act-ABS as to which more than a certain percentage (*e.g.,* 5%, 10% or 20%) of any class of such Exchange Act-ABS are sold to U.S. persons?

B. Proposed Disclosure Requirements in Regulation AB Transactions

The requirements in Section 943 of the Act are in many ways quite similar to the Commission's proposal for additional disclosure regarding fulfilled and unfulfilled repurchase requests. In our 2010 ABS Proposing Release,[50] we proposed expanded disclosure regarding originators [51] and sponsors,[52] such as information for certain identified originators and the sponsor relating to the amount of the originator's or sponsor's publicly securitized assets that, in the last three years, has been the subject of a demand to repurchase or replace.[53] However, the Commission's proposals would only apply to registered offerings and would only require disclosure about other registered offerings, if material. In contrast, as we discuss in our proposals above, Section 943 of the Act requires similar but expanded disclosure by requiring that any securitizer of Exchange Act-ABS disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by securitizer, so that investors may identify asset originators with clear underwriting deficiencies.[54]

In order to conform our 2010 ABS proposals to the rule proposed today to implement Section 943 of the Act, we are re-proposing our previous proposals for Regulation AB with respect to disclosures regarding sponsors in prospectuses and with respect to disclosures about the asset pool in periodic reports, so that issuers would be required to include the disclosures in the same format as required by proposed Rule 15Ga–1(a).[55] Under our revised proposals, issuers of Reg AB–ABS would need to provide disclosures in the same format as proposed Rule 15Ga–1(a) within a prospectus and within ongoing reports on Form 10–D as described below. As we stated in the 2010 ABS Proposing Release, we believe that investors must be able to readily access and understand the information for a specific offering.[56] Consistent with that belief, we are proposing that certain repurchase history should be presented in the body of the prospectus and within ongoing reports in order to facilitate investor understanding and eliminate the need to locate all of the information that may be disclosed elsewhere and by a different party. Even though our proposals discussed above would require securitizers to provide repurchase history on Form ABS–15G, we believe that issuers should provide a subset of that information to investors in the body of a prospectus or a periodic report.[57] However, the obligation of an

[47] 15 U.S.C. 77d(2). Section 4(2) provides an exemption from registration for transactions by an issuer not involving any public offering.

[48] Securities Act Rule 144A [17 CFR 230.144A] provides a safe harbor for a reseller of securities from being deemed an underwriter within the meaning of Sections 2(a)(11) and 4(1) of the Securities Act for the offer and sale of non-exchange listed securities to "qualified institutional buyers" (QIBs), as defined in Rule 144A.

[49] 17 CFR 240.3b–4.

[50] *See* Section V.A. of the 2010 ABS Proposing Release.

[51] *See* previously proposed Item 1110(c) of Regulation AB in the 2010 ABS Proposing Release.

[52] *See* previously proposed Item 1104(f) of Regulation AB in the 2010 ABS Proposing Release.

[53] The proposal would amend Regulation AB to require sponsors and originators (of greater than 20% of the assets underlying the pool) to disclose the amount, if material, of publicly securitized assets originated or sold by the sponsor that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets that has been made in the prior three years pursuant to the transaction agreements on a pool by pool basis as well as the percentage of that amount that were not then repurchased or replaced by the sponsor. Of those assets that were not then repurchased or replaced, disclosure would be required regarding whether an opinion of a third party not affiliated with the sponsor/originator had been furnished to the trustee that confirms that the assets did not violate the representations and warranties. *See* proposed Items 1104(f), 1110(c) and 1121(c) of Regulation AB in the 2010 ABS Proposing Release.

[54] *See* Section 943 of the Act. We note that several commentators on the 2010 ABS Proposing Release expressed concerns about the difficulty of producing data to comply with the proposed requirement to report three years of repurchase activity. *See e.g.,* letters of ASF, Bank of America, Financial Services Roundtable and Mortgage Bankers Association. However, in light of the requirements of Section 943 of the Act, we continue to believe that the information is important to include in prospectuses.

[55] As discussed above, in the 2010 ABS Proposing Release, we proposed to amend Item 1110(c) of Regulation AB to require originators (of greater than 20% of the assets underlying the pool) to disclose the amount, if material, of publicly securitized assets originated or sold by the sponsor that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets that has been made in the prior three years pursuant to the transaction agreements on a pool by pool basis as well as the percentage of that amount that were not then repurchased or replaced by the sponsor. That proposal remains outstanding.

[56] In the 2010 ABS Proposing Release, we proposed that issuers provide all disclosures in one prospectus, instead of the current practice of providing information in a base prospectus and prospectus supplement to address concerns that the base and supplement format resulted in unwieldy documents with excessive and inapplicable disclosure that is not useful to investors. *See* Section II.D.1 of the 2010 ABS Proposing Release.

[57] We are not proposing that issuers include all of the information that would be required of a securitizer under proposed Rule 15Ga–1 in prospectuses because information about other asset classes and information older than three years may make the size of the prospectus unwieldy and

issuer to provide the disclosures in prospectuses and in ongoing reports under our proposed changes to Regulation AB would be independent from, and would not alleviate the disclosure obligations of a securitizer under, proposed Rule 15Ga–1.

We are revising and re-proposing our previous proposal to amend Item 1104 of Regulation AB. As noted above, the Commission's previous proposals applied to disclosure of a sponsor's repurchase demand and repurchase and replacement history concerning the last three years with respect to other registered transactions, if material. In order to conform our previous proposal to the format of the information that would be provided by the rule proposed today to implement Section 943 of the Act, we are proposing that if the underlying transaction agreements provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty, then issuers would be required to provide in the body of the prospectus disclosure of a sponsor's repurchase demand and repurchase and replacement history for the last three years, pursuant to the format proscribed in proposed Rule 15Ga–1(a). In addition, we are also proposing to limit the disclosure required in the prospectus to repurchase history for the same asset class as the securities being registered. We are also excluding the materiality threshold that was previously proposed as Section 943 includes no such standard. Also, because we believe the complete historical information about repurchase activity may be useful to investors, an issuer would be required to reference the Form ABS–15G filings made by the securitizer (*i.e.,* sponsor) of the transaction and disclose the CIK number of the securitizer so that investors may easily locate Form ABS–15G filings on EDGAR.

Our previous proposal would amend Item 1121 of Regulation AB so that issuers would be required to disclose the repurchase demand and repurchase and replacement history with respect to assets that underlie a particular ABS on an ongoing basis in periodic reports on Form 10–D, if material.[58] We are revising and re-proposing our previous proposal to require that issuers provide in Form 10–D, repurchase demand and repurchase and replacement disclosure regarding the assets in the pool in the format prescribed by proposed Rule 15Ga–1(a). In order to conform our previous proposal to the rule proposed today to implement Section 943 of the Act, we are also excluding the materiality threshold that was previously proposed. Because we believe the complete historical information about repurchase activity may be useful to investors, the Form 10–D would also be required to include a reference to the Form ABS–15G filings made by the securitizer of the transaction and disclose the CIK number of the securitizer so that investors may easily locate Form ABS–15G filings on EDGAR. As discussed above, providing repurchase history disclosure for a particular pool in Form 10–D, is independent from and would not alleviate a securitizer's obligation to disclose ongoing information for all of their transactions as required by proposed Rule 15Ga–1.

Request for Comment:

27. Is our re-proposal to require disclosure pursuant to the format prescribed in Rule 15Ga–1(a) for the same asset class in prospectuses and for pool assets in periodic reports appropriate? Is it appropriate to limit the disclosure in prospectuses to the last three years of activity, as proposed? Would a different period (e.g., one or five years) be more appropriate?

28. Is it appropriate to omit a materiality requirement for disclosures in prospectuses, as proposed? What issues would arise by creating two different disclosure standards between what would be required to be disclosed in prospectuses and what would be disclosed by securitizers on Form ABS–15G? Are there any ways to address those issues?

29. Should we permit issuers to incorporate the repurchase demand and repurchase and replacement disclosure by reference from Form ABS–15G, instead of requiring that it be provided in the body of the prospectus or Form 10–D? Would it be burdensome for investors to search elsewhere to locate disclosure that would otherwise be included in a prospectus?

30. In the 2010 ABS Proposing Release, the Commission also proposed that originators of over 20% of the pool assets provide disclosure regarding the fulfilled and unfulfilled repurchase requests on a pool by pool basis for publicly securitized assets.[59] If we were to adopt that proposal, should we make any changes to conform that proposal given the information that would be required by proposed Rule 15Ga–1(a)? For example, should that information be provided in the same format as proposed Rule 15Ga–1(a) and should we require disclosures with respect to all originators of the pool assets?[60] Or is disclosure unnecessary in light of the other disclosures required by proposed Rule 15Ga–1?

C. Proposed Disclosure Requirements for NRSROs

We are proposing to add new Exchange Act Rule 17g–7, which would implement Section 943(1) of the Act by requiring an NRSRO to make certain disclosures in any report accompanying a credit rating relating to an asset-backed security.[61] Specifically, in accordance with Section 943(1), Rule 17g–7 would require an NRSRO[62] to include a description of the representations, warranties and enforcement mechanisms available to investors and a description of how they differ from the representations, warranties and enforcement mechanisms in issuances of similar

investors should have ready access to more current information. We are also not proposing that issuers include all of the proposed Rule 15Ga–1 in Form 10–Ds for the same reasons, and because the purpose of Form 10–D is to provide periodic performance of a specific asset pool.

[58] *See* previously proposed Item 1121(c) and Section V.A. of the 2010 ABS Proposing Release.

[59] *See* proposed Item 1110(c) of Regulation AB in the 2010 ABS Proposing Release.

[60] Originators may sell their assets to multiple securitizers. Proposed Rule 15Ga–1 would not require securitizers to disclose the demand, repurchase and replacement activity across all trusts across multiple securitizers that may contain an originator's assets. For example, under proposed Rule 15Ga–1, if securitizers A, B and C securitize the loans of an originator, Securitizer A would only need to disclose the fulfilled and unfulfilled repurchase request activity with respect to loans with respect to Securitizer A securitizations. As we discuss above, proposed Rule 15Ga–1 would require disclosure that indicates the name of the originator in order to permit "investors [to] identify asset originators with clear underwriting deficiencies," as required by Section 943 of the Act.

[61] In June 2008, the SEC proposed a new Rule 17g–7 that would have required an NRSRO to publish a report containing certain information each time the NRSRO published a credit rating for a structured finance product or, as an alternative, use ratings symbols for structured finance products that differentiated them from the credit ratings for other types of debt securities. *See Exchange Act Release No. 57967* (June 16, 2008), [73 FR 36212]. In November 2009, the SEC announced that it was deferring consideration of action on that proposal and separately proposed a new Rule 17g–7 to require annual disclosure by NRSROs of certain information. *See Proposed Rules for Nationally Recognized Statistical Rating Organizations,* SEC Release 34–61051 (November 23, 2009), [74 FR 63866]. Although we are proposing a new rule with the same rule number, that proposal remains outstanding.

[62] Current Item 1111(e) of Regulation AB [17 CFR 1111(e)] already requires *issuers* to disclose the representations and warranties related to the transaction in prospectuses. Additionally, in the 2010 ABS Proposing Release, the Commission proposed changes to this item to require a description of any representation and warranty relating to fraud in the origination of the assets, and a statement if there is no such representation or warranty.

securities.[63] As discussed above, the Act also amended the Exchange Act to include the definition of an "asset-backed security" and Section 943 of the Act references that definition.[64] Therefore, Rule 17g–7 would provide that the NRSRO must provide the disclosures with respect to any Exchange Act-ABS, whether or not the security is offered in a transaction registered with the SEC.

Section 943, by its terms, applies to any report accompanying a credit rating for an ABS transaction, regardless of when or in what context such reports and credit ratings are issued. Proposed Rule 17g–7 is intended to reflect the broad scope of this congressional mandate. In addition, we are proposing a note to the proposed rule which would clarify that for the purposes of the proposed rule, a "credit rating" would include any expected or preliminary credit rating issued by an NRSRO.[65] In ABS transactions, pre-sale reports are typically issued by an NRSRO at the time the issuer commences the offering and typically include an expected or preliminary credit rating and a summary of the important features of a transaction. Disclosure at the time pre-sale reports are issued is particularly important to investors, since such reports provide them with important information prior to the point at which they make an investment decision.[66]

Request for Comment:

31. The Act and our proposed new Rule 17g–7 require disclosure of how the representations, warranties and enforcement mechanisms in a particular deal differ from the representations, warranties and enforcement mechanisms in the issuance of similar securities. We are not specifying in this release a definition for the term "similar securities." Should we define "similar securities"? If so, how should it be defined? Should similar securities be defined by underlying asset classes (*i.e.,* residential mortgages, commercial mortgages, auto loans, or auto leases, etc.)? Or should the distinction be narrower (*i.e.,* prime residential mortgages, Alt–A residential mortgages, or subprime residential mortgages)? Or by sponsor (Originator A or Originator B, etc.)? Or by other ABS rated by the same NRSRO?

32. Section 932 of the Act further amends the Exchange Act by adding a new paragraph (s) to Section 15E requiring a form to accompany the publication of each credit rating that discloses certain information and requiring that we adopt rules requiring NRSROs to prescribe and use such a form. Would it be appropriate to require the inclusion of the disclosures about representations, warranties and enforcement mechanisms required under proposed Rule 17g–7 in the form used to make the disclosures that will be required under rules adopted pursuant to Exchange Act Section 15E(s)? Are there any timing issues that we should take into account in determining whether to do so?

33. Should we require the proposed disclosure to include comparisons to industry standards in addition to similar securities? For instance, one organization has published model standards for representation, warranties and enforcement mechanisms with respect to residential mortgage backed securities.[67] What would be an industry standard for other asset classes?

34. Is there any reason not to consider an expected or preliminary credit rating to be a "credit rating" for the purposes of the proposed rule? If so, why?

35. In the case of a registered ABS transaction, should we allow NRSROs to satisfy the requirement to disclose representations, warranties and enforcement mechanisms by referring to disclosure about those matters that is included in a prospectus prepared by an issuer?

36. Rule 17g–5, among other things, is designed to facilitate the performance of unsolicited credit ratings for structured finance products by providing a mechanism for NRSROs not hired by arrangers of structured finance products to obtain the same information provided to NRSROs hired by such arrangers to rate those products.[68] As such, non-hired NRSROs performing unsolicited credit ratings pursuant to the Rule 17g–5 mechanism would have access to the same information on a transaction's representations, warranties, and enforcement mechanisms at the same time as hired NRSROs. However, in the event that a non-hired NRSRO elected to perform an unsolicited credit rating not pursuant to Rule 17g–5, it would likely not have access to such information until it was made public. It is the Commission's understanding that prior to the introduction of the Rule 17g–5 mechanism described above, NRSROs rarely, if ever, performed unsolicited credit ratings for structured finance products. Given the availability of the Rule 17g–5 mechanism, is it likely that any NRSROs would perform unsolicited credit ratings for structured finance products in the future without relying on that mechanism to obtain information from securitizers? If so, would such NRSROs be able to comply with proposed Rule 17g–7? Would it be appropriate for such NRSROs to include an explanatory note accompanying the disclosures required by proposed Rule 17g–7 indicating that such disclosures were based only on publicly available information?

III. Transition Period

We are considering the appropriate timing for compliance and effectiveness of the proposals, if adopted, and request that commentators provide input about feasible dates for implementation of the proposed amendments. We currently anticipate that, if adopted, the new and amended rules would apply to all securitizers and NRSROs related to new issuances, including takedowns off of existing shelf registration statements, of Exchange Act-ABS. However, we note that Rule 15Ga–1, as proposed, would

[63] As discussed further in Section V.B.6. below, we anticipate that one way an NRSRO could fulfill the requirement to describe how representations, warranties and enforcement mechanisms differ from those provided in similar securities would be to review previous issuances both on an initial and an ongoing basis in order to establish "benchmarks" for various types of securities and revise them as appropriate.

[64] *See* Section 3(a)(77) of the Exchange Act, as amended by the Act.

[65] We intend the term "preliminary credit rating" to include any rating, any range of ratings, or any other indications of a rating used prior to the assignment of an initial credit rating for a new issuance. *See generally Credit Ratings Disclosure,* SEC Release No. 33–9070 (October 7, 2009) [74 FR 53086].

[66] We further note that Section 932 of the Act amends Section 15E of the Exchange Act to require a form to accompany the publication of each credit rating that discloses certain information. For the purposes of Section 943 and proposed Rule 17g–7, such a form would clearly be a "report" and its publication would therefore require the necessary disclosures regarding representations, warranties and enforcement mechanisms available to investors. The Commission has one year to adopt rules requiring NRSROs to prescribe and use a form to make certain required disclosures, whereas the Rule 17g–7 disclosures that we are proposing in this release must be prescribed within 180 days from the date of enactment of the Act. *See* Section 937 of the Act. Given that Sections 932 and 943 both mandate rules requiring NRSROs to disclose information, we solicit comment below on whether the proposed Rule 17g–7 disclosure should eventually be scoped into proposals we will issue under Section 932 regarding the disclosure that would need to be made by an NRSRO in the form accompanying the publication of each credit rating.

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

[68] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* SEC Release 34–61050 (November 23, 2009), [74 FR 63832].

require disclosures about the repurchase demands and repurchases and replacements that occurred prior to the effective date of the new requirements.

Request for Comment:

37. Should implementation of any proposals be phased-in? If so, explain why and describe the timeframe needed for a phase-in (*e.g.,* six months, one or two years) and basis for such period?

38. Should implementation be based on a tiered approach that relates to a characteristic such as the size of the securitizer? Is there any reason to structure implementation around asset class of the securities? Because a reporting structure is already available for registered transactions, should prospectuses and periodic reports be required to include the demand, repurchase and replacement disclosures, as provided by our proposals to amend Items 1104 and Item 1121 of Regulation AB, before Form ABS–15G is implemented?

IV. General Request for Comments

We request comment on the specific issues we discuss in this release, and on any other approaches or issues that we should consider in connection with the proposed amendments. We seek comment from any interested persons, including investors, securitizers, asset-backed issuers, sponsors, originators, servicers, trustees, disseminators of EDGAR data, industry analysts, EDGAR filing agents, and any other members of the public.

V. Paperwork Reduction Act

A. Background

Certain provisions of the proposed rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[69] The Commission is submitting these proposed amendments and proposed rules to the Office of Management and Budget (OMB) for review in accordance with the PRA.[70] An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:[71]

(1) "Form ABS–15G" (a proposed new collection of information);

(2) "Regulation S–K" (OMB Control No. 3235–0071); and

(3) "Rule 17g–7" (a proposed new collection of information).

The regulation listed in No. 2 was adopted under the Securities Act and the Exchange Act and sets forth the disclosure requirements for registration statements and periodic and current reports filed with respect to asset-backed securities and other types of securities to inform investors.

The regulations and forms listed in Nos. 1 and 3 are newly proposed collections of information under the Act. Rule 15Ga–1 would require securitizers to provide disclosure regarding all fulfilled and unfulfilled repurchase requests with respect to Exchange Act-ABS pursuant to the Act. Form ABS–15G would contain Rule 15Ga–1 disclosures and be filed with the Commission. Rule 17g–7 would require NRSROs to provide disclosure regarding representations, warranties, and enforcement mechanisms available to investors in any report accompanying a credit rating issued by an NRSRO in connection with an Exchange Act-ABS transaction.

Compliance with the proposed amendments would be mandatory. Responses to the information collections would not be kept confidential and there would be no mandatory retention period for proposed collections of information.

B. PRA Reporting and Cost Burden Estimates

Our PRA burden estimates for the proposed amendments are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used with respect to asset-backed securities, as well as information from outside data sources.[72] When possible, we base our estimates on an average of the data that we have available for years 2004, 2005, 2006, 2007, 2008, and 2009.

In adopting rules under the Credit Rating Agency Reform Act of 2006 ("the Rating Agency Act"),[73] as well as proposing additional rules in November 2009, we estimated that approximately 30 credit rating agencies would be registered as NRSROs.[74]

1. Form ABS–15G

This new collection of information relates to proposed disclosure requirements for securitizers that offer Exchange Act-ABS. Under the proposed amendments, such securitizers would be required to disclose demand, repurchase and replacement history with respect to pool assets across all trusts aggregated by securitizer. The new information would be required at the time a securitizer offers Exchange Act-ABS after the implementation of the proposed rule, and then monthly, on an ongoing basis as long as the securitizer has Exchange Act-ABS outstanding held by non-affiliates. The disclosures would be filed on EDGAR on proposed Form ABS–15G. We believe that the costs of implementation would include costs of collecting the historical information, software costs, costs of maintaining the required information, and costs of preparing and filing the form. Although the proposed requirements apply to securitizers, which by definition would include sponsors and issuers, we base our estimates on the number of unique ABS sponsors because we are also proposing that issuers affiliated with a sponsor would not have to file a separate Form ABS–15G to provide the same proposed Rule 15Ga–1 disclosures. We base our estimates on the number of unique ABS securitizers (i.e., sponsors) over 2004–2009, which was 540, for an average of 90 unique securitizers per year.[75] We base our burden estimates for this collection of information on the assumption that most of the costs of implementation would be incurred before the securitizer files its first Form ABS–15G. Because ABS issuers currently have access to systems that track the performance of the assets in a pool we believe that securitizers should also have access to information regarding whether an asset had been repurchase or replaced. However, securitizers may not have historically collected the information and systems may not currently be in place to track when a demand has been made,[76] and in particular, systems may not be in place to track those demands made by investors upon trustees. Therefore, securitizers would incur a one-time cost to compile historical information in systems. Furthermore, the burden to collect and compile the historical information may vary significantly between securitizers, due

[69] 44 U.S.C. 3501 *et seq.*

[70] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[71] The paperwork burden from Regulation S–K is imposed through the forms that are subject to the requirements in those regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulation S–K.

[72] 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).

[73] Public Law 109–291 (2006).

[74] *See e.g.,* Section VIII of *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* SEC Release 34–61051 (December 4, 2009) [74 FR 63866].

[75] We base the number of unique sponsors on data from SDC.

[76] *See e.g.,* comment letters from ASF, Bank of America, Financial Services Roundtable and the Mortgage Bankers Association on the 2010 ABS Proposing Release.

to the number of asset classes and number of ABS issued by a securitizer.

We estimate that a securitizer would incur a one-time setup cost for the initial filing of 972 hours to collect and compile historical information and adjust its existing systems to collect and provide the required information going forward.[77] Therefore, we estimate that it would take a total of 87,480 hours for a securitizer to set up the mechanisms to file the initial Rule 15Ga–1 disclosures.[78] We allocate 75% of these hours (65,610 hours) to internal burden for all securitizers. For the remaining 25% of these hours (21,870 hours), we use an estimate of $400 per hour for external costs for retaining outside professionals totaling $8,748,000.

After a securitizer has made the necessary adjustments to its systems in connection with the proposed rule and, after an initial filing of Form ABS–15G disclosures has been made, we estimate that each subsequent filing of Form ABS–15G to disclose ongoing information by a securitizer will take approximately 30 hours to prepare, review and file. We estimate, for PRA purposes, that the number of Form ABS–15G filings per year will be 1,620.[79]

Therefore, after the initial filing is made, we estimate the total annual burden hours for preparing and filing the disclosure will be 48,600 hours.[80] We allocate 75% of those hours (36,450 hours) to internal burden hours for all securitizers and 25% of those hours (12,150 hours) for professional costs totaling $400 per hour of external costs of retaining outside professionals totaling $4,860,000. Therefore, the total internal burden hours are 102,060[81] and the total external costs are $13,608,000.[82]

2. Rule 15Ga–1

Rule 15Ga–1 contains the requirements for disclosure that a securitizer must provide in Form15G–ABS filings described above. The collection of information requirements, however, are reflected in the burden hours estimated for Form ABS–15G, therefore, Rule 15Ga–1 does not impose any separate burden. Therefore, we have not included additional burdens for proposed Rule 15Ga–1.

3. Forms S–1 and S–3

We are proposing that asset-backed securities offered on Forms S–1 and S–3 include the required Rule 15Ga–1 disclosures for the same asset class in registration statements. The burden for the collection of information is reflected in the burden hours for Form ABS–15G filed by a securitizer; however, Forms S–1 and S–3 are filed by asset-backed issuers, and issuers may include only a portion of the information in the prospectus. Therefore, we have not included additional burdens for Forms S–1 and S–3.

4. Form 10–D

In 2004, we adopted Form 10–D as a new form limited to asset-backed issuers. This form is filed within 15 days of each required distribution date on the asset-backed securities, as specified in the governing documents for such securities. The form contains periodic distribution and pool performance information.

We are proposing that issuers of registered ABS include the proposed Rule 15Ga-1 disclosures for only the pool assets on Form 10–D. However, because the burden for the collection of information is reflected in the burden hours for Form ABS–15G, we have not included additional burdens for Form 10–D.

5. Regulation S–K

Regulation S–K, which includes the item requirements in Regulation AB, contains the requirements for disclosure that an issuer must provide in filings under both the Securities Act and the Exchange Act. In 2004, we noted that the collection of information requirements associated with Regulation S–K as it applies to ABS issuers are included in Form S–1, Form S–3, Form 10–K and Form 8–K. We have retained an estimate of one burden hour to Regulation S–K for administrative convenience to reflect that the changes to the regulation did not impose a direct burden on companies.[83]

The proposed changes would make revisions to Regulation S–K. The collection of information requirements, however, are reflected in the burden hours estimated for the various Securities Act and Exchange Act forms related to ABS issuers. The rules in Regulation S–K do not impose any separate burden. Consistent with historical practice, we have retained an estimate of one burden hour to Regulation S–K for administrative convenience.

6. Rule 17g–7

This new collection of information relates to proposed disclosure requirements for NRSROs. Under the proposed amendments, an NRSRO would be required to disclose in any report accompanying a credit rating the representations, warranties and enforcement mechanisms available to investors and describe how they differ from those in issuances of similar securities. We believe that the costs of implementation would include the cost of preparing the report and maintaining the information. In addition, it is our understanding that the disclosures and drafts of transaction agreements that contain the representations, warranties and enforcement mechanisms related to an ABS transaction are prepared by the issuer and made available to NRSROs during the rating process. We estimate it would take 1 hour per ABS transaction to review the relevant disclosures prepared by an issuer, which an NRSRO would presumably have reviewed as part of the rating process, and convert those disclosures into a format suitable for inclusion in any report to be issued by an NRSRO. The proposed rule would also require an NRSRO to include disclosures describing how the representations, warranties and enforcement mechanisms differ from those provided in similar securities. Although we are not prescribing how an NRSRO must fulfill this requirement, we anticipate that one way an NRSRO could do so would be to review previous issuances both on an initial and an ongoing basis in order to establish "benchmarks" for

[77] The value of 972 hours for setup costs is based on staff experience. We estimate that 672 of those hours will be to set up systems to track the information and is calculated using an estimate of two computer programmers for two months, which equals 21 days per month times two employees times two months times eight hours per day.

[78] 972 hours to adjust existing systems per securitizer X 90 average number of unique securitizers.

[79] The Form ABS–15G is required to be filed on a monthly basis; however, we are estimating that, in the first year after implementation, the number of Form ABS–15G per year would be a multiple of six times the number of unique securitizers per year since the obligation to initially file Form ABS–15G is an offering of Exchange Act-ABS, which could happen at any time of the year. Therefore, in the first year of implementation, a securitizer would most likely not be obligated to file Form ABS–15G for the full 12 months. Thus, we estimate the total number of Form ABS–15G to be filed in the first year after implementation to be 540 (90 unique securitizers year one × 6).

In the second year after implementation, we estimate the number of Form ABS–15G to be filed will be 1080 for a total of 1,620 (90 unique securitizers year one × 12) + (90 unique securitizers year two × 6). In the third year after implementation, we estimate the number of Form ABS–15G to be filed will be 2,160 for a total of 2,700 (90 unique securitizers year one × 12) + (90 unique securitizers year two × 12) + (90 unique securitizers year three X 6). The total number of Forms 15G–ABS over three years, would therefore be 4,860. Therefore, for PRA purposes, we estimate an annual average of 1,620 Form ABS–15G filings.

[80] 30 hours × 1,620 forms.

[81] 65,610 hours + 36,450 hours.

[82] $8,748,000 + $4,860,000.

[83] *See* the 2004 ABS Adopting Release.

various types of securities and revise them as appropriate. We expect that an NRSRO would incur an initial setup cost to collect, maintain and analyze previous issuances to establish benchmarks as well as an ongoing cost to review the benchmarks to ensure that they remain appropriate. We estimate that the initial review and set up system cost will take 100 hours and that NRSROs will spend an additional 100 hours per year revising the various benchmarks. Therefore, we estimate it would take a total of 3,000 hours [84] for NRSROs to set up systems and an additional 3,000 hours per year revising various benchmarks.[85]

On a deal-by-deal basis, we estimate it would take an NRSRO 10 hours per ABS transaction to compare the terms of the current deal to those of similar securities. Because NRSROs would need to provide the disclosures in connection with the issuance of a credit rating on a particular offering of ABS, we base our estimates on an annual average of 2,067 ABS offerings.[86] Typically, the terms of the transaction agreements condition the issuance of an ABS on a credit rating, and generally, two credit ratings are required, resulting in the hiring of two NRSROs per transaction, although some may only require one credit rating and thus the hiring of one NRSRO. However, we anticipate that our recent amendments to Rule 17g–5, which provide a mechanism for allowing non-hired NRSROs to obtain the same information provided to NRSROs hired to rate structured finance transactions, will promote the issuance of credit ratings by NRSROs that are not hired by the arranger.[87] As a result, we assign 4 to the number of credit ratings per issuance of ABS, based on an average of two NRSROs preparing two reports (pre-sale and final) for each transaction. Therefore, we estimate that it would take a total of 90,948 hours, annually, for NRSROs to provide the proposed Rule 17g–7 disclosures.[88]

7. Summary of Proposed Changes to Annual Burden Compliance in Collection of Information

Table 1 illustrates the annual compliance burden of the collection of information in hours and costs for the new proposed disclosure requirements for securitizers and NRSROs. Below, the proposed Rule 15Ga–1 requirement for securitizers is noted as "Form ABS–15G" and the proposed requirement for NRSROs is noted as "17g–7."

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
Form ABS–15G	.....	1,620	.....	102,060	102,060	.....	13,608,000	13,608,000
17g–7	.....	8,268	.....	96,948	96,948	.....	.....	.....

8. Solicitation of Comments

We request comments in order to evaluate: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information; (3) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.[89] In addition, we specifically ask whether it is appropriate to assume, as we have, that for the purposes of preparing the required disclosures describing how the representations, warranties and enforcement mechanisms differ from those provided in similar securities NRSROs would review previous issuances both on an initial and an ongoing basis in order to establish "benchmarks" for various types of securities and revise them as appropriate? Would NRSROs use other means to prepare the required comparisons, for example, reviewing previous issuances on a *de novo* basis for every ABS transaction?

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–24–10. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–24–10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Benefit-Cost Analysis

The Act requires us to implement the requirements discussed in this release. These changes will affect all securitizers of Exchange Act-ABS, including unregistered Exchange Act-ABS, and NRSROs that provide credit ratings on Exchange Act-ABS. Further, the proposed rules would also require historical information with respect to Exchange Act-ABS issued by a securitizer. We also re-propose disclosure requirements with respect to repurchase requests in Regulation AB in order to conform disclosures that we previously proposed under our 2010 ABS Proposals to those required by Section 943 of the Act.

[84] 100 hours × 30 NRSROs.

[85] 100 hours × 30 NRSROs.

[86] The annual average number of registered offerings was 958 and the annual average number of Rule 144A ABS offerings was 716 for an estimated annual average of 1,674 over the period 2004–2009. *See* Section X. of the 2010 ABS Proposing Release. We also add 393 to estimate for offerings under other exemptions that were not within the scope of the 2010 ABS Proposing Release. Thus, in total we use an estimated annual average number of 2,067 ABS offerings for the basis of our PRA burden estimates.

[87] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* SEC Release 34–61050 (November 23, 2009), [74 FR 63832].

[88] 4 reports × 2,067 ABS offerings × 11 hours (1 hour to review disclosures + 10 hours to compare and prepare).

[89] We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

We are sensitive to benefits and costs of the proposed rules, if adopted. We discuss these benefits and costs below. We request that commentators provide their views along with supporting data as to the benefits and costs of the proposed amendments.

A. Benefits

The proposals seek to fulfill the Act's objective to provide greater transparency regarding the use of representations and warranties in ABS transactions in both the registered and unregistered ABS markets. The recent financial crisis has revealed various problems with existing representation, warranty and enforcement provisions. Poor underwriting standards coupled with unenforceable representations and warranties by securitizers exacerbated investors' losses in ABS.[90] Increasing transparency regarding all demands for repurchases and replacements, including investor demands upon a trustee, will help investors and market participants identify originators with clear underwriting deficiencies. By having better information to judge the origination and underwriting quality of the assets that were previously securitized, investors can make more informed investment decisions.

The proposals may strengthen the incentives for securitizers to improve origination and underwriting standards and to refrain from securitizing assets that do not meet stated representations. In addition, following a securitization, securitizers may have stronger incentives to fulfill repurchase and replacement demands properly. We also propose to limit the scope of the disclosures to outstanding Exchange Act-ABS, and in the initial filing to the last five years of demand, repurchase and replacement history in order to ameliorate costs to securitizers, and still provide information so that investors may identify originators with underwriting deficiencies.

We are proposing to require that the disclosures be filed on EDGAR on new Form ABS–15G. By requiring the proposed Form ABS–15G to be filed on EDGAR, the information proposed to be required would be housed in a central repository that would preserve continuous access to the information. After the initial filing, securitizers would be required to file Form ABS–15G, periodically, on a monthly basis with updated information, so that consistent with the purpose of Section 943 of the Act, an investor may monitor the demand, repurchase and replacement activity across all Exchange Act-ABS issued by a securitizer.

If an ABS is rated, the proposals would require more disclosures by NRSROs about the representations, warranties and enforcement mechanisms available to investors, and how they differ from those of other similar securities. The proposed disclosures will enhance the comparability of information across issuers in a relatively efficient manner by centralizing this disclosure in NRSRO reports. As a result, these disclosures will possibly expand the information available to investors and improve transparency regarding the use of representations and warranties in ABS transactions.

As a result, proposed Rules 15Ga–1 and 17g–7 disclosures are likely to help investors more accurately evaluate and price initial offerings and existing issues of ABS securities and in turn, are likely to improve capital allocation in both the markets for ABS and the original loan markets that back those ABS. Further, the proposed rules would require disclosures regarding the registered and unregistered transactions, thus extending the benefits of disclosure to the unregistered market. While it is difficult to quantify the benefits listed above, they are likely to be substantial in light of the recent financial crisis.

B. Costs

The proposals would implement the Act's requirement on securitizers to disclose the repurchase and replacement demands resulting from breaches of representations and warranties in past ABS transactions initially, for the last five years and then updated disclosures going forward on a monthly basis. We understand that some of the data collection may be costly. In some cases, it may be very difficult to obtain repurchase or replacement records from the distant past.[91] However, we believe that the information about whether an asset had been repurchased or replaced from recent years should be accessible by issuers of outstanding ABS, because the current servicing history of the underlying assets would still be accessible on servicers' systems. However, systems may not currently be in place to track when a demand has been made and therefore, securitizers may incur a significant one-time cost to collect and compile historical information and that cost may vary substantially between securitizers, due to the number of asset classes and number of ABS issued by a securitizer. In addition to the costs on a securitizer, trustees would also incur costs of tracking investor demands upon the trustee. We also expect that the cost of compiling and reporting this information would require a one-time set-up cost to adjust existing systems to compile the initial historical information. Additionally, under the proposal, the securitizer would incur additional costs to satisfy the obligation to file ongoing monthly reports on EDGAR of repurchase demand and repurchase and replacement activity. Filing on EDGAR would require a securitizer to obtain authorization codes and to adhere to formatting instructions. The Act does not specify the periodicity with which information should be provided so that investors may identify originators with clear underwriting deficiencies. However, we believe that monthly reporting would provide a better picture of repurchase activity and a shorter interval might be too burdensome. Also, many ABS pay distributions to investors monthly and likewise, the related transaction agreements, including in unregistered transactions, typically provide for monthly reporting to investors. Therefore, because most securitizers would most likely be accustomed to preparing and providing monthly disclosures, we anticipate that it may be less costly than providing the disclosures at any other interval. However, any securitizers that do not make payments or provide reporting on a monthly basis may find it costlier to prepare the proposed disclosures.

Indirectly, as we discussed in the 2010 ABS Proposing Release, disclosures about an originator's or a sponsor's refusal to repurchase or replace assets put back to them for breach of representations and warranties might create incentives for originators to agree to repurchase or replace such assets even in cases where these assets were not clearly in breach. If investors regard such disclosures as indicative of a willingness to comply with representations and warranties in the future, then originators or sponsors might try to preserve their reputation by taking back assets even when they do not have an obligation to do so. This might create an incentive for sponsors and possibly trustees to ask for repurchase or replacement of poorly performing assets that represent no breach of representations and

[90] *See, e.g.,* N. Timiaros and Aparajita Saha-Bubna "Banks Face Fight Over Mortgage Loan Buybacks," *Wall Street Journal* (Aug. 18, 2010); and Alistair Barr, "Loan repurchases are a $10 billion problem for big banks," (Feb. 3, 2010) available at *http://www.marketwatch.com/story/banks-10-billion-problem-loan-repurchases-2010-02-03.*

[91] *See* discussion in Section II.A. 3.

warranties.[92] However, securitizers may devise other disclosures and mechanisms to solve such problems in the long run, if they occur.

In the aggregate, the proposed requirements are likely to affect unregistered ABS more significantly because traditionally these securities have provided less disclosure. Since, as discussed previously, the Act requires disclosures with respect to all ABS issued by a securitizer, registered and unregistered, the initial and ongoing disclosures may significantly increase the direct and particularly indirect costs of issuing unregistered ABS relative to their historical cost structure. The indirect costs include the possibility of revealing information about the quality of assets to competitors. A possible effect of these requirements is that such issuers may look towards alternative forms of financing. Given that those issuers have historically preferred ABS issues, they may consider more expensive and less efficient forms of financing. Some of these incremental financing costs are likely to be passed to consumers and other borrowers whose loans make up the underlying pools backing the ABS. While it is difficult to quantify such incremental costs, researchers have estimated that securitization has generally been beneficial in banking and mortgage industries. However, other factors may be more determinative in deciding what form of financing a business will pursue.[93]

The proposals would also require NRSROs to disclose in any report accompanying a credit rating for an ABS transaction the representations, warranties and enforcement mechanisms available to investors and how they differ from those of other similar securities. NRSROs often issue a pre-sale report for ABS transactions that includes a preliminary credit rating as well as a summary of important features of a transaction; however, they do not usually provide disclosure of how representations and warranties would differ from other similar securities. We anticipate that in order to fulfill this requirement, NRSROs will incur a direct cost to review previous issuances both on an initial and an ongoing basis. In connection with that review, they may establish "benchmarks" for various types of securities and revise them as appropriate. To the extent that they have not already established such systems, we expect that an NRSRO would incur initial and ongoing costs to set up systems to collect, maintain and analyze previous issuances to establish such benchmarks as well as an ongoing cost to review the benchmarks to ensure that they remain appropriate. An NRSRO may pass those costs onto the issuers and underwriters by building them into the costs it charges to provide a credit rating, which in turn could be passed on as an indirect cost onto investors. We are not prescribing how an NRSRO must fulfill its responsibility to compare the terms of a deal to those of similar securities.

We believe that the proposed requirements are necessary to implement the purposes of the Act. For purposes of the Paperwork Reduction Act, we have estimated that the proposed paperwork/disclosure requirements on securitizers would result in an approximate burden of 102,060 internal hours and external cost of $13,608,000 paperwork/disclosure and the proposed requirement on NRSROs would result in an approximate burden of 96,948 internal hours. Additionally, we believe that the re-proposed requirements in Regulation AB on issuers would not impose a significant additional burden on asset-backed issuers because the disclosures would have already been prepared for purposes of filing on Form ABS–15G.

C. Request for Comment

We seek comments and empirical data on all aspects of this Benefit-Cost Analysis including identification and quantification of any additional benefits and costs. Specifically, we ask the following:

39. Are there other more cost-effective ways securitizers can provide the disclosure of fulfilled and unfulfilled repurchase requests consistent with the requirements of Section 943 of the Act?

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

Section 23(a) of the Exchange Act[94] 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.

The proposed amendments implement the Act and the re-proposals amend Regulation AB in order to conform the disclosures that would be required under our 2010 ABS Proposals to those required by Section 943 of the Act. The amendments are intended to increase transparency regarding the use of representations and warranties in asset-backed securities transactions. We anticipate that these proposals would enhance the proper functioning of the capital markets by providing investors with disclosures about the representations, warranties and enforcement mechanisms available to them and by giving investors greater insight into whether underlying pool assets met stated underwriting guidelines across registered and unregistered transactions of a securitizer. Because investors would be able to more easily understand the representations, warranties and enforcement mechanisms available to them and identify originators with better underwriting criteria, competition in the ABS markets should increase.

We request comment on whether the proposed amendments, if adopted would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Commentators are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) of the Securities Act[95] and Section 3(f) of the Exchange Act[96] require the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. The proposed amendments would enhance our reporting requirements. The purpose of the amendments is to increase

[92] *See* Section XI.C.2. of the 2010 ABS Proposing Release. However, in certain situations, it may have the opposite effect, where the threat of such a disclosure requirement relating to an originator could induce a sponsor to be more reticent in pursuing repurchase claims where the originator may be affiliated with the sponsor. A sponsor may also be worried that a large number of successful repurchase claims could indicate that its initial due diligence, or the originator's loan quality, was poor. *See* letter from Commonwealth of Massachusetts Attorney General in response to the 2010 ABS Proposing Release.

[93] *See generally,* Kashyap, A. and J. Stein (2000) "What Do a Million Observations on Banks Say About the Transmission of Monetary Policy," The American Economic Review, Vol. 90, No. 3, at 407–428 and Loutskina, E. and P. Strahan (2009) "Securitization and the declining impact of bank financial condition on loan supply: Evidence from mortgage originations," The Journal of Finance, Vol. 64, No. 2, at 861–889.

[94] 15 U.S.C. 78w(a).

[95] 15 U.S.C. 77b(b).

[96] 15 U.S.C. 78c(f).

transparency regarding the use of representations and warranties in asset-backed securities transactions. This should improve investors' ability to make informed investment decisions. Informed investor decisions generally promote market efficiency and capital formation.

However, the proposals could have indirect adverse consequences by changing the willingness of issuers to access securitization markets. If the required disclosures results in revealing information that would benefit competitors, issuers may instead prefer to use other funding sources that do not require such public disclosures.

Finally, proposed Rule 17g–7 would require NRSROs to describe in any report accompanying a credit rating how the representations, warranties and enforcement mechanisms of the rated ABS differ from the representations, warranties and enforcement mechanisms in issuances of similar securities. We believe that the proposed additional disclosures and, especially, the required comparisons of the representations, warranties, and enforcement measures in a given ABS transaction to those available in similar transactions may provide an impetus to the development of more standardized representations, warranties, and enforcement mechanisms across the ABS markets, which is likely to benefit the efficiency of these markets.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commentators are requested to provide empirical data and other factual support for their views if possible.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[97] a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposed amendments would be a "major rule" for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

IX. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the proposals contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposals relate to the registration, disclosure and reporting requirements for asset-backed securities under the Act, the Securities Act and the Exchange Act. Securities Act Rule 157[98] and Exchange Act Rule 0–10(a)[99] defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. As the depositor and issuing entity are most often limited purpose entities in an ABS transaction, we focused on the sponsor in analyzing the potential impact of the proposals under the Regulatory Flexibility Act. Based on our data, we only found one sponsor that could meet the definition of a small broker-dealer for purposes of the Regulatory Flexibility Act.[100] With respect to our proposals related to disclosures by an NRSRO, currently there are two NRSROs that are classified as "small" entities for purposes of the Regulatory Flexibility Act. As noted above, we are not prescribing how an NRSRO must fulfill its responsibility to compare the terms of a deal to those of similar securities. Accordingly, the Commission does not believe that those proposals, if adopted, would have a significant economic impact on a substantial number of small entities.

X. Statutory Authority and Text of Proposed Rule and Form Amendments

We are proposing the new rules, forms and amendments contained in this document under the authority set forth in Section 943 of the Act, Sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act and Sections 3(b), 12, 13, 15, 15E, 17, 23(a), 35A and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 229, 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 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l,* 78m, 78n, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Amend § 229.1104 by adding paragraph (e) to read as follows:

§ 229.1104 (Item 1104) Sponsors.

* * * * *

(e) *Repurchases and replacements.* (1) If the underlying transaction agreements provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty, provide the information required by Rule 15Ga–1(a) (17 CFR 240.15Ga–1(a)) concerning all assets originated or sold by the sponsor that were subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets for all outstanding asset-backed securities (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934) where the underlying transaction agreements included a covenant to repurchase or replace an underlying asset of the same asset class held by non-affiliates of the sponsor, within the prior three years in the body of the prospectus.

(2) Include a reference to the most recent Form ABS–15G filed by the securitizer (as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934) and disclose the CIK number of the securitizer.

3. Amend § 229.1121 by adding paragraph (c) to read as follows:

§ 229.1121 (Item 1121) Distribution and pool performance information.

* * * * *

(c) *Repurchases and replacements.* (1) Provide the information required by Rule 15Ga–1(a) (17 CFR 240.15Ga–1(a)) concerning all assets of the pool that were subject of a demand to repurchase or replace for breach of the representations and warranties pursuant to the transaction agreements.

[97] Public Law 104–121, Title II, 110 Stat. 857 (1996).

[98] 17 CFR 230.157.

[99] 17 CFR 240.0–10(a).

[100] This is based on data from Asset-Backed Alert.

(2) Include a reference to the most recent Form ABS–15G (17 CFR 249.1300) filed by the securitizer (as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934) and disclose the CIK number of the securitizer.

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

4. The authority citation for part 240 is amended by adding authorities for § 240.15Ga–1 and § 240.17g–7 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, 78o, 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.

* * * * *

Section 240.15Ga–1 is also issued under sec. 943, Pub. L. No. 111–203, 124 Stat. 1376.

* * * * *

Section 240.17g–7 is also issued under sec. 943, Pub. L. No. 111–203, 124 Stat. 1376.

* * * * *

5. Add § 240.15Ga–1 to read as follows:

§ 240.15Ga–1 Repurchases and replacements relating to asset-backed securities.

(a) *General.* With respect to any asset-backed security (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934) for which the underlying transaction agreements contain a covenant to repurchase or replace an underlying asset for breach of a representation or warranty, then the securitizer (as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934) shall disclose fulfilled and unfulfilled repurchase requests across all trusts by providing the information required in paragraph (1) concerning all assets originated or sold by the securitizer that were subject of a demand to repurchase or replace for breach of the representations and warranties concerning the assets for all outstanding asset-backed security held by non-affiliates of the securitizer.

Name of issuing entity	Check if registered	Name of originator	Assets that were subject of demand			Assets that were repurchased or replaced			Assets that were not repurchased or replaced			Assets pending repurchase or replacement		
(a)	(b)	(c)	(#) (d)	($) (e)	(% of pool) (f)	(#) (g)	($) (h)	(% of pool) (i)	(#) (j)	($) (k)	(% of pool) (l)	(#) (m)	($) (n)	(% of pool) (o)
Asset Class X														
Issuing Entity A CIK #	X	Originator 1												
		Originator 2												
Issuing Entity B		Originator 3												
Total			#	$		#	$		#	$		#	$	
Asset Class Y														
Issuing Entity C		Originator 2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
		Originator 3	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Issuing Entity DCIK #	X	Originator 1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total			#	$		#	$		#	$		#	$	

(1) The table shall:

(i) Disclose the asset class and group the issuing entities by asset class (column (a)).

(ii) Disclose the name of the issuing entity (as that term is defined in Item 1101(f) of Regulation AB (17 CFR 229.1101(f)) of the asset-backed securities. List the issuing entities in order of the date of formation (column (a)).

(iii) For each named issuing entity, indicate by check mark whether the transaction was registered under the Securities Act of 1933 (column (b))

(iv) Disclose the name of the originator of the underlying assets (column (c)).

(v) Disclose the number, outstanding principal balance and percentage by principal balance of assets that were subject of demand to repurchase or replace for breach of representations and warranties (columns (d) through (f)).

Instruction to paragraph (a)(1)(v): If a securitizer requested and was unable to obtain all information with respect to investor demands upon a trustee that occurred prior to [effective date of the final rule], so state by footnote. In this case, also state that the disclosures do not contain investor demands upon a trustee made prior to [effective date of the final rule].

(vi) Disclose the number, outstanding principal balance and percentage by principal balance of assets that were repurchased or replaced for breach of representations and warranties (columns (g) through (i)).

(vii) Disclose the number, outstanding principal balance and percentage by principal balance of assets that were not repurchased or replaced for breach of representations and warranties (columns (j) through (l)).

(viii) Disclose the number, outstanding principal balance and percentage by principal balance of assets that are pending repurchase or replacement for breach of representations and warranties (columns (m) through (o)).

Instruction to paragraph (a)(1)(viii): Indicate by footnote and provide narrative disclosure of the reasons why any repurchase or replacement is pending. For example, if pursuant to the terms of a transaction agreement, assets have not been repurchased or replaced pending the expiration of a cure period, indicate by footnote.

(ix) Provide totals by asset class for columns that require number of assets and principal amounts (columns (d), (e), (g), (h), (j), (k), (m) and (n)).

(2) [Reserved]

(b) If a securitizer has filed all the disclosures required in order to meet the obligations under paragraph (a) of this section, which would include disclosures of the activity of affiliated securitizers, those affiliated securitizers are not required to separately provide and file the same disclosures.

(c) The disclosures in paragraph (a) of this section shall be provided by a securitizer:

(1) Initially, with respect to the five year period immediately preceding the date of filing, as of the end of the preceding month, by any securitizer that issues an asset-backed security, or

organizes and initiates an asset-backed securities transaction by selling or transferring an asset, either directly or indirectly, including through an affiliate, to the issuer, at the time the securitizer, or an affiliate commences its first offering of the asset-backed securities after [effective date of the final rule], if the underlying transaction agreements provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty.

(2) Periodically, for a securitizer which was required to provide the information required pursuant to paragraph (c)(1) of this section, as of the end of each calendar month, to be filed not later than 15 calendar days after the end of such calendar month. Information is not required for the time prior to that specified in paragraph (c)(1) of this section.

(3) Except that, if a securitizer has no asset-backed securities outstanding held by non-affiliates, the duty under paragraph (c)(2) of this section to file periodically the disclosures required by paragraph (a) shall be terminated immediately upon filing a notice on Form ABS–15G (17 CFR 249.1300).

6. Add § 240.17g–7 to read as follows:

§ 240.17g–7 Report of representations and warranties.

Each nationally recognized statistical rating organization shall include in any report accompanying a credit rating with respect to an asset-backed security (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934) a description of:

(a) The representations, warranties and enforcement mechanisms available to investors; and

(b) How they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities.

Note to § 240.17g–7: For the purposes of this requirement, a "credit rating" includes any expected or preliminary credit rating issued by a nationally recognized statistical rating organization.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 249 is amended by adding an authority for § 249.1300 to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

Section 249.1300 is also issued under sec. 943, Pub. L. No. 111–203, 124 Stat. 1376.

* * * * *

8. Add Subpart O and Form ABS—15G (referenced in § 249.1300) to Part 249 to read as follows:

Subpart O–Forms for Securitizers of Asset-Backed Securities

§ 249.1300 Form ABS–15G, Asset-backed securitizer report pursuant to Section 15G of the Securities Exchange Act of 1934.

This form shall be used for reports of information required by Rule 15Ga–1 (§ 240.15Ga–1 of this chapter).

Note: The text of Form ABS–15G does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission, Washington, DC 20549

Form ABS–15G

Asset-Backed Securitizer Report Pursuant to Section 15G of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) _____

Commission File Number of securitizer: _____

Central Index Key Number of securitizer: _____

_____

Name and telephone number, including area code, of the person to contact in connection with this filing

GENERAL INSTRUCTIONS

A. Rule as to Use of Form ABS–15G.

This form shall be used to comply with the requirements of Rule 15Ga–1 under the Exchange Act (17 CFR 240.15Ga–1).

B. Events To Be Reported and Time for Filing of Reports.

Forms filed under Rule 15Ga–1. In accordance with Rule 15Ga–1, file the information required by Part I in accordance with Item 1.01, Item 1.02, or Item 1.03, as applicable. If the filing deadline for the information occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, then the filing deadline shall be the first business day thereafter.

C. Preparation of Report.

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b–12 (17 CFR 240.12b–12). The report shall contain the number and caption of the applicable item, but the text of such item may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b–13 (17 CFR 240.12b–13). All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

D. Signature and Filing of Report.

1. *Forms filed under Rule 15Ga–1.* Any form filed for the purpose of meeting the requirements in Rule 15Ga–1 must be signed by the senior officer in charge of securitization of the securitizer.

2. *Copies of report.* If paper filing is permitted, three complete copies of the report shall be filed with the Commission.

INFORMATION TO BE INCLUDED IN THE REPORT

REPRESENTATION AND WARRANTY INFORMATION

Item 1.01 Initial Filing of Rule 15Ga–1 Representations and Warranties Disclosure

If any securitizer (as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934), issues an asset-backed security, (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934), or organizes and initiates an asset-backed securities transaction by selling or transferring an asset, either directly or indirectly, including through an affiliate, to the issuer, provide the disclosures required by Rule 15Ga–1 (17 CFR 240.15Ga–1) at the time the securitizer, or an affiliate commences its first offering of the asset-backed securities after [effective date of the final rule], if the underlying transaction agreements contain a covenant to repurchase or replace an underlying asset for breach of a representation or warranty.

Item 1.02 Periodic Filing of Rule 15Ga–1 Representations and Warranties Disclosure

Each securitizer that was required to provide the information required by Item 1.01 of this form, shall provide the disclosures required by Rule 15Ga–1 (17 CFR 240.15Ga–1) as of the end of each calendar month, to be filed not later than 15 calendar days after the end of such calendar month.

Item 1.03 Notice of Termination of Duty to File Reports under Rule 15Ga–1

If any securitizer has no asset-backed securities outstanding (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934) held by non-affiliates, provide the date of the last payment on the last asset-backed security outstanding that was issued by or issued by an affiliate of the securitizer.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the reporting entity has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

(Securitizer) _____

Date _____

(Signature)* _____

* Print name and title of the signing officer under his signature.

* * * * *

By the Commission.

Dated: October 4, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–25361 Filed 10–12–10; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC27

Privacy Act of 1974; Proposed Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment to update its Privacy Act regulations, and to add an exemption from certain provisions of the Privacy Act for a system of records related to the Office of Foreign Assets Control (OFAC).

DATES: Comments must be received no later than November 12, 2010.

ADDRESSES: Comments should be sent to: Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990 (not a toll free number). All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, tel.: 202–622–2510 (not a toll free number), or Chief Counsel (Foreign Assets Control), Office of General Counsel, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, tel.: 202–622–2410 (not a toll free number).

SUPPLEMENTARY INFORMATION: In reviewing Treasury regulations implementing the Privacy Act, the Department found that Executive Order 11652 listed in Section 1.26(g)(6)(ii)(A) has been superseded and needs to be updated. This section is being amended to reference Executive Orders 12958, 13526, or successor or prior Executive Orders as may be necessary.

Under 5 U.S.C. 552a(k)(1), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is subject to the provisions of 5 U.S.C. 552(b)(1), which regards matters specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

To the extent that systems of records contain information subject to the provisions of 5 U.S.C. 552(b)(1), the Department of the Treasury proposes to exempt the systems of records from the following provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1):

5 U.S.C. 552a(c)(3),
5 U.S.C. 552a(d)(1), (2), (3), and (4),
5 U.S.C. 552a(e)(1),
5 U.S.C. 552a(e)(4)(G), (H), and (I), and
5 U.S.C. 552a(f).

The reason for invoking the exemption is to protect material authorized to be kept secret in the interest of national defense or foreign policy pursuant to Executive Orders 12958, 13526, or successor or prior Executive Orders.

This document also creates a new table in paragraph 31 CFR 1.36(e)(1) under the new heading designated as "(i) Departmental Offices:". The system of records entitled "DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions" will be added to the table under (i). The current heading "Financial Crimes Enforcement Network:" and the associated table is designated as "(ii)."

The Department of the Treasury has published separately in the **Federal Register** the notice of a consolidated system of records related to OFAC on October 6, 2010, at 75 FR 61853.

This proposed rule is not a "significant regulatory action" under Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. The term "small entity" is defined to have the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," as defined in the RFA.

The proposed regulation, issued under section 522a(k) of the Privacy Act, is to exempt certain information in the above systems of records within the Department from certain provisions under the Privacy Act, including those regarding notification, access to a record, and amendment of a record by individuals who are citizens of the United States or an alien lawfully admitted for permanent residence. Inasmuch as the Privacy Act rights are personal and apply only to U.S. citizens or an alien lawfully admitted for permanent residence, small entities as defined in the RFA are not provided rights under the Privacy Act and are outside the scope of this regulation.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, subpart C of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a, as amended.

Subpart C—Privacy Act

2. Section 1.26 is amended by revising the first sentence in paragraph (g)(6)(ii)(A) to read as follows:

§ 1.26 Procedures for notification and access to records pertaining to individuals—format and fees for request for access.

* * * * *

(g) * * *

(6) * * *

(ii) * * *

(A) Requests for information classified pursuant to Executive Orders 12958, 13526, or successor or prior Executive Orders require the responsible component of the Department to review