SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–63652; File No. S7–02–11]

RIN 3235–AK89

Suspension of the Duty To File Reports for Classes of Asset-Backed Securities Under Section 15(d) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: Section 942(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Securities Exchange Act of 1934 for asset-backed securities issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty. We are proposing to permit suspension of the reporting obligations for asset-backed securities issuers when there are no longer asset-backed securities of the class sold in a registered transaction held by non-affiliates of the depositor. We are also proposing to amend our rules relating to the Exchange Act reporting obligations of asset-backed securities issuers in light of these statutory changes.

DATES: Comments should be received on or before February 7, 2011.

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 S7–02–11 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 S7–02–11. 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 website 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: Steven Hearne, Special Counsel, or Kathy Hsu, Senior Special Counsel, 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.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rules 12h–3 and 15d–22 [1] and Form 15 [2] under the Securities Exchange Act of 1934 ("Exchange Act").[3]

I. Background

This release is one of several that the Commission is issuing to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") [4] related to asset-backed securities ("ABS"). Section 942(a) of the Act eliminated the automatic suspension of the duty to file under Section 15(d) [5] of the Exchange Act for ABS issuers and granted the Commission the authority to issue rules providing for the suspension or termination of such duty. In this release, we propose rule amendments to permit the suspension of reporting obligations for ABS issuers under certain circumstances and to update our rules in light of the amendment of Exchange Act Section 15(d).

Exchange Act Section 15(d) generally requires an issuer with a registration statement that has become effective pursuant to the Securities Act of 1933 [6] ("Securities Act") to file ongoing Exchange Act reports with the Commission. In 2004, the Commission adopted an Exchange Act reporting regime specifically designed for ABS issuers. Under those rules, the Exchange Act reporting requirements for ABS issuers consist of:

- Annual reports on Form 10–K [7] that include a report on the assessment of compliance with servicing criteria as well as an attestation report on assessments of compliance by a registered public accounting firm;
- Distribution reports on Form 10–D [8] that include distribution and pool performance information for the distribution period and disclosure regarding the assets filed based on the frequency of distributions on the ABS; and
- Current reports on Form 8–K.[9]

As discussed in more detail below, in April 2010, the Commission proposed changes to the ongoing reporting requirements for ABS issuers that would include, among other things, loan-level information in the distribution reports and revised triggering events for current reports.

Prior to enactment of the Act, Exchange Act Section 15(d) provided that for issuers without a class of securities registered under the Exchange Act the duty to file ongoing reports is automatically suspended as to any fiscal year, other than the fiscal year within which the registration statement for the securities became effective, if the securities of each class to which the registration statement relates are held of record by less than three hundred persons. As a result, the reporting obligations of ABS issuers, other than those with master trust structures,[10] were generally suspended after the ABS issuer filed one annual report on Form 10–K because the number of record holders was below, often significantly below, the 300 record holder threshold.[11]

ABS offerings are typically registered on shelf registration statements and each ABS offering is typically sold in a separate "takedown" off of the shelf. In 2004, the Commission adopted Exchange Act Rule 15d–22, relating to ABS reporting under Exchange Act Section 15(d).[12] Exchange Act Rule

[1] 17 CFR 240.12h–3 and 17 CFR 240.15d–22.

[2] 17 CFR 249.323.

[3] 15 U.S.C. 78a *et seq.*

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

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

[6] 15 U.S.C. 77a *et seq.*

[7] 17 CFR 249.310.

[8] 17 CFR 249.312.

[9] 17 CFR 249.308.

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

[11] One source noted that in a survey of 100 randomly selected asset-backed transactions, the number of record holders provided in reports on Form 15 ranged from two to more than 70. The survey did not consider beneficial owner numbers. *See* Committee on Capital Markets Regulation, *The Global Financial Crisis: A Plan for Regulatory Reform,* May 2009, at fn. 349.

[12] *See* Asset-Backed Securities, Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506] ("2004 ABS Adopting Release").

15d–22(b) codified the staff position that the starting and suspension dates for any reporting obligation with respect to a takedown of ABS is determined separately for each takedown. Exchange Act Rule 15d–22 also clarified that a new takedown for a new ABS offering off the same shelf registration statement did not necessitate continued reporting for a class of securities from a prior takedown that was otherwise eligible to suspend reporting.

Prior to enactment of the Act, in April of 2010, we proposed rules that would revise the disclosure, reporting and offering process for ABS (the "2010 ABS Proposing Release").[13] Among other things, the 2010 ABS Proposing Release proposed to replace the investment grade ratings conditions to ABS shelf eligibility with four new eligibility conditions. One of the proposed new conditions would require an ABS issuer to undertake to file the same Exchange Act reports with the Commission as would be required by Section 15(d) of the Exchange Act and rules thereunder, if the issuer were subject to the reporting requirements of that section.[14] Before we acted on that proposal, the Act rendered that proposed shelf eligibility condition unnecessary by removing any class of ABS from the automatic suspension provided in Exchange Act Section 15(d) by inserting the phrase, "other than any class of asset-backed securities." Consequently, ABS issuers no longer automatically suspend reporting under Exchange Act Section 15(d). Instead, the Act granted the Commission authority to "provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commission deems necessary or appropriate in the public interest or for the protection of investors."[15]

As noted, by adding the exception for ABS, the amendment removed the automatic suspension for any class of ABS. The effect is that the Exchange Act Section 15(d) reporting obligation now requires ongoing reporting for ABS issuers. As a result, we are proposing to update our rules consistent with the changes to Exchange Act Section 15(d), as amended by Section 942(a) of the Act.[16] Our proposal to amend Exchange Act 15d–22 is described below. In addition, because ABS issuers no longer automatically suspend reporting absent Commission action, we are proposing relief where there are no longer ABS of a class that were sold in a registered transaction held by non-affiliates of the depositor.

II. Discussion of Proposals

As indicated above, Exchange Act Section 15(d), as amended by the Act, establishes an ongoing reporting obligation for each class of ABS for which an issuer has filed a registration statement which has become effective pursuant to the Securities Act. Exchange Act Section 15(d) also grants the Commission authority to provide for the suspension or termination of the duty to file. We believe that post-issuance reporting of information by an ABS issuer provides investors and the markets with transparency regarding many aspects of the ongoing performance of the securities and the servicer in complying with servicing criteria, among other things, and further believe this transparency is important for investors and the market in evaluating transaction performance and making ongoing investment decisions. We recognize, however, the costs imposed by ongoing reporting obligations and are proposing limited relief from these reporting obligations that we believe is appropriate in the public interest and consistent with the protection of investors. In addition, we are proposing rule and form amendments to update our rules relating to ABS takedowns under a shelf registration statement.

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

We are proposing in new Exchange Act Rule 15d–22(b) to permit suspension of the reporting obligations for a given class of ABS pursuant to Exchange Act Section 15(d) for any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year, there are no longer ABS of the class that were sold in a registered transaction held by non-affiliates of the depositor.[17] As revised by the Act, Exchange Act Section 15(d) no longer provides for the automatic suspension of the duty to file periodic and other reports for issuers of a class of ABS. Without action by the Commission, ABS issuers that have filed a registration statement that has become effective pursuant to the Securities Act or that have conducted a takedown off of a shelf registration statement as described above, would be obligated to continue to file such reports for the life of the security.

In the 2010 ABS Proposing Release, we noted the importance to investors of post-issuance reporting of information regarding an ABS transaction in understanding transaction performance and in making ongoing investment decisions.[18] We also believe, however, that there is a point at which the benefits to investors and the market of reporting significantly diminish, such as the limited benefit provided by reporting of an issuer that has no non-affiliated holders of its securities. Where an issuer has only affiliated holders of its securities, there is no public market for the securities and the affiliated holders typically have access to comparable information to that provided by public reports. In addition, preparation of reports under such circumstances would add to the cost of offering and maintaining the ABS and therefore to the cost of capital formation.

In the 2010 ABS Proposing Release we sought to balance the value of the information to investors and the market with the burden to issuers of preparing the reports. We proposed in the 2010 ABS Proposing Release to require, as a condition to ABS shelf eligibility, that the issuer undertake to file reports providing disclosure as would be required pursuant to Exchange Act Section 15(d) and the rules thereunder as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in a registered transaction.[19]

[13] *See* Asset-Backed Securities, Release No. 33–9117 (April 7, 2010) [75 FR 23328].

[14] *See* proposed Item 512(a)(7)(ii) of Regulation S–K from the 2010 ABS Proposing Release. The issuer's reporting obligation in the proposed undertaking would have extended as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in registered transactions.

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

[16] One comment letter relating to the Commission's 2010 ABS Proposing Release argues that Rule 15d–22(b) specifically provides suspension from reporting and is available to automatically suspend reporting obligations despite enactment of Section 942 of the Act. *See* comment letter from the American Securitization Forum to the 2010 ABS Proposing Release available on-line at *http://sec.gov/comments/s7-08-10/s70810-70.pdf*. *See also* comment letter from the American Securitization Forum on Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act available on-line at *http://www.sec.gov/comments/df-title-ix/asset-backed-securities/assetbackedsecurities-10.pdf*. However, as explained in the 2004 ABS Adopting Release, Rule 15d–22(b) clarifies that the starting and suspension for any reporting obligation with regard to a takedown of ABS is determined separately for each takedown. *See supra* note 12 at 1563. It did not, and should not be read, to provide an independent basis for suspending the reporting obligation of Exchange Act Section 15(d).

[17] We are also proposing to amend Form 15 to provide a checkbox referring to proposed Rule 15d–22(b).

[18] See 2010 ABS Proposing Release, *supra* note 13, at 23347.

[19] *Id.* In light of the Act, we are no longer pursuing our proposal relating to ongoing reporting as a condition to ABS shelf eligibility. However, we

While our proposal to require ongoing reporting as a condition to ABS shelf eligibility and the comments we received on that proposal are informative, the Act no longer provides for the automatic suspension of the duty to file periodic and other reports for issuers of a class of ABS.

We believe that the limited benefits of ongoing reporting to investors and the market where there are only affiliated holders of the ABS would not justify the burden of reporting by issuers. Consequently, we are proposing new Exchange Act Rule 15d–22(b) which would provide that the reporting obligation regarding any class of ABS is suspended for any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year there are no longer any securities of such class held by non-affiliates of the depositor that were sold in the registered transaction. We are also proposing to amend Form 15 to add a checkbox for ABS issuers to indicate that they are relying on proposed Exchange Act Rule 15d–22(b) to suspend their reporting obligation to alert the market and the Commission of the change in reporting status.

Request for Comment

- Is it appropriate to suspend the Exchange Act Section 15(d) reporting obligation regarding a class of ABS for any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year there are no longer any securities of such class held by non-affiliates of the depositor that were sold in a registered transaction?
- Should we instead consider allowing suspension of the reporting obligation dependent on a limited number of non-affiliates of the depositor holding the securities? If so, what would be an appropriate number and why? Please provide data establishing a basis for such a limit.
- If an issuer is unable to locate a security holder in order to provide information and make distributions to that security holder, such that the distributions are returned to the issuer without payment to the unknown security holder and the issuer or its agent has attempted to notify the unknown security holder within seven months of the failed distribution, should we allow the issuer not to count such security holders when determining the number of non-affiliates of the depositor that hold its securities? Should we allow an issuer to suspend the Exchange Act Section 15(d) reporting obligation regarding a class of ABS if, at the beginning of the fiscal year there are no longer any securities of such class, other than securities held by such lost or missing security holders, held by non-affiliates of the depositor that were sold in a registered transaction?
- Should we allow an issuer to suspend the Exchange Act Section 15(d) reporting obligation regarding a class of ABS if that issuer has effected legal or covenant defeasance of such class? Why or why not? Is legal or covenant defeasance typically provided for in ABS indentures or other governing instruments? Is legal or covenant defeasance effected with any meaningful frequency in the ABS market? Are there certain asset classes or tranches where it is more or less common? Please provide data to support your conclusions.
- Is there another standard, such as one relying on the percentage of pool assets remaining or the percentage of pool assets held by non-affiliates of the depositor, that would be more appropriate? Should we permit suspension based on a mandatory period of time since the registered offering? If so, how long would be appropriate? Three years? Five years? Should the amount of time depend on the asset class?

B. Revisions to Existing Exchange Act Rule Provisions

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

Exchange Act Rule 15d–22 currently provides that: (1) No annual or other reports need be filed pursuant to Exchange Act Section 15(d) for ABS until the first bona fide sale in a takedown of securities under the registration statement; and (2) the starting and suspension dates for any reporting obligation with respect to a takedown of ABS is determined separately for each takedown.

We are proposing to amend Exchange Act Rule 15d–22. The revised rule would retain the approach that the Exchange Act Section 15(d) reporting obligation relates to each separate takedown in current Exchange Act Rules 15d–22(a) and 15d–22(b) in a new Exchange Act Rule 15d–22(a). Proposed Rule 15d–22(a)(1) tracks the language in current Exchange Act Rule 15d–22(a) providing that with respect to an offering of ABS sold off the shelf pursuant to Securities Act Rule 415(a)(1)(x),[20] the requirement to file annual and other reports pursuant to Exchange Act Section 15(d) regarding a class of securities commences upon the first bona fide sale in a takedown of securities under the registration statement. Proposed Exchange Act Rule 15d–22(a)(2) would restate the concept contained in current Exchange Act Rule 15d–22(b) that the requirement to file annual and other reports pursuant to Exchange Act Section 15(d) regarding a class of securities is determined separately for each takedown of securities under the registration statement. Exchange Act Rule 15d–22(b) currently does this by relying on language relating to when an issuer may suspend reporting under Exchange Act Section 15(d). Because the Act eliminated the automatic suspension of reporting for ABS issuers, we are proposing to delete current Exchange Act Rule 15d–22(b) and replace it with new Exchange Act Rule 15d–22(a)(2).[21]

found comments on the proposed shelf eligibility condition helpful in preparing proposed Exchange Act Rule 15d–22. Some commentators supported the proposed ongoing reporting requirements. See, for example, comment letters to the 2010 ABS Proposing Release from American Bar Association, Council of Institutional Investors, Metropolitan Life Insurance Company, and Prudential Investment Management, Inc. One commentator, the Council of Institutional Investors, asserted that transparency is related to asset quality and that ongoing reporting would facilitate due diligence by investors. Other commentators noted the burdens of reporting and suggested alternatives to filing reports with the Commission as a condition to shelf eligibility. *See,* for example, comment letters to the 2010 ABS Proposing Release from Bank of America Corporation (suggesting automatic suspension be continued but on a more delayed basis such as three years), Cleary Gottlieb Steen & Hamilton (suggesting that investors be permitted to opt the class of ABS out of reporting), and Kutak Rock LLP (suggesting a higher threshold below which ABS issuers could suspend reporting pursuant to Section 15(d) such as 50 investors or $3 million). Comments on the 2010 ABS Proposing Release are available on-line at *http://www.sec.gov/comments/s7-08-10/s70810.shtml.*

[20] 17 CFR 230.415(a)(1)(x).

[21] Current Exchange Act Rule 15d–22(b) states: "Regarding any class of asset-backed securities in a takedown off of a registration statement pursuant to § 230.415(a)(1)(x) of this chapter, no annual and other reports need be filed pursuant to section 15(d) of the Act regarding such class of securities as to any fiscal year, other than the fiscal year within which the takedown occurred, if at the beginning of such fiscal year the securities of each class in the takedown are held of record by less than three hundred persons." As is currently the case, proposed Rule 15d–22(a)(2) would only require a registrant to file reports after a takedown of securities under the registration statement. If the registrant has filed a registration statement but has not conducted a takedown, the registrant would not

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As proposed, Exchange Act Rule 15d–22(c), which states that Exchange Act Rule 15d–22 does not affect other reporting obligations applicable to any class of securities from additional takedowns or reporting obligations that may be applicable pursuant to Exchange Act Section 12, such as for an ABS issuer's non-ABS securities, would remain substantially unchanged, except for minor revisions to reflect the amendments discussed above. We believe it is appropriate to continue to apply this provision to all of proposed Exchange Act Rule 15d–22 to make clear that other reporting obligations applicable to a class of securities are not affected by the rules.

Finally, we are proposing to amend Exchange Act Rule 12h–3(b)(1) to exclude ABS from the classes of securities eligible for suspension. Exchange Act Rule 12h–3(b) currently designates the classes of securities eligible for suspension of the duty to file reports under Exchange Act Section 15(d). The Act explicitly removed "any class of asset-backed security" from the automatic suspension of Exchange Act Section 15(d). Since the language of Exchange Act Rule 12h–3 tracks the language of the Exchange Act, we are proposing to add the language from amended Exchange Act Section 15(d) to our rule. We are also proposing to add a note to direct ABS issuers to Exchange Act Rule 15d–22 for the requirements regarding suspension of reporting for ABS.

Request for Comment

- Does proposed Exchange Act Rule 15d–22(a) effectively provide guidance relating to when an ABS issuer is required to file annual and other reports pursuant to Section 15(d) of the Exchange Act regarding a class of securities upon a takedown of securities from a shelf registration statement? Are there other changes that we should make to the Commission guidance relating to the application of Exchange Act Section 15(d) to registered ABS?
- Do our proposed revisions to Exchange Act Rule 12h–3 appropriately modify the rule to give effect to the statutory change and provide clarity to ABS issuers regarding the reporting obligations and where to refer relating to the ability to suspend reporting?

be required to file annual and other reports related to those securities.

III. Reporting Obligation of ABS Whose Exchange Act Section 15(d) Obligation Was Suspended Prior to Enactment of the Act

A suspension from reporting under Exchange Act Section 15(d) is applicable under the statute only for a year and needs to be reconsidered each subsequent year:

> The duty to file under this subsection shall also be automatically suspended *as to any fiscal year,* other than the fiscal year within which such registration statement became effective, if, at the beginning of *such fiscal year,* the securities of each class, other than any class of asset-backed securities, to which the registration statement relates are held of record by less than three hundred persons.[22] (emphasis added)

Consequently, once an issuer has registered an offering under the Securities Act it needs to consider at the beginning of each fiscal year whether it has a reporting obligation under Exchange Act Section 15(d). This is the case even if an issuer has previously been eligible to suspend reporting under Exchange Act Section 15(d). As a result, the revision to Exchange Act Section 15(d) results in a "springing" Section 15(d) reporting obligation for ABS issuers on the first day of their next fiscal year since, by its terms, Section 15(d) as amended, does not provide for the suspension of reporting for ABS, unless the Commission exercises its authority to provide for a suspension or termination of such reporting. We note that unlike corporate issuers that can generate new revenue and actively manage their assets and business, ABS issuers by definition are a discrete pool of self-liquidating assets. One commentator has noted, among other things, that historically the transaction documents have not contained provisions necessary to support an ongoing reporting obligation, or provide for the funds to cover the costs of taking steps to recommence reporting.[23] While the transaction documents may not provide for recommencing reporting, we note that most transaction documents require ABS issuers to provide periodic distribution reports to the trustee or security holders in order to provide information for investors for the life of the securitization. Taking into account all of these factors, the staff of the Division of Corporation Finance has issued a no-action letter applicable to all ABS issuers whose reporting obligations had been suspended prior to the date of enactment of the Act that states that, provided the issuer continues complying with requirements under the transaction agreements to make ongoing information regarding the ABS and the related pool assets available to security holders in the manner and to the extent required under those transaction agreements, the Division would not recommend enforcement action if the issuer continues to determine its reporting requirements based on the standards set forth in Section 15(d) of the Exchange Act immediately prior to enactment of the Act.[24] The letter also requires as an additional condition to the no-action position that the issuer retain the information for at least five years after the ABS are no longer outstanding and provide copies of such information to the Commission or its staff upon request.

[22] 15 U.S.C. 78o(d). We note that our staff has previously stated in this regard, "If on the first day of any subsequent fiscal year the thresholds in Rule 12h-3(b)(1) are exceeded, the suspension of reporting obligations under Section 15(d) will lapse, and the issuer would be required to resume periodic and current reporting under Section 15(d) in the manner specified in Rule 12h-3(e)." *See* Staff Legal Bulletin No. 18 (Mar. 15, 2010), fn. 7.

[23] *See* comment letters from the American Securitization Forum *supra* note 16.

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, ABS 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 disclosure rules and forms applicable to ABS issuers contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[25] While the amendments proposed today do not alter the disclosure requirements set forth in these rules and forms, the amendment to Exchange Act Section 15(d) effected by the Act will increase the number of filings made pursuant to these rules and forms. Accordingly, the Commission is submitting revised burden estimates for certain of these collections of information to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[26] An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless

[24] *See* Staff no-action letter to American Securitization Forum (January 6, 2011).

[25] 44 U.S.C. 3501 *et seq.*

[26] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

it displays a currently valid control number. The titles for the affected collections of information are:

(1) "Form 10–K" (OMB Control No. 3235–0063);

(2) "Form 10–D" (OMB Control No. 3235–0604);

(3) "Form 8–K" (OMB Control No. 3235–0288); and

(4) "Form 15" (OMB Control No. 3235–0167).[27]

The forms were adopted under the Exchange Act and set forth the disclosure requirements for periodic and current reports filed with respect to ABS and other types of securities to inform investors.

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

B. Revisions to PRA Reporting and Cost Burden Estimates

Our PRA burden estimate for Form 10–K, Form 8–K and Form 15 is based on an average of the time and cost incurred by all types of public companies, not just ABS issuers, to prepare the collection of information. Form 10–D is a form that is only prepared and filed by ABS issuers. Form 10–D is filed within 15 days of each required distribution date on the ABS, as specified in the governing documents for such securities, containing periodic distribution and pool performance information.

Our PRA burden estimates for the collections of information are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used by ABS issuers, as well as information from outside data sources.[28] When possible, we base our estimates on an average of the data that we have available for years 2004 through 2009. In some cases, our estimates for the number of ABS issuers that file Form 10–D with the Commission are based on an average of the number of ABS offerings in 2006 through 2009.[29]

1. Statutory Effects

Prior to the amendment to Exchange Act Section 15(d), except for master trust issuers, the requirement to file Form 10–K for ABS issuers was typically suspended after the year of initial issuance because the issuer had fewer than 300 security holders of record. The Act amended Exchange Act Section 15(d) to remove issuers of a class of ABS from automatic suspension of the filing requirement. Subsequent to the enactment of the Act, the number of Forms 10–K and 10–D filed by ABS issuers is expected to increase each year by the number of ABS registered offerings and the number of Forms 15 filed by ABS issuers is expected to decrease by a similar number. The yearly average of ABS registered offerings with the Commission over the period from 2004 to 2009 was 958. As a result, for PRA purposes, we estimate an annual increase in Form 10–K filings of 958 filings[30] and corresponding increases in Form 10–D filings of 5,748 filings and Form 8–K filings of 1437.[31] Concurrently, for PRA purposes, we estimate an annual decrease in Form 15 filings of 958 filings.[32]

We estimate that, for Exchange Act reports generally, 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour. Consistent with our estimates in 2004, we estimate that 120 hours would be needed to complete and file a Form 10–K for an ABS issuer, 30 hours would be needed to complete and file a Form 10–D for an ABS issuer, 5 hours would be needed to complete and file a Form 8–K for an ABS issuer, and 1.5 hours would be needed to complete and file a Form 15 for an ABS issuer.[33]

In summation, we estimate, for PRA purposes, increases of 114,960 total burden hours for Form 10–K (958 Forms 10–K times 120 burden hours per filing), 172,440 total burden hours for Form 10–D (5,748 Forms 10–D times 30 burden hours per filing), and 7,185 total burden hours for Form 8–K (1,437 Forms 8–K times 5 burden hours per filing), as well as a decrease of 1,437 total burden hours for Form 15 (958 Forms 15 times 1.5 burden hours per filing) as a result of the statutory changes to Exchange Act Section 15(d).[34] We allocate 75% of those hours (an increase of 86,220 hours for Form 10–K, 129,330 hours for Form 10–D, and 5,389 hours for Form 8–K) to internal burden and the remaining 25% to external costs using a rate of $400 per hour (an increase of $11,496,000 for Form 10–K, $17,244,000 for Form 10–D and $718,500 for Form 8–K).

2. Effects on Burden Estimates of the Proposed Rules

We are proposing to permit ABS issuers to suspend their reporting obligation with respect to a class of ABS for any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year non-affiliates no longer hold any of the issuer's securities of that class that were sold in registered transactions. While we expect that issuers will be able to suspend their reporting obligations in the future, based on average expected deal life data, for purposes of the PRA, we estimate that the proposal will not affect our PRA estimates over the next three years.[35] We are also proposing to amend Exchange Act Rule 15d–22 relating to reporting and shelf registration and Exchange Act Rule 12h–3 to conform the rule to Exchange Act Section 15(d). We do not believe that these proposals will affect our PRA estimates.

[27] We are proposing to add a new check box to Form 15 (OMB Control No. 3235–0167) to allow ABS issuers to indicate that they are relying on proposed Rule 15d–22(b) to suspend their reporting obligation. We do not believe that the proposed changes will affect the burden estimates for Form 15.

[28] 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).

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

[30] *See* the 2010 ABS Proposing Release, *supra* note 13, at 23402. In order to estimate the number of Forms 10–K filed by ABS issuers for PRA purposes, we average the number of Forms 10–K over three years. In the first year after implementation, we use 958 as an estimate for the number of Forms 10–K we expect to receive. In the second year, we increase our estimate of the number of Forms 10–K expected by 958 to a total of 1,916 and in the third year, the addition of another 958 brings the total to 2,874. The average number of Forms 10–K over three years would, therefore, be 1,916. As a result, for PRA purposes, we estimate an increase in Form 10–K filings of 958 filings. These estimates assume that the market for ABS returns to historic levels.

[31] We are estimating that each ABS issuer would have an annual Form 10–K filing, six Form 10–D filings and 1.5 8–K filings consistent with our estimates in the 2010 ABS Proposing Release. *See* 2010 ABS Proposing Release, *supra* note 13, at n. 521.

[32] We assume that in any given year the issuers of all 958 registered ABS issued in the prior year would have suspended reporting using Form 15. The average number of Form 15 over three years would, therefore, have been 958. After the implementation of the Act, Form 15 will no longer be used by these ABS issuers as it was in the past. As a result, for the purposes of PRA, we estimate a decrease in Form 15 filings of 958.

[33] *See* 2010 ABS Proposing Release, *supra* note 13, at 23402–23403.

[34] We allocate all of the burden for Form 15 filings to internal burden hours.

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

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

Table 1 illustrates the changes in annual compliance burden in the collection of information in hours and costs for existing reports for ABS issuers.

Form	Current annual responses	Proposed annual responses	Current burden hours	Decrease or increase in burden hours	Proposed burden hours	Current professional costs	Decrease or increase in professional costs	Proposed professional costs
10–K	13,545	14,503	21,363,548	86,220	21,449,768	2,848,473,000	11,496,000	2,859,969,000
10–D	10,000	15,478	225,000	129,330	354,330	30,000,000	17,244,000	47,244,000
8–K	115,795	117,232	493,436	5,389	498,825	54,212,000	718,500	54,930,500
15	3,000	2,042	4,500	(1,437)	3,063	0	0	0

4. 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.[36]

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. S7–02–11. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–02–11, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213. 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.

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

VI. Benefit-Cost Analysis

The Exchange Act establishes an ongoing reporting obligation for each class of ABS for which an issuer has filed a registration statement that has become effective pursuant to the Securities Act and grants the Commission authority to provide for the suspension or termination of the duty to file. In light of the changes made to Exchange Act Section 15(d) in the Act, the Commission is proposing to amend Exchange Act Rule 12h–3 and 15d–22, and to provide for the suspension of the duty to file for certain issuers as discussed in this release.[37]

We believe that reporting of the ongoing performance of the ABS is useful to investors and the market by providing readily accessible information upon which investors may evaluate performance and make ongoing investment decisions. We also recognize, however, that there is a point at which the benefits to investors and the market of reporting diminish. In proposing to provide for the suspension of the duty to file for ABS issuers when non-affiliated holders no longer hold securities in the issuer, we have sought to balance the value of the information to investors and the market with the burden on the issuers of preparing the reports. We further recognize that there are other alternatives for determining when the suspension of the duty to file is appropriate and have sought comment on that issue in this release.

We are sensitive to benefits and costs of the proposed rules, if adopted. The discussion below focuses on the benefits and costs of the decisions made by the Commission in the exercise of the new exemptive authority provided by the Act. We request that commentators provide their views along with supporting data as to the benefits and costs of the proposed amendments.

[37] The proposed amendments to Exchange Act Rules 12h–3 and 15d–22 do not substantively alter the current requirements and should help issuers comply with their obligations and avoid confusion.

A. Benefits

The proposals would allow an issuer to suspend reporting under certain circumstances and update certain provisions relating to reporting obligations under a shelf registration statement. The Act amended Exchange Act Section 15(d) to eliminate the automatic suspension of the duty to file ongoing Exchange Act reports for ABS issuers and granted the Commission authority to issue rules providing for the suspension or termination of such duty. The proposals would permit issuers to suspend their reporting obligation under Exchange Act Section 15(d) for any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year there are no longer ABS of the class that were sold in a registration statement held by non-affiliates of the depositor. Permitting such issuers to suspend reporting would allow those issuers to avoid the costs of preparing and filing annual and periodic reports with the Commission when non-affiliates of the depositor no longer hold any outstanding classes of the securities sold in registered transactions.

B. Costs

In revising Exchange Act Section 15(d), Congress exhibited an intent to increase the continued reporting by ABS issuers, but gave the Commission authority to place limitations on that reporting in the public interest. The Commission is exercising this authority and proposing a rule which would allow ABS issuers to suspend their reporting obligation under certain limited conditions. Permitting the suspension of reporting would limit the ability of market participants and

observers to access and review information for those ABS that suspend reporting. We believe that this cost would be mitigated, since affiliates would generally be able to receive relevant information because of their relationship with the depositor. Thus, only non-holders of a particular ABS would be affected. Furthermore, the utility of the information to market participants and observers would be limited since ABS owned solely by affiliates would generally not have a public market. We recognize that there is an additional cost to preparing ongoing disclosure for registered transactions relative to issuing in the private markets. Issuers' willingness to issue registered ABS may be affected by the proposed threshold at which issuers may suspend their reporting obligations under Section 15(d), or another suspension threshold that we may adopt.

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.

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

Section 23(a) of the Exchange Act [38] requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act [39] requires the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.

The proposed amendments update the reporting requirements for takedowns from shelf registration in Exchange Act Rule 15d–22 and provide for the suspension of the duty to file for certain ABS issuers as discussed in this release. The proposal to allow ABS issuers without non-affiliated holders to suspend their duty to file would decrease transparency regarding those issuers, to the extent that non-affiliated investors and the market use that information. However, the suspension of the duty to file would reduce compliance costs for issuers which could increase efficiency and facilitate capital formation.

The Act eliminated the ability of ABS issuers to suspend their duty to file ongoing reports under Exchange Act Section 15(d). An inability to suspend the duty to file may encourage some issuers to offer ABS privately or not to issue ABS at all, rather than registering those ABS and incurring the ongoing reporting costs. If issuers register fewer ABS, this would reduce liquidity and decrease transparency in the ABS market. The current proposal that would allow ABS issuers under limited circumstances to suspend their duty to file and provide issuers certainty regarding when they may suspend reporting may encourage some ABS issuers to register ABS and offer ABS in the public markets, which would increase liquidity and transparency and facilitate capital formation.

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

We do not believe the proposed amendments would have an impact or burden on competition. 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. 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,[40] 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 ongoing reporting requirements for ABS issuers under the Exchange Act. Exchange Act Rule 0–10(a) [41] 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.[42] Accordingly, the Commission does not believe that the 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 amendments contained in this document under the authority set forth in Section 942 of the Act, and Sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, Title 17, Chapter II of the Code of Federal

[38] 15 U.S.C. 78w(a).

[39] 15 U.S.C. 78c(f).

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

[41] 17 CFR 240.0–10(a).

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

Regulations is proposed to be amended as follows:

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

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 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.

* * * * *

2. Amend § 240.12h–3 by:

a. In paragraph (b)(1) introductory text add ", other than any class of asset-backed securities," in the first sentence after "Any class of securities"; and

b. Adding a Note to paragraph (b).

The addition to read as follows:

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

* * * * *

(b) * * *

Note to Paragraph (b): The suspension of classes of asset-backed securities is addressed in § 240.15d–22.

* * * * *

3. Revise § 240.15d–22 to read as follows:

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

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

(1) Annual and other reports need not be filed pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) regarding any class of securities to which such registration statement relates until the first bona fide sale in a takedown of securities under the registration statement; and

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

(b) The duty to file annual and other reports pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) regarding any class of asset-backed securities is suspended as to any fiscal year, other than the fiscal year within which the registration statement became effective, if, at the beginning of the fiscal year there are no longer any asset-backed securities of such class that were sold in a registered transaction held by non-affiliates of the depositor.

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

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for part 249 continues 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.

5. Amend Form 15 (referenced in § 249.323) by adding a checkbox referring to "Rule 15d–22(b)" after the checkbox referring to "Rule 15d–6".

Dated: January 6, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–416 Filed 1–11–11; 8:45 am]

BILLING CODE 8011–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49, 60, 63, 75, 86, 89, 92, 94, 761, and 1065

[EPA–HQ–OPPT–2010–0518; FRL–8846–6]

RIN 2070–AJ51

Incorporation of Revised ASTM Standards That Provide Flexibility in the Use of Alternatives to Mercury-Containing Thermometers; Solicitation of Public Comment on the Required Use of Mercury-Containing Thermometers in EPA Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to incorporate the most recent versions of the American Society for Testing and Materials (ASTM) International standards (ASTM standards) into EPA regulations that provide flexibility to use alternatives to mercury-containing industrial thermometers. These proposed amendments will allow the use of such alternatives in certain limited field and laboratory applications previously impermissible as part of compliance with EPA regulations. Additionally, EPA is seeking public input on the need to address the remaining EPA regulations that incorporate by reference ASTM standards that do not allow the use of alternatives to mercury-containing industrial thermometers. EPA believes these embedded ASTM standards may unnecessarily impede the use of effective, comparable, and available mercury alternatives. Due to elemental mercury's high toxicity, EPA seeks to reduce potential mercury exposures to humans and the environment by reducing the overall use of mercury-containing products, including mercury-containing thermometers.

DATES: Comments must be received on or before March 14, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0518 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. *Attention:* Docket ID Number EPA–HQ–OPPT–2010–0518. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2010–0518. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available