

SUPPORTING STATEMENT FOR PROPOSED RULES UNDER THE SECURITIES EXCHANGE ACT OF 1934

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq.

A. JUSTIFICATION

1. NECESSITY OF INFORMATION COLLECTION

In Release No. 33-9244¹, the Securities and Exchange Commission (the “Commission”) re-proposed certain rules related to asset-backed securities (“ABS”) that were initially proposed in April 2010² in light of the provisions added by the Dodd-Frank Wall Street Reform and Consumer Protection Act and comments we received on the April proposals. Specifically, the re-proposed rules relate to shelf registration of ABS and exhibit filing deadlines. The Re-proposals along with the 2010 ABS Proposals are designed to enhance investor protection in the ABS market, in light of the role that ABS played in the recent financial crisis. Together the proposals are intended to provide investors with timely and sufficient information, including information in and about the private market for asset-backed securities, reduce the likelihood of undue reliance on credit ratings, and help restore investor confidence in the representations and warranties regarding the assets. Although these revisions are comprehensive and therefore would impose new burdens, the Commission believes that they would protect investors and promote efficient capital formation.³

The re-proposed amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. The titles for the collections of information contained by the re-proposed amendments are:

- “Form S-3” (OMB Control No. 3235-0073);
- “Form 10-D” (OMB Control No. 3235-0604);
- “Regulation S-K” (OMB Control No. 3235-0071); and
- “Form SF-3” (a proposed new collection of information)⁴

“Form SF-3” is a new collection of information created by the proposed amendments. The proposal would revise the shelf registration offering process and criteria for asset-backed securities. Because the registration process, criteria, and disclosure for ABS shelf offerings would differ from shelf offerings of other types of securities, the Commission

¹ Re-proposal of Shelf Eligibility conditions for Asset-Backed Securities and Other Additional Requests for Comment, Release No. 33-9244 (July 26, 2011) [76 FR 47948] (the “ABS Re-proposals”).

² Asset-Backed Securities, Release No. 33-9117 (April 7, 2010) [75 FR 23328] (the “2010 ABS Proposals”).

³ See Section I.A. of Release No. 33-9117.

⁴ As noted in Section VI. of Release No. 33-9117 and also below (#12 and #13), we believe that the proposed amendments would not change the burden hours and costs associated with Regulation S-K, Regulation S-T, and Form D.

proposed that ABS offerings be registered on new forms “Form SF-3.” Because ABS issuers would register shelf offerings on new Form SF-3, the number of respondents for existing Form S-3 will decrease.

“Form 10-D” is a collection of information related to the periodic reports that are filed on an ongoing basis under the Exchange Act. As part of the proposed new shelf registration requirements, issuers will be required to provide additional disclosure on Form 10-D. The proposed new requirements would provide important transparency for investors on an ongoing basis.

2. PURPOSE FOR THE INFORMATION COLLECTION

The purpose of the proposed collections of information is to provide enhanced disclosure and transparency to participants and investors in the asset-backed securities market.

3. ROLE OF IMPROVED TECHNOLOGY AND OBSTACLES TO REDUCING BURDEN

The information in each of the collections of information discussed above is filed electronically with the Commission using Commission’s Electronic Data Gathering and Retrieval (EDGAR) system.

4. DUPLICATION

We are not aware of any rules that conflict with or substantially duplicate the proposed rules.

5. METHODS USED TO MINIMIZE BURDEN ON SMALL BUSINESSES

The proposed amendments would not impact a significant number of small entities. Rules in the Securities Act and Exchange Act define an issuer, other than an investment company, to be a “small business” or a “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 on small entities. Based on our data, we only found one sponsor that could meet the definition of a small broker-dealer.

6. DESCRIPTION OF CONSEQUENCES OF LESS FREQUENT COLLECTION

The objectives of offering disclosure requirements under the Securities Act and the ongoing disclosure requirements under the Exchange Act could not be met with less frequent collection of this information for asset-backed securities.

7. EXPLANATION OF SPECIAL CIRCUMSTANCES/INCONSISTENCIES WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

None.

8. CONSULTATION OUTSIDE THE AGENCY

The Commission has issued a release soliciting comment on the new “collection of information” requirements and associated paperwork burdens. A copy of the release is attached. Comments on the Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. The Commission will consider all comments received.

9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY

The information in each of the collections of information discussed above would be made publicly available.

11. SENSITIVE QUESTIONS

Not applicable.

12. AND 13. ESTIMATES OF HOUR AND BURDEN COSTS

The paperwork burden estimates associated with the proposal include the burdens attributable to preparing, reviewing and reporting information to the Commission and retaining records. In most cases, the burden also includes filing the information with the Commission on EDGAR.

Our PRA burden estimates for each the existing collection of information on Form S-3 is based on an average of time and cost incurred by all types of public companies, not just ABS issuers, to prepare the collection of information. In contrast, Form 10-D, is a form that is only prepared and filed by ABS issuers. In 2004, we codified requirements for ABS issuers in these regulations and forms, recognizing that the information relevant to asset-backed securities differs substantially from that relevant to other securities.

Our PRA burden estimates for the proposed amendments are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used with respect to asset-backed securities, as well as information from outside data sources.⁵ When possible, we base our estimates on an average of the data that we have available for years 2004 through 2010. In some cases, our estimates for the number of asset-backed issuers that file Form 10-D with the Commission are based on an average of the number of ABS offerings in 2006 through 2010.⁶

a. Form S-3 and Form SF-3

Our current PRA burden estimate for Form S-3 is 243,927 annual burden hours. This estimate is based on the assumption that most disclosures required of the issuer are incorporated by reference from separately filed Exchange Act reports. However, because ABS issuers using Form S-3 often present all of the relevant disclosure in the registration statement rather than incorporate relevant disclosure by reference, our current burden estimate for ABS issuers using Form S-3 under existing requirements is similar to our current burden estimate for ABS issuers using Form S-1. During 2004 through 2010, we received an average of 90 Form S-3 filings annually related to asset-backed securities.

We are proposing to move the requirements for asset-backed issuers into new forms that would be solely for the registration by offerings of asset-backed securities. Under the proposal, proposed Form SF-3 would be the ABS shelf equivalent form of existing Form S-3. For purposes of our calculations, we estimate that the proposals relating to shelf eligibility would cause a 5% movement in the number of filers (i.e., a decrease of five registration statements) out of the shelf system due to the new requirements which include the proposed executive officer certification, the proposed transaction requirement for the credit risk manager, the proposed transaction requirement related to investor communications, and the proposed annual evaluations of compliance with timely Exchange Act reporting and timely filing of transaction agreements and certifications.⁷ On the other hand, we estimate the number of shelf registration statements for ABS issuers would increase by five as a result of the outstanding proposal from the 2010 ABS Proposing Release to eliminate the practice of providing a base prospectus and a prospectus supplement for these issuers.⁸ Thus, we estimate that the annual number of shelf registration statements concerning ABS offerings

⁵ 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).

⁶ Form 10-D was not implemented until 2006. Before implementation of Form 10-D, asset-backed issuers often filed their distribution reports under cover of Form 8-K.

⁷ We calculated the decrease of five Form SF-3s by multiplying the average number of Form S-3s filed (90) by 5 percent.

⁸ See Section II.D. of the 2010 ABS Proposing Release. Based on staff reviews, we believe it is very unusual to see ABS registration statements with multiple unrelated collateral types such as auto loans and student loans. There are occasionally multiple related collateral types such as HELOCs, subprime mortgages and Alt-A mortgages in ABS registration statements.

would remain the same. Accordingly, since the proposals would shift all shelf eligible ABS filings from Form S-3 to Form SF-3, we estimate that the proposals would cause a decrease of 90 ABS filings on Form S-3 and a corresponding number of 90 ABS filings on Form SF-3s filed annually.⁹

In 2004, we estimated that an ABS issuer, under the 2004 amendments, would take an average of 1,250 hours to prepare a Form S-3 to register ABS.¹⁰ Additionally, in the January 2011 ABS Issuer Review Release, we estimated that the requirements described in that release would increase the annual incremental burden to ABS issuers by 30 hours per form.¹¹ Therefore, we currently estimate that it would take an average of 1,280 hours to prepare a Form S-3 to register ABS. For registration statements, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the registrant at an average cost of \$400 per hour.¹²

We are proposing new and revised disclosure requirements for ABS issuers that, if adopted, would be a cost to filing on Form SF-3. In particular, we are proposing to add a shelf eligibility condition that the registrant file a certification at the time of each offering off of a shelf registration statement, or takedown, by the chief executive officer of the depositor or executive officer in charge of securitization of the depositor concerning the disclosure contained in the prospectus and the design of the securitization. We are also proposing a shelf eligibility condition that the underlying transaction agreement must provide for the appointment of a credit risk manager to review assets upon the occurrence of certain trigger events and provisions related to repurchase request dispute resolution. Additionally, we are proposing to require that registrants include disclosures concerning the credit risk manager in the prospectus in the registration statement. Lastly, we are proposing a shelf eligibility condition that the underlying transaction agreement include a provision requiring that the party responsible for making periodic filings on Form 10-D include any request received from an investor to communicate with other investors during the reporting period related to investors exercising their rights under the terms of the asset-backed security. We are also proposing changes to Form 10-D relating to disclosure regarding credit risk managers.

If the proposals are adopted, we estimate that the incremental burden for ABS issuers to complete the disclosure requirements in Form SF-3, prepare the information, and file it with the Commission would be 100 burden hours per response on Form SF-3. As a result, we estimate that each Form SF-3 would take approximately 1,380 hours to complete and

⁹ This is based on the number of registration statements for ABS issuers filed on Form S-3 and the four changes due to our rule proposal.

¹⁰ See Asset-Backed Securities, Release No. 33-8518 (December 22, 2004) [70 FR 1506] and Asset-Backed Securities, Release No. 33-8419 (May 3, 2004) [69 FR 26650].

¹¹ See Issuer Review of Assets in Offerings of Asset-Backed Securities, Release No. 33-9176 (Jan. 20, 2011) [76 FR 4231] at 4239.

¹² See, e.g., Credit Ratings Disclosure, Release No. 33-9070 (Oct. 7, 2009) [74 FR 53086].

file.¹³ We estimate the total internal burden for Form SF-3 to be 31,050 hours and the total related professional costs to be \$37,260,000.¹⁴ This would result in a corresponding decrease in Form S-3 burden hours of 28,800 and \$34,560,000 in professional costs.¹⁵

b. Form 10-D

In 2004, we adopted Form 10-D as a new form for only asset-backed issuers. This form is filed within 15 days of each required distribution date on the asset-backed securities, as specified in the governing documents for such securities. The form contains periodic distribution and pool performance information. We estimate that the yearly average number of Form 10-D filings is 10,000¹⁶ and that the proposed new Regulation AB disclosure requirements that would be included in Form 10-D related to investor communications (Item 1121(g)) and credit risk managers (Item 1121(f)) would result in an additional burden of five hours per filing to prepare. Consistent with our estimate in 2004, we estimate that it currently takes 30 hours to complete and file a Form 10-D. Therefore, we estimate that the proposals would increase the number of hours to prepare, review, and file a Form 10-D to 35 burden hours; thus, increasing the total burden hours for all annual Form 10-D responses to an estimate of 350,000 hours.¹⁷

We allocate 75% of those hours (262,500 hours) to internal burden and the remaining 25% to external costs totaling \$35,000,000 using a rate of \$400 per hour.

c. 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. We assign one burden hour to Regulation S-K for administrative

¹³ The total burden hours to file Form SF-3 are calculated by adding the existing burden hours of 1,280 that we estimate for Form S-3 and the incremental burden of 100 hours imposed by our proposals for a total of 1,380 total burden hours.

¹⁴ To calculate these values, we first multiply the total burden hours per Form SF-3 (1,380) by the number of Form SF-3s expected under the proposal (90), resulting in 124,200 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 31,050 hours. We allocate the remaining 75 percent of the total burden hours to related professional costs and use a rate of \$400 per hour to calculate the external professional costs of \$37,260,000.

¹⁵ To calculate these values, we first multiply the total burden hours per Form S-3 (1,280) by the average number of Form S-3s over the period 2004-2010 (90), resulting in 115,200 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 28,800 hours. We allocate the remaining 75 percent of the total burden hours to related professional costs and use a rate of \$400 per hour to calculate the external professional costs of \$34,560,000.

¹⁶ Our estimate is based on 1,000 respondents per year multiplied by 10 filings per respondent.

¹⁷ The burden hours are calculated by multiplying 10,000 Form 10-Ds by the 35 burden hours required to complete the form for a total of 350,000 hours.

convenience to reflect that the changes to the regulation did not impose a direct burden on companies.

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

The table below illustrates the changes in annual compliance burden in the collection of information in hours and costs for existing reports and registration statements and for the proposed new registration statements for asset-backed issuers. Bracketed numbers indicate a decrease in the estimate.

Form	Current Annual Responses	Proposed Annual Responses	Current Burden Hours	Decrease or Increase in Burden Hours	Proposed Burden Hours	Current Professional Costs	Decrease or Increase in Professional Costs	Proposed Professional Costs
S-3	2,065	1,075	243,927	[28,800]	215,127	\$292,711,500	[\$34,560,000]	\$258,151,500
SF-3	90	31,050	31,050	\$37,260,000	\$37,260,000
10-D	10,000	10,000	225,000	37,500	262,500	\$30,000,000	\$5,000,000	\$35,000,000

14. ESTIMATE OF COST TO FEDERAL GOVERNMENT

We estimate annualized cost to the government will be \$200,000 per year for the collections of information changes discussed above.

15. EXPLANATION OF CHANGES IN BURDEN

See Question 12 and 13 (including the table in paragraph (k)).

16. INFORMATION COLLECTIONS PLANNED FOR STATISTICAL PURPOSES

Not applicable.

17. EXPLANATION AS TO WHY EXPIRATION DATE WILL NOT BE DISPLAYED

We request authorization to omit the expiration date on the electronic version of this form for design and scheduling reasons. The OMB control number will be displayed.

18. EXCEPTIONS TO CERTIFICATION

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.