



Regulation AB II

The Securities and Exchange Commission today adopted final amendments related to Regulation AB that were first proposed in 2010.¹ The changes address the offering process and disclosure and periodic reporting requirements for asset-backed securities. The 2010 proposals were published prior to the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Dodd-Frank Act addressed some of the elements of the 2010 proposal, resulting in a reproposal by the Commission in 2011.² The Commission published a third release in 2014,³ requesting comment on the possibility of sponsors disclosing asset-level information on their own websites. The comment period for the third release was extended in March 2014.⁴

Some of the significant changes adopted by the Commission today are:

- a requirement to file a preliminary prospectus at least three days prior to sales of any securities (this is referred to as the “speed bump” provision);
- a requirement to appoint an unaffiliated reviewer to review assets for compliance with representations and warranties;
- a requirement to provide in machine readable form asset-level information for securitizations involving residential mortgage loans, commercial mortgage loans, auto loans and leases, debt securities, and resecuritizations of these assets;
- a requirement to report periodically demands by the trustee to repurchase assets for breach of representations and warranties, and any such assets not repurchased;
- for each offering, a certification is required by the CEO or executive officer in charge of securitization of the depositor stating that the securitization as described in the prospectus is designed to produce cash flows from the assets in amounts sufficient to service expected payments on the securities; and
- new Forms SF-1 and SF-3 for the registration of asset-backed securities.

¹ Release 33-9117 (April 2010) available at <http://www.sec.gov/rules/proposed/2010/33-9117.pdf>.

² Release 33-9244 (July 2011) available at <http://www.sec.gov/rules/proposed/2011/33-9244.pdf>.

³ Release 33-9552 (February 2014) available at <http://www.sec.gov/rules/proposed/2014/33-9552.pdf>.

⁴ Release 33-9568 (March 2014) available at <http://www.sec.gov/rules/proposed/2014/33-9568.pdf>.

The following significant items from the 2010 proposal were not adopted today:

- a requirement to file a computer program for the cash-flow waterfall—in the 2011 reproposal, the Commission stated that it would address this requirement separately;
- a requirement for the sponsor or an affiliate to retain an interest in the assets securitized—this is the subject of a separate multiagency rulemaking⁵ as required by the Dodd-Frank Act;
- the extension of the disclosure requirements of Form SF-1 to private placements under Rule 506 or Rule 144A;
- filing of transaction agreements in substantially final form with the preliminary prospectus; and
- asset-level information for other assets, including student loans and equipment leases and loans.

A more detailed client alert will be issued upon publication of the adopting release by the SEC.

Authors

Jerry Marlatt
New York
+1 (212) 468-8024
jmarlatt@mofo.com

Melissa Beck
New York
+1 (212) 336-4319
mbeck@mofo.com

Kenneth Kohler
Los Angeles
+1 (213) 892-5315
kkohler@mofo.com

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⁵ Release 34-70277 (August 2013) available at <http://www.sec.gov/rules/proposed/2013/34-70277.pdf>.