

MEMO# 24869

January 12, 2011

SEC Proposes Limited Suspension of Reporting Duty For Asset-Backed Securities Issuers

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TO: FIXED-INCOME ADVISORY COMMITTEE No. 4-11
SEC RULES COMMITTEE No. 4-11 RE: SEC PROPOSES LIMITED SUSPENSION OF REPORTING DUTY FOR ASSET-BACKED SECURITIES ISSUERS

The Securities and Exchange Commission recently proposed rules, pursuant to Section 942(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), which would permit suspension of the reporting obligations for asset-backed securities (“ABS”) issuers when there are no longer asset-backed securities of the class sold in a registered transaction held by non-affiliates of the depositor. [\[1\]](#) The proposal is summarized below.

Comments on the SEC proposal are due on or before February 7, 2011. We will hold a conference call on Friday, January 14, at 2:30 p.m. Eastern time to discuss the SEC proposal and possible ICI comments. If you plan to participate on the call, please contact Jennifer Odom by email at jodom@ici.org or by phone at 202-326-5833 to receive the dial-in information. If you are unable to participate on the call but have views to offer, please contact Sarah Bessin at sarah.bessin@ici.org prior to the call.

Background

Section 942(a) of the Dodd-Frank Act eliminated the automatic suspension of the duty to file under Section 15(d) of the Securities Exchange Act of 1934 for ABS issuers and granted the SEC the authority to issue rules providing for the suspension or termination of that duty. Prior to the Dodd-Frank Act, the duty to file ongoing reports under Section 15(d) was automatically suspended for ABS issuers that did not have a class of securities registered under the Exchange Act 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 related were held of record by less than 300 persons.

Rule Proposal

New Exchange Act Rule 15d-22(b) 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.

In the Release, the SEC requests comment on several specific issues, including whether it should:

- Instead allow suspension of the reporting obligation based on a limited number of non-affiliates of the depositor holding the securities;
- Allow the ABS issuer not to count lost or missing security holders when determining the number of non-affiliates of the depositor that hold its securities;
- Allow an issuer to suspend Section 15 reporting of a class of ABS if the issuer has effected legal or covenant defeasance of such class;
- Instead use another standard for suspension, e.g., permit suspension based on a mandatory period of time since the registered offering.

The Release also discusses a recent no-action letter issued by the staff of the Division of Corporation Finance. [2] The letter recognizes that ABS issuers that were in compliance with Section 15(d) prior to its amendment may not have provisions in their transaction documents to permit them to recommence reporting as would be required under amended Section 15(d) and provides for certain limited relief.

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endnotes

[1] See Securities Exchange Act Release No. 63652 (January 6, 2011) (“Release”), available at <http://www.sec.gov/rules/proposed/2011/34-63652.pdf>.

[2] See American Securitization Forum, SEC no-action letter (January, 6, 2011), available at <http://www.sec.gov/divisions/corpfin/cf-noaction/2011/asf010611-15d.htm>.