

**MEMO# 25436**

August 25, 2011

## **SEC Adopts Rules for Limited Suspension of Reporting Duty for Asset-Backed Securities Issuers**

[25436]

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TO: FIXED-INCOME ADVISORY COMMITTEE No. 63-11  
SEC RULES MEMBERS No. 106-11 RE: SEC ADOPTS RULES FOR LIMITED SUSPENSION OF REPORTING DUTY FOR ASSET-BACKED SECURITIES ISSUERS

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 ("Exchange Act") for asset-backed securities ("ABS") issuers and granted the Securities and Exchange Commission (the "Commission") the authority to issue rules providing for the suspension or termination of that duty. [\[1\]](#) The Commission recently adopted rules under this authority, which will become effective September 22, 2011. [\[2\]](#) The key aspects of the rules are described below.

### Rules

New Exchange Act Rule 15d-22(b) provides that the obligation to file annual and other reports under Section 15(d) of the Exchange Act is suspended:

- As to any semi-annual fiscal period, if, at the beginning of the semi-annual fiscal period, other than a period in the fiscal year within which the registration statement became effective or, for shelf offerings, the takedown occurred, there are no ABS of that class that were sold in a registered transaction held by non-affiliates of the depositor and a certification on Form 15 (indicating the basis for suspending reporting) has been filed; or
- When there are no ABS of such class that were sold in a registered transaction still outstanding (i.e., when the securities have been retired or fully paid), immediately upon the filing with the Commission of a certification on Form 15 if the issuer has filed all required reports for the most recent three fiscal years. [\[3\]](#)

As adopted, Rule 15d-22(b) also includes the following two notes:

- Securities held of record by a broker, dealer, bank, or nominee for the accounts of customers are considered held by the separate accounts for which they are held. Thus, a bank ABS issuer that holds securities in its name for the benefit of non-affiliated investors cannot suspend reporting.
- An issuer may not suspend reporting if securities are acquired and resold by affiliates as part of a plan or scheme to evade the reporting obligations of Section 15(d).

In addition, the final rules amend Form 15 to add a checkbox for ABS issuers to indicate that they are relying on Rule 15d-22(b) to suspend their reporting obligation.

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#### **endnotes**

[1] See ICI Memorandum No. [24870](#) (January 12, 2011).

[2] Suspension of the Duty to File Reports for Classes of Asset-Backed Securities Under Section 15(d) of the Securities Exchange Act of 1934, Exchange Act Release No. 65148 (August 17, 2011), available at <http://www.sec.gov/rules/final/2011/34-65148.pdf>.

[3] If the certification on Form 15 is subsequently withdrawn or denied, the issuer must, within 60 days, file within the Commission all reports that would have been required if the certification had not been filed.

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