The SEC has adopted a new regulation, Regulation AB (the “Regulation”), that sets forth the SEC’s ‘principles-based’ set of disclosure items for registered offerings of asset-backed securities. In SEC Release Nos. 33-8518 and 34-50903 (the “Adopting Release”), available through the SEC’s web site at www.sec.gov, the SEC has promulgated amendments to the Securities Act of 1933, as amended (the “Securities Act”) and the Securities Exchange Act of 1934, as amended (the “Exchange Act”) that contain new and amended rules and forms for registration and ongoing reporting with respect to asset-backed securities offerings. Compliance with these new and amended rules is required for a registered offering of asset-backed securities commencing on or after December 31, 2005. This Alert summarizes and discusses these requirements. For purposes of this Alert, we have assumed basic familiarity with asset-backed and mortgage-backed securities, their structure and purpose, and the asset-backed and mortgage-backed market generally. For purposes of this Alert, when we refer to asset-backed securities, we intend to include mortgage-backed securities as well, unless otherwise specified.

General Overview
The final rules promulgated in the Adopting Release (the “ABS Rules”) provide a comprehensive set of federal securities laws, rules and regulations for asset-backed securities. Previously, there was no such comprehensive set of laws, but instead a myriad of no-action letters and SEC staff positions. Many of these positions were communicated through comment letters on specific registration statements and not widely disseminated, resulting in a body of laws applicable to ABS that was more like lore than law. In light of this, a principal goal of the SEC in adopting the ABS Rules was to provide clarity and transparency to the ABS registration and reporting process.

The Adopting Release sets out the requirements of the new ABS Rules under five general categories: Securities Act registration requirements, prospectus disclosure requirements, rules governing communications during the offering process, ongoing reporting requirements under the Exchange Act and the transition period for effectiveness of the rules. We will summarize and discuss each of these categories, noting differences from current practice as well as changes from the proposed amendments issued by the SEC on May 3, 2004 (the “Proposed Amendments”). In general, the Adopting Release codifies current staff positions that have been expressed through no-action letters and the registration comment process as well as
current industry practice, although certain of the amendments represent material changes to current practice.

Securities Act Registration Requirements

Defining Asset-Backed Securities
In adopting the ABS Rules, the SEC began by amending the definition of “asset-backed security” to identify which securities and offerings are covered by the new rules, and moving that definition into Regulation AB for more general applicability (beyond its current more limited applicability to determining the use of Form S-3).

The definition of asset-backed securities (“ABS”) that has been adopted in Item 1101 (c)(1) of Regulation AB is the same basic definition that has existed since 1992, with one additional proviso with respect to leases and a codification of certain other conditions and interpretations that have developed in current practice through no-action letter advice and the SEC comment process. Clarifying the 1992 definition, the SEC has specifically included lease-backed securities in the definition of ABS. Further the SEC has added the conditions currently applicable in practice that (1) neither the depositor nor the issuing entity be an investment company under the Investment Company Act of 1940, as amended (the “Investment Company Act”), (2) the activities of the issuing entity be limited to passive ownership of the pool of assets, issuance of the ABS and other activities reasonably incidental thereto, (3) as of the cut-off date for the ABS offering or, in the case of master trusts, the date loss, delinquency and other required pool information is presented in the prospectus (such date shall be referred to herein as the “Measurement Date”) charged-off or non-performing assets may not be part of the principal amount of the pool funded by the ABS offering, (4) as of the Measurement Date, total delinquent assets may not comprise 50 percent or more of the asset pool, and (5) with respect to lease-backed ABS, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases (in each case determined as of the Measurement Date) may not constitute (x) 65 percent or more of the securitized pool balance for motor vehicle leases, and (y) 50 percent or more of the securitized pool balance for all other leases.

The last leg of the SEC’s definition of ABS provides clarifications and exceptions to what constitutes a “discrete pool of assets” as required by the definition. In this regard, the SEC has codified the concept that multi-issuance vehicles, such as master trusts, that issue series of ABS backed by a common pool continue to qualify as ABS despite the “discrete pool of assets” requirement. For master trusts and other multi-issuance vehicles, the SEC has clarified that pool additions may be made both to support additional issuances and also to meet minimum pool requirements for existing securities. Further, the SEC has provided that pre-funding periods not exceeding one year and pre-funding accounts meeting the amount limitations of the ABS definition will not cause an asset pool to fail to constitute a discrete pool and therefore continue to fall within the definition of ABS. Finally, the SEC has clarified that securities backed by pool assets not arising under revolving accounts but contemplating a revolving period will qualify as ABS if the conditions specified in the definition are met. For receivables and other financial assets that by their nature revolve, such as credit cards, dealer floorplan financings and home equity lines of credit, there is no limit on the amount of the total asset pool that revolves or duration of the revolving period.

In adopting this definition, the SEC specifically considered and rejected the comment that synthetic securitizations be included in the basic definition of ABS. The SEC in the Adopting Release...
says that it does not intend that synthetic securities may not be offered in a public offering, only that such securities may not be registered under this alternative regulatory regime for ABS. Additional comment is sought regarding synthetic securities and whether a alternative scheme should be considered by these securities.

The ABS Registration Forms: Use and Guidance
The Adopting Release requires that all registered offerings of ABS be registered on either Form S-1 or Form S-3. No new registration statement form has been proposed or adopted. Form S-3 is for use in connection with continuous or delayed offerings of investment grade asset-backed securities sold in the future through one or more offerings or takedowns of securities off a shelf registration statement. Form S-1 will be the form for all other offerings that meet the definition of ABS but do not meet the eligibility requirements for Form S-3 use. In the future, Form S-11 will no longer be used to register mortgage-backed securities, although the SEC has provided for grandfathering of existing shelf registrations on Form S-11.13 In addition to amendments related to Form S-11, the SEC has adopted amendments to Forms S-2, F-1, F-2 and F-3 to exclude their use for any offerings meeting the definition of ABS.

The SEC has adopted a new General Instruction VI to Form S-1 that sets forth how the form is to be prepared for ABS offerings. It includes the requirements regarding who signs the registration statement and the menu of disclosure requirements, substituted items from Regulations AB and omitted items. See the discussion below under the heading “Prospectus Disclosure Requirements” for the specific requirements. The applicability of disclosure items for Form S-1 are as follows:

## Disclosure for Form S-1 for Registered ABS Offerings

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The SEC has also adopted a new General Instruction V to Form S-3 that sets forth how that form is to be prepared for ABS offerings. Many non-ABS offerings using Form S-3 rely heavily on incorporation by reference of Exchange Act filings about the issuer and primarily describe only the current securities offering. ABS offerings using Form S-3, however, will need to contain additional disclosure from Regulation AB about the pool assets, servicers, trustees, significant obligors, credit enhancers and others, and material provisions such as covenants and default triggers. These basic disclosure items are contained in Items 1102-1120 of Regulation AB. The applicability of disclosure items for Form S-3 are as follows:

### Disclosure for Form S-3 for Registered ABS Offerings

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In connection with Form S-3, the SEC states that it does not intend to change the current practice of presenting disclosure in the form of a base prospectus containing general disclosure applicable to all the shelf offerings and a prospectus supplement containing disclosures for the specific securities offering or shelf takedown. The SEC provides some further guidance regarding the proper disclosure for the base prospectus and prospectus supplement, stating that the base prospectus should probably include risk factors that are applicable to the general type of transaction as a whole and the nature of the securities, general federal income tax consequences, and a description of the types of offerings contemplated by the registration statement. A takedown off the shelf involving assets, structural features, credit enhancement or other features that were not described in the base prospectus generally requires either a new registration statement or a post-effective amendment. It is not sufficient to simply describe these new items in the final prospectus filed under Rule 424 of the Securities Act. The SEC has also stated its position in the General Instruction to Form S-3 that when it is intended that multiple asset types may be securitized in discrete pools under the same shelf registration statement, separate base prospectuses and forms of prospectus supplements must be included for each asset type. It is not sufficient to merely identify several alternative types of assets that may be securitized in one base prospectus. A similar requirement of separate base prospectuses and prospectus supplements applies to shelf registration statements intended to cover pools of foreign assets where the
assets originate in separate countries or the property securing the pool of assets is located in separate countries. As a final note, the SEC reiterates its position that disclosures in prospectus supplements regarding the transactions may supplement or enhance disclosures in the base prospectus, but should not contradict it. As such, language such as "Except as otherwise provided in the prospectus supplement" may permit some supplementing or modifying of terms from the base, but may not be used to provide the ability to add asset types or structural features in a takedown that were not otherwise contemplated by and described in the base prospectus.

**Form S-3 Eligibility**

The ABS Rules contain specific conditions to eligibility of an ABS offering for use of the Form S-3 shelf registration statement. Such eligibility is determined at the time of initial filing of the registration statement. First, if the depositor or any affiliate of the depositor is, or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of a registration statement on Form S-3, subject to the requirements of Section 12 or 15(d) of the Exchange Act with respect to a class of ABS involving the same asset class as that covered by the registration statement on Form S-3, such depositor, its affiliates and each such issuing entity must have filed all material required to be filed regarding such ABS pursuant to Section 13, 14 or 15(d) of the Exchange Act for such twelve month period (or such shorter period that each such entity was required to file such materials) and such filings must have been filed in a timely manner (other than reports related to certain Items of Form 8-K). Excluded from this eligibility condition are any required filings relating to ABS of an issuing entity previously established by an affiliated depositor that became an affiliate as a result of a business combination transaction during the period specified in the preceding sentence and that were required to be filed prior to the business combination. The SEC felt strongly about linking Form S-3 eligibility to Exchange Act compliance as an important means of encouraging such compliance. The SEC took this opportunity to criticize ABS issuers for their performance in complying with Exchange Act reporting by stating in the Adopting Release that: “Compliance with Exchange Act reporting by ABS issuers under the existing modified reporting no-action letters has been unacceptable. While this may be partially attributable to a lack of widely understood requirements due to reduced transparency in the current process, which these final rules are intended to help remedy, the concerns in this area are more broad-based than minor inadvertent or unintentional failures to file. Instead, reporting issues in the ABS market include widespread instances of untimely, deficient and sometimes even complete lapses in reporting.”

The second condition for Form S-3 eligibility is that the ABS must be rated “investment grade” by a nationally recognized statistical rating organization at the time of offer and sale to the public. Third, delinquent assets (as defined previously under footnote 6) may not constitute 20 percent or more, as measured by dollar volume, of the asset pool. Fourth, for securities backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to residual values may not constitute 20 percent or more, as measured by dollar volume. The SEC has modified the proposed penalty of loss of Form S-3 eligibility for failure to comply with Exchange Act reporting obligations so that it no longer applies to transaction sponsors, who argued that they may have no control over future reporting for a transaction. However, for sponsors that act through one or more affiliated depositors, the penalty may still result in significant drawbacks. First, the ability to access the market on a quick or timely basis...
may be significantly hindered by the inability to have an effective shelf registration on Form S-3. Second, no ABS informational and computational materials may be used or incorporated by reference.

**Depositor As “Issuer” For Purposes of the Registration Statement and the Securities Act**

Under newly promulgated Securities Act Rule 191, the SEC clarifies that for ABS offerings, the depositor of assets into the issuing entity, acting solely in its capacity as depositor to the issuing entity, is the “issuer” of the ABS for purposes of the Securities Act. A similar rule, Rule 3b-19, was also adopted for purposes of the Exchange Act. For ABS where there is no intermediate transfer from the sponsor to a depositor prior to the transfer to the issuing entity, the sponsor is the “depositor” for purposes of Rule 191 and the Securities Act. The rules specify that a person acting in its capacity as depositor for the issuing entity of ABS is a different “issuer” from that same person acting as a depositor for any other issuing entity or for purposes of that person’s own securities. As a result, exemptions from registration that may be applicable to the depositor’s own securities, are not applicable to the ABS and conversely, a person’s reporting history on its own securities does not affect Form S-3 eligibility with respect to its ABS. Registration Statements on Forms S-1 and S-3 must be signed by the depositor, the depositor’s principal executive officers, principal financial officers or principal accounting officers, and by at least a majority of the depositor’s board of directors.

ABS sponsors that deposit assets directly into the ABS issuing entities may want to consider the impact of these rules and whether it may be beneficial from a corporate management perspective to create an intermediate depositor entity to act as “depositor” for the purposes of these rules. Further, given the impact of Sarbanes-Oxley and required certifications, moving responsibility and resulting liability to an intermediate special purpose entity acting as depositor for the ABS program, with its own board of directors and officers, may be desirable from a corporate responsibility and risk management perspective.

**Application to Foreign Issuers or Foreign Financial Assets**

The growth of securitizations by foreign issuers sold into the US has developed rapidly and prompted the SEC to include such offerings in the current rulemaking. The SEC determined not to treat foreign ABS offerings differently than domestic US ABS offerings. Foreign ABS offerings must use the same Forms S-1 and S-3, as applicable; they are subject to the same disclosure requirements of Regulation AB (with one exception set forth below); foreign issuers that are eligible for Form S-3 use are also eligible for the rules regarding use of ABS informational and computational materials and ABS research reports described in this memo; and once registered, foreign ABS are subject to the same Exchange Act reporting requirements.

To address additional disclosure concerns regarding foreign ABS, such as differing legal and regulatory regimes affecting the ABS, Regulation AB contains an additional General Instruction (Item 1100(e)) requiring that if an ABS offering is issued by a foreign issuer, backed by foreign assets, or credit enhanced or otherwise supported by a foreign entity, then the prospectus must describe any pertinent governmental, legal or regulatory or administrative matters and any pertinent tax matters, exchange controls, currency restrictions or other economic, fiscal, monetary or potential factors in the applicable home jurisdiction that could materially affect payments on, the performance of or other matters affecting or relating to, the assets contained in the pool or the ABS themselves.
Rules Related to Market Making Transactions

Under the new rules, registration and delivery of a current prospectus when a broker-dealer affiliated with an issuer engages in market-making transactions is no longer required. The SEC was persuaded by industry comment on this requirement in connection with the Proposed Amendments. The SEC notes that prospectuses must nonetheless be kept evergreen or updated where they relate to a delayed or continuous selling shareholder offering, a registered remarketing transaction or a re-securitization of ABS where the underlying ABS constitutes a “significant obligor.”

Prospectus Disclosure Requirements

General

Regulation AB sets forth a new principles-based set of disclosure items that will form the basis for disclosure in both Securities Act registration statements and Exchange Act reports for ABS transactions. In adopting this principles-based approach, the SEC’s objective was to provide an effective framework for disclosure applicable to existing ABS asset classes as well as any new asset classes that may emerge in the future. Existing disclosure requirements in the SEC’s forms did not elicit the information material to ABS offerings, and no codification existed of the informal requirements that had been adopted for ABS. The SEC promulgated Regulation AB to address such concerns and increase transparency. In addition, the Adopting Release identifies substantial additional disclosure requirements for ABS transactions, citing developments in the market and evolving standards of materiality. However, the SEC emphasizes that materiality of information to investors with respect to a particular ABS transaction and a specific asset pool should ultimately be assessed by issuers.

Transaction Parties

Recognizing that, unlike corporate issuances, ABS transactions may involve numerous transaction parties who each provide particular services or functions, the SEC has included in Regulation AB specific definitions for these transactions parties and disclosure requirements that are tailored to each.

Sponsor

Regulation AB adopts the proposed definition of “sponsor” as “the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.” In response to comments that the definition of “sponsor” could be interpreted to relate to more than one party in an ABS transaction, the Adopting Release clarifies that the definition should not be construed beyond its plain language and by way of example offers that in aggregator or consolidator transactions where a sponsor acquires loans from other unaffiliated sellers prior to a securitization, each of the underlying sellers would not be considered a “sponsor.”

Item 1104 of Regulation AB contains the specific disclosure requirements for a sponsor. These include basic identifying information as well as a description of the sponsor’s securitization program. Specific requirements include:

- A general discussion of the sponsor’s experience in and overall procedures for originating or acquiring and securitizing assets of the type to be included in a given transaction
- A description of the sponsor’s material roles and responsibilities in its securitization program
- Information about whether the sponsor or an affiliate is responsible for originating, acquiring, pooling and servicing the pool assets and the sponsor’s participation in structuring the transaction

These disclosures should include information about underwriting criteria, credit review processes, servicing
policies and procedures and any outsourcing arrangements, among other things; information about the sponsor’s portfolio of assets of the type to be securitized (including static pool information, as discussed below, for the overall portfolio or prior securitized pools) and other information or factors related to the sponsor that may be material to an analysis of the origination or performance of the pool assets. Additionally, sponsor disclosures should identify whether any prior securitizations organized by the sponsor have experienced a default or early amortization event.

**Depositor**
The “depositor” is defined as the person “who receives or purchases and transfers or sells the pool assets to the issuing entity”25 in an ABS transaction. The sponsor may also be treated as the depositor if there is no intermediate transfer of assets from a sponsor to the issuing entity. Item 1106 of Regulation AB sets out the disclosure requirements for the depositor and, if the depositor is not the same entity as the sponsor, requires disclosures similar to those required for the sponsor and the sponsor’s securitization program pursuant to Item 1104. Disclosures must also include information relating to the ownership structure of the depositor and the general character of any activities of the depositor other than securitizing assets. It should also describe any continuing duties the depositor will have after issuance of the ABS.

**Issuing Entity and Transfer of Asset Pool**
Regulation AB defines “issuing entity” as “the trust or other entity created at the direction of the sponsor or depositor that owns or holds the pool assets and in whose name the asset-backed securities supported or serviced by the pool assets are issued”.26 Pursuant to Item 1107, disclosure about the issuing entity must include, among other things, a description of:

- The nature of the issuing entity
- Its permissible activities and restrictions on activities
- Any specific discretionary activities with regard to the administration of the asset pool or ABS
- Any assets owned or to be owned by the issuing entity, apart from pool assets, as well as liabilities of the issuing entity, apart from the ABS
- Details on the sale or transfer of pool assets to the issuing entity as well as the creation (and perfection and priority status) of any security interests
- Expenses incurred in connection with the selection and acquisition of the pool assets
- If the pool assets are securities, as defined under the Securities Act, the market price of the securities and the basis on which the market price was determined27

To the extent material, additional information that should be disclosed includes whether any security interests granted in connection with the transaction are perfected, maintained and enforced, whether bankruptcy, receivership or similar proceedings with respect to the issuing entity can occur and whether, in such event, the assets of the issuing entity can become part of the bankruptcy estate or subject to control of a third party. The governing documents of the issuing entity and material agreements related to the ABS must be filed as exhibits to the registration statement.

**Servicers**
Recognizing that multiple parties in a given ABS transaction may perform various servicing functions and that the role of a servicer is not always limited to administration and collection of pool assets, the SEC sought to adopt a definition of “servicer” that captured all aspects of a servicer’s activities. Pursuant to the Adopting Release, the “servicer” is any person responsible for the management or collection of the pool assets or making allocations or distributions to holders of ABS.
Notwithstanding the foregoing, the definition does not include a trustee that makes allocations or distributions to holders of ABS based on information received from a servicer.

Item 1108 requires information regarding the entire servicing function, including a description of the roles, responsibilities and oversight requirements of the entire servicing process and the parties involved. Each master servicer, each affiliated servicer, each unaffiliated servicer (e.g., primary servicer) that services 10 percent or more of the pool assets and any other material servicer responsible for calculating or making distributions to holders of ABS, performing work-outs or foreclosures or other aspect of servicing upon which performance of the pool is materially dependent must be identified. With respect to each such servicer, provided, that in the case of each unaffiliated servicer, only if such servicer services 20 percent or more of the pool assets, and to the extent material, the following additional information should also be disclosed:

- Information regarding a servicer’s experience in servicing assets of any type as well as a more detailed discussion of asset-specific servicing procedures and experience
- The size, composition and growth of the servicer’s portfolio of serviced assets of the type included in the transaction, any prior securitizations involving the servicer that have experienced default, early amortization or other performance triggering event due to servicing, the extent of outsourcing, or previous disclosure of material noncompliance with servicing criteria with respect to other securitizations involving the servicer
- Any material changes within the last 3 years to the servicer’s policies or procedures in the servicing function it will perform in the current transaction for assets of the same type
- Information regarding the servicer’s financial condition
- A description of the material terms of the servicing agreement and the servicer’s duties with respect to a transaction, including how collections on the assets will be maintained, any advancing provisions (including, to the extent material, statistical information regarding advance activity for the past 3 years), the servicer’s process for handling delinquencies, losses, bankruptcies and recoveries, the ability of a servicer to waive or modify any terms, fees, penalties or payments on the assets and the effect of doing so, any custodial responsibilities and any limitations on the servicer’s liability under the transaction
- A description of the material terms regarding the servicer’s removal, replacement, resignation or transfer

Trustees

Item 1109 of the Regulation requires basic identifying information about a trustee as well as a description of the trustee’s prior experience in serving as trustee for ABS transactions involving similar pool assets, the trustee’s duties and responsibilities under the governing documents and under applicable law, any limitations on liability, any indemnification provisions and removal or replacement provisions. To address concerns about the lack of transparency regarding a trustee’s level of oversight in an ABS transaction, disclosure regarding the trustee should also include information about the extent to which the trustee independently verifies distribution calculations, has access to and its activity in transaction accounts, compliance with transaction covenants, use of credit enhancement, addition, substitution or removal of pool assets and underlying data used for such determinations. Also required is disclosure of any actions required by the trustee, including notices to investors, rating agencies or other third parties and the required percentage of a class or classes needed to cause the trustee to take action. If multiple trustees are involved in the transaction, a description
of the roles and responsibilities of each trustee must be disclosed.

**Originators**
For those ABS transactions that involve pool assets that were not originated by the sponsor, each originator, apart from the sponsor or its affiliates, that has originated, or is expected to originate, 10 percent or more of the pool assets must be identified. With respect to any originator that has originated, or is expected to originate, 20 percent or more of such pool assets, additional information relating to such originator’s asset origination program must be disclosed, including, to the extent material, information regarding the size and composition of the related originator’s origination portfolio, the originator’s experience with originating the asset type, underwriting criteria and credit approval process and other material information relating to the origination program and an analysis of the performance of the pool assets, similar to the disclosure requirements applicable to the sponsor’s program.

**Other Transaction Parties**
To the extent that an ABS transaction involves other parties in addition to those mentioned above, information regarding such party is required to the extent material regarding that party, its role, function and experience in relation to the transaction.

**Static Pool Information**
A significant change to existing practice and no-action letter positions is the new requirement in the ABS Rules relating to disclosure of static pool data material to the transaction. The SEC notes the importance of such information as a valuable tool in analyzing performance and in assisting investors in making informed investment decisions. Significantly, the SEC reminds those making a materiality determination that they consider the standard for materiality to be whether a reasonable investor would consider the information to be important to an investment decision, and states that investors uniformly informed them that they consider static pool information to meet this test. Thus, there is very little room for issuers to conclude that static pool information in general is not material, and such determinations will be left to the scope and presentation of such data.

In response to comments received to the Proposed Amendments, the SEC made several revisions to Item 1105 of Regulation AB, to provide guidance on the scope of information contemplated by the ABS Rules, as well as to provide alternative means to present the information.

**For Amortizing Asset Pools**
Item 1105 requires disclosure, to the extent material to the transaction, of:

- Static pool information regarding delinquencies, cumulative losses and prepayments for prior securitized pools of the same asset type by a “seasoned sponsor” (a sponsor that has three years or more of experience securitizing assets of that type)
- Static pool information regarding delinquencies, cumulative losses and prepayments by vintage origination year of the same asset type originated or purchased, as applicable, by an “unseasoned sponsor” (a sponsor that has less than three years of experience securitizing assets of that type)

The foregoing information is required to be provided for a period of five years, or such shorter period of time as the sponsor has been either securitizing assets of the same asset type (in the case of seasoned sponsors) or making originations or purchases (in the case of unseasoned sponsors). The information to be presented should include delinquency, cumulative loss and prepayment data for each prior securitized pool or vintage origination year, as applicable, in periodic increments (e.g., monthly or quarterly) over the life of the prior securitized pool or vintage origination year. The most recent periodic
increment for the data must be as of a date no later than 135 days of the date of first use of the prospectus. The prospectus should also present summary information for the original characteristics of the prior securitized pools or vintage origination years.

**For Revolving Asset Master Trusts**

Item 1105 requires disclosure, to the extent material, of data regarding delinquencies, cumulative losses, prepayments, payment rate, yield and standardized credit scores or other applicable measure of obligor credit quality in separate increments (i.e., 12-month increments through the first five years of the account's life) based on the date of origination of the pool assets. If the information that would otherwise be required is not material, but alternative static pool information would provide material disclosure, the prospectus should provide such alternative information instead. Similarly, Item 1105 provides that information regarding a party or parties other than the sponsor may be provided in addition to or in lieu of such information regarding the sponsor if appropriate to provide material disclosure. In addition, other explanatory disclosure, including disclosure explaining the absence of any static pool information, may be provided.

Item 1105 further provides that (i) with respect to information regarding prior securitized pools of the sponsor that do not include the currently offered pool, information regarding prior securitized pools that were established before January 1, 2006 and (ii) with respect to information regarding the currently offered pool, information about the pool for periods before January 1, 2006 shall not be deemed to be a prospectus or part of a prospectus for the ABS nor shall such information be deemed to be part of the registration statement for the ABS offering.

If any of the information described in the preceding paragraph that is to be provided is unknown and not available to the registrant without unreasonable effort or expense, such information may be omitted, provided the registrant provides the information on the subject it possesses or can acquire without unreasonable effort or expense, and the registrant includes a statement in the prospectus showing that unreasonable effort or expense would be involved in obtaining the omitted information.

**Method of Presentation**

In response to requests in comment letters for flexibility in the presentation of required static pool information, and recognizing that advances in technology, particularly the Internet, have greatly increased efficiencies in the ability to gather, process, present and analyze information, the ABS Rules provide issuers with alternatives for providing the required information for inclusion in the prospectus.

The issuer could physically include the information in the prospectus or, for ABS offerings on Form S-3, incorporate the information by reference from a filed Exchange Act report. Alternatively, static pool information may be posted on an Internet Web site, subject to the following conditions:

- The prospectus at effectiveness discloses the intention to provide the information through a Web site and the final prospectus provides the specific Internet address where the information is posted
- The information is provided through the designated Web site, unrestricted as to access and free of charge
- The information remains available on the Web site for a period of not less than five years, with the date of any subsequent update or change to the information clearly indicated on the Web site
- The registration statement contains an undertaking that the information provided through the specified Internet address is deemed to be a part of the prospectus included in the registration statement for the asset-backed securities
Pool Assets and Pool Composition

Item 1111 of Regulation AB requires disclosure of general information regarding the asset pool, including a brief description of the asset type to be securitized and a description of the material terms of the assets. In addition, the solicitation, credit-granting or underwriting criteria used to originate or purchase the assets, the selection criteria for the asset pool, and the cut-off date or similar date for establishing pool composition must be disclosed. Finally, the effects of any legal or regulatory provisions on origination, enforcement and servicing of the assets must be described to the extent they may materially affect pool asset payment or performance.

Statistical information, if material, is to be presented in tabular or graphical format, and may include such information as average balance, weighted average coupon, average age and remaining term, average loan-to-value or similar ratio, and weighted average standardized credit score or other applicable measure of obligor credit quality. The SEC recognized that the characteristics that are material will vary depending on the nature of the pool assets. Examples of illustrative characteristics in the disclosure item include:

- Number of each type of pool assets
- Original balance and outstanding balance as of a designated cut-off date
- Interest rate or rate of return, including type of interest rate if the pool includes different types, such as fixed and floating rates
- Capitalized or uncapitalized accrued interest
- Age, maturity, remaining term, average life (based on different prepayment assumptions), current payment/prepayment speeds and pool factors, as applicable
- Servicer distribution, if different servicers service different pool assets
- If a loan or similar receivable: amortization period; loan purpose; loan status; loan-to-value ratios and debt service coverage ratios; and type and/or use of underlying property, product or collateral
- If a receivable or other financial asset that arises under a revolving account, such as a credit card receivable: monthly payment rate; maximum credit lines; average account balance; yield percentages; type of asset; finance charges, fees and other income earned; balance reductions granted for refunds, returns, fraudulent charges or other reasons; and percentage of full-balance and minimum payments made
- Whether the pool asset is secured or unsecured, and if secured, the type(s) of collateral
- Billing and payment procedures, including frequency of payment, payment options, fees, charges and origination or payment incentives
- Information about the origination channel and origination process for the pool assets, such as originator information (and how acquired) and level of origination documentation required, as applicable

In addition to the above, the ABS Rules require the disclosure of standardized credit scores of obligors and other information regarding obligor credit quality. Furthermore, disclosure about the geographic distribution of the pool assets, such as by state or other material geographic region, is required if 10 percent or more of the pool assets are or will be located in any one state or other geographic region, as well as any information regarding any economic or other factors specific to such state or region that may materially impact the pool assets or pool asset cash flows.

Consistent with existing practice, the ABS Rules require that delinquency and loss information for the pool be presented in 30 or 31 day increments, as applicable, beginning at least with assets that are 30 or 31 days delinquent, as applicable, through the point that assets are written off or charged off as uncollectible. Such information is to be
presented at a minimum by number of accounts and dollar amount. Disclosure also will be required on how delinquencies, charge-offs and uncollectible accounts are defined or determined, addressing the effect of any grace period, re-aging, restructure, partial payments considered current or other practices on delinquency experience.

The ABS Rules provide for a separate list of disclosure items for commercial mortgage backed securities, to the extent material:

- Location and present use of each mortgaged property
- Net operating income and net cash flow information, as well as the components of such items, for each mortgaged property
- Current occupancy rates for each mortgaged property
- Identity, square feet occupied by and lease expiration dates for the three largest tenants at each mortgaged property
- The nature and amount of all other material mortgages, liens or encumbrances against such properties and their priority

In addition, the following information is to be provided for each commercial mortgage that represents, by dollar value, 10 percent or more of the asset pool, as measured as of the cut-off date:

- Proposed renovation, improvement or development programs
- Competitive conditions
- Management of the properties, historical occupancy rates and property uses
- Further information about material tenants and lease terms

Source of Pool Cash Flow

The ABS Rules require disclosure of the specific sources of funds and their uses, including, if applicable, the relative amount and percentage of funds that are to be derived from each source. Any assumptions, data, models and methodology used to derive such amounts also must be described. If a portion of the securitized pool balance is attributable to the residual values of the physical property underlying the assets securing the ABS, the disclosure must include information on how residual values are estimated and derived, statistical information regarding estimated residual values and historical statistics on turn-in rates and residual value realization rates. Information also will be required regarding the manner and process in which residual values are to be realized, and of the effects if not enough proceeds are received from the realization of residual values.

Changes to the Asset Pool

More detailed disclosures on when and how the composition of an asset pool may change, such as through a pre-funding or revolving period, are required by the ABS Rules. Such disclosure includes:

- The term or duration of any pre-funding or revolving period
- Aggregate amounts and percentages involved in the pre-funding or revolving period, if applicable
- Triggers that would limit or terminate such periods
- When and how new pool assets may be added, removed or substituted, and the acquisition or underwriting criteria for additional pool assets, and the party that makes determinations on such changes
- Any minimum requirements to add or remove pool assets
- Temporary investment of funds pending use
- Whether, and if so, how, investors will be notified of any changes to the asset pool

Transaction Structure

While Item 202 of Regulation S-K would continue to provide the core disclosure requirements for describing offered securities, Item 1113 of Regulation AB requires disclosure of additional specific factors relating to ABS. Current market practice is to include many of the
Specified disclosure items in Item 1113 relating to the ABS and transaction structure include:

- The types or categories of securities that may be offered, such as interest-weighted or principal-weighted classes, planned amortization or companion classes or residual or subordinated interests
- The flow of funds for the transaction, including payment allocation and priority structure
- Description of the interest rate or rate of return on the ABS and how such rate is determined and how frequently it will be determined
- Amortization or principal distribution schedules
- Denominations in which the ABS may be issued
- Any changes to the transaction structure that would be triggered upon a default or event of default
- Any liquidation, amortization, performance or similar triggers or events and consequences if such events occur
- Whether the servicer or other party is required to provide periodic evidence of the absence of a default or of compliance with the terms of transaction documents
- Overcollateralization or undercollateralization figures
- Any provisions contained in other securities that could result in a cross-default or cross-collateralization
- Minimum standards, restrictions or suitability requirements regarding purchasing, owning or transferring the securities
- Security holder vote requirements to amend transaction documents and the allocation of voting rights among security holders

A new disclosure requirement under Item 1113 is that a separate table must be included itemizing all of the fees and expenses to be paid or payable out of the cash flows of the transaction. The general purpose of the fees and expenses must be set forth as well as the party receiving such amounts, the source of funds and the distribution priority of the fees and expenses. If applicable, the formula used to determine such fees and expenses must be provided. Additional information necessary to understand the fees and expenses, such as any restrictions or limits or potential changes in fees or expenses should be presented with the table.

Item 1113 further requires disclosure relating to the frequency of distribution dates and collection periods and how cash held pending distribution is held and invested, including how long the cash is held prior to distribution to security holders and by whom.

Disclosure relating to excess cash flows must include: (i) a description of the disposition of residual or excess cash flows as well as identification of the owner of any residual or retained interests to the cash flows, (ii) any requirements to maintain a minimum amount of excess cash flow or spread from, or retained interest in, the transaction and any consequences to the transaction structure if such requirements were not met and (iii) to the extent material, any features or arrangements to facilitate a securitization of the excess cash flow or retained interest from the transaction. The owner of any residual or retained interest must be identified only if such person is affiliated with the sponsor, depositor, issuing entity or any entity identified in Item 1119(a) of the Regulation or if such person has rights that may alter the transaction structure beyond receipt of residual or excess cash flows.

Descriptive information about any optional or mandatory redemption or termination provisions must be included in the disclosure. In particular, the title of any class of securities with an optional redemption or termination feature that may be exercised when 25 percent or more of the original principal balance of the pool assets is still outstanding must include the word “callable”. In the case of a master trust, however, a title of a class of securities must include the word “callable” when
an optional redemption or termination feature may be exercised when 25 percent or more of the original principal balance of the particular series in which the class was issued is still outstanding.

Any transaction involving a master trust structure must provide additional information, to the extent material, regarding additional securities already outstanding or any securities that may be issued in the future that are backed by the same pool. Such information should include:

- The relative priority of such additional securities to the securities being offered and rights to the underlying pool assets and their cash flows
- Allocation of cash flow from the asset pool and any expenses or losses among the various series or classes
- Terms under which such additional series or classes may be issued and pool assets increased or changed
- The terms of any security holder approval or notification of such additional securities
- Which party has the authority to determine whether such additional securities may be issued

Finally, Item 1113 requires disclosure regarding prepayment, maturity and yield considerations that may be material to ABS transactions. Information that should be disclosed include any models, including material assumptions and limitations, used as a means to identify cash flow patterns, a description to the extent material of the degree to which each class of securities is sensitive to changes in the rate of payment on the pool assets and the consequences of such changing rate of payment and a description of any special allocations of prepayment risks among the classes of securities and whether any class protects other classes from the effects of the uncertain timing of cash flow.

**Significant Obligors**

Consistent with current practice, the Regulation adopts detailed disclosure requirements, including a requirement to provide financial information, with respect to significant obligors in an ABS transaction. The Release defines “significant obligor” as:

- An obligor or a group of affiliated obligors on any pool asset or group of pool assets if such pool asset or group of pool assets represents 10 percent or more of the asset pool
- A single property or group of related properties securing a pool asset or a group of pool assets if such pool asset or group of pool assets represents 10 percent or more of the asset pool
- A lessee or group of affiliated lessees if the related lease or group of leases represents 10 percent or more of the asset pool

With respect to such significant obligors, descriptive information is required including the identity of the significant obligor, its organizational form and the general character of its business, the nature of the concentration of pool assets with the significant obligor, the material terms of the pool assets and the agreements with the significant obligor involving the pool assets.

Pursuant to Item 1112, different levels of financial information about a significant obligor are required depending on the concentration:

- If the pool assets relating to a significant obligor represent 10 percent or more, but less than 20 percent, of the asset pool, then selected financial data as required by Item 301 of Regulation S-K for the significant obligor is required.
- Notwithstanding the foregoing, the Regulation specifically states that in the case of a single property or group of related properties securing a pool asset or a group of pool assets, if such pool asset or group of pool assets represents 10 percent or more of the asset pool, only net operating income for the most recent fiscal year and interim period is required.
- If pool assets relating to a significant obligor represent 20 percent or more of the asset pool, audited financial
statements meeting the requirements of Regulation S-X are required.

The instructions to Item 1112 clarify that financial information is not required if the obligations of the significant obligor as they relate to the pool assets are either backed by (i) the full faith and credit of the United States or (ii) the full faith and credit of a foreign government if the pool assets are investment grade securities. The instructions further state that if the significant obligor is an asset-backed issuer and the pool assets relating to the significant obligor are asset-backed securities, rather than providing financial information, the information required by Items 1104 through 1115, 1117 and 1119 of Regulation AB should instead be provided in connection with a registration statement or prospectus. In the case of an Exchange Act report on Form 10-K or Form 10-D, the information required by General Instruction J of Form 10-K regarding such ABS for the period for which the last Form 10-K of the ABS was due (or would have been due if such ABS are not subject to Exchange Act reporting) should be included in lieu of financial information required by Item 1112.

Credit Enhancement and Other Support

Item 1114 of the Regulation requires descriptive information, to the extent material, of the manner in which any enhancement or support mechanism is designed to affect or ensure timely payment of the ABS. Note that Item 1114 only includes derivative instruments whose primary purpose is to provide credit enhancement related to pool assets or the ABS. Derivatives that are used to alter the payment characteristics of the cashflows from the issuing entity and whose primary purpose is not to provide credit enhancement related to the pool assets or the ABS (e.g., interest rate and currency swaps) are covered under Item 1115. Disclosure must include a description of the material terms of the enhancement or support, including any limits on the timing or amount of the enhancement or support or any conditions that must be met before the enhancement or support can be accessed and any provisions regarding substitution of the enhancement or support.

As with significant obligors, if any entity or group of affiliated entities providing enhancement or other support is liable or contingently liable to provide payments representing 10 percent or more of the cash flow supporting any offered class of ABS, detailed disclosure including their identity and general information about their business is required. Financial data required by Item 301 of Regulation S-K will be required only with respect to any entity or group of affiliated entities providing enhancement or support that are liable or contingently liable to provide payments representing 10 percent or more, but less than 20 percent of the cash flow supporting any offered class of ABS. If any entity or group of affiliated entities providing enhancement or support is liable or contingently liable to provide payments representing 20 percent or more of the cash flow supporting any offered class of the ABS, audited financial statements meeting the requirements of Regulation S-X must be provided. Certain exceptions apply including if the obligations of the enhancement provider are backed by the full faith and credit of the United States or a foreign government, if the pool assets are student loans originated under the Federal Family Education Loan Program or if the enhancement provider is a foreign business.

For derivatives (e.g., interest rate and currency swaps) that are used to alter the payment characteristics of the cashflows from the issuing entity and whose primary purpose is not to provide credit enhancement related to the pool assets or the ABS, Item 1115 requires basic identifying information about the derivative counterparty as well information relating to the general character of its business, material terms
of the instrument and provisions regarding substitution of the instrument. In response to comments on the Proposed Amendments, the SEC has adopted a more market-based approach to materiality for derivatives than the approach originally proposed. Under the Adopting Release, the significance of a derivative is based on a reasonable good-faith estimate of maximum probable exposure. In most instances, ordinary course interest rate and currency swaps are not expected to meet the disclosure thresholds under this standard, which would require disclosure of counterparty information if such exposure represented 10 percent or more of the aggregate principal balance of pool assets. If such significance percentage is at least 10 percent but less than 20 percent, selected financial data required by Item 301 of Regulation S-K must be provided and in cases where the significance percentage is 20 percent or more, audited financial statements meeting the requirements of Regulation S-X are required.

Other Basic Disclosure Items

Tax Matters
Consistent with existing practice, Item 1116 of the Regulation requires a brief summary of the tax aspects of an ABS transaction, including disclosure relating to the tax treatment of the ABS transaction under federal income tax laws, the material federal income tax consequences of purchasing, owning and selling the ABS and the substance of the tax opinion, including identification of the material consequences upon which counsel has not been asked, or is unable, to opine.

Legal Proceedings
Item 1117 of the Regulation requires a brief description of any legal proceedings pending against the sponsor, depositor, trustee, issuing entity, servicer meeting the thresholds of Item 1108(a)(3) of the Regulation or 20 percent or more originator, or of which any property of the foregoing is the subject, that is material to security holders. Similar information is also required as to any proceedings known to be contemplated by governmental authorities.

Affiliations and Certain Relationships and Related Transactions
The Regulation adopts, as proposed, Item 1119 and requires a description, if applicable, of how the sponsor, depositor or issuing entity is an affiliate of any of the following parties (and if material, how any of the following are affiliates of any of the other following parties):

- Servicer contemplated by Item 1108(a)(3) of the Regulation;
- Trustee
- Originator contemplated by Item 1110 of the Regulation
- Significant obligor contemplated by Item 1112 of the Regulation
- Enhancement or support provider contemplated by Items 1114 or 1115 of the Regulation
- Any other material parties related to the ABS contemplated by Item 1100(d)(1) of the Regulation

This disclosure item also requires, to the extent material, a description of the general character of any business relationship, agreement, arrangement, transaction or understanding that is entered into outside the ordinary course of business or is on terms other than would be obtained in an arm's length transaction with an unrelated third party, apart from the ABS transaction, between the sponsor, depositor or issuing entity and any of the parties listed above that currently exists or that existed during the past two years. The instruction to this item specifically states that only information that is material to an investor's understanding of the ABS is required.

Ratings
Item 1120 of the Regulation codifies current market practice by requiring (i) disclosure of whether the issuance or sale of any class of certificates is
conditioned on the assignment of a minimum rating by one or more rating agencies and (ii) a description regarding any arrangements to have such ratings monitored while the ABS are outstanding.

Reports and Additional Information
Given that on-going reporting is essential to an understanding of an ABS transaction’s performance and related investment decisions, the Regulation adopts Item 1118, which requires a description of the reports or other documents required under the transaction agreements, the information included, the schedule and manner of distribution and identification of who will prepare and provide such reports. Item 1118 also requires a statement as to whether reports will be available on a web site and whether other reports to security holders or information about the ABS and filings will be made available on the web site. If such filings and other reports will not be available via a web site, the reasons why they will not, and whether a party to the transaction will voluntarily provide electronic or paper copies of the filings and other reports free of charge upon request, must be disclosed. The Release makes clear that the new disclosure requirement does not separately create or otherwise affect any duty to update prior statements.

Alternatives to Present Third Party Financial Information
As discussed above, certain financial information is required regarding significant obligors and significant credit enhancement parties. The Regulation codifies current practice, as developed through several no-action letters and interpretations by the SEC, and permits alternative methods to present or refer to such information if it exists in other SEC filings of the third party. Incorporation by reference of required financial information of any enhancement provider from its Exchange Act reports (or the entity that consolidates such party) is permissible, provided that four conditions are met:

- The third party or entity that consolidates the third party in its financial statements is subject to the Exchange Act reporting requirements
- The third party or entity that consolidates the third party in its financial statements is current with its Exchange Act reporting for the past twelve months, or such shorter period that it has been required to file reports
- The reports to be incorporated by reference include (or properly incorporate by reference) the financial statements of the third party
- If incorporated by reference into a prospectus or registration statement, the prospectus also states that all documents subsequently filed by such third party, or the entity that consolidates the third party, prior to the termination of the offering also will be deemed to be incorporated by reference into the prospectus

Significantly, because the definition of asset-backed security has been expanded to registered offerings on Form S-1, the Regulation as adopted also permits incorporation by reference of third party financial information for ABS offerings registered on Form S-1.

Alternatively, an ABS filing may include a reference to a significant obligor’s Exchange Act reports instead of providing the required financial information in the filing as long as two conditions are met. The filing must include how the reports may be accessed, including the third party’s name and SEC file number.

Communications With Prospective Investors During the Offering Process

General
In general, the Securities Act restricts the types of offering communications between a registrant or other parties...
and prospective investors during a registered public offering. The SEC staff, through a series of no-action letters issued during the mid-1990’s, modified these rules for issuers of ABS registering their securities using Form S-3 to permit the use of structural term sheets, collateral term sheets and computational materials. The staff provided definitions for each of these types of written communications with investors and set forth filing requirements related to the use of these materials. The filing requirements differed somewhat depending on the type of written material. Many issuers found the definitions overlapping, however, and the differing filing requirements created some confusion. In the ABS Rules, the SEC, while generally codifying the stated no-action positions, has modified the rules relating to these written materials to try to create a more uniform system, reduce confusion and encourage free flow of information to investors.

Moreover, on November 4, 2004, the SEC issued Adopting Release No. 33-8501 (the “Offering Process Release”) which is a sweeping proposal to streamline and more fully integrate securities offerings (including ABS offerings), communications and the registration process for issuers under the Securities Act. The Offering Process Release includes provisions for “free writing prospectuses”, among other things, which are written communications with prospective investors that constitute offers to sell securities that are or will be the subject of a registration statement but which writings do not constitute a prospectus satisfying the requirements of Section 10(a) of the Securities Act. The SEC has sought comment on this proposed rulemaking, particularly encouraging comments by participants in the asset-backed market. As the rules proposed in the Offering Process Release are finalized, further changes to the requirements regarding communications with prospective investors during an ABS offering may result. As such, the SEC was not inclined to relax the existing allowance for written communications during an ABS offering substantially in connection with the ABS Rules promulgated by the Adopting Release.

Use of Computational Materials
The ABS Rules codify the earlier no-action positions by adopting Securities Act Rule 167, which is an exemption from the Section 5(b)(1) requirements of the Securities Act for the use of ABS informational and computational materials in shelf takedowns of ABS after the effectiveness of the Form S-3 registration statement but before delivery of the final Section 10(a) prospectus for such takedown. In response to comment, the SEC has created one unified definition of “ABS informational and computational material” covering all the specified categories, rather than maintaining the separate categories from the previous no-action positions. Also in response to comment, the new definition clarifies that providing investors with raw pool data is permitted under the new rule, although the SEC reminds issuers and underwriters to be mindful of privacy, consumer protection and other requirements regarding individual data disclosures.

The conditions for use of ABS informational and computational material are (1) the communications must be filed to the extent required under new Rule 426, and (2) the communication must include prominently on the cover page: (i) the issuing entity’s name and the depositor’s name; (ii) the SEC file number for the related registration statement; (iii) a statement that the communication is ABS informational and computational material used in reliance on the exemptive rule; and (iv) a legend that urges investors to read the relevant documents filed or to be filed with the SEC because they contain important information. The legend also must explain to investors that they can get the document for free at the SEC’s Web...
site and describe which documents are available free from the issuer or an underwriter.

The requirement from the prior no-action letters that computational materials include a legend stating that the information contained in the material supersedes all prior ABS information and computational material was dropped. The SEC noted, however, that some issuers have included legends or disclaimers that it finds inappropriate, such as disclaimers of responsibility or liability for accuracy or completeness, language indicating that the communication is neither a prospectus nor an offer to sell or a solicitation of an offer to buy, and statements requiring investors to read or acknowledge that they have read any disclaimers or legends or the registration statements. ABS informational and computational materials are not being excluded from the definition of “offer,” “offer to sell,” or “prospectus” under the Securities Act and when filed on Form 8-K will be incorporated into the registration statement. As such these communications constitute offers and are subject to liability under Section 12(a)(2) of the Securities Act and, if filed and incorporated into the registration statement for the ABS, subject to Section 11 liability. Consistent with the position proposed in the SEC’s Offering Process Release, the SEC states that ABS informational and computational materials will not be superceded for liability purposes by information included in the final prospectus, if the final prospectus is not made available until after the date of contract for sale, which it interprets as the date an investment decision is made. Given the incomplete nature of these materials, this position could create substantial new liability for using them. The SEC has specifically requested comments from the ABS industry on the Offering Process Release.

The exemption for ABS informational and computational material is also applicable to parties other than the issuer in an asset-backed transaction such as affiliates, underwriters and dealers. In this regard, the SEC clarified that the failure by a particular underwriter to cause the filing of materials in connection with an offering will not affect the ability of any other underwriter who has complied to rely on the exemption. Finally, the SEC added a provision stating that an immaterial or unintentional failure to file or a delay in meeting filing requirements will not result in loss of the exemption, so long as a good faith and reasonable effort is made to comply with the filing requirement and the material is filed as soon as practicable after discovery of the failure.

**Filing Requirements With Respect to Computational Materials**

New Rule 426 sets forth unified filing requirements for ABS informational and computational material, requiring the following material to be filed: (1) if a prospective investor has indicated to the issuer or an underwriter that it will purchase all or a portion of the class of ABS to which such materials relate, all materials relating to such class that are or have been provided to such prospective investor; and (2) for any other prospective investor, all materials provided to that prospective investor after the final terms have been established for all classes of the offering. These materials must be filed by the later of the due date for filing the final prospectus for the ABS offering or two business days after first use. The filing must be made on Form 8-K under new Item 6.01 of that Form and is thereby incorporated by reference into the registration statement. The filer may aggregate data presented in ABS informational and computational materials and file such data in consolidated form, so long as any such aggregation does not result in the omission of any information that should have been filed or makes the information misleading.
Although computational materials were previously exempt from the electronic filing requirements of EDGAR, due to updates and improvements of the EDGAR system, ABS informational and computational materials will no longer be exempt from the electronic filing requirements. EDGAR accepts HTML documents and filings made over the Internet. The system is also in the process of being updated to accept material in PDF format.

Publication of Research Reports
In the Adopting Release the SEC has promulgated Rule 139a, providing a non-exclusive safe harbor for the publication by a broker or dealer of research reports concerning a particular type of ABS during the time such broker/dealer is participating in an ABS offering of the same type that meets the requirements for use of Form S-3. This Rule 139a represents a codification of the SEC’s earlier position stated in a 1997 no-action letter.

Specifically, the research report does not constitute an offer to sell the securities of the ABS offering meeting the requirements for use of Form S-3 in which the broker/dealer participates, nor does it constitute a prospectus that does not conform to the requirements of Section 10 of the Securities Act, provided the following conditions are met:

1. The broker or dealer shall have previously published or distributed with reasonable regularity information, opinions or recommendations relating to Form S-3 ABS backed directly (or, with respect to securitizations of other securities, indirectly) by substantially similar collateral as that directly or indirectly backing Form S-3 ABS that is the subject of the information, opinion or recommendation that is proposed to be published or distributed.

2. If the securities for the registered offering are proposed to be offered, offered, or are part of an unsold allotment or subscription, the information, opinion or recommendation shall not: (i) identify such securities; (ii) give greater prominence to specific structural or collateral-related attributes of those securities than it gives to the same attributes of other ABS that it mentions; or (iii) contain any ABS informational and computational material relating to those securities.

3. If the material identifies specific ABS of a specific issuer and recommends that such ABS be purchased, sold or held by persons receiving such material, then a recommendation as favorable or more favorable as to such ABS shall have been published by the broker or dealer in the last publication of such broker or dealer addressing such ABS prior to the commencement of its participation in the distribution of the securities whose offering is being registered.

4. Sufficient information is available from one or more public sources to provide a reasonable basis for the view expressed by the broker or dealer with respect to the ABS that are the subject of the information, opinion or recommendation.

5. If the material published by the broker or dealer identifies other ABS backed directly or indirectly by substantially similar collateral as that directly or indirectly backing the securities whose offering is being registered and specifically recommends that such ABS be preferred over other ABS backed by different types of collateral, then the material shall explain in reasonable detail the reasons for such preference.

Pre-Sale Reports
In the ABS Rules the SEC tries to clarify, in response to comment, when and to what extent an issuer or underwriter becomes responsible for information in presale reports prepared and distributed by unaffiliated third parties, particularly rating agencies. Liability of issuers and underwriters of ABS for pre-sale reports issued by third parties not involved in the offering process will depend on the level of the issuer’s or underwriter’s
involvement in the preparation of information and/or endorsement or approval of information contained in the pre-sale report. The SEC refers market participants to the “entanglement” theory and to the “adoption” theory, discussed in SEC Release No. 33-7856 (Apr. 28, 2000) at footnote 48 and accompanying text, stating that it believes these theories are applicable to ABS.

Ongoing Reporting Requirements Under the Exchange Act

Basic Reporting System for Asset-backed Securities

The Amendments to the Exchange Act set out in the Adopting Release generally codify the modified reporting system applicable to registered ABS developed through numerous no-action letters issued by the SEC staff, but in many instances broaden the content of ongoing reporting for ABS issuers. These changes reflect a key concern of the SEC that servicers and sponsors must improve their overall level of compliance with the Exchange Act reporting requirements. Under the current modified reporting system, an ABS issuer is required to file periodic distribution date statements on Form 8-K and to file annual reports on Form 10-K consisting of an annual audited servicing statement. Because the distribution date statements are typically filed monthly on Form 8-K containing the relevant current financial information for an ABS issuer, no Form 10-Q filings have been required. Generally this system will remain, although the SEC has provided a new Form 10-D for filing of distribution date statements, and has provided specific instructions for compliance by ABS issuers with the Section 302 certification requirements of Sarbanes-Oxley Act in connection with Form 10-K filings.

As under Rule 191 of the Securities Act, new Rule 3b-19 of the Exchange Act defines the “issuer” with respect to the Exchange Act reporting obligation for an ABS transaction as the depositor for the entity issuing the ABS, acting solely in its capacity as depositor to the issuing entity. The depositor for each issuing entity is a different “issuer” from the same person acting as a depositor for any other issuing entity or for the purposes of that person’s own securities. Therefore, issuing entities registered on the same registration statement are not related for purposes of Exchange Act reporting, separate reports must be filed for each issuing entity and reports may not be consolidated for such issuing entities. Notwithstanding this approach, an authorized representative of the servicer will be permitted to sign Exchange Act reports and certifications on behalf of the issuing entities. Trustees will not be permitted to sign these reports and certifications.

Form 10-D

The new rules, while generally codifying this approach, have provided a new form, Form 10-D, for the filing of monthly distribution date statements and pool performance data to be used instead of filing such information using Form 8-K. The stated reason for this new form is that investors expressed some confusion and difficulty in trying to identify Form 8-K filings of ABS issuers containing information regarding material changes or events from those containing monthly distribution date information. ABS issuers will continue to be required to file reports on Form 8-K if a reportable event covered in one of the Items of Form 8-K occurs, such as a change in servicer, trustee, credit enhancement or otherwise or the occurrence of material events that could...
Since the distribution date report will be attached to the Form 10-D as an exhibit and will contain most, if not all, of the disclosures required about the distribution and pool performance, the report itself may cross-reference such information rather than repeating it. Taken together, however, the attached distribution statement and the information provided in the Form 10-D must cover all the information required by Item 1121 of Regulation AB.

A Form 10-D must be filed within 15 days after each required distribution date on the ABS, regardless of whether a distribution was actually made. The SEC has allowed ABS issuers the ability to obtain a five calendar day filing extension for Form 10-D filings, without affecting Form S-3 eligibility (although the filing must have actually been filed within the additional five day period prior to filing a new registration statement on Form S-3). The Form 10-D must attach as an exhibit the report or statement that is required under the transaction documents to be delivered to the trustee and/or the security holders of the ABS. The report on Form 10-D must be signed by a senior officer of the depositor or the servicer, if acting on behalf of the issuing entity.

Form 10-D, which refers to Item 1121 of Regulation AB, requires updated disclosure of current payment and pool performance information, including cash flows, delinquencies, and losses, additions, repurchases, removals, substitutions and other changes in pool composition, material changes in credit-granting or underwriting policies, material changes in pool selection criteria, updated information regarding significant obligors or enhancers and material amendments, breaches, defaults or waivers under the transaction documents. The menu of disclosure items for Form 10-D is set forth in table below.

### Disclosure for Form 10-D

**Form Items and Source of Disclosure Required**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tr>
<td>Item 1</td>
<td>Distribution and Pool Performance Information (Item 1121 of Regulation AB)</td>
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<td>Item 2</td>
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<td>Item 9</td>
<td>Exhibits (Item 601 of Regulation S-K)</td>
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</table>
Annual Report on Form 10-K

The SEC has adopted a new general instruction as to how this form is to be used for an annual report with respect to an ABS issuer. Again, the new rules codify existing no-action positions, with modifications to address Section 302 of the Sarbanes-Oxley Act. Because asset-backed issuers typically do not have a principal executive officer or principal financial officer, the signature required for the Section 302 ABS certification is the senior officer in charge of securitization of the depositor, if the depositor is signing the Form 10-K report, or the senior officer in charge of the servicing function of the servicer, if the servicer is signing the Form 10-K report on behalf of the issuing entity. If multiple servicers are involved in servicing the pool assets, the senior officer in charge of the servicing function of the master servicer must sign if a representative of the servicer is to sign. The annual servicer compliance statement must be filed as an exhibit to the Form 10-K, containing statements regarding the servicer’s compliance with its obligations under the particular servicing agreement for the ABS transaction. If multiple servicers are involved in servicing the pool assets, separate compliance statements are required from each servicer servicing 10 percent or more of the pool assets.

Disclosure for Form 10-K for ABS

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<td>Item 3</td>
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<td>Item 8</td>
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<td>Item 9</td>
<td>Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.</td>
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<td>Item 9A</td>
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<td>Item 9B</td>
<td>Other Information.</td>
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<td>Item 10</td>
<td>Directors and Executive Officers of the Registrant.</td>
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</tbody>
</table>
Certifications for Asset Backed Securities under Section 302 of the Sarbanes-Oxley Act

The SEC has amended Item 601 of Regulations S-K to provide the specific form and content of the certification required by Section 302 of the Sarbanes-Oxley Act for ABS issuers. The same person who signs the Form 10-K must also sign the Section 302 certification. The SEC has added an instruction to the certification saying that the signer may reasonably rely on information that unaffiliated trustees, depositors, servicer, sub-servicers or co-servicers have provided. If the signer does so, it must provide an additional statement in the certification identifying the unaffiliated parties on which the signer reasonably relied. Unfortunately, the SEC gives no guidance on what constitutes reasonable reliance or the manner in which reasonable reliance may be established. The new form of certification is as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>Item 11</td>
<td>Executive Compensation.</td>
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<td>Item 12</td>
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<td>Item 13</td>
<td>Certain Relationships and Related Transactions.</td>
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<td>Additional Disclosure Items from Regulation AB</td>
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<td>Item 1112(b) of Regulation AB, Significant Obligor Financial Information.</td>
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<td>Items 1114(b)(2) and 1115(b) of Regulation AB, Significant Enhancement Provider Financial Information.</td>
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<td>Item 1117 of Regulation AB, Legal Proceedings.</td>
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<td>Item 1119 of Regulation AB, Affiliations and Certain Relationships and Related Transactions.</td>
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<td>Item 1122 of Regulation AB, Compliance with Applicable Servicing Criteria.</td>
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<tr>
<td>Item 1123 of Regulation AB, Servicer Compliance Statement.</td>
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1 If the issuing entity does not have any executive officers or directors.

Certifications

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form 10-K and all reports on Form 10-D required to be filed in respect of the period covered by this report on Form 10-K of [identify the issuing entity] (the “Exchange Act periodic reports”);

2. Based on my knowledge, the Exchange Act periodic reports, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact necessary
to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, all of the distribution, servicing and other information required to be provided under Form 10-D for the period covered by this report is included in the Exchange Act periodic reports;

4. [I am responsible for reviewing the activities performed by the servicer(s) and based on my knowledge and the compliance review(s) conducted in preparing the servicer compliance statement(s) required in this report under Item 1123 of Regulation AB, and except as disclosed in the Exchange Act periodic reports, the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s); and]

[B]ased on my knowledge and the servicer compliance statement(s) required in this report under Item 1123 of Regulation AB, and except as disclosed in the Exchange Act periodic reports, the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s); and]

5. All of the reports on assessment of compliance with servicing criteria for asset-backed securities and their related attestation reports on assessment of compliance with servicing criteria for asset-backed securities required to be included in this report in accordance with Item 1122 of Regulation AB and Exchange Act Rules 13a-18 and 15d-18 have been included as an exhibit to this report, except as otherwise disclosed in this report. Any material instances of noncompliance described in such reports have been disclosed in this report on Form 10-K.

[In giving the certifications above, I have reasonably relied on information provided to me by the following unaffiliated parties [name of servicer, sub-servicer, co-servicer, depositor or trustee].]

Date: ....................

_______________________
[Signature]
[Title]

Report on Assessment of Compliance with Servicing Criteria and Accountants Attestation

Although the modified reporting system for Exchange Act reporting has not required audited financial statements for the issuing entity in the annual report on Form 10-K, the system has required an assertion by the servicer and an attestation by an independent public accountant regarding compliance with the servicing criteria. The SEC had codified this approach in the new rules, continuing to require as part of the report on Form 10-K a servicer assessment of compliance with servicing criteria and a public accountant’s attestation with respect to servicing compliance. The SEC notes that in the past there has been wide variation in the application of these requirements and the kinds of compliance statements and attestations provided by ABS issuers. As a result, the SEC has adopted a single set of minimum servicing criteria to be applied across a variety of types of ABS transactions and has set out those criteria in paragraph (d) to Item 1122 of Regulation AB. The servicing criteria in Item 1122 include general servicing considerations (such as policies for monitoring performance triggers and defaults and monitoring third party service providers), cash collection and administration requirements, investor reporting and payments, and pool asset administration. The servicers compliance assessment and related accountant attestation must address compliance with these servicing criteria.

The SEC also prescribes the form of servicer assessment report and public
accountants attestation report in Item 1122(a) and (b) of Regulation AB.50 In response to comment, the SEC has removed in the final rules the proposed requirement that a single responsible party make an assertion regarding servicing compliance with the Item 1122 servicing criteria covering the entire servicing function. Instead the SEC adopted an approach requiring reports on assessments of compliance with servicing criteria from each party participating in the servicing function with associated attestation reports from registered public accountants to be filed as exhibits to the Form 10-K report. Also the SEC revised Section 5 of the Section 302 certification to require a certification from the signing party that required reports from all parties participating in the servicing function have been included as an exhibit to the Form 10-K. If any servicer compliance assessment report or public accountants attestation report has not been obtained or is not included as an exhibit to the filing, the Form 10-K must disclose this and provide an explanation as to why such report has not been included. Further, if a servicer assessment report or an accountants attestation report identifies any material noncompliance with the servicing criteria set out in Item 1122(d), the Form 10-K must identify such noncompliance. A potentially larger group of servicers than that providing compliance certificates must provide the servicer assessment report and public accountants attestation report. This group must include all parties who participate in the servicing function unless their activities relate to less than 5 percent of the assets in the pool.

Current Reporting on Form 8-K
On March 11, 2004 the SEC amended Form 8-K to expand the number of reportable events. The new ABS Rules make those amendments equally applicable to ABS. In addition, the SEC adopted several proposed ABS-specific items under Section 6 of Form 8-K. As such, the number or reportable events under Form 8-K with respect to ABS will increase, although with the addition of Form 10-D for reporting monthly distribution date statements, reports on Form 8-K will return to their original purpose of identifying material changes or events rather than regular pool information updates. Reports on Form 8-K must be filed within 4 business days of the occurrence of one of the specified reportable events. The following is the table of reportable events on Form 8-K with respect to ABS.

Disclosure for Form 8-K for ABS

<table>
<thead>
<tr>
<th>Existing Form Items</th>
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<td>Item 1.01</td>
<td>Entry into a Material Definitive Agreement.</td>
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<td>Termination of a Material Definitive Agreement.</td>
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<td>Completion of Acquisition or Disposition of Assets.</td>
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<td>Item 2.02</td>
<td>Results of Operations and Financial Condition</td>
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<td>Item 2.03</td>
<td>Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.</td>
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</table>
| Item 2.04 | Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement. |  *
| Item 2.05 | Costs Associated with Exit or Disposal Activities. |  *
| Item 2.06 | Material Impairments. |  *
| Item 3.01 | Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing. |  *
| Item 3.02 | Unregistered Sales of Equity Securities. |  *
| Item 3.03 | Material Modifications to Rights of Security Holders. |  *
| Item 4.01 | Changes in Registrant's Certifying Accountant. |  *
| Item 4.02 | Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review. |  *
| Item 5.01 | Changes in Control of Registrant. |  *
| Item 5.02 | Departure of Directors or Principal Officers. Election of Directors. Appointment of Principal Officers. |  *
| Item 5.03 | Amendments to Articles of Incorporation or Bylaws. Change in Fiscal Year |  *
| Item 5.04 | Temporary Suspension of Trading Under Registrant's Employee Benefit Plans. |  *
| Item 5.05 | Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics. |  *
| Item 7.01 | Regulation FD Disclosure |  *
| Item 8.01 | Other Events |  *
| Item 9.01 | Financial Statements and Exhibits. |  *

**Additional Items added to Form 8-K for ABS**

| Item 6.01 | ABS Informational and Computational Material. |  *
| Item 6.02 | Change of Servicer or Trustee. |  *
| Item 6.03 | Change in Credit Enhancement or Other External Support. |  *
| Item 6.04 | Failure to Make a Required Distribution. |  *
| Item 6.05 | Securities Act Updating Disclosure |  *
With respect to new Item 6.05, Securities Act Updating Disclosure, this item is intended to apply to instances where the composition of the asset pool at the time of issuance differs from the composition of the pool described in the final prospectus for the offering. If under a shelf registration statement on Form S-3 a material pool characteristic at the time of a takedown differs by 5 percent or more from the description of the asset pool in the final prospectus filed for the takedown pursuant to Rule 424, disclosure about the actual asset pool will be required, including disclosure regarding new significant obligors, servicers or originators.

**Transition Period**

The effective date of the final rules is March 8, 2005. However, in response to comment letters requesting a substantial transition period, the SEC has provided a set of delayed compliance dates.

Any series of ABS with an initial offering date after December 31, 2005 must comply with the new rules and forms in all respects. Transactions with an initial offering date on or before December 31, 2005 are fully grandfathered and are not required to comply with the new rules. In particular, for these transactions the static pool data and other new disclosure requirements do not apply to the offering, and the new Exchange Act reporting rules, including the assessment of servicing compliance and accountants attestation requirements, will never apply.

ABS shelf registrations filed prior to December 31, 2005, but continuing to be valid after such date, must be amended to comply with the new rules. Regarding ABS shelf registration statements filed on or before August 31, 2005:

(1) for any takedown with an initial offering date after December 31, 2005 but not after March 31, 2006, the base prospectus does not need to be revised, but the base prospectus and the prospectus supplement taken together must comply with the new rules and Part II of the registration statement must be amended post-effectively as necessary to add any required undertakings, and

(2) for any takedown with an initial offering date after March 31, 2006, the registration statement must be amended post-effectively to make the base prospectus comply with the new rules, and to add any required undertakings to Part II.

Regarding an ABS shelf registration statement filed after August 31, 2005, for any takedown with an initial offering date after December 31, 2005, the registration statement must be amended either pre-effectively or post-effectively to make the base prospectus comply with the new rules, and to add any required undertakings to Part II.

A post-effective amendment to an ABS shelf registration statement for purposes of compliance could trigger full review by the SEC staff.

Although this Alert is intended to highlight certain of the key provisions of the Adopting Release, the Adopting Release is very detailed and complex and much of what has been presented is by necessity a summary. For more information and advice, please contact Laura A. DeFelice at +1-212-906-1780, Kevin C. Blauch at +1-212-906-1241, Kevin Fingeret at +1-212-906-1237, Scott Smith at +1-212-906-1849, Joanne Lee at +1-212-906-1872 or Ellen Marks at +1-312-876-7626 or any Latham & Watkins LLP attorney you normally consult.
Endnotes

1 Regulation AB is located in a subpart of Regulation S-K as Items 1100-1123.


3 “Asset-Backed Security” is defined in Item 1101(c) of Regulation AB [17 CFR Part 229, $ 229.1101(c)] as:

“(1)a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds form the disposition of the physical property underlying such leases,

(2)the following additional conditions apply in order to be considered an “asset-backed security”:

(i)neither the depositor nor the issuing entity is an investment company under the Investment Company Act of 1940 nor will become an investment company as a result of the asset-backed securities transaction,

(ii)the activities of the issuing entity for the asset-backed securities are limited to passively owning or holding the pool of assets, issuing the asset-backed securities supported or serviced by those assets, and other activities reasonably incidental thereto,

(iii)no non-performing assets are part of the asset pool as of the measurement date,

(iv)delinquent assets do not constitute 50 percent or more, as measured by dollar volume, of the asset pool as of the measurement date,

(v)with respect to securities that are backed by leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute: (A) for motor vehicle leases, 65 percent or more, as measure by dollar volume, of securitized pool balance as of the measurement date, and (B) for all other leases, 50 percent or more, as measured by dollar volume, of the securitized pool balance as of the measurement date, and

(3)notwithstanding the requirement in paragraph (c)(1) of this section that the asset pool be a discrete pool of assets, the following are considered to be a discrete pool of assets for purposes of being considered an “asset-backed security”:

(i)Master Trusts. The offering related to the securities contemplates adding additional assets to the pool that backs such securities in connection with future issuances of asset-backed securities backed by such pool. The offering related to the securities also may contemplate additions to the asset pool, to the extent consistent with paragraphs (c)(3)(ii) and (c)(3)(iii) of this section, in connection with maintaining minimum pool balances in accordance with the transaction agreements for master trusts with revolving periods or receivables or other financial assets that arise under revolving accounts.

(ii)Prefunding Periods. The offering related to the securities contemplates a prefunding account where a portion of the proceeds of that offering is to be used for the future acquisition of additional pool assets, if the duration of the prefunding period does not extend for more than one year from the date of issuance of the securities and the portion of the proceeds for such prefunding account does not involve in excess of: (A) for master trusts, 50 percent of the aggregate principal balance of the total asset pool whose cash flows support the securities; and (B) for other offerings, 50 percent of the proceeds of the offering.

(iii)Revolving Periods. The offering related to the securities contemplates a revolving period where cash flows from the pool assets may be used to acquire additional pool assets, provided, that, for securities backed by receivables or other financial assets that do not arise under revolving accounts, the revolving period does not extend for more than three years from the date of issuance of the securities and the additional pool assets are of the same general character as the original pool assets.”

4 This appears to be somewhat circular, in that the exemption from the Investment Company Act typically relied upon in an ABS offering is the one provided in Rule 3a-7 that applies to investment grade rated ABS issued by a passive issuer.

5 The SEC defines an asset as “non-performing” if any of the following are true: (1) the pool asset would be treated as wholly or partially charged-off under the requirements in the
Amendments for certain multi-issuance transaction agreements for the ABS, (2) the pool asset would be treated as wholly or partially charged-off under the charge-off policies of the sponsor, an affiliate of the sponsor that originates the pool asset or a servicer that services the pool asset; or (3) the pool asset would be treated as wholly or partially charged-off under the charge-off policies applicable to such pool asset established by the primary safety and soundness regulator of any entity listed above or the program or regulatory entity that oversees the program under which the pool asset was originated. Clause (3) responds to concerns raised in connection with the Proposed Amendments that servicers would have to evaluate non-performing assets under different standards for SEC disclosure than those required by bank regulators.

6 The SEC recognizes that charged-off or delinquent assets may technically remain part of the securitized pool if they are given a zero balance in cash flow calculations and funding formulas and no proceeds are applied to the purchase of charged-off assets or delinquent assets exceeding the percentage limitation applicable under the definition of ABS and the Form S-3 eligibility requirements. This resolves a difficulty posed by the Proposed Amendments for certain multi-issuance vehicles, which typically retain charged-off and delinquent assets in the pool.

7 A delinquent asset is defined as a pool asset any portion of which is more than 30 days or 31 days or a single payment cycle, as applicable, past due from the contractually required payment due date, determined in accordance with any of the following: (1) the transaction agreements for the ABS, (2) the delinquency recognition policies of the sponsor, any affiliate of the sponsor that originated the pool asset or the servicer of the pool asset; or (3) the delinquency recognition policies applicable to such pool asset established by the primary safety and soundness regulator of any of the sponsor, any affiliated thereof that originated the pool asset or the servicer of the pool asset or the program or regulatory entity that oversees the program under which the pool asset was originated. As with non-performing assets, the final definition better accommodates existing practice and regulatory requirements.

8 See Note 6 above regarding treating over-concentrations as having a zero balance. Also note that the percentage limitation on delinquent assets in the asset pool for Form S-3 eligibility is 20 percent (i.e., the pool must have less than 20 percent, by dollar volume, of delinquent assets as of the cut-off date or prospectus information reporting date, as applicable, to qualify for Form S-3 use).

9 This was increased to 65 percent from the 60 percent level contained in the Proposed Amendments.

10 Note that these residual value percentage limitations are lower for Form S-3 eligibility. For Form S-3 eligibility, residual values must be less than 50 percent for motor vehicle leases, and no more than 20 percent for other leases.

11 These requirements are that the pre-funding period does not exceed one year from the date of issuance of the ABS and that the portion of the proceeds deposited into such pre-funding account does not exceed (1) for master trusts, 50 percent of the aggregate principal balance of the total asset pool whose cash flows support the securities, and (2) for other offerings, 50 percent of the proceeds of the offering. The SEC dropped its proposal set forth in the Proposed Amendments that these percentage limitations reduce to 25 percent over the same one-year period for Form S-3 eligibility and has kept a single measure of 50 percent for both Form S-1 and Form S-3 use.

12 These conditions are that the revolving period does not extend for more than three years from the date of issuance of the ABS and the additional pool assets are of the same general character as the original pool assets.

13 Mortgage related securities offerings should use Form S-1 in lieu of Form S-11 for future transactions. A mortgage related securities offering meeting the requirements of Rule 415(a)(1)(vii) may be done on a continuous or delayed offering basis using Form S-1, even if the mortgage related securities do not meet the requirements of Form S-3.

14 The SEC re-states in the Adopting Release its position that if a registrant plans a prompt takedown of ABS following the effectiveness of a registration statement on Form S-3, the registration statement at the time of effectiveness must include all available current information regarding the proposed offering, including information about the asset pool, subject to permitted omissions under Rule 430A of the Securities Act.

15 The SEC also gives some guidance regarding the requirements for filing of legal opinions, stating that where a prompt offering under the registration statement is not contemplated, opinions filed as of effectiveness (which is a
requirement of Items 601(b)(5) and 601(b)(8) of Regulations S-K) must be signed opinions, although they may be appropriately conditioned or qualified pending the actual opinion. Amended or final opinions without such conditions or qualifications must be filed for each takedown.

At the same time, the SEC cautions that the registration statement should only describe features that the issuer reasonably contemplates using in an actual takedown.

If pool assets of different types or different jurisdictions are intended to be pooled together in a single transaction, a single base and form of supplement is permitted, so long at there are appropriate disclosures for each asset type or jurisdiction included. This resolves a concern expressed in regard to the Proposed Amendment that multi-jurisdiction offerings would be impeded by the requirement for separate prospectuses.

These Items are: Items 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02, 6.01, 6.03 or 6.05 of Form 8-K. This represents an expanded list from what is currently being applied by the SEC in practice.

See the Adopting Release at page 76.

See “Ongoing Reporting Requirements under the Exchange Act”, below.

The SEC gives the example here of a bank acting as depositor not being able to use the exemption from registration provided in Section 3(a)(2) of the Securities Act for its ABS.

The SEC cites a statistic that non-US ABS issuance grew from $93 billion of total issuance in 2000 to $185 billion of total issuance in 2003.

See Item 1101 of Regulation AB for defined terms.

See Item 1101(l) of Regulation AB [17 CFR Part 229, §229.1101(l)].

See Item 1101(e) of Regulation AB [17 CFR Part 229, §229.1101(e)].

See Item 1101(f) of Regulation AB [17 CFR Part 229, §229.1101(f)].

Market prices would not typically be included in current ABS disclosures. In response to comments, the SEC has limited this new requirement to circumstances in which the pool assets are themselves securities, and is not requiring pricing information for transfers of other assets, which some commenters consider to be proprietary.

No financial information for the servicer is required unless there is a material risk that the financial condition of the servicer could materially impact the performance of the ABS.

The Regulation does not explicitly require information on servicer portfolio loss and delinquency history, which is often included in current practice in the prospectus, nor does it require static pool data on pools it services.

Static pool data indicates how the performance of groups of assets are performing over time and, by presenting comparisons between originations at similar points in the assets’ lives, allows the detection of patterns that may not be evident from overall portfolio numbers.

A vintage origination year refers to assets originated during the same year.

These characteristics may include, among other things, the number of pool assets; original pool balance; weighted average initial pool balance; weighted average interest or note rate; weighted average original term; weighted average remaining term; weighted average and minimum and maximum standardized credit score or other applicable measure of obligor credit quality; product type; loan purpose; loan-to-value information; distribution of assets by loan or note rate; and geographic distribution information.

Although the SEC received numerous comments from issuers and their representatives who objected to the disclosure of information relating to standardized credit scores, the SEC stated that investors considered this information to be important and therefore retained the proposed requirement.

The foregoing rule was adopted in response to concern expressed by commenters as to application of the disclosure requirement in transactions, such as “rent-a-shelf” and aggregator transactions, where one or more entities transfer the pool assets to an unaffiliated depositor. In particular, these commenters argued that in some instances static pool information for one or more entities other than the sponsor may be more appropriate than information about the sponsor.

The filing accommodation provided for in the ABS Rules will apply with respect to filings filed on or before December 31, 2009.

If these conditions are met, the Internet Web site information is deemed to be included in the prospectus and need not be physically repeated in the prospectus or in a Form 8-K report incorporated by reference into the prospectus and registration statement.
The Web site used for disclosure of the information need not be a Web site maintained by the issuer, although, as noted below, there are conditions for the retention and availability of the information.

The five-year period commences from the filing date of the final prospectus, or the date of first use of the prospectus, whichever is earlier.

The registrant is required to retain all versions of the information posted through the Web site address for a period of not less than five years in a form that permits delivery to an investor or the SEC, and the registrant must furnish to the SEC or the SEC staff upon request a copy of any or all information retained pursuant to this requirement.

As the information will be deemed to be included in the prospectus, disclaimers of liability or responsibility for the information are not appropriate.

Legal or regulatory provisions include bankruptcy, consumer protection, predatory lending, privacy, property rights, licensing or registration requirements or foreclosure laws or regulations.

Cash flows to support the ABS in some transactions come from more than one source, such as in lease-backed transactions that include separate cash flows from lease payments and from the residual value realized on sale of the leased asset at the termination of the lease.

Under certain circumstances, this information may be incorporated by reference from other filings by the significant obligor with the SEC. See the discussion under “Alternatives to Present Third Party Financial Information” below.

Under certain circumstances, this information may be incorporated by reference from other filings by the entity with the SEC. See the discussion under “Alternatives to Present Third Party Financial Information” below.

The first condition is that neither the significant obligor nor any of its affiliates has had a direct or indirect agreement, arrangement, relationship or understanding, written or otherwise, relating to the ABS transaction, and neither the third party nor any of its affiliates is an affiliate of the sponsor, depositor, issuing entity or underwriter of the ABS transaction. The second condition is that to the knowledge of the registrant, the significant obligor meets at least one of certain eligibility categories.

The definition of “ABS informational and computational material” is:

“a written communication consisting solely of one or some combination of the following:”

- Factual information regarding the asset-backed securities being offered and the structure and basic parameters of the securities, such as the number of classes, seniority, payment priorities, terms of payment, the tax, ERISA and other legal conclusions of counsel, and descriptive information relating to each class (e.g., principal amount, coupon, minimum denomination, anticipated price, yield, weighted average life, credit enhancements, anticipated ratings, and other similar information relating to the proposed structure of the offering)

- Factual information regarding the pool assets underlying the asset-backed securities, including origination, acquisition and pool selection criteria, information regarding any pre出てくる or revolving period applicable to the offering, information regarding significant obligors, data regarding the contractual and related characteristics of the underlying pool assets (e.g., weighted average coupon, weighted average maturity, delinquency and loss information and geographic distribution) and other factual information concerning the parameters of the asset pool appropriate to the nature of the underlying assets, such as the type of assets comprising the pool and the programs under which the loans were originated

- Identification of key parties to the transaction, such as servicers, trustees, depositors, sponsors, originators and providers of credit enhancement or other support, including a brief description of each such party’s roles, responsibilities, background and experience

- Static pool data, as discussed previously, such as for the sponsor’s and/or servicer’s portfolio, prior transactions or the asset pool itself

- Statistical information displaying for a particular class of asset-backed securities the yield, average life, expected maturity, interest rate sensitivity, cash flow characteristics, total rate of return, option adjusted spread or other financial or statistical information relating to the class or classes under specified prepayment, interest rate, loss or other hypothetical scenarios.

Examples of such information under the definition include:
- Statistical results of interest rate sensitivity analyses regarding the impact on yield or other financial characteristics of a class of securities from changes in interest rates at one or more assumed prepayment speeds
- Statistical information showing the cash flows that would be associated with a particular class of asset-backed securities at a specified prepayment speed
- Statistical information reflecting the financial impact of losses based on a variety of loss or default experience, prepayment, interest rate and related assumptions
  - The names of underwriters participating in the offering of the securities, and their additional roles, if any, within the underwriting syndicate
  - The anticipated schedule for the offering (including the approximate date upon which the proposed sale to the public will begin) and a description of marketing events (including the dates, times, locations and procedures for attending or otherwise accessing them)
- A description of the procedures by which the underwriters will conduct the offering and the procedures for transactions in connection with the offering with an underwriter or participating dealer (including procedures regarding account-opening and submitting indications of interest and conditional offers to buy)

47 The SEC recognizes that this may not be a true statement and therefore removed the requirement.
48 Public Securities Association (Feb. 7, 1997).
49 See Note 17 and related text above.
50 Regulation S-X has been amended (see Rule 1-02(3) of Regulations S-X) to reflect the requirements of the attestation report to be prepared by a registered public accounting firm, stating that the report must express an opinion, or state that an opinion cannot be expressed, concerning an asserting party’s assessment of compliance with servicing criteria, in accordance with standards on attestation engagements. When an opinion cannot be expressed, the accounting firm must state why it was unable to express such an opinion.
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