

## Disclosure for Asset-Backed Securities Required by Regulations Under Section 943 of the Dodd-Frank Act

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On January 20, 2011, the Securities and Exchange Commission (SEC) adopted final rules<sup>1</sup> to implement Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>2</sup> (the Dodd-Frank Act) related to asset-backed securities (ABS). Section 943 of the Dodd-Frank Act requires the SEC to prescribe regulations on the use of representation and warranties in the market for ABS:

- (1) to require any securitizer to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer so that investors may identify asset originators with clear underwriting deficiencies; and
- (2) to require each nationally recognized statistical rating organization (NRSRO) to include in any report accompanying a credit rating a description of (a) the representation, warranties, and enforcement mechanisms available to investors; and (b) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities.<sup>3</sup>

To implement these changes, the SEC added Rule 15Ga-1 and Rule 17g-7 and Form ABS-15G under the Securities Exchange Act of 1934 (the Exchange Act) and the Dodd-Frank Act. The SEC also amended Items 1104 and 1121 of Regulation AB (a subpart of Regulation S-K) under the Securities Act of 1933 (the Securities Act) and Rules 101 and 314 of Regulation S-T.

### **Background**

In many asset securitization transactions the underlying documents contain representations and warranties relating to quality of the pool assets and their origination. Generally upon discovery of noncompliance of an asset with the representation or warranty, the transaction sponsor, or other obligated party, must repurchase the asset or substitute it with a different asset. Rule 15Ga-1(a)<sup>4</sup> requires any “securitizer” of an “asset-backed security” where such repurchase obligation

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<sup>1</sup> See Release Nos. 33-9175; 34-63741.

<sup>2</sup> Pub. L. No. 111-203 (July 21, 2010).

<sup>3</sup> See Section 943 of the Act.

<sup>4</sup> Rule 15Ga-1(a) provides “With respect to any asset-backed security (as that term is defined in Section 3(a)(77) of the Securities Exchange Act of 1934) for which underlying transaction agreements contain a covenant to repurchase or replace an underlying asset for breach of a representation or warranty, a securitizer (as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934) shall disclose fulfilled and unfulfilled repurchase requests across all trusts by proving the information required in paragraph (1) (continued...)”

exists to disclose fulfilled and unfulfilled repurchase request so that investors may identify asset originators with clear underwriting deficiencies.

**Securitizer.** The disclosure obligations of Rule 15Ga-1 are on the securitizer. Under the Exchange Act, as amended by the Dodd-Frank Act, a securitizer is either (a) an issuer of an asset-backed security; or (b) a 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 issuer.<sup>5</sup> Rule 15Ga-1 applies to securitizers offering ABS in either registered or unregistered transactions. Because both depositors and sponsors for an ABS transaction would fit within the definition of securitizer, both entities would have disclosure obligations under the new rule. The rules provide, however, that if the sponsor and depositor are affiliated for a single ABS transaction and if one securitizer has filed all the disclosures required in order to meet the rules, other affiliated securitizers do not have to separately provide the same disclosure. Further, in the case of ABS issued by government-sponsored enterprises (GSEs) such as Fannie Mae or Freddie Mac, the disclosure requirement would apply solely to the GSEs and not the financial institution transferring loans for securitization by the GSEs.<sup>6</sup>

Rule 15Ga-1 applies to a municipal entity that is a securitizer of ABS (a municipal securitizer).<sup>7</sup> An issuer of single family housing bonds or student loan bonds<sup>8</sup> is likely a municipal securitizer for purposes of the rule because these entities are usually political subdivisions or public instrumentalities and issue securities such as bonds that are collateralized by a self-liquidating financial asset such as a loan or mortgage and the holder of the issuer's bonds expects to receive payments on the bonds that depend primarily on cash flow from the loans or mortgages (see the

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concerning all assets securitized by the securitizer that were the subject of demand to repurchase or replace for breach of the representations and warranties concerning the pool assets for all asset-backed securities held by non-affiliates of the securitizer during the reporting period.”

<sup>5</sup> See Section 15G(a)(3) of the Exchange Act, as amended by the Dodd-Frank Act.

<sup>6</sup> If a securitizer further securitizes an ABS issued by a GSE, the disclosure obligations may also apply to the securitizer in addition to the GSEs (e.g. an issuer of single family housing bonds secured by GSE ABS).

<sup>7</sup> A municipal securitizer is any securitizer that is a State or Territory of the United States, the District of Columbia, any political subdivision of any State, Territory or the District of Columbia, or any public instrumentality of one or more States, Territories or the District of Columbia.

<sup>8</sup> Although many issuers of student loan bonds are municipal securitizers other nonprofit issuers of student loan bonds are not municipal securitizers and would be treated as securitizers under Rule 15Ga-1.

definition of “asset-backed security” below). Even though a municipal entity may be a securitizer for purposes of Rule 15Ga-1, the new disclosure requirements for securitizers only apply if the documents underlying the ABS transaction contain a covenant to repurchase or replace an asset because of a breach of representation or warranty related to such assets. While the underlying transaction documents for most municipal securities do not contain a covenant to repurchase or replace an asset if it does not comply with a representation or warranty provision, single family housing and student loan transactions generally have such provisions and would be subject to the new disclosure requirements.<sup>9</sup>

**Asset-Backed Security.** Section 3(a)(77) of the Exchange Act, as amended by the Dodd-Frank Act, provides the term “asset-backed security” means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including: a collateralized mortgage obligation; a collateralized debt obligation; a collateralized bond obligation; a collateralized debt obligation of asset-backed securities; a collateralized debt obligation of collateralized debt obligations; and a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.

## **Disclosure Required by Rule 15Ga-1**

**Form ABS-15G.** The SEC adopted a new Form ABS-15G that is to be used to comply with Rule 15Ga-1. The particular disclosure requirements are included in paragraph (a)(1) of Rule 15Ga-1 and are to be provided in a tabular format. Printable versions of both the new Form ABS-15G and the tabular format are included at the end of this article.

**Disclosure Information.** A summary of certain of the information to be disclosed includes: (a) the asset class (such as single family mortgage loans or credit cards), (b) the name of the “issuing entity”<sup>10</sup> and listed in the order of the date of formation<sup>11</sup>, (c) whether the transaction was

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<sup>9</sup> Rule 15Ga-1 requires disclosure with respect to any asset-backed security for which “the underlying transaction agreements contain a covenant to repurchase.” An argument could be made that the “underlying transaction agreements” include only the documents related directly to the asset securitization itself and do not extend to the mortgage purchase level documentation. Until further clarification is provided on this point, a more conservative interpretation would be that underlying transaction agreement included both those documents directly and indirectly related to the asset securitization.

<sup>10</sup> Defined in Regulation AB 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.

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registered with the SEC and disclosure of the CIK number of the issuing entity (as applicable), (d) the name of the originator of the underlying assets and include all originators that originated assets in the asset pools for each issuing entity, (e) the number, outstanding principal balance and percentage by principal balance of assets at the time of securitization, (f) the number, outstanding principal balance and percentage by principal balance of assets that were subject to a demand to repurchase or replace for breach of warranties and representations, (g) the number, outstanding principal balance and percentage by principal balance of assets that were repurchased or replaced for breach of warranties and representations, and (h) the number, outstanding principal balance and percentage by principal balance of assets that are (1) pending repurchase or replacement for breach of warranties and representations due to the expiration of a cure period, (2) pending repurchase or replacement because the demand is currently in dispute, and (3) not repurchased or replaced because the demand was withdrawn or rejected.<sup>12</sup>

If any information required to be disclosed is not known or unavailable to the securitizer without unreasonable expense or effort, the information may be omitted if the securitizer provides the information it has or can get without unreasonable expense or effort and includes a statement showing that unreasonable expense or effort would be involved in obtaining the omitted information.

**Initial Filing.** Securitizers (other than municipal securitizers) are to file Form ABS-15G for the three years ended December 31, 2011 through EDGAR by February 14, 2012. Municipal securitizers are to file Form ABS-15G for the three years ended December 31, 2014 through EMMA by February 14, 2015. Municipal securitizers should begin record keeping as of January 1, 2012 of demand, repurchase and replacement activity of assets in their securitization pools to enable them to make their initial filing. An initial filing is required for securitizers that issued an ABS (or organized and initiated an ABS transaction by securitizing an asset, either directly or indirectly, including through an affiliate) during the applicable three period (i.e. the three years ended December 31, 2011 for non-municipal securitizers and the three year period ended December 31, 2014 for municipal securitizers).

**Quarterly Filing.** After the initial disclosure filing, securitizers are required to disclose demand, repurchase and replacement activity of assets in a securitization pool on Form ABS-15G no later

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<sup>11</sup> The SEC has clarified that in a securitization using a master trust structure (e.g. single family housing bonds issued under a master trust indenture) whereby the ABS structure contemplates future issuance of ABS by the same issuing entity, but still backed by the same, but expanded, asset pool, the issuing entity would be organized based on the date of the master trust was formed, although this generally may be earlier than the date of the most recent issuance of additional securities under such master trust.

<sup>12</sup> The SEC has instructed that the table should include any activity during the reporting period, including activity related to assets subject to demands made prior to the beginning of the reporting period.

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than 45 calendar days after the end of each calendar quarter if the securitizer (a) issued an ABS during the period, (b) organized an initial ABS transaction during such time period, by securitizing an asset, either directly or indirectly, including through an affiliate, or (c) had outstanding ABS held by non-affiliates during such period. The information securitizers are to file for quarterly filings is similar to the initial filing format and can be obtained by clicking on the link above under “Disclosure Required by Rule 15Ga-1 - Form ABS-15G.” The quarterly report is only required to set forth any repurchase activity during the applicable quarter, and is not required to present information on a cumulative basis.

***Suspension of Quarterly Filing Requirement.*** A securitizer may suspend its duty to provide quarterly disclosures if it has no activity to report during the initial filing period or during a calendar quarter by checking the appropriate box on Form ABS-15G that it has no activity to report. Thereafter, no quarterly report is required unless there is a change in the demand, repurchase or replacement activity during a calendar quarter, but the securitizer must still make an annual filing and check the appropriate box on Form ABS-15G that no activity occurred during the previous calendar year.

***Termination of Filing Requirement.*** A securitizer may terminate its disclosure requirement upon filing a notice on Form ABS-15G if it has no ABS outstanding that are held by non-affiliates.

## **Disclosure Requirements for Regulation AB Transactions**

For registered securitizations Item 1104 of Regulation AB was amended to require disclosure in the prospectus in the same manner as required by Rule 15Ga-1 and Item 1121 of Regulation AB was amended to require securitizers provide the same disclosure as required by Rule 15Ga-1 to investors with their reports on Form 10-D.

## **Disclosure Requirements for NRSROs**

Rule 17g-7 was adopted to require each NRSRO to include in any report accompanying a credit rating with respect to an ABS a description of (a) the representations, warranties and enforcement mechanisms available to investors; and (b) how they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities. For purposes of the rule, a credit rating includes any expected or preliminary credit rating issued by a NRSRO. NRSRO's are to comply with Rule 17g-7 for any such report issued on or after September 26, 2011.

For more information, please contact Ryan Warburton at 801.531.3072 or [warburton@ballardspahr.com](mailto:warburton@ballardspahr.com); Andrew P. Spicknall at 202.661.2268 or [spicknallp@ballardspahr.com](mailto:spicknallp@ballardspahr.com); Frederic L. Ballard, Jr. at 202.661.2210 or [flb@ballardspahr.com](mailto:flb@ballardspahr.com); Blake K. Wade at 801.531.3031 or [wadeb@ballardspahr.com](mailto:wadeb@ballardspahr.com); or any other member of Ballard Spahr's Public Finance Group.

For more information on the firm, please visit [www.ballardspahr.com](http://www.ballardspahr.com).

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**FORMABS-15G  
ASSET-BACKED SECURITIZER  
REPORT PURSUANT TO SECTION 15G OF  
THE SECURITIES EXCHANGE ACT OF 1934**

Check the appropriate box to indicate the filing obligation to which this form is intended to satisfy:

Rule 15Ga-1 under the Exchange Act (17 CFR 240.15Ga-1) for the reporting period

\_\_\_\_\_ to \_\_\_\_\_

Date of Report (Date of earliest event reported) \_\_\_\_\_

Commission File Number of securitizer: \_\_\_\_\_

Central Index Key Number of securitizer: \_\_\_\_\_

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Name and telephone number, including area code, of the person to  
contact in connection with this filing.

Indicate by check mark whether the securitizer has no activity to report for the initial period pursuant to Rule 15Ga-1(c)(1)

Indicate by check mark whether the securitizer has no activity to report for the quarterly period pursuant to Rule 15Ga-1(c)(2)(i)

Indicate by check mark whether the securitizer has no activity to report for the annual period pursuant to Rule 15Ga-1(c)(2)(ii)

## GENERAL INSTRUCTIONS

### **A. Rule as to Use of Form ABS-15G.**

This form shall be used to comply with the requirements of Rule 15Ga-1 under the Exchange Act (17 CFR 240.15Ga-1).

### **B. Events to be Reported and Time for Filing of Reports.**

Forms filed under Rule 15Ga-1. In accordance with Rule 15Ga-1, file the information required by Part I in accordance with Item 1.01, Item 1.02, or Item 1.03, as applicable. If the filing deadline for the information occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, then the filing deadline shall be the first business day thereafter.

### **C. Preparation of Report.**

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b-12 (17 CFR 240.12b-12). The report shall contain the number and caption of the applicable item, but the text of such item may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b-13 (17 CFR 240.12b-13). All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

### **D. Signature and Filing of Report.**

1. Forms filed under Rule 15Ga-1. Any form filed for the purpose of meeting the requirements in Rule 15Ga-1 must be signed by the senior officer in charge of securitization of the securitizer.

2. Copies of report. If paper filing is permitted, three complete copies of the report shall be filed with the Commission.

## INFORMATION TO BE INCLUDED IN THE REPORT

### **REPRESENTATION AND WARRANTY INFORMATION**

#### **Item 1.01 Initial Filing of Rule 15Ga-1 Representations and Warranties Disclosure**

Provide the disclosures required by Rule 15Ga-1 (17 CFR 240.15Ga-1) according to the filing requirements of Rule 15Ga-1(c)(1).

#### **Item 1.02 Periodic Filing of Rule 15Ga-1 Representations and Warranties Disclosure**

Provide the disclosures required by Rule 15Ga-1 (17 CFR 240.15Ga-1) according to the filing requirements of Rule 15Ga-1(c)(2).

#### **Item 1.03 Notice of Termination of Duty to File Reports under Rule 15Ga-1**

If a securitizer terminates its reporting obligation pursuant to Rule 15Ga-1(c)(3), provide the date of the last

payment on the last asset-backed security outstanding that was issued by or issued by an affiliate of the securitizer.

## **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the reporting entity has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

\_\_\_\_\_ (Securitizer)

Date \_\_\_\_\_

\_\_\_\_\_ (Signature)\*

\*Print name and title of the signing officer under his signature.

Name of Issuing Entity	Check if Registered	Name of Originator	Total Assets in ABS by Originator			Assets That Were Subject of Demand			Assets That Were Repurchased or Replaced			Assets Pending Repurchase or Replacement (within cure period)			Demand in Dispute			Demand Withdrawn			Demand Rejected		
			(#)	(\$)	(% of principal balance)	(#)	(\$)	(% of principal balance)	(#)	(\$)	(% of principal balance)	(#)	(\$)	(% of principal balance)	(#)	(\$)	(% of principal balance)	(#)	(\$)	(% of principal balance)	(#)	(\$)	(% of principal balance)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)	(t)	(u)	(v)	(w)	(x)
Asset Class X																							
Issuing Entity A CIK #	X	Originator 1																					
		Originator 2																					
<b>Total</b>			#	\$		#	\$		#	\$		#	\$		#	\$		#	\$		#	\$	
Asset Class Y																							
Issuing Entity B		Originator 3																					
<b>Total</b>			#	\$		#	\$		#	\$		#	\$		#	\$		#	\$		#	\$	
<b>Total</b>			#	\$		#	\$		#	\$		#	\$		#	\$		#	\$		#	\$	