Client Alert

October 2014

User Guide to Regulation AB II and Exchange Act Rules 15Ga-2 and 17g-10

On August 27, 2014, the Securities and Exchange Commission adopted the final version of its long-awaited revisions to Regulation AB, commonly referred to as Regulation AB II.[1] Regulation AB, originally adopted in 2004, represents the SEC's comprehensive set of regulations related to registration, disclosure and reporting for publicly offered, asset-backed securities.

Regulation AB II does not include two provisions that would have expanded significantly the scope of Regulation AB. Regulation AB continues to apply only to asset-backed securities ("ABS") as currently defined in Regulation AB (securities primarily serviced by cash flows of a discrete pool of receivables or other financial assets that by their terms convert into cash within a finite period) and does not extend to the broader classification of asset-backed securities as defined in the Securities Exchange Act, as amended by the Dodd-Frank Act (commonly referred to by the SEC as "Exchange Act-ABS," which includes managed pools). Regulation AB also continues to apply only to registered public offerings of asset-backed securities, as the SEC did not expand Regulation AB II, as it had initially proposed, to transactions exempt from registration under the provisions of Rule 144A or otherwise.

Regulation AB II introduces several new requirements related to public offerings of ABS, including the following:

- ABS-specific registration statement forms (Forms SF-1 and SF-3).
- New shelf registration statement eligibility requirements for ABS.
- New prospectus and transaction documents filing and delivery requirements.
- New asset-level disclosure requirements for ABS backed by residential mortgage loans, commercial mortgage loans, automobile loans or leases, resecuritizations of ABS backed by any of those asset types, and debt securities.

With the exception of the new asset-level disclosure requirements, issuers of publicly offered ABS must comply with Regulation AB II's new rules, forms and disclosures no later than November 23, 2015. The

[1] Asset-Backed Securities Disclosure and Registration, SEC Release Nos. 33-9638; 34-72982, 79 Fed. Reg. 57184 (Sept. 24, 2014) (the "Reg AB II Adopting Release"). Revisions to Regulation AB originally were proposed in April 2010. In July 2011, the SEC partially re-proposed Regulation AB II, primarily to reflect changes to the shelf registration eligibility requirements to correspond with the requirements of the Dodd-Frank Act, which was enacted in July 2010. Comments on the original Regulation AB II proposal raised a number of concerns regarding asset-level disclosure requirements and the potential for exposure of personally identifiable consumer financial information and related privacy concerns. The SEC reopened the Regulation AB II comment period in February 2014 to solicit further comment on those issues, as well as a suggested approach for disclosure of such sensitive information. Each of the proposing releases, as well as the comment letters the SEC received on the proposed changes to Regulation AB, are available on the SEC's website.

asset-level disclosure requirements, including those in Form 10-D and Form 10-K filings, become applicable on November 23, 2016).

In addition, the SEC also finalized its credit rating agency reform rules to implement stronger conflict of interest and governance controls and to improve the transparency of the credit ratings process by nationally recognized statistical rating organizations ("NRSROs").[2] The new NRSRO rules include, among other things, new rules and forms that apply to providers of third-party due diligence services for both publicly and privately issued Exchange Act-ABS (which includes CLOs, CDOs and synthetic securitizations). The new NRSRO rules include a requirement that an issuer or an underwriter of ABS publish the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter for any ABS that is to be rated by an NRSRO and a requirement that the third-party provider of any such report provide a certification on the report to the NRSRO.

The User Guide is intended to summarize certain provisions of Regulation AB II and the new NRSRO rules relating to third-party due diligence reports, with a particular focus on residential mortgage-backed securities ("RMBS"). It is not intended to be a comprehensive outline or review of Regulation AB II or of the new NRSRO rules relating to third-party due diligence reports (or the various other rules set forth in the NRSRO Adopting Release). Rather, we hope to provide a useful resource to help understand and address the most significant new requirements of Regulation AB II and the NRSRO rules relating to third-party due diligence reports.

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[2] Nationally Recognized Statistical Rating Organizations, SEC Release No. 34-72936, 79 Fed. Reg. 55078 (Sept. 16, 2014) (the "NRSRO Adopting Release").

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User Guide to Regulation AB II and Exchange Act Rules 15Ga-2 and 17g-10

	SUMMARY OF KEY PROVISIONS	ADDITIONAL CONSIDERATIONS
A. REGULATION AB II		
1. ASSET-LEVEL DISCLOSURE		
Schedule AL and Form ABS-EE	Schedule AL of new Item 1124 of Regulation AB[4] sets forth standardized asset-level data points that are required to be provided about the pool assets backing the ABS at the time of securitization (incorporated into both the preliminary prospectus and final prospectus) and on an ongoing basis (incorporated into each Form 10-D report) for pool assets consisting of residential mortgages, commercial mortgages, auto loans, auto leases, resecuritizations of ABS that include these asset types, or debt securities. The asset data file must be provided in a tagged XML format and filed on EDGAR. Issuers can provide additional asset-level disclosures by filing an "asset related document" concurrently with the Schedule AL it supplements as long as the tags, definitions and formulas for each additional asset-level disclosure are provided. (*See* Reg AB II Adopting Release, Section III.B.3(c) and Section III.B.4(c)) Generally, each response to a required data point must be a date, a number, text or a coded response. If the issuer selects "not applicable," "unknown" or "other," it is encouraged to provide additional explanatory disclosure in an "asset related document." If required data is unknown and not reasonably available to the issuer, and the issuer relies on Rule 409 or Exchange Act Rule 12b-21, the issuer is to include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person who has the information and stating the result of a request made to	In addition to specific data points for the specified asset types (as we discuss below for residential mortgages), Schedule AL includes data points for disclosure of the following general information regardless of the asset type (*see* Reg AB II Adopting Release, Section III.A.2(a))**:** • *Unique Asset Number:* Each asset in the pool must have a unique asset number applicable only to that asset in order to allow investors to follow the performance of an asset from securitization through periodic reporting. If an asset is removed and replaced with another asset, the replacement asset also must be assigned its own unique asset number. • *Underwriting Indicator:* The issuer must disclose whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset. • *Information about Repurchases:* The issuer must disclose whether (i) the asset is pending repurchase or replacement (within the cure period); (ii) the asset was repurchased or replaced during the reporting period; and (iii) the demand is in dispute, has been rejected or withdrawn, as well as the name of the repurchaser and the reason for repurchase or replacement.

[4] References in this User Guide to an "Item" mean, unless otherwise specified, an Item of Regulation AB, including any changes to the Item made by Regulation AB II.

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	such person for the information. The asset data files and any asset related documents are required to be filed as exhibits to new Form ABS-EE and incorporated by reference into each prospectus and Form 10-D filing. (*See* Reg AB II Adopting Release, Section III.B.5(c))	• *Reporting Period Beginning and End Dates:* For a preliminary or final prospectus, Schedule AL data is required to be provided as of the end of the most recent reporting period, unless otherwise specified in Schedule AL. For periodic reports on Form 10-D, the Schedule AL data is required to be provided as of the end of the reporting period covered by the Form 10-D, unless otherwise specified in Schedule AL. If the required data typically is captured at a time other than the end of a reporting period, such as at origination, the data point may include the "as of" date of the data required.
Required Data Points for RMBS and Resecuritizations of RMBS	The final asset-level disclosure requirements for RMBS, which are set forth in Item 1 of Schedule AL, include 270 data points. These data points include information about the property, the mortgage, the obligor's creditworthiness, original and current mortgage terms and loan performance. (*See* Reg AB II Adopting Release, Section III.A.2(b)(1)) For each registered resecuritization, issuers must provide the same disclosures that are required for debt security ABS (60 data points set forth in Item 5 of Schedule AL). If the resecuritization consists of RMBS (or ABS backed by another asset type for which the SEC also adopted asset-level disclosure requirements), then a second tier of asset-level information is required. However, Regulation AB II includes an exemption from the requirement to provide asset-level disclosure about the underlying ABS if the underlying ABS was issued prior to the compliance date for the asset-level disclosure requirements. (*See* Reg AB II Adopting Release, Section III.A.2(b)(5)) Technical specifications regarding the various values and codes relating to the coded responses that are required to be included in the asset data files can be	Certain data points were modified in response to privacy concerns. The changes are intended to reduce the potential risk that the obligors could be identified. As suggested by some commenters to proposed Regulation AB II, the SEC sought guidance from the CFPB and received a letter issued to the SEC stating that the Fair Credit Reporting Act would not apply to asset-level disclosures as long as the SEC determines that the disclosure of the asset-level data is "necessary for investors to independently perform due diligence." (*See* Reg AB II Adopting Release, Section III.A.3(c))

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	found at: http://www.sec.gov/info/edgar/edgarabsxml1_d.htm	
Temporary Hardship Exemption	If an issuer experiences unanticipated technical difficulties preventing the timely submission of an asset data file, it may still be considered timely filed if: • the asset data file is posted on a website accessible to the public on the same day it was due to be filed on EDGAR; • a Form ABS-EE is filed that identifies the website address where the file can be located; • a legend (set forth in Rule 201(d)(3)) is provided claiming the hardship exemption; and • the asset data file is filed on EDGAR within six business days. (*See* Rule 201(d) of Regulation S-T and Reg AB II Adopting Release, Section III.B.6(c))	
Compliance Date for Asset-Level Disclosures	Issuers must comply with the asset-level disclosure requirements no later than November 23, 2016.	
2. OTHER PROSPECTUS DISCLOSURE		
Transaction Parties		
Originator	If the cumulative amount of pool assets originated by parties other than the sponsor or its affiliates is more than 10% of the total pool assets, then any originator that originated less than 10% of the pool assets also must be identified in the prospectus. (Item 1110(a))	This additional disclosure element requires disclosure of the identity of the additional originators only.

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Financial Condition of Repurchase Party	If a sponsor or originator of 20% or more of the pool assets is contractually obligated to repurchase a pool asset for breach of a representation and warranty, then the financial condition of such party must be disclosed in the prospectus to the extent that such party's financial condition poses a material risk that the effect on its ability to comply with its contractual repurchase obligations for those assets could have a material impact on pool performance or the performance of the ABS. (Items 1104(f) and 1110(c))	Loan purchase programs should be revised to require originators to disclose their financial condition to sponsors in the event that such originator's assets compose 20% or more of the assets included in a securitization. This requirement raises particular concerns for private companies that would prefer not to disclose their financial statements or financial condition. The SEC acknowledged that some originators may elect not to sell into securitizations, but viewed the benefit of the additional disclosure to investors as outweighing this concern. (*See* Reg AB II Adopting Release, Section IV.A.2.c.) The SEC is not requiring that any financial statements or financial condition disclosed in relation to the requirement be audited. (*Id.*) However, in addition to representations and warranties regarding the truth and accuracy of such financial disclosure, sponsors may consider requiring some level of accounting verification for unaffiliated originators.
Economic Interest in the Transaction	The sponsor, each servicer and each originator of 20% or more of the pool assets must disclose its continuing interest in the pool assets, including the amount and nature of such interest and any related hedging of that interest. The preliminary prospectus must contain the amount and nature of the interest that each such party intends to retain, and the final prospectus must contain the actual amount retained by those parties. (*See* Reg AB II Adopting Release, Section IV.A.3.c. and Items 1104, 1108 and 1110) As we discuss below, any material change in a sponsor's or an affiliate's interest in the ABS in connection with a purchase, sale or other acquisition or disposition must be reported on Form 10-D. (Item 1124)	The SEC notes that this disclosure requirement is independent of the risk retention proposals still under consideration by regulators under the Dodd-Frank Act. After adoption of the final risk retention rules, the parties also must include disclosure as to the amount and nature of the interest or assets they have retained in order to comply with those rules. (*See* Reg AB II Adopting Release, Section IV.A.3.c.)

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Prospectus Summary	The summary section of the prospectus may include, among other items, statistical information regarding underwriting or origination standards, exceptions to underwriting or origination standards, and modifications to pool assets after their origination. (*See* Reg AB II Adopting Release, Section IV.B.3 and Instruction to Item 1103(a)(2))	Although Regulation AB II does not require this disclosure, the SEC noted its concern that prospectus summaries often summarized characteristics common to an asset type, rather than the characteristics of the asset pool backing the ABS being offered. Sponsors should keep this in mind and should consider developing a brief summary disclosure that highlights the statistical and other information required by this instruction in a manner that permits cross-references to the more detailed disclosure contained in the prospectus.
Modification of Underlying Assets	The prospectus disclosure must include a description of the provisions in the transaction agreements governing modification of pool assets and the potential impact of modifications on cash flows from the pool assets. (*See* Reg AB II Adopting Release, Section IV.C.2 and Item 1111(e)(2))	
No Disclosure with Respect to Fraud Representations	The proposed revision to Item 1111(e) that would have required disclosure of a fraud representation or warranty was not adopted by the SEC. (*See* Reg AB II Adopting Release, Section IV.D.)	Several comment letters noted, and the SEC ultimately agreed, that the absence of fraud is an element of several other representations and warranties concerning pool assets. (*See* Reg AB II Adopting Release, Section IV.D.)
Static Pool Disclosure	Static pool disclosure must include an introductory and explanatory narrative description of the static pool information presented in the prospectus in order to provide investors a context to evaluate this information. The narrative must include a description of any key differences between the composition of the pool of assets being securitized and the static pool. Static pool disclosure also must contain a clear description of methodology and any terms or abbreviations used in the presentation of the static pool. (*See* Reg AB II Adopting Release, Section IV.E.1.c. and introduction to Item 1105) Static pool disclosure should utilize a graphical presentation if it would be	

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	helpful to the investor in understanding the data; however, such graphical presentations are not required for static pools. (*See* Reg AB II Adopting Release, Section IV.E.1.c. and introduction to Item 1105) For amortizing pools, graphical presentations of delinquency, loss and prepayment data are required. (*See* Reg AB II Adopting Release, Section IV.E.2.c. and Instruction to Item 1105(a)(3)(ii)) If static pool information is not provided in the related prospectus, such information must be filed under new Item 6.06 on Form 8-K or, if incorporated by reference into the prospectus, as Exhibit 106 to the Form 8-K. (*See* Reg AB II Adopting Release, Section IV.E.3.c. and Instructions to Form 8-K) If an issuer does not include static pool information or includes disclosure that is intended to serve as an alternative to static pool information, the issuer must explain in its prospectus, in a non-conclusory manner, why it has not included static pool disclosure or why it has provided alternative information. (*See* Reg AB II Adopting Release, Section IV.E.1.c. and Item 1105(a)(3)(iv))	
Disclosure Requirements that Rely on Credit Ratings	Regulation AB II eliminated the exceptions in Items 1112 and 1114 that permitted the omission of certain financial information regarding significant obligors (Item 1112) and credit enhancement providers (Item 1114) when the pool assets or credit enhancement providers, as applicable, have investment-grade ratings by an NRSRO. (*See* Reg AB II Adopting Release, Section IV.F.)	This change is consistent with reducing regulatory reliance on credit ratings. As a result, sponsors will now need to obtain and disclose certain financial information regarding significant obligors and credit enhancement providers, without regard to their credit ratings. Sponsors should consider imposing contractual obligations on unaffiliated significant obligors and credit enhancement providers to provide such financial information.
No Required Cash Flow Waterfall Computer Program	Regulation AB II does not include the SEC's initial proposal that issuers file a waterfall computer program of the contractual cash flow provisions of the ABS. (*See* Reg AB II Adopting Release, Section I.C.5)	As in the case of certain other proposed changes to Regulation AB, this proposal remains outstanding and could be adopted by the SEC at a later time. (*See* Reg AB II Adopting Release, Section I.C.5 for a complete

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		list of the proposals that remain outstanding)
3. SECURITIES ACT REGISTRATION; FILING REQUIREMENTS FOR TRANSACTION DOCUMENTS		
Prospectus Filing Requirements	Under new Rule 424(h), each takedown of ABS from an effective shelf registration statement (regardless of the asset class or seasoning of the issuer) will require the filing of a complete preliminary prospectus (describing, among other things, the specific asset pool and the transaction structure) two business days after first use but no later than three business days prior to the first sale of the ABS. New Rule 430D permits an ABS shelf issuer to omit from its preliminary prospectus information with respect to offering price, underwriting syndicate, underwriting and dealer discounts and commissions, amount of proceeds and other matters dependent on pricing, to the extent such information is unknown or not reasonably available to the issuer pursuant to Rule 409. Rule 424(h) also requires that any material changes to the preliminary prospectus be described in a supplement filed by the issuer with the SEC at least 48 hours before the date and time of the first sale.	Rule 424(h) imposes a minimum three-business day "waiting period" for the sale of registered ABS. However, as we discuss below, any third-party due diligence services report related to ABS that is to be rated by an NRSRO is required to be filed at least five business days prior to the first date of sale in the offering. Further, to the extent that an issuer includes a third-party due diligence services report in the prospectus, the waiting period for the sale of such ABS will be five business days under new Rule 15Ga-2. (*See* discussion below under B. Credit Rating Agency Reform ─ Third-Party Due Diligence Services (Rule 15Ga-2) and Certifications (Rule 17g-10)) ABS issuers that have filed a prospectus meeting the requirements of Rule 430D may continue to use a free writing prospectus or ABS informational and computational materials under existing rules; however, a free writing prospectus or ABS informational and computational materials cannot be used to satisfy the Rule 424(h) filing requirement. (*See* Reg AB II Adopting Release, Section V.B.1(a)(3))
New Forms SF-1 and SF-3	ABS offerings that qualify for shelf registration are required to be registered on Form SF-3. All other registered ABS offerings are to be registered on Form SF-1. (*See* Reg AB II Adopting Release, Section V.B.2(c))	The two new forms are based largely on existing Forms S-1 and S-3, but are tailored to ABS offerings.
A Single, Complete Prospectus is Required	New Rule 430D and an instruction to Form SF-3 require ABS issuers to file a form of prospectus at the time of effectiveness of the registration statement and a single prospectus for each takedown from the shelf. In addition, each depositor must file a	These changes effectively eliminate the traditional use of a base prospectus and prospectus supplement for registered ABS transactions. New Rule 430D(d)(2) codifies the SEC's longstanding position that an

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	separate registration statement for each form of prospectus and each registration statement may cover only one asset class.	ABS issuer must file a post-effective amendment to its registration statement if it desires to add information about a new structure feature or credit enhancement that was not disclosed in the prospectus of the effective registration statement.
"Pay-as-You Go" Registration Fees	Under new Rule 457(s), ABS issuers may elect to pay registration fees as the securities are offered rather than paying all of the registration fees upfront. If an issuer elects the "pay-as-you go" option, under new Rule 456(c) the applicable registration fee for a takedown from the shelf will be payable at the time the issuer files the initial preliminary prospectus for that takedown.	The SEC notes that this amendment (together with the ability under Rule 457(p) to apply fees associated with unsold securities paid in connection with a previously filed registration statement or preliminary prospectus toward a future takedown from the shelf) will alleviate some of the burden ABS issuers incur in managing multiple registration statements. (*See* Reg AB II Adopting Release*,* Section V.E.3)
Shelf Eligibility — Registrant Requirements	In addition to the shelf eligibility transaction requirements discussed below, Form SF-3 contains two "registrant requirements." First, as in the case of Form S-3, at the time of effectiveness, the depositor, each issuing entity and any affiliate of the depositor that is or was at any time during a 12-month period prior to the date of filing of the registration statement a registrant with respect to a previous offering of ABS of the same asset class must have timely filed all required Exchange Act filings. (Form SF-3, General Instruction I.A.2) The depositor, each issuing entity and any affiliate with respect to the same asset class also must have timely filed all required CEO certifications and transaction agreements containing the required provisions relating to asset reviews, dispute resolution and investor communications during the preceding 12 months (and any stub period); a cure period is provided for any late filings of CEO certifications or transaction agreements, and the registrant will be deemed to have met this registrant requirement 90 days after the date on which all such required filings have been made. (Form SF-3, General Instruction	Although a depositor or issuing entity may be "locked out" of the market as a result of having failed to timely make all CEO certification and transaction agreement filings during the 12-month look-back period, the cure provision effectively limits the lock-out period to no more than 90 days after the curative filings have been made. Note, however, that the cure period does not extend to the registrant requirement with respect to the timely filing of all required Exchange Act reports. The effect of new Rule 401(g)(4) is that an effective shelf registration on Form SF-3 will become ineffective, and will not be available for a takedown, if the registrant requirements are not met as of the date that is 90 days following the registrant's fiscal year-end prior to an offering. The shelf registrant must disclose in a prospectus that it has met the registration requirements relating to the filing of CEO certifications and transaction agreements. (Form SF-3, Instruction to General Instruction I.A.1)

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	I.A.1) In addition to those registration requirements, under new Rule 401(g)(4), the registrant is required to evaluate annually, as of 90 days after the end of the depositor's fiscal year-end, whether it meets the two registrant requirements described in the preceding paragraphs during the 12 months preceding the test date.	
Shelf Eligibility — Transaction Requirements	ABS offerings that qualify for shelf registration also must satisfy the following transaction requirements: • a depositor CEO certification regarding the prospectus disclosure and securitization structure, using the required form, must be filed with the SEC as of the date of the final prospectus for each take-down; • the transaction documents must provide for an asset review of each pool, or sub-pool, for compliance with representations and warranties upon the occurrence of a specified percentage of delinquencies and a subsequent security holder vote, completed by an unaffiliated third-party "asset representations reviewer" whose identity is disclosed in the prospectus; • the transaction documents must provide for dispute resolution in the form of a mediation or third-party arbitration, at the option of the party requesting repurchase, if a repurchase demand is unresolved after 180 days; and • the transaction documents must include the obligation to disclose in a Form 10-D filing an investor's request to communicate with other investors. (Form SF-3, General Instruction I.B.1)	As a result of elimination of the eligibility requirement that registered ABS have investment-grade ratings, issuers may include classes of ABS with noninvestment-grade ratings in a registered offering. Unlike the proposed amendments, the new shelf eligibility requirements do not include risk retention or an undertaking to file Exchange Act reports for the life of the transaction, as those were separately addressed by the Dodd-Frank Act.
CEO Certification	The form of the CEO certification is included as Item 601(b)(36) of Regulation S-K. A copy of the CEO certification is included as Exhibit A to this User Guide.	The SEC made a number of changes to the final form of CEO certification — including materiality qualifiers and clarification that the certification is not a guarantee and that the signer has

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		any and all defenses available to him or her under the federal securities laws — to address commenters' concerns about the scope of the certification and potential liability of the signer.
Required Asset Representations Reviewer	An "asset representations reviewer" must be identified in the prospectus, have access to all the documents and upon the occurrence of a two-pronged trigger event, review at a minimum all assets that are 60 days or more delinquent for compliance with representations and warranties. Regulation AB II permits the issuer and other transaction parties to determine: • the definition of delinquency; • the threshold percentage of delinquent assets triggering an investor vote to require a review (the issuer's explanation of the reasonableness of such percentage, including a comparison against delinquency triggers of the sponsor's prior securitized pools for the same asset type, must be disclosed in the prospectus); • after the delinquency threshold has been met, the minimum percentage of investor interests needed to initiate a vote on whether to direct a review, which percentage can be no greater than 5% of the total investors' pool interest, and the percentage required to direct the review, which can be no more than a simple majority of those investors casting their votes. In addition to identifying the asset representations reviewer, the prospectus must describe the reviewer's form of organization and experience and how it is to be compensated, its duties as reviewer and the provisions in the transaction documents relating to limitations on its liability, indemnification, removal or replacement and reimbursement of expenses. (Item 1109(b))	Asset reviews are not automatically required once the delinquency threshold is met, and are initiated by investors as specified in the transaction documents. (*See* Reg AB II Adopting Release, Section V.B.3(a)(2)(c)) Regulation AB II does not preclude the inclusion of additional review triggers nor does it dictate the threshold percentage of delinquencies (or how those delinquencies should be calculated, other than that the determination must be made by percentage of the dollar amount of the assets in the pool rather than the number of pool assets) that first must be reached in order to trigger the independent review of the pool assets. The SEC notes that the parties for any given transaction would be in the best position to determine the appropriate delinquency threshold and that the shelf eligibility requirements permit the asset pool to include up to 20% of delinquent assets at the time of issuance of the ABS. (*See* Reg AB II Adopting Release, Section V.B.3(a)(2)(c)) However, the final rules require prospectus disclosure regarding how the trigger was determined and a comparison of the delinquency trigger against delinquencies disclosed for prior securitized pools of the sponsor of the same asset type.

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	The asset representations reviewer is to provide a report to the trustee of the reviewer's findings and conclusions regarding its review of the assets. (*See* General Instruction I.B.1(b)(e) of Form SF-3) The trustee may use the report to determine whether a repurchase request would be appropriate. (*See* Reg AB II Adopting Release, Section V.B.3(a)(2)(c)) In addition, a summary of the findings and conclusions of the report must be included on Form 10-D together with disclosure about the event triggering the review of assets. (*See* Form 10-D, Item 1B)	
Dispute Resolution Requirements	The dispute resolution requirements apply to repurchase requests that are not "resolved" (rather than "repurchased") within 180 days of the repurchase request, whether or not the repurchase request was based on a review by the asset representations reviewer. The arbitrator will determine, or the parties with the assistance of the mediator will mutually agree, on the allocation of expenses incurred in connection with a dispute resolution. (*See* General Instruction I.B.1(c) of Form SF-3)	
Investor Communications	The party responsible for the Form 10-D filings must include in the Form 10-D report any request from an investor to communicate with other investors regarding the possible exercise of rights under the transaction documents. (*See* Form 10-D, Item IB and Item 1121(e) of Regulation AB) Verification of an investor that holds through DTC is limited to the investor's written certification that it is a beneficial owner and one other form of documentation, such as a trade confirmation, an account statement, a broker/dealer letter or similar document. (*See* Reg AB II Adopting Release, Section V.B.3(a)(2)(c))	The SEC indicates that the asset review, dispute resolution and investor communications shelf eligibility requirements will collectively enhance the enforceability of the representations and warranties about the pool assets and provide incentives for obligated parties to more carefully consider the characteristics and quality of the assets included in an ABS pool. (*See* Reg AB II Adopting Release, Section V.B.3(a)(2)(c))
Continuous Offerings	Regulation AB II includes an amendment to Rule 415 limiting the registration of continuous offerings for ABS to "all or	In the Reg AB II Adopting Release, the SEC clarifies that this would exclude "best-efforts" or "mini-max"

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	nothing" offerings (e.g., an offering in which the transaction is completed only if all the securities are sold).	offerings, but agrees that an underwritten transaction in which the depositor or an affiliate retains or purchases some of the securities would not be considered a "mini-max" offering if the prospectus includes all transaction-specific information, including information about the specific pool assets. (*See* Reg AB II Adopting Release, Section V.B.4)
Exchange Act Rule 15c2-8(b)	Regulation AB eliminates the exception in Rule 15c2-8(b) from the 48-hour preliminary prospectus delivery requirement for offerings of shelf-eligible ABS.	As a result of this amendment, a broker or dealer of registered ABS will be required to deliver a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the sending of such confirmation. The 48-hour preliminary prospectus delivery requirement also applies to ABS issuers of master trust structures otherwise exempt from Section 12(h) reporting requirements. (*See* Reg AB II Adopting Release, Section V.C.3)
Filing Requirements for Transaction Documents	Exhibits required to be filed with respect to a Form SF-3 filing, including transaction documents, must be filed no later than the date the final prospectus is filed pursuant to Rule 424. (Item 1100(f))	Citing the lack of current industry standards and the ability of investors to create their own blacklines, the SEC declined to adopt its earlier proposal that issuers file as an exhibit a copy of the representations, warranties, remedies and exceptions marked to show comparison to industry-developed model provisions. (*See* Reg AB II Adopting Release, Section VI.C.) However, the SEC is continuing to consider whether it should require the transaction documents to be filed, in substantially final form, at the time of filing of the preliminary prospectus. (*Id*.)
4. DEFINITION OF ABS; EXCHANGE ACT REPORTING		
Definition of ABS	The definition of "asset-backed security" in Item 1101 was changed to reduce from 50% to 25% the amount of the principal balance of the total asset pool, in the case of master trusts, or of the proceeds of an offering, in the case of other offerings, that can be used for a	The SEC notes that this limitation is consistent with the prefunding standards under ERISA. (*See* Reg AB II Adopting Release, Section VII.C) As we noted above, Regulation AB II

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	prefunding account. (Item 1101(c)(3)(ii)(A) and (B))	does not adopt the more expansive term "Exchange Act-ABS" that is used, for example, in the new NRSRO rules discussed in this User Guide.
Delinquency Disclosure in Reports on Form 10-D	The pool delinquency disclosures required to be included in Form 10-D reports were changed from a materiality standard to a standard consistent with the pool-level delinquency disclosure to be provided in accordance with Item 1100(b) and are to be provided in 30–31 day increments through no less than 120 days. (*See* Item 1121(a)(9) and Item 1100(b))	
Previously Reported Information	The instructions in General Instructions C.3. to Form 10-D were revised to provide that if substantially the same information has been "previously reported" (as such term is defined in Rule 12b-2), an additional report on the current Form 10-D report need not be made. However, the current Form 10-D must identify the previous report, including the CIK number, file number and date. In addition, the cover page of Form 10-D is now required to include the name and phone number of the contact in connection with such filing.	
Changes in Sponsor's Retained Interest	New Item 1124 requires disclosure in a Form 10-D report about a material change in the sponsor's or its affiliate's interest in the ABS that results from a purchase, sale or other acquisition or disposition of such ABS for the period covered by such Form 10-D report, as well as the resulting interest after the change. In addition, the instruction to Item 1124 requires separate disclosure of the amounts of any interest or asset that are retained in compliance with law, as well as whether such amounts are retained by the sponsor or other parties.	As noted by the SEC, the mortgage loan purchase agreement or other agreement related to the transfer of assets to a securitization trust should obligate the sponsor of a transaction to provide ongoing reporting of information related to its and its affiliates' retained interests in such transaction. Note that activities such as the pledging of the related interest are not required to be disclosed. (*See* Reg AB II Adopting Release, Section VIII.A.3.c.)
Servicer's Assessment of Compliance with Servicing Criteria	Item 1122(c), which relates to the annual assessment of compliance with servicing criteria, has been expanded to require disclosure in a report on Form 10-K about whether any material instance of noncompliance reported in any assessment involves the servicing of any	If a material instance of noncompliance pursuant to Item 1122 has been identified, issuers should make clear in their reports on Form 10-K that the absence of disclosure with respect to a specific transaction should not be construed as an

	SUMMARY OF KEY PROVISIONS	ADDITIONAL CONSIDERATIONS
	of the assets backing the ABS for which the report on Form 10-K is being filed. In addition, the Form 10-K report must include a discussion of the steps taken to remedy a material instance of noncompliance with respect to ABS transactions involving such party that are backed by the same asset type as the ABS to which such Form 10-K relates.	indication that such transaction has not been affected by such noncompliance. In addition, the SEC notes that, while it did not adopt a change to Item 1108(b)(2) of Regulation AB (which requires a detailed discussion in the prospectus of the servicer's background and procedures with respect to the role it will perform in the offered transaction), it believes a prospectus should discuss any noncompliance noted in an Item 1122 assessment, or in a compliance statement required under Item 1123, as well as any steps taken to remedy the noncompliance. (*See* Reg AB II Adopting Release, Section VIII.B.1.c.)
Codification of Prior Staff Interpretations Relating to the Servicer's Assessment of Compliance with Servicing Criteria	Pursuant to new Item 1122(d)(1)(v), a servicer's assessment of compliance must include an assessment of whether the aggregation of information (if applicable to the servicer) is mathematically accurate and the information conveyed accurately reflects the information. In addition, a new Instruction to Item 1122 clarifies that, while the servicer may take into account, when determining its platform for reporting purposes, divisions in its servicing functions that are consistent with actual practices, if the servicer does not include in its platform all transactions of a similar asset type that it services, it must describe the scope of the platform. (*See* Reg AB II Adopting Release, Section VIII.B.2)	This change will require each servicer that is aggregating information to assess whether the aggregation is mathematically accurate. If information is conveyed by a servicer to another servicer un-aggregated, the conveying party need only assess whether the information conveyed accurately reflects the information. (*See* Reg AB II Adopting Release, Section VIII.B.2, note 1353) Servicers and other parties participating in the servicing function should evaluate their servicing practices and procedures and determine whether or not they are in compliance with the codified staff interpretation requirements.

B. CREDIT RATING AGENCY REFORM – THIRD-PARTY DUE DILIGENCE SERVICES (RULE 15Ga-2) AND CERTIFICATIONS (RULE 17g-10)		
New Exchange Act Rule 15Ga-2 and Amendments to Form ABS-15G	New Rule 15Ga-2 requires an issuer or underwriter of any Exchange Act-ABS rated by an NRSRO to file on EDGAR, five business days prior to the first sale in the offering, a Form ABS-15G containing the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter. (*See* NRSRO Adopting Release, section II.H.1)	Rule 15Ga-2 applies to issuers and underwriters of both registered and unregistered offerings of rated Exchange Act-ABS. Most importantly, the definition of Exchange Act-ABS is broader than the definition of "asset-backed security" used in Regulation AB (and Regulation AB II). Accordingly, the rule scopes in transactions that have not previously been considered to involve the issuance of ABS (*see,* for example*,* the discussion below regarding the exemption for "municipal issuers"). Rule 15Ga-2 applies to an Exchange Act-ABS that is to be rated by an NRSRO, regardless of: • whether the Exchange Act-ABS is sold in a registered or unregistered transaction; and • whether the third-party due diligence report is made available to, or used by, the NRSRO(s). This Rule may require the issuer of a registered Exchange Act-ABS offering that is to be rated by an NRSRO to file its 424(h) prospectus at least five business days prior to the first sale of the offering.
What is a "third-party due diligence report"?	"Third-party due diligence report" is defined in new Rule 17g-10 (which we discuss below) as any report containing findings and conclusions of any due diligence services performed by a third party.	The third-party due diligence report need not be a "final" report; any interim report also triggers the obligation to file a Form ABS-15G. The report must contain all findings and the conclusions of the due diligence service provider, and must describe the criteria against which the assets were evaluated, how the assets compared with the criteria and the rationale for including assets in the asset pool that did not meet the criteria. (*See* Instruction to paragraph (a) in Rule 15Ga-2)
What are "due diligence services"?	As defined in new Rule 17g-10, "due diligence services" include any of the following services:	The definition of "due diligence services" is broad in scope, including certain functions that have been

	• Review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to the accuracy of the information or data about the assets provided, directly, or indirectly, by the securitizer or originator of the assets (Rule 17g-10(c)(1)(i)); • Review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to whether the origination of the assets conformed to stated underwriting or credit extension guidelines, standards, criteria or other requirements (Rule 17g-10(c)(1)(ii)); • Review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to the value of collateral securing such assets (Rule 17g-10(c)(1)(iii)); • Review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to whether the originator of the assets complied with federal, state or local laws or regulations (Rule 17g-10(c)(1)(iv)); and • Review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to any other factor or characteristic of such assets that would be material to the likelihood that the issuer of the Exchange Act-ABS will pay interest and principal according to its terms and conditions (Rule 17g-10(c)(1)(v)).	governed by accountants' agreed upon procedures engagement letters (commonly referred to as "AUPs"). Given the breadth of the definition, it is uncertain what types of due diligence-related activities would constitute "due diligence services" and, furthermore, which third parties may be obligated to comply with Rule 17g-10. In the NRSRO Adopting Release, the SEC notes that: • AUPs by third parties that are (1) recalculating projected future cash flows due to investors and (2) performing procedures that address other information included in the offering documents will not fall under the definition of due diligence services. • AUPs by third parties that consist of comparing the loan tape to the loan file will constitute due diligence services. • Paragraph (c)(1)(v) of the definition of "due diligence services" was intended to apply to due diligence services used for pools of other asset classes, such as commercial loans, corporate loans, student loans and credit card receivables, to the extent that the nature of the due diligence services provided currently or prospectively with respect to other asset classes would not squarely fall into the other prongs of the definition of "due diligence services." (*See* NRSRO Adopting Release, section II.H.2)
Form ABS-15G	Either the issuer or the underwriter may furnish the Form ABS-15G covering the same third-party due diligence report, but only one Form ABS-15G is required to be furnished for a transaction. The Form ABS-15G must be signed by the senior officer of the depositor in charge of securitization, if furnished by the depositor, or a duly authorized officer of the underwriter, if furnished by the	Issuers and underwriters of unregistered Exchange Act-ABS offerings will be required to acquire the applicable EDGAR filing codes to file Form ABS-15G on EDGAR (which will add additional time and costs to issuance). Third-party due diligence reports for registered Exchange Act-ABS are not required to be included in a

	underwriter. If a disclosure required by Rule 15Ga-2 is made in the prospectus and the prospectus is publicly available at the time Form ABS-15G is furnished by the issuer or underwriter, then the issuer or underwriter may refer to that section of prospectus in Form ABS-15G rather than providing the findings and conclusions directly in Form ABS-15G. Even if the required disclosure is included in the prospectus, however, either the issuer or underwriter still must file a Form ABS-15G.	prospectus. However, if the issuer includes a third-party due diligence report in a prospectus and incorporates such disclosure into the Form 15Ga-2, the waiting period prior to the sale of such Exchange Act-ABS will be at least five business days (as opposed to three business days for other registered offerings as contemplated under Regulation AB II). Form ABS-15G need not be furnished for any subsequent updates to an initial credit rating issued by an NRSRO. (*See* Instruction to paragraph (a) of Rule 15GA-2)
Exemptions from Rule 15Ga-2	Two of the exemptions from Rule 15Ga-2 are of particular interest to issuers of Exchange Act-ABS. Municipal Exchange Act-ABS issuers and underwriters are exempt from Rule 15Ga-2 if: (1) the issuer of the rated security is a municipal issuer; and (2) the offering is not required to be registered under the Securities Act. (Rule 15Ga-2(f)) In addition, Rule 15Ga-2 does not apply to "offshore" transactions if: (1) the offering is not required to be, and is not, registered under the Securities Act; (2) the issuer of the rated security is not a US person (as defined under Rule 902(k)); and (3) the Exchange Act-ABS issued by the issuer will be offered and sold upon issuance, and any underwriter or arranger linked to the security will effect transactions of the security after issuance, only in transactions that occur outside the United States. (Rule 15Ga-2(e))	While municipal issuers and underwriters are exempt from the requirements of Rule 15Ga-2 (that is, they are not required to furnish Form ABS-15Gs), the SEC notes that municipal issuers nonetheless are subject to the statutory requirement and must make publicly available the findings and conclusions of any third-party due diligence report (via any means reasonably accessible to the public, such as a public website or voluntary filing of Form ABS-15G on EDGAR). (*See* NRSRO Adopting Release, section II.H.1)
New Exchange Act Rule 17g-10	Under new Rule 17g-10, promptly upon completion of its due diligence review, a provider of third-party due diligence services must provide to each NRSRO rating the transaction a written certification, on new Form ABS Due Diligence-15E, signed by an individual who is duly authorized by the third-party due diligence provider to make the certification. (*See* Rule 17g-10(a)-(b), and NRSRO Adopting Release, section II.H.2)	While the SEC expects that most third-party due diligence services will be provided in connection with the issuance of Exchange Act-ABS, the requirements relating to the publication of due diligence reports is ongoing. If a third-party due diligence provider is employed to perform due diligence services after the initial offering, the party incurs new obligations under Rule 17g-10. (*See* NRSRO Adopting Release, section II.H.2)

	A third-party due diligence service provider will be deemed to satisfy the requirements of Rule 17g-10 if it provides Form ABS Due Diligence-15E to an NRSRO that requests the form (and that states that the services relate to its ratings) and to the issuer or underwriter who is responsible for maintaining the Rule 17g-5 website.	A corresponding revision to Rule 17g-5 requires any NRSRO hired to rate Exchange Act-ABS to obtain from the third-party due diligence provider an additional representation that can reasonably be relied upon from the issuer, sponsor or underwriter that such party will post to the Rule 17g-5 website, promptly, any executed Form ABS Due Diligence-15E. (Rule 17g-5(a)(3)(iii)(e))
New Form ABS Due Diligence-15E	The required certification must be provided on new Form ABS Due Diligence-15E. (*See* NRSRO Adopting Release, section II.H.3) Form ABS Due Diligence-15E includes representations, made by the individual executing the Form on behalf of the third-party due diligence provider, that, as of the date of execution: (1) he or she has executed the Form on behalf of, and on the authority of, the third party, and (2) the third party conducted a thorough review in performing the due diligence services described in the Form; and includes such person's certification as to the accuracy in all significant respects, as of the date of the certification, of: (a) the description of the scope and manner of the due diligence services provided in connection with the review of the assets and (b) the findings and conclusions that resulted from the due diligence services.	The written certification must include: • sufficient detail about the third party that conducted the due diligence services; • the identity of the issuer, underwriter or NRSRO that employed the due diligence services provider; • whether the due diligence services conducted were intended to conform with any particular NRSRO standards; • a summary of the scope and manner of the due diligence services performed in sufficient detail to provide an understanding of the steps taken in performing the review; and • a summary of the findings and conclusions resulting from the due diligence services in sufficient detail to provide an understanding of the findings and conclusions.
Compliance Dates for Rules 15Ga-2 and 17g-10	These new Exchange Act rules take effect on June 15, 2015.	The compliance date for Rules 15Ga-2 and 17g-10 is five months earlier than the November 23, 2015 compliance date for the provisions of Regulation AB II (other than its asset-level disclosure requirements, which have a compliance date of November 23, 2016).

Exhibit A

Certification

I [identify the certifying individual] certify as of [the date of the final prospectus under §230.424 of this chapter] that:

1. I have reviewed the prospectus relating to [title of all securities, the offer and sale of which are registered] (the "securities") and am familiar with, in all material respects, the following: the characteristics of the securitized assets underlying the offering (the "securitized assets"), the structure of the securitization, and all material underlying transaction agreements as described in the prospectus;

2. Based on my knowledge, the prospectus does 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;

3. Based on my knowledge, the prospectus and other information included in the registration statement of which it is a part fairly present, in all material respects, the characteristics of the securitized assets, the structure of the securitization and the risks of ownership of the securities, including the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms; and

4. Based on my knowledge, taking into account all material aspects of the characteristics of the securitized assets, the structure of the securitization, and the related risks as described in the prospectus, there is a reasonable basis to conclude that the securitization is structured to produce, but is not guaranteed by this certification to produce, expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.

5. The foregoing certifications are given subject to any and all defenses available to me under the federal securities laws, including any and all defenses available to an executive officer that signed the registration statement of which the prospectus referred to in this certification is part.

Date:_____

[Signature]

_____
[Title]

The certification must be signed by the chief executive officer of the depositor, as required by General Instruction I.B1(a) of Form SF-3.