



October 25, 2010

*VIA E-MAIL: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)*

Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090  
Attn: Elizabeth M. Murphy, Secretary

Re: Implementing Section 942(a) (Section 15(d) Ongoing Reports) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

Ladies and Gentlemen:

The American Securitization Forum (“ASF”)<sup>1</sup> appreciates the opportunity to submit this letter to express our views relating to the implementation of Section 942(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”) in connection with the Securities and Exchange Commission’s (the “Commission”) rulemaking regarding the filing of ongoing reports under the Securities Exchange Act of 1934 (the “Exchange Act”) by issuers of asset-backed securities (“ABS”). ASF supports appropriate reforms within the securitization market and we commend the Commission for seeking industry input prior to proposing rules on this important issue. ASF was founded as a means to provide industry consensus on market and regulatory issues, and we have established an extensive track record of providing meaningful comment to the Commission and other agencies on issues affecting our market. Our views as expressed in this letter are based on feedback received from our broad membership and are consistent with the comments set forth in our response<sup>2</sup> to the Commission’s recently-proposed revisions to offering, disclosure and reporting requirements for ABS.<sup>3</sup>

---

<sup>1</sup> The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to [www.americansecuritization.com](http://www.americansecuritization.com).

<sup>2</sup> Please refer to pages 28-29 in our broad comment letter, dated August 2, 2010, which can be found at <http://www.americansecuritization.com/uploadedFiles/ASFRegABIICommentLetter8.2.10.pdf>.

<sup>3</sup> Release Nos. 33-9117; 34-61858; File No. S7-08-10, dated April 7, 2010.

Prior to the enactment of Dodd-Frank, Section 15(d) of the Exchange Act automatically suspended the duty to file ongoing reports after any fiscal year (other than the fiscal year within which the registration statement became effective) if the securities of each relevant class were held of record by fewer than three hundred persons. As a result, the reporting obligations of most ABS issuers suspended after they filed one annual report on Form 10-K. Section 942(a) of Dodd-Frank amended Section 15(d) to exclude ABS from the automatic suspension provisions and, in its place, authorized the Commission to suspend or terminate Section 15(d) reporting requirements for any class of ABS on such terms and conditions and for such periods as the Commission deems appropriate.

In connection with any rules proposed pursuant to Section 942(a), the Commission must consider outstanding ABS completed prior to enactment of Dodd-Frank (and, therefore, under Section 15(d) in its pre-amended form) and ABS issuances completed under current Commission regulations, including in particular, Exchange Act Rule 15d-22. Currently, with respect to ABS shelf issuances, Rule 15d-22 automatically suspends the duty to file ongoing reports pursuant to Section 15(d) after any fiscal year (other than the fiscal year within which the takedown occurred) if the securities of each relevant class are held of record by fewer than three hundred persons. To the extent the Commission may in the future seek to amend Rule 15d-22 to modify this automatic suspension provision, we believe it is critical that the amendments to Section 15(d) implemented under Dodd-Frank apply only to ABS issuances completed after the Commission amends Rule 15d-22 and, conversely, that ABS issuances completed before any such amendments take effect should be grandfathered and, as a result, should continue to be eligible to rely on Rule 15d-22 in its current form.

Thousands of registered ABS issuances, each by a separate ABS issuer, that were issued over a period of many years are currently outstanding and new issuances are occurring at this time. These ABS issuers completed or are completing those issuances on the basis of a regulatory framework that provides for the automatic suspension of ongoing reporting obligations as to fiscal years other than the first year, and those reporting obligations are, in effect, permanently suspended because each class of securities is held of record, and is expected to continue until maturity to be held of record, by far fewer than three hundred persons. For the vast majority of these issuances, the ABS issuer has not filed periodic reports for as many years (other than the initial year) as the ABS have been outstanding and the related transaction documents do not contain provisions necessary to support an ongoing reporting obligation, or provide for the funds to cover the costs of such reporting, because it was never envisaged that such a springing reporting obligation might arise. Moreover, in practical terms, the sheer scale of the undertaking that would be necessary for many thousands of ABS issuers even to attempt to ready themselves for such a springing reporting obligation makes apparent that ABS issuances completed under Section 15(d) in its pre-amended form and before any amendments to Rule 15d-22 occur, should be grandfathered. Simply stated, the prospect of applying Section 15(d) in its amended form to outstanding ABS raises issues of fundamental fairness inasmuch as it would change a fundamental consequence of conducting a registered issuance of ABS – the issuer’s ability to suspend its reporting obligation – after-the-fact, thereby subjecting the issuer to new and onerous

reporting requirements but without the necessary contractual commitments or funds to support an ongoing reporting obligation.

Accordingly, to the extent the Commission may in the future seek to amend Rule 15d-22 to modify the automatic suspension provision, we respectfully request that the Commission do so in a manner so that shelf and non-shelf ABS issuances completed before the effectiveness of any such amendments are grandfathered and, as a result, continue to be eligible to rely on Section 15(d) or Rule 15d-22, as applicable, in its pre-amended form.<sup>4</sup> In addition, in the event the Commission does amend Rule 15d-22, we respectfully request that the Commission also confirm that (i) ABS issuers can suspend ongoing reporting for so long as all of the issuer's securities that were sold in registered transactions are held by affiliates of the depositor and (ii) on a more technical point, that ABS issuers can cease ongoing reporting at such time as all of the issuer's securities that were sold in registered transactions are no longer outstanding.

ASF very much appreciates the opportunity to provide the foregoing views in connection with the Commission's rulemaking process. Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact me at 212.412.7107 or at [tdeutsch@americansecuritization.com](mailto:tdeutsch@americansecuritization.com), Evan Siegert, ASF Associate Director, at 212.412.7109 or at [esiegert@americansecuritization.com](mailto:esiegert@americansecuritization.com), or ASF's outside counsel on this matter, Michael Mitchell of Orrick, Herrington and Sutcliffe LLP, at 202.339.8479 or at [mhmitchell@orrick.com](mailto:mhmitchell@orrick.com).

Sincerely,



Tom Deutsch  
Executive Director  
American Securitization Forum

---

<sup>4</sup> As noted above, Dodd-Frank authorizes the Commission to suspend or terminate Section 15(d) reporting requirements for any class of asset-backed security on such terms and conditions and for such periods as the Commission deems appropriate. As the Commission is aware, Exchange Act Section 12(h) also authorizes the Commission to exempt in whole or in part any issuer or class of issuers from the provisions of Exchange Act Section 15(d).