

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR PART 232**

**RELEASE NO. 33-9165; File No. S7-18-10**

**RIN 3235-AK70**

**EXTENSION OF FILING ACCOMMODATION FOR STATIC POOL INFORMATION  
IN FILINGS WITH RESPECT TO ASSET-BACKED SECURITIES**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting an amendment to Rule 312 of Regulation S-T to further extend its application for eighteen months. Rule 312 provides a temporary filing accommodation for filings with respect to asset-backed securities that allows static pool information required to be disclosed in a prospectus of an asset-backed issuer to be provided on an Internet website under certain conditions. Under this rule, such information is deemed to be included in the prospectus included in the registration statement for the asset-backed securities. As a result of the extension, the rule will apply to filings with respect to asset-backed securities filed on or before June 30, 2012.

**EFFECTIVE DATE:** December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jay Knight, Attorney-Adviser, Division of Corporation Finance, at (202) 551-3370, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3720.

**SUPPLEMENTARY INFORMATION:** We are adopting an amendment to Rule 312<sup>1</sup> of Regulation S-T.<sup>2</sup>

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<sup>1</sup> 17 CFR 232.312.

## I. BACKGROUND AND DISCUSSION OF THE AMENDMENT

In December 2004, we adopted new and amended rules and forms to address the registration, disclosure and reporting requirements for asset-backed securities (“ABS”) under the Securities Act of 1933<sup>3</sup> (the “Securities Act”) and the Securities Exchange Act of 1934<sup>4</sup> (the “Exchange Act”).<sup>5</sup> As part of this rulemaking, we adopted Regulation AB,<sup>6</sup> a new principles-based set of disclosure items forming the basis for disclosure with respect to ABS in both Securities Act registration statements and Exchange Act reports. Compliance with the revised rules was phased in; full compliance with the revised rules became effective January 1, 2006. One of the significant features of Regulation AB is Item 1105, which requires, to the extent material, static pool information to be provided in the prospectus included in registration statements for ABS offerings.<sup>7</sup> While the disclosure required by Item 1105 depends on factors such as the type of underlying asset and materiality, the information required to be disclosed can be extensive. For example, a registrant may be required to disclose multiple performance metrics in periodic increments for prior securitized pools of the sponsor for the same asset type in the last five years.<sup>8</sup>

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<sup>2</sup> 17 CFR 232.10 et seq.

<sup>3</sup> 15 U.S.C. 77a et seq.

<sup>4</sup> 15 U.S.C. 78a et seq.

<sup>5</sup> See Asset-Backed Securities, Release No. 33-8518 (Dec. 22, 2004) [70 FR 1506] (adopting release related to Regulation AB and other new rules and forms related to asset-backed securities) (hereinafter, the “2004 Adopting Release”).

<sup>6</sup> 17 CFR 229.1100 et seq.

<sup>7</sup> See Form S-1 (17 CFR 239.11) and Form S-3 (17 CFR 239.13) under the Securities Act. Static pool information indicates how groups, or static pools, of assets, such as those originated at different intervals, are performing over time. By presenting comparisons between originations at similar points in the assets’ lives, the data allows the detection of patterns that may not be evident from overall portfolio numbers and thus may reveal a more informative picture of material elements of portfolio performance and risk.

<sup>8</sup> 17 CFR 229.1105.

As described in the 2004 Adopting Release, in response to the Commission's proposal to require material static pool information in prospectuses for ABS offerings, many commentators representing both ABS issuers and investors requested flexibility in the presentation of such information. In particular, commentators noted that the required static pool information could include a significant amount of statistical information that would be difficult to file electronically on EDGAR as it existed at that time and difficult for investors to use in that format. Commentators accordingly requested the flexibility for ABS issuers to provide static pool information on an Internet website rather than as part of an EDGAR filing.<sup>9</sup> In response to these comments, we adopted Rule 312 of Regulation S-T, which permits, but does not require, the posting of the static pool information required by Item 1105 on an Internet website under the conditions set forth in the rule.<sup>10</sup> We recognized at the time that a Web-based approach might allow for the provision of the required information in a more efficient, dynamic and useful format than was currently feasible on the EDGAR system. At the same time, we explained that we continued to believe at some point for future transactions the information should also be submitted with the Commission in some fashion, provided investors continue to receive the information in the form they have requested. Accordingly, we adopted Rule 312 as a temporary filing accommodation applicable to filings filed on or before December 31, 2009.<sup>11</sup> We explained that we were directing our staff to consult with the EDGAR contractor, EDGAR filing agents, issuers, investors and other market participants to consider how static pool information could be filed with the Commission in a cost-effective manner without undue burden or expense

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<sup>9</sup> See 2004 Adopting Release, Section III.B.4.b.

<sup>10</sup> 17 CFR 232.312(a). Instead of relying on Rule 312, an issuer can include information required by Item 1105 of Regulation AB physically in the prospectus or, if permitted, through incorporation by reference from an Exchange Act report.

<sup>11</sup> 17 CFR 232.312(a); see also 2004 Adopting Release, Section III.B.4.b.

that still allows issuers to provide the information in a desirable format. We also noted, however, that it might be necessary, among other things, to extend the accommodation.<sup>12</sup>

On December 15, 2009, we adopted a one-year extension of the filing accommodation.<sup>13</sup> In the adopting release for the extension (“2009 Static Pool Extension Adopting Release”), we noted the staff’s experience with the rule and that a vast majority of residential mortgage-backed security issuers and a significant portion of ABS issuers in other asset classes have relied on the accommodation provided by the rule to disclose static pool information on an Internet website. We also noted that the staff of the Division of Corporation Finance was, at the time, engaged in a broad review of the Commission’s regulation of ABS including disclosure, offering process, and reporting of ABS issuers and that along with this review, the staff of the Division of Corporation Finance was continuing to explore whether it was feasible to provide a filing mechanism for static pool information that fulfills the Commission’s objectives. We also stated our belief that a proposal for a longer-term solution for providing static pool disclosure would be better considered together with other proposals on the regulations relating to the offer and sale of ABS.

On April 7, 2010, we proposed significant revisions to Regulation AB and other rules regarding the offering process, disclosure and reporting for asset-backed securities (the “2010 ABS Proposals”).<sup>14</sup> In that release, we proposed to revise Rule 312 to remove the temporary accommodation set to expire on December 31, 2010. In lieu thereof, under the proposal, ABS issuers would be required to file all static pool information on EDGAR; however, we proposed to

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<sup>12</sup> 2004 Adopting Release, Section III.B.4.b.

<sup>13</sup> Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities, Release No. 33-9087 (Dec. 15, 2009) [74 FR 67812] (the “2009 Static Pool Extension Adopting Release”).

<sup>14</sup> Asset-Backed Securities, Release No. 33-9117 (Apr. 7, 2010) [75 FR 23328] (the “2010 ABS Proposing Release”).

allow that such information be filed in Portable Document Format (PDF).<sup>15</sup> Also, in lieu of providing the static pool information in the prospectus, we proposed to allow issuers to file the disclosure on Form 8-K and incorporate it by reference. The comment period for the 2010 ABS Proposals expired on August 2, 2010.

On August 30, 2010, we proposed to extend the temporary filing accommodation set forth in Rule 312 of Regulation S-T for eighteen months so that it would apply to filings with respect to ABS filed on or before June 30, 2012.<sup>16</sup> We received three comment letters that addressed the proposed extension.<sup>17</sup> All three commentators expressed support for the Rule 312 filing accommodation and the proposed extension.<sup>18</sup> The ASF cited the strong preference among both its issuer and investor members for Web-based presentation of static pool information due to its utility and effectiveness and the current lack of an adequate filing alternative.<sup>19</sup> SIFMA and CNH Capital agreed that a long-term solution for providing static pool disclosure would be better considered together with other proposals to revise the regulations governing the offer and sale of ABS.<sup>20</sup> With regard to the duration of an extension, ASF requested that the filing accommodation be made permanent or, in the alternative, extended for five years;<sup>21</sup> CNH Capital requested that the duration of the extension be synchronized with the timing of implementation

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<sup>15</sup> Portable Document Format (PDF) is a file format created by Adobe Systems in 1993 for document exchange. PDF captures formatting information from a variety of desktop publishing applications, making it possible to send formatted documents and have them appear on the recipient's monitor or printer for free as they were intended. To view a file in PDF format, you need Adobe Reader, an application distributed by Adobe Systems.

<sup>16</sup> Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities, Release No. 33-9137 (Aug. 30, 2010) [75 CFR 54059] (hereinafter, the "Proposing Release").

<sup>17</sup> The public comment letters we received are available online at <http://www.sec.gov/comments/s7-18-10/s71810.shtml>.

<sup>18</sup> See letters from the American Securitization Forum ("ASF"), CNH Capital America LLC ("CNH Capital"), and the Securities Industry and Financial Markets Association ("SIFMA").

<sup>19</sup> See letter from ASF.

<sup>20</sup> See letters from SIFMA and CNH Capital.

<sup>21</sup> See letter from ASF.

of the other disclosure requirements that were proposed in the 2010 ABS Proposing Release but have not yet been adopted;<sup>22</sup> and SIFMA supported the Commission's proposal to extend the temporary accommodation for the filing of static pool information for eighteen months.<sup>23</sup>

We are adopting as proposed an eighteen-month extension to the temporary filing accommodation provided by Rule 312. As we stated in the Proposing Release, we believe a proposal for a long-term solution for providing static pool disclosure would be better considered together with other proposals to revise the regulations governing the offer and sale of ABS. Additionally, on July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act").<sup>24</sup> Among other things, the Act mandates a number of significant changes to the regulation of ABS offerings. In order to provide ample time for the Commission and its staff to give proper consideration to comments received on the 2010 ABS Proposals and in light of the changes to the regulations of ABS offerings that are mandated by the Act, we are adopting the extension to the temporary filing accommodation set forth in Rule 312 of Regulation S-T for an additional eighteen months so that it would apply to filings with respect to ABS filed on or before June 30, 2012. Although we are adopting an eighteen-month extension of Rule 312, we may take action on the 2010 ABS Proposals, including the static pool proposal, at any time before the expiration of the extension.

Under the extension, the temporary filing accommodation set forth in Rule 312 of Regulation S-T will apply to filings with respect to ABS filed on or before June 30, 2012. During the extension, the existing requirements of Rule 312 will continue to apply. Pursuant to these requirements, the registrant must disclose its intention to provide static pool information

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<sup>22</sup> See letter from CNH Capital.

<sup>23</sup> See letter from SIFMA.

<sup>24</sup> Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

through a website in the prospectus included in the registration statement at the time of effectiveness and provide the specific Internet address where the static pool information is posted in the prospectus filed pursuant to Rule 424.<sup>25</sup> The registrant must maintain such information on the website unrestricted and free of charge for a period of not less than five years, indicate the date of any updates or changes to the information, undertake to provide any person without charge, upon request, a copy of the information as of the date of the prospectus if a subsequent update or change is made to the information and retain all versions of the information provided on the website for a period of not less than five years in a form that permits delivery to an investor or the Commission. In addition, the registration statement for the ABS must contain an undertaking pursuant to Item 512(l) of Regulation S-K<sup>26</sup> that the information provided on the website pursuant to Rule 312 is deemed to be part of the prospectus included in the registration statement.<sup>27</sup>

The Administrative Procedure Act generally requires that an agency publish an adopted rule in the Federal Register 30 days before it becomes effective. This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.<sup>28</sup> Because the temporary filing accommodation expires on December 31, 2010, we believe it is necessary to make the amendment effective December 31<sup>st</sup> so that there is no gap between which an issuer would be required to convert its static pool data into an EDGAR filing. In addition, this extension creates no new requirements but maintains a voluntary accommodation that relieves a

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<sup>25</sup> 17 CFR 230.424.

<sup>26</sup> 17 CFR 229.512(l).

<sup>27</sup> 17 CFR 232.312. As we indicated in the 2004 Adopting Release, if the conditions of Rule 312 are satisfied, then the information will be deemed to be part of the prospectus included in the registration statement and thus subject to all liability provisions applicable to prospectuses and registration statements, including Section 11 of the Securities Act [15 U.S.C. 77k]. 2004 Adopting Release, Section III.B.4.b.

<sup>28</sup> See 5 U.S.C. 553(d).

registrant from the obligation to file static pool data on EDGAR, provided it makes the information available on a website. The Commission therefore believes the extension grants or recognizes an exemption or relieves a restriction. On the basis of the foregoing, the Commission finds good cause to make the amendment effective December 31, 2010.

## II. PAPERWORK REDUCTION ACT

Rule 312 of Regulation S-T was adopted in 2004 along with other new and amended rules and forms to address the registration, disclosure and reporting requirements for ABS under the Securities Act and the Exchange Act. In connection with this prior rulemaking, we submitted a request for approval of the “collection of information” requirements contained in the amendments and rules to the Office of Management and Budget (“OMB”) in accordance with the Paperwork Reduction Act of 1995 (“PRA”).<sup>29</sup> OMB approved these requirements.<sup>30</sup>

Item 1105 of Regulation AB<sup>31</sup> requires certain static pool information, to the extent material, to be provided in prospectuses included in registration statements for ABS offerings.<sup>32</sup> Rule 312 is a temporary filing accommodation that permits the posting of the static pool information required by Item 1105 on an Internet website under the conditions set forth in the rule.<sup>33</sup> The amendment to Rule 312 further extends the existing temporary filing accommodation provided by the rule for an additional eighteen months. As is the case today, issuers may choose whether or not to take advantage of the accommodation. The conditions of Rule 312 remain otherwise unchanged. The disclosure requirements themselves, which are

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<sup>29</sup> 44 U.S.C. 3501 et seq.

<sup>30</sup> The collections of information to which Rule 312 of Regulation S-T relates are “Form S-1” (OMB Control No. 3235-0065) and “Form S-3” (OMB Control No. 3235-0073).

<sup>31</sup> 17 CFR 229.1105.

<sup>32</sup> See Form S-1 and Form S-3 under the Securities Act.

<sup>33</sup> 17 CFR 232.312(a).



contained in Forms S-1 and S-3 under the Securities Act and require the provision of the information set forth in Item 1105 of Regulation AB, also remain unchanged. Therefore, the amendment will not result in an increase or decrease in the costs and burdens imposed by the “collection of information” requirements previously approved by the OMB. No commentator suggested the extension would impose any new paperwork burden.

### **III. BENEFIT-COST ANALYSIS**

In this section, we examine the benefits and costs of the amendment. In the Proposing Release, we requested that commentators provide views, supporting information and estimates on the benefits and costs that may result from the adoption of the proposed amendment. No commentator addressed the cost-benefit analysis of the Proposing Release.

#### **A. Benefits**

We initially adopted the filing accommodation provided by Rule 312 of Regulation S-T because commentators requested flexibility in the presentation of required static pool information. Given the large amount of statistical information involved, those commentators argued for a Web-based approach that would allow issuers to present the information in an efficient manner and with greater functionality and utility than might have been available if an EDGAR filing was required. We believe this greater functionality and utility has enhanced an investor’s ability to access and analyze the static pool information because investors have been able to access static pool information in more user-friendly formats than was initially capable with filings on EDGAR and also removed the burden on issuers of duplicating the information in each prospectus as well as easing the burdens of updating such information.<sup>34</sup> As we discussed in the 2004 Adopting Release, since the information is deemed to be part of the prospectus

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<sup>34</sup> See Section I above and 2004 Adopting Release, Section V.D.

included in the registration statement, the rule is designed to give investors access to accurate and reliable information.

By further extending the accommodation provided by Rule 312, these benefits to both issuers and investors will continue to apply. As noted in the 2009 Static Pool Extension Adopting Release, based on the staff's experience since Rule 312 became effective in 2006, the vast majority of residential mortgage-backed security issuers and a significant portion of ABS issuers in other asset classes have relied on the accommodation provided by the rule to disclose static pool information on an Internet website.<sup>35</sup> If we did not further extend the accommodation provided by Rule 312 as we are doing today, static pool information would have been required in EDGAR filings beginning on January 1, 2011. We believe this would have resulted in costs for issuers as they attempt to adjust their procedures in a short period of time in order to present the information in a format acceptable to the EDGAR system and could have resulted in costs to investors if the information filed on EDGAR was presented in a less useful format.

As indicated above, on April 7, 2010, we issued a release proposing to require the filing of static pool information on EDGAR at the same time we proposed other amendments addressing the disclosure, offering process and reporting of ABS issuers.<sup>36</sup> We believe that the eighteen-month extension to the temporary filing accommodation contained in Rule 312 will benefit both investors and issuers by maintaining a consistent approach to the filing of static pool information while we and our staff consider comments received on the proposed amendment to static pool filing together with our other proposals regarding the offering and sale of asset-backed securities and in light of the changes to the regulations of ABS offerings that are mandated by the Dodd-Frank Act.

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<sup>35</sup> See Section I of the 2009 Static Pool Extension Adopting Release.

<sup>36</sup> See 2010 ABS Proposing Release.

## B. Costs

We do not believe the eighteen-month extension of the Rule 312 accommodation will impose any new or increased costs on issuers. In the Cost-Benefit Analysis section of the 2004 Adopting Release, we noted that ABS issuers electing the Web-based accommodation provided by Rule 312 would incur costs related to the maintenance and retention of static pool information posted on a website and might also incur start-up costs.<sup>37</sup> While it is likely that certain of those costs will continue to impact ABS issuers that elect the Web-based approach during the extension period, we do not believe the amendment will impose any new or increased costs for ABS issuers because it does not change any other conditions to the accommodation or the underlying filing and disclosure obligations. As a result of the extension of the accommodation, ABS issuers will be able to continue their current practices for an additional eighteen months.

For investors, there may be costs associated with the static pool information not being electronically filed with the Commission. For example, when information is electronically filed with the Commission, investors and staff can access the information from a single, permanent, and centralized location, the EDGAR website.<sup>38</sup> We think these costs are mitigated by the fact that ABS issuers relying on the Rule 312 accommodation must ensure that the prospectus for the offering contains the Internet website address where the static pool information is posted, the website must be unrestricted and free of charge, such information must remain on the Internet website for five years with any changes clearly indicated and the issuer must undertake to

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<sup>37</sup> See 2004 Adopting Release, Section V.D.

<sup>38</sup> See, e.g., comment letter from EDGAROnline dated December 9, 2009, on the Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities, Release No. 33-9074 (Oct. 19, 2009) [74 FR 54767] (the “2009 Static Pool Extension Proposing Release”). EDGAROnline commented that extending the filing accommodation will hinder the quality and comparability of information because investors will not be able to depend on a common repository for cross issuer comparisons. The public comments on the 2009 Static Pool Extension Proposing Release are available at <http://www.sec.gov/comments/s7-23-09/s72309.shtml>.

provide the information to any person free of charge, upon request, if a subsequent update or change is made. Furthermore, because the information is deemed included in the prospectus under Rule 312, it is subject to all liability provisions applicable to prospectuses and registration statements.

Investors and issuers may have incurred costs to adjust their processes in anticipation of the lapse of the Rule 312 accommodation and potential reversion to a requirement to file static pool information on EDGAR. In this case, benefits to investors or issuers of not having to change their procedures regarding static pool reporting in a short time frame would be diminished by any costs already incurred in anticipation of the change. We believe such anticipatory action and any associated costs are minimal.

#### **IV. CONSIDERATION OF IMPACT ON THE ECONOMY, BURDEN ON COMPETITION AND PROMOTION OF EFFICIENCY, COMPETITION AND CAPITAL FORMATION**

Section 2(b) of the Securities Act requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

As discussed in greater detail above, Rule 312 of Regulation S-T was adopted as a temporary filing accommodation so that issuers of ABS could present static pool information on an Internet website. The amendment to Rule 312 of Regulation S-T that we are adopting today further extends its application for eighteen months. We are not changing the conditions of Rule 312 or to the disclosure obligations to which it applies. We do not believe that the eighteen-month extension will impose a burden on competition. We also believe the extension of the filing accommodation will continue to promote efficiency and capital formation by permitting

ABS issuers to disclose static pool information in a format that is more useful to investors and cost-effective and not unduly burdensome for ABS issuers.

We requested comment on whether the proposed amendment, if adopted, would promote efficiency, competition, and capital formation. We did not receive any comments directly responding to this request.

## **V. REGULATORY FLEXIBILITY ACT CERTIFICATION**

In Part VII of the Proposing Release, the Commission certified pursuant to 5 U.S.C. 605(b) that the proposed amendment to Rule 312 of Regulation S-T would not have a significant economic impact on a substantial number of small entities. While the Commission encouraged written comments regarding this certification, no commentators responded to this request or indicated that the amendment as adopted would have a significant economic impact on a substantial number of small entities.

## **VI. STATUTORY AUTHORITY AND TEXT OF THE AMENDMENT**

The amendment described is being adopted under the authority set forth in Sections 6, 7, 10, 19 and 28 of the Securities Act of 1933 (15 U.S.C. 77f, 77g, 77j, 77s and 77z-3).

### **List of Subjects**

17 CFR Part 232

Reporting and recordkeeping requirements, Securities.

### **TEXT OF THE AMENDMENT**

For the reasons set out in the preamble, the Commission hereby amends title 17, chapter II, of the Code of Federal Regulations as follows:

#### **PART 232 – REGULATION S-T – GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS**

1. The authority citation for part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 et seq.; and 18 U.S.C. 1350.

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2. Amend §232.312 paragraph (a) introductory text by removing “December 31, 2010” and in its place adding “June 30, 2012” in the first sentence.

By the Commission.

Elizabeth M. Murphy  
Secretary

December 16, 2010