

and file the same disclosures related to the same asset-backed security.

(c) The disclosures in paragraph (a) of this section shall be provided by a securitizer:

(1) For the three year period ended December 31, 2011, by any securitizer that issued an asset-backed security during the period, or organized and initiated an asset-backed securities transaction during the period, by securitizing an asset, either directly or indirectly, including through an affiliate, in each case, if the underlying transaction agreements provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty and the securitizer has asset-backed securities, containing such a covenant, outstanding and held by non-affiliates as of the end of the three year period. If a securitizer has no activity to report, it shall indicate by checking the appropriate box on Form ABS-15G (17 CFR 249.1400). The requirement of this paragraph (c)(1) applies to all issuances of asset-backed securities whether or not publicly registered under the provisions of the Securities Act of 1933. The disclosures required by this paragraph (c)(1) shall be filed no later than February 14, 2012.

**INSTRUCTION TO PARAGRAPH (c)(1):** For demands made prior to January 1, 2009, the disclosure should include any related activity subsequent to January 1, 2009 associated with such demand.

(2) For each calendar quarter, by any securitizer that issued an asset-backed security during the period, or organized and initiated an asset-backed securities transaction by securitizing an asset, either directly or indirectly, including through an affiliate, or had outstanding asset-backed securities held by non-affiliates during the period, in each case, if the underlying transaction agreements provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty. The disclosures required by this paragraph (c)(2) shall be filed no later than 45 calendar days after the end of such calendar quarter:

(i) Except that, a securitizer may suspend its duty to provide periodic quarterly disclosures if no activity occurred during the initial filing period in paragraph (c)(1) of this section or

during a calendar quarter that is required to be reported under paragraph (a) of this section. A securitizer shall indicate that it has no activity to report by checking the appropriate box on Form ABS-15G (17 CFR 249.1400). Thereafter, a periodic quarterly report required by this paragraph (c)(2) will only be required if a change in the demand, repurchase or replacement activity occurs that is required to be reported under paragraph (a) of this section during a calendar quarter; and

(ii) Except that, annually, any securitizer that has suspended its duty to provide quarterly disclosures pursuant to paragraph (c)(2)(i) of this section must confirm that no activity occurred during the previous calendar year by checking the appropriate box on Form ABS-15G (17 CFR 249.1400). The confirmation required by this paragraph (c)(2)(ii) shall be filed no later than 45 days after each calendar year.

(3) Except that, if a securitizer has no asset-backed securities outstanding held by non-affiliates, the duty under paragraph (c)(2) of this section to file periodically the disclosures required by paragraph (a) of this section shall be terminated immediately upon filing a notice on Form ABS-15G (17 CFR 249.1400).

[76 FR 4511, Jan. 26, 2011, as amended at 76 FR 54375, Sept. 1, 2011; 79 FR 57344, Sept. 24, 2014]

#### **§ 240.15Ga-2 Findings and conclusions of third-party due diligence reports.**

(a) The issuer or underwriter of an offering of any asset-backed security (as that term is defined in Section 3(a)(79) of the Act (15 U.S.C. 78c(a)(79))) that is to be rated by a nationally recognized statistical rating organization must furnish Form ABS-15G (§ 249.1400 of this chapter) to the Commission containing the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter at least five business days prior to the first sale in the offering.

**Instruction to paragraph (a):** Disclosure of the findings and conclusions includes, but is not limited to, disclosure of the criteria against which the loans were evaluated, and how the evaluated loans compared to those criteria along with the basis for including any loans

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not meeting those criteria. This disclosure is only required for an initial rating and does not need to be furnished in connection with any subsequent rating actions. For purposes of this rule, the date of first sale is the date on which the first investor is irrevocably contractually committed to invest, which, depending on the terms and conditions of the contract, could be the date on which the issuer receives the investor's subscription agreement or check.

(b) In the case where the issuer and one or more underwriters have obtained the same third-party due diligence report related to a particular asset-backed securities transaction, if any one such party has furnished all the disclosures required in order to meet the obligations under paragraph (a) of this section, the other party or parties are not required to separately furnish the same disclosures related to such third-party due diligence report.

(c) If the disclosure required by this rule has been made in the prospectus (including an attribution to the third-party that provided the third-party due diligence report), the issuer or underwriter may refer to that section of the prospectus in Form ABS-15G rather than providing the findings and conclusions itself directly in Form ABS-15G.

(d) For purposes of paragraphs (a) and (b) of this section, *issuer* is defined in Rule 17g-10(d)(2) (§ 240.17g-10(d)(2) of this chapter) and *third-party due diligence report* means any report containing findings and conclusions of any *due diligence services* as defined in Rule 17g-10(d)(1) (§ 240.17g-10(d)(1) of this chapter) performed by a third party.

(e) The requirements of this rule would not apply to an offering of an asset-backed security if certain conditions are met, including:

(1) The offering is not required to be, and is not, registered under the Securities Act of 1933;

(2) The issuer of the rated security is not a U.S. person (as defined in § 230.902(k)); and

(3) All offers and sales of the security by any issuer, sponsor, or underwriter linked to the security will occur outside the United States (as that phrase is used in §§ 230.901 through 230.905 (Regulation S)).

(f) The requirements of this rule would not apply to an offering of an asset-backed security if certain conditions are met, including:

(1) The issuer of the rated security is a municipal issuer; and

(2) The offering is not required to be, and is not, registered under the Securities Act of 1933.

(g) For purposes of paragraph (f) of this section, a municipal issuer is an *issuer* (as that term is defined in Rule 17g-10(d)(2) (§ 240.17g-10(d)(2) of this chapter)) that is any State or Territory of the United States, the District of Columbia, any political subdivision of any State, Territory or the District of Columbia, or any public instrumentality of one or more States, Territories or the District of Columbia.

(h) An offering of an asset-backed security that is exempted from the requirements of this rule pursuant to paragraph (f) of this section remains subject to the requirements of Section 15E(s)(4)(A) of the Act (15 U.S.C. 78o-7(s)(4)(A)), which requires that the issuer or underwriter of any asset-backed security shall make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.

[79 FR 55261, Sept. 15, 2014; 79 FR 61576, Oct. 14, 2014, as amended at 84 FR 40258, Sept. 13, 2019]

**REPORTS OF DIRECTORS, OFFICERS, AND PRINCIPAL SHAREHOLDERS**

**§ 240.16a-1 Definition of terms.**

Terms defined in this rule shall apply solely to section 16 of the Act and the rules thereunder. These terms shall not be limited to section 16(a) of the Act but also shall apply to all other subsections under section 16 of the Act.

(a) The term *beneficial owner* shall have the following applications:

(1) Solely for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered pursuant to section 12 of the Act, the term "beneficial owner" shall mean any person who is deemed a beneficial owner pursuant to section 13(d) of the Act and the rules thereunder; *provided, however*, that the following institutions or persons shall not be deemed the beneficial