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February 8, 2011

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Spencer Bachus
Chairman
The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Issuer Review of Assets in Offerings of Asset-Backed Securities*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled “Issuer Review of Assets in Offerings of Asset-Backed Securities” (RIN: 3235-AK76). We received the rule on January 20, 2011. It was published in the *Federal Register* as a final rule on January 25, 2011. 76 Fed. Reg. 4231. The rule has a stated effective date of March 28, 2011, and a compliance date of December 31, 2011.

The final rule implements section 945 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.¹ The rule requires any issuer registering the offer and sale of an asset-backed security (ABS) to perform a review of assets underlying the ABS. The rule also requires the issuer of an ABS to disclose the nature of its review and the findings and conclusions of the issuer’s review of the assets.

Enclosed is our assessment of the Commission’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the

¹ Pub. L. No. 111-203, § 945, 124 Stat. 1376, 1898 (July 21, 2010).

rule. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Elizabeth M. Murphy
Secretary, Securities and
Exchange Commission

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"ISSUER REVIEW OF ASSETS IN OFFERINGS
OF ASSET-BACKED SECURITIES"
(RIN: 3235-AK76)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) analyzed the costs and benefits of this final rule. This rule requires a minimum level of review of the assets, which the Commission expects will have the benefit of loan pools with fewer loans that do not conform to the disclosures in the prospectus regarding the pool assets. The Commission also expects that establishing a minimum level of review will prevent some potential reviews that are not sufficiently thorough and disclosures about the pool assets that are not sufficiently accurate. Finally, the Commission also expects that a minimum standard of review will benefit investors by facilitating comparability among reviews performed by different issuers.

The Commission also discussed the costs of this rule. The Commission recognized that asset-backed securities issuers in registered offerings may incur additional costs to perform more extensive reviews that are sufficient to comply with the minimum level of review required by the rule, whether the issuer performs the review itself, or hires a third-party to perform the review. Moreover, this could be costly to issuers, if investors do not seek to invest in securities about which there is disclosure indicating a more robust review over investing in securities about which the disclosure indicates a less robust review. The Commission also acknowledged that the potential for expert liability could impose costs on issuers and third-party due diligence providers, and they may be required to adjust their practices (and prices in the case of third parties) to account for this new requirement.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission determined that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The Commission published a proposed rule on October 13, 2010. 75 Fed. Reg. 64,182. The Commission received over 50 comment letters on the proposed rule, to which it responded in the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Commission determined that this final rule contains information collection requirements within the meaning of the Act, which it submitted to the Office of Management and Budget (OMB). The requirements are entitled “Form S-1” (OMB Control Number 3235-0065), “Form S-3” (OMB Control Number 3235-0073), and “Regulation S-K” (OMB Control Number 3235-0071). The Commission estimates that the total increase burden attributable to S-1 and S-3 rules will be approximately 6,998 hours with a cost of \$8,397,000.

Statutory authorization for the rule

The Commission promulgated this final rule under the authority of sections 6, 7, 10, 19(a), and 28 of the Securities Act of 1933 and sections 3(b), 23(a), and 36 of the Securities Exchange Act of 1934. 15 U.S.C. §§ 77f, 77g, 77j, 77s, 77z-3, 78c(b), 78w(a), 78mm.

Securities Act of 1933 and Securities Exchange Act of 1934, 15 U.S.C. §§ 77b(b), 78c(f), 78w(a)

The Commission analyzed the final rule to determine if it will promote efficiency, competition, and capital formation, and that any burden imposed by this rule on competition is necessary or appropriate. The Commission determined that greater transparency of the review performed on the underlying assets will decrease the uncertainty about pool information and, thus, should help investors price these products more accurately. Therefore the requirements are likely to positively affect pricing, efficiency, and capital allocation in asset-backed securities capital markets.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the Order.