MAYER·BROWN

Legal Update
September 9, 2014

Review and Analysis of the US SEC's Adopted Final Amendments to Regulation AB

After more than three years from the original proposal and several additional requests for comment,[1] on August 27, 2014, the US Securities and Exchange Commission (the "SEC") adopted final rules that amend Regulation AB ("Final Reg AB II").[2] Final Reg AB II adopts new rules, forms and disclosures for registered asset-backed security transactions effective as of the compliance dates discussed below. The five most significant requirements relate to the following: (1) changes to the definition of an "asset-backed security"; (2) new eligibility conditions for shelf registration; (3) changes to the shelf offering process, including changes related to the timing of required filings; (4) asset-level data disclosure for selected asset classes and related privacy issues; and (5) other new prospectus disclosure requirements. Final Reg AB II includes many changes that will affect the marketing process, deal terms, disclosure requirements, registration process and periodic reporting requirements for registered transactions, but it does not govern asset-backed securities offered for sale pursuant to an exemption from registration (i.e., Rule 144A or Regulation S offerings).

Compliance Dates

Final Reg AB II becomes effective 60 days after publication in the Federal Register. We expect this publication to occur in September 2014. The compliance dates are bifurcated between (i) changes to the rules, forms and disclosures and (ii) implementation of asset-level disclosures. Registrants must comply with the new rules, forms and disclosures (except for asset-level disclosures) one year after effectiveness. Asset-backed securities offerings backed by residental mortgages, commercial mortgages, automotive loans, automotive leases, debt securities and resecuritizations must comply with the new asset-level disclosure requirements no later than two years after effectiveness.[3]

Definition of an "Asset-Backed Security"

Final Reg AB II sets forth amendments to the definition of an "asset-backed security" (as defined by Final Reg AB II, "ABS"). The SEC amended the definition to address its concern that pools of assets are not sufficiently developed at the time of an offering but may still qualify for ABS treatment, and as a result investors do not receive appropriate information about the asset pool. The SEC was particularly concerned with whether the asset pool was truly a discrete pool of assets that by their terms convert to cash. To address these concerns, the SEC decreased the pre-funding limit to qualify as an ABS from 50% to 25% of the offering proceeds (or in the case of master trusts, the principal balance of the total asset pool). The SEC, however, did not adopt proposals described in the Reg AB II Proposal (i) to exclude ABS backed by assets in non-revolving accounts from the master trust exception or (ii) to reduce the permissible duration of the permitted revolving period for ABS backed by non-revolving assets.

Eligibility Conditions for Shelf Registration Statements on Form SF-3

The SEC recognized that ABS issuers need the timing and flexibility afforded by shelf registration in order to access the capital markets quickly. However, the SEC treated the shelf registration process as an opportunity to further its mandate under the Dodd-Frank Act to add protections for investors and reduce the industry's reliance on credit ratings. Final Reg AB II institutes a number of new registrant and transaction eligibility requirements for using Form SF-3, including:

- a certification by the chief executive officer of the depositor as to, among other things, the disclosure in the prospectus and the structure of the securitization at the time of the filing of a final prospectus for each takedown off the shelf (see Exhibit A for the full text of the certification);
- inclusion in the transaction documents of provisions with respect to (1) requiring an asset representations reviewer to review delinquent assets for compliance with representations and warranties if a delinquency test has been triggered and investors vote to direct a review, (2) establishing dispute resolution procedures for repurchase requests unresolved after 180 days and (3) facilitating communication among investors; and
- a registrant requirement regarding the timely filing of Exchange Act reports and required Form SF-3 transaction documents, including annual compliance checks.

Shelf Eligibility Requirement #1: Depositor CEO Certification. In an attempt to ensure that executives are actively involved in the oversight of each shelf-registered securitization transaction, Final Reg AB II requires that the depositor's chief executive officer sign an officer's certification at the time of the final prospectus for each takedown from a shelf (the "certification").[4] The SEC noted that each of the depositor's executive officers incurs liability under Section 11 of the Securities Act by his or her execution of the registration statement and are expecting that by requiring the certification for each takedown, the depositor's executives would conduct the same level of diligence and scrutiny on the prospectus as they do for the initial registration statement filing. However, the certification extends to matters, and creates additional liability, beyond those created under Section 11 of the Securities Act when an officer signs a registration statement.[5] In response to issuers' concerns about the certification as proposed in the Reg AB II Re-Proposal, the SEC made some concessions on the certification, including adding language to reflect that (i) the certification is a statement of what is known by the certifier at the time and (ii) the securitization is structured to produce, *but is not a guarantee that it will produce*, expected cash flows to pay interest and principal in accordance with the transaction's terms. In addition, the SEC added a final paragraph to the certification clarifying that the certifer has rights to "any and all defenses" available under the federal securities laws, including defenses available to an executive officer who signed the registration statement. As a result, executives will likely only become comfortable signing the required certification by establishing and implementing an extensive internal review process, which may include obtaining sub-certifications from other officers and employees, holding disclosure review meetings with key members of the securitization team and analyzing cash-flow models prepared by investment banks or other third parties.[6] We believe an extensive internal review process will reduce the risk of potential securities liability with respect to the certification. However, since Final Reg AB II does not govern securities issued pursuant to an exemption from registration, some issuers may opt to issue securities in the private market (under Rule 144A or Regulation S) to avoid making the certification.

Shelf Eligibility Requirement #2: Asset-Level Review Provision. *Asset Representations Reviewer.* Final Reg AB II requires that the transaction documents governing a takedown appoint an asset representations reviewer. Instead of the trustee appointing the asset representations reviewer, as was proposed in the Reg AB II Re-Proposal, Final Reg AB II allows the sponsor to select the asset representations reviewer. The asset representations reviewer must not be:

- the sponsor, depositor, servicer, trustee or any of their respective affiliates;
- the party that determines whether non-compliance constitutes a breach; or
- the party(s) hired by the sponsor or underwriter to perform pre-closing due diligence on the pool assets or its affiliates.

Triggers for Review. The transaction documents must provide that, at a minimum, the asset representations reviewer conduct a review of the delinquent assets in the pool for compliance with representations and warranties if both: (1) delinquencies[7] exceed a certain threshold and (2) the requisite number of investors vote to conduct the review. While Final Reg AB II allows the transaction parties to designate a delinquency threshold,[8] the prospectus must disclose how the delinquency threshold was determined to be appropriate and provide a comparison of the delinquency threshold against the delinquencies disclosed for prior securitized pools of the sponsor for the applicable asset class. Once this delinquency threshold is met, the transaction documents will need to provide investors with a right to vote as to whether the review should occur.[9] To prevent the transaction parties from nullifying investor control by agreeing to onerously high voting thresholds, Final Reg AB II requires that (i) if the documents provide for a minimum investor demand percentage in order to trigger a vote, this minimum must be no more than 5% of the total investor interests outstanding and (ii) no more than a simple majority of those voting investors will be required to start the review. The SEC felt that such investor control was important because investors will ultimately bear the financial costs related to this asset-level review.

Scope of Review. Once both triggers have been satisfied, the asset representations reviewer must conduct a review of all assets that are 60 or more days delinquent as reported in the most recent periodic report. Final Reg AB II does not mandate the specific procedures that the asset representations reviewer must use to conduct its review. However, the asset representations reviewer must be provided with access to copies of the underlying loan-level documents to determine whether the assets complied with the representations and warranties in the transaction documents.

Disclosure of Results. The asset representations reviewer's full report must be delivered to the trustee, but, citing privacy concerns over the disclosure of the underlying data, Final Reg AB II only requires a summary of the results to be filed with the SEC on Form 10-D.

Shelf Eligibility Requirement #3: Dispute Resolution Provision. The Reg AB II Re-Proposal incorporated dispute resolution procedures into the asset-level review requirement described above. In order to clarify that these dispute resolution procedures apply to all requests for the repurchase of assets (not just those that arise as a result of the asset-level review and regardless of whether the investors directed the review), in Final Reg AB II the requirement that the transaction documents contain dispute resolution procedures is a separate and distinct requirement for shelf eligibility. The dispute resolution procedures must state that if a repurchase request with respect to a securitized asset has not been resolved within 180 days from when the repurchase request was received, the party submitting the repurchase request has the right to refer the matter to mediation or third-party arbitration. The party with the potential

obligation to repurchase the securitized assets must agree to the selected resolution method and the arbitrator or mediator will determine which party is obligated to pay for its services.

We believe that these dispute resolution procedures will facilitate enforcement of the repurchase provisions but may also lead investors to claim that breaches of representations and warranties have occurred more frequently than in the past, and in certain cases, without cause, in order to force a repurchase by the ABS sponsor to cover credit losses on the securitized assets.

Shelf Eligibility Requirement #4: Investor Communication Provision. Final Reg AB II adopts the requirement proposed in the Reg AB II Re-Proposal that the transaction documents require the party that is obligated to make the Form 10-D filings to include in its periodic filing any request received from an investor to communicate with other investors. The SEC stated that this disclosure will facilitate investor communications in offerings where most securities are held through The Depository Trust Company (or another clearing agency), which does not provide the name of the underlying beneficial owner. Form 10-D disclosure will be required to include:

- the name of the investor making the request;
- the date the request was received;
- a statement to the effect that the party responsible for filing received a request from such investors to communicate with other investors about the exercise of rights under the transaction documents;[10] and
- a description of the method by which other investors may contact the requesting investor.

Shelf Eligibility Requirement #5: Satisfaction of Shelf Filing and Exchange Act Filing Requirements. As detailed in the chart attached as Exhibit B, Final Reg AB II contains eligibility requirements for filing a new shelf registration stastement related to (i) the timely filing of Exchange Act reports and (ii) compliance with the transaction requirements of shelf registration.[11] Additionally, Final Reg AB II requires an annual evaluation with respect to the same Exchange Act filing requirements and transaction requirements for shelf registration in order to complete takedowns from an existing shelf registration. These requirements are detailed in Exhibit C. We anticipate that these timely filing requirements will be strictly enforced by the SEC staff and therefore will require issuers to be vigilant that all filings have been timely made.

Timing And Other Changes Related to Filing Requirements

Timing Changes. Final Reg AB II significantly changes the timeline for filing and delivery of the preliminary prospectus in connection with shelf registered offerings by imposing the following requirements:

TIMING	REQUIRED ACTION
At least three business days prior to first sale[12]	File preliminary prospectus with SEC
At least 48 hours prior to first sale[13]	File any material changes to preliminary prospectus with SEC
At least 48 hours prior to investor receiving confirmation of sale[14]	Broker or dealer must deliver preliminary prospectus to the investor (note that access does not equal delivery for a preliminary prospectus)
By the time that the final prospectus is required to be filed[15]	File transaction documents with SEC

As noted above, for shelf-registered offerings, Final Reg AB II requires the filing of a preliminary prospectus at least three business

days in advance of the first sale of the ABS.[16] The current market practice for many registered securitization issuers is to issue a preliminary prospectus and price the securities on a much more compressed timeline, sometimes on the same business day. Often the sale of ABS occurs before the preliminary prospectus is filed with the SEC. Because this new requirement is intended to give investors additional time to analyze the specific structure, assets and contractual rights regarding each transaction and to encourage investors not to rely on the credit ratings of the ABS, issuers and underwriters will have to build the three additional business days into their issuance timeline.

Further, prior to enactment of Final Reg AB II, Exchange Act Rule 15c2-8(b) contained an exemption for shelf-registered ABS transactions from the general rule that a broker or dealer is 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 the confirmation. Final Reg AB II removes this exemption. The SEC noted that delivery of the preliminary prospectus to an investor 48 hours prior to sale should be a relatively simple task since that same prospectus needs to be filed with the SEC three business days prior to sale as described above. So as a practical matter, the removal of this exemption will not impact deal execution. Any material change in a preliminary prospectus needs to be filed (and delivered pursuant to the above Rule 15c2-8(b)) at least 48 hours prior to the first sale.

In an effort to provide investors with even more information about the transaction, the Reg AB II Re-Proposal included a provision that would require the underlying transaction documents to be filed in substantially final form by the date the preliminary prospectus is required to be filed. Persuaded by issuers' reactions to this proposal,[17] the SEC declined to adopt such a provision in the Final Reg AB II Rules. Instead, the SEC stated that its adoption of a general requirement that exhibits filed with respect to an offering registered on Form SF-3 must be on file and made part of the registration statement by the date the final prospectus is required to be filed, coupled with the other protections implemented in Final Reg AB II (i.e., advance filing of preliminary prospectus and the certification), provides investors with adequate information about the transaction.

Other Changes to ABS shelf registration. The SEC has adopted the following additional changes to the shelf registration process:

- requiring the combination of the base prospectus and the prospectus supplement into a single unified prospectus for each takedown;[18]
- limiting each registration statement to a single asset class, which would eliminate so called "rent-a-shelf" filings by investment banks to be offered to clients to securitize almost any asset;[19]
- establishing a "pay as you go" system for filing fees for ABS shelf registrations, meaning that registration fees may be paid at the time of the filing of the preliminary prospectus for each takedown from the shelf at the rate then in effect rather than before the shelf is declared effective;[20]
- clarifying that no separate filing fee for collateral certificates or SUBI certificates is necessary;[21] and
- providing ABS specific shelf registration forms (new Forms SF-1 and SF-3).

As a result of the implementation of the new Form SF-3 and the requirement for a unified prospectus rather than a separate base and supplement, takedowns from existing shelf registration statements on Form S-3 will not be permitted after the initial one-year compliance date.

Asset-Level Data and Related Privacy Concerns

Final Reg AB II requires asset-level disclosures for ABS backed by residential mortgages, commercial mortgages, automotive loans, automotive leases, debt securities and resecuritizations. The SEC has not yet adopted asset-level disclosure requirements for any other asset classes and stated that it is continuing to consider whether such disclosure would be useful to investors in other asset classes.[22] For the relevant asset classes, issuers must provide disclosure in standardized XML machine-readable format, filed and publicly available through EDGAR on Form ABS-EE. Issuers are required to provide this information in the preliminary prospectus and final prospectus and to update such information over the life of the ABS issued in the transaction in ongoing Exchange Act periodic reports.[23]

The SEC stated that it is requiring standardized asset-level disclosures in order to allow investors to compare and analyze more easily the underlying asset-level data of a particular pool as well as to compare that pool to other recent pools in similar ABS offerings. The SEC's stated goals are to mitigate prior problems caused by investors not having the necessary information to consider and understand the risks related to the assets underlying the ABS and to make information available to track the performance of ABS offerings. For all applicable asset classes, Final Reg AB II has set forth rules addressing definitions for each data point, the format for providing asset-level data (i.e., XML) and the scope of the information required, such as what data is required about each obligor, the collateral and the cash flows related to each individual asset.

Privacy and Other Concerns. While the privacy concerns raised by the Reg AB II Proposal have not been eliminated, Final Reg AB II substantially mitigates these concerns as they relate to the disclosure of originators' proprietary data as well as to data that could allow third parties to re-identify individual obligors because securitizers must post all asset-level disclosure data on EDGAR. To mitigate privacy concerns raised by various industry participants — which we understand were taken very seriously by the SEC and delayed the release of Final Reg AB II — the SEC scaled back certain data items to further limit obligor re-identification risk and privacy concerns. For RMBS, the SEC adopted a 2-digit zip code identifier and omitted data points related to unique broker identifiers, sales price, origination date and first payment date and information about an obligor's bankruptcy or foreclosure, which further reduced re-identification risks and concerns that the asset-level disclosure data could be nonpublic personally identifiable information. The SEC also omitted certain income and debt data points. Additionally, the SEC, in response to industry comments, sought and obtained guidance from the Consumer Financial Protection Bureau (the "CFPB") on the potential application of the Fair Credit Reporting Act (the "FCRA") to the new asset-level required disclosures. In its letter to the SEC, the CFPB reached two important conclusions regarding the application of the FCRA to the asset-level disclosure data.[24] First, the CFPB concluded that neither issuers nor the SEC would become consumer reporting agencies under the FCRA by disclosing to investors the asset-level disclosure data contemplated by Final Reg AB II. Second, the CFPB concluded that the SEC would not require a permissible purpose under Section 604 of the FCRA to obtain or disseminate the asset-level disclosure data and issuers would not require a permissible purpose to disclose such data to investors or file it with the SEC. The CFPB's conclusions reflected a significant level of deference to the SEC's determination that the disclosure of this information is "necessary for investors to independently perform due diligence" under Section 942(b) of the Dodd-Frank Act and that the information should be filed with the SEC and

disclosed via EDGAR to best fulfill the congressional mandate in Section 942(b). While the CFPB letter provides very limited analysis of the FCRA issues, the conclusions reached should still provide additional comfort to issuers and the SEC as they represent the views of the federal agency with general rulemaking and interpretative authority with respect to the FCRA.

While the SEC made some modifications to the Original Reg AB II Proposal to address privacy concerns for assets originated in the United States, the SEC did not address privacy concerns for assets originated outside the United States. Thus, foreign originators will be subject to both their own domestic requirements as well as privacy rules and regulations applicable in the United States. While the SEC acknowledged the challenges of compliance with the laws of multiple jurisdictions and increased costs to foreign market participants, it did not believe that these challenges and costs outweighed the benefit to investors of having the same data for ABS backed by assets originated outside the US as ABS backed by assets originated within the US.

In addition to privacy concerns, securities law liability issues also exist where certain "soft data" is presented in the asset-level disclosures. "Soft data" would include data that originates from representations provided by an obligor at origination or is based on the subjective judgment of a third party. The SEC references a property valuation by an appraiser as an example of subjective third-party judgment. The liability issues related to "soft data" exist because "soft data" is susceptible to more inaccuracies, given the subjectivity involved in generating such data. The SEC, in noting these concerns, however, stated that the value of disclosure of such data outweighs any risks with disclosure of the data and also stated that narrative disclosure can prevent it from being misleading, thereby assuaging any securities law liability concerns.

Additional Costs. The cost to and burden on sponsors of securitizations in establishing the systems to gather the required asset-level information, particularly if such information is not typically obtained at origination of the asset, will likely be significant. The additional costs of compliance may be pushed down to the obligors on the underlying assets, result in lower yield for investors or create a barrier to entry for companies that are not already active securitizers or cause current securitizers to exit the public markets if the incremental costs outweigh the benefits of securitization. Additionally, securitization servicers will now have the added cost and burden related to periodic reporting of asset-level data.

Asset-Level Disclosures by Asset Class. For the asset classes subject to asset-level disclosure, new Schedule AL in new Item 1125 of Regulation AB sets forth all of the required data points. Final Reg AB II requires that each asset in a securitized pool has a unique asset number applicable only to that asset so that investors can more easily track that asset. Final Reg AB II also ties to other rules already in effect that originated from the Dodd-Frank Act, such as Rule 193, which requires a review of the disclosure regarding pool assets and Rule 15Ga-1, which requires disclosure about repurchase requests. The general disclosure requirements for each applicable asset class as well as relief from those disclosure requirements are set forth below.

Residential Mortgages. The Reg AB II Re-Proposal for residential mortgage-backed securities ("RMBS") included a total of 362 data points allocated between 74 proposed general item requirements and 288 RMBS specific data points. Final Reg AB II requires disclosure of 270 data points for residential mortgage-backed securities. The required information is set forth in Item 1 of Schedule AL. The requirements include information to help investors better understand the underlying property, mortgage, obligor's creditworthiness, original and current

mortgage terms and loan performance information. The main data point groupings fall under five categories: information about the payment status and history, property, obligor(s),[25] servicer advances and loan modifications. The SEC stated that it modeled the scope of its disclosure requirements around the information that Fannie Mae and Freddie Mac require for each loan.[26]

Commercial Mortgages. The Reg AB II Re-Proposal for commercial mortgage-backed securities ("CMBS") included a total of 182 data points allocated between 74 proposed general items and 108 CMBS specific data points. Final Reg AB II requires disclosure of 152 data points for CMBS. The required information is set forth in Item 2 of Schedule AL. Although most CMBS transactions already require asset-level disclosures in line with the CREFC Investor Reporting Package ("CREFC IRP"), the SEC is adopting standard asset-level disclosures to provide a minimum level of standardized asset-level reporting in the prospectus and over the life of the security that is not subject to change based on current market practices. The SEC did note, however, that the CMBS market is accustomed to the CREFC IRP and has made efforts to align the asset-level disclosure requirements in Final Reg AB II to the CREFC IRP data requirements as much as possible. Therefore, many of the disclosures provided under the CREFC IRP data requirements can be used to satisfy the disclosure requirements in Final Reg AB II. The primary data point groupings fall under two categories for CMBS: tenant disclosures and valuations.

Automotive Loans and Leases. The Reg AB II Re-Proposal included 110 data points for ABS backed by automotive loans and 116 data points for ABS backed by automotive leases. Final Reg AB II requires disclosure of 72 data points for automotive loan-backed and 66 data points for automotive lease-backed securities. The required information is set forth in Items 3 (automotive loans) and 4 (automotive leases) of Schedule AL.[27] The SEC reduced the scope of asset-level data reporting for loan and lease ABS in response to industry concerns regarding the cost to sponsors to gather the asset-level data as well as due to privacy concerns. The SEC also attempted to align the data points with current industry standards. Data point groupings fall within five categories: information about obligors, loan and lease terms and payment activity, servicer advances, modifications and extensions and certain lease-specific data points.

Debt Security ABS. The Reg AB II Re-Proposal for ABS backed by debt securities included a total of 83 data points allocated between 74 proposed general item requirements and nine debt security ABS specific data points. Final Reg AB II requires disclosure of 60 data points for ABS backed by debt securities. The required information is set forth in Item 5 of Schedule AL. The disclosures the SEC adopted include the title of the underlying security, origination date, minimum denomination and currency of the underlying security, name of trustee, whether the security is callable, payment frequency on the underlying security and whether the security is interest-bearing. The goal of the SEC is to provide investors with this information in a standardized format though it recognizes that standardization will impose greater costs on issuers to collect this information.

Resecuritizations. Final Reg AB II requires the same asset-level disclosures for resecuritizations that it requires for debt security ABS. Additionally, if the resecuritization includes securities where the SEC has adopted asset-level disclosure for the underlying assets backing those securities (e.g., RMBS, CMBS, automotive loan ABS or automotive lease ABS), then additional asset-level disclosure is required. The additional level of disclosure would correspond to the disclosure required for the underlying asset type. The SEC provided the example that if the asset pool in the resecuritization included RMBS, then the issuer would need to satisfy the disclosure points from both Items 1 and 5 of

Schedule AL. The SEC also provided an exemption from the new requirement if the underlying RMBS, CMBS or ABS was issued prior to the compliance date for asset-level disclosure. This is a significant change from the Reg AB II Proposal, which required asset-level disclosure for the underlying assets regardless of when the underlying RMBS, CMBS or ABS were initially issued.

Some Relief. The SEC is permitting issuers to omit certain asset-level disclosures if that information is not known or reasonably available to the issuer. If that information is omitted for those reasons, under Securities Act Rule 409 the issuer would then include a statement in the prospectus either showing that unreasonable effort or expense would be involved in obtaining and disclosing that information or that it has no affiliation with the person or entity that has that information. An issuer may select "not applicable," "unknown" or "other" when it is unable to provide the necessary disclosures, but the SEC encourages the issuer to then provide additional explanatory disclosure in an Asset Related Document describing why this response is appropriate. The SEC sought to provide for flexibility in Final Reg AB II by including an Asset Level Document where issuers could provide explanations, when necessary, and also provide any additional asset-level disclosures not provided for in Schedule AL.

Other Prospectus Disclosure

Final Reg AB II includes several other requirements affecting prospectus disclosure in registered offerings. Specifically, Final Reg AB II addresses five other prospectus disclosure items: (1) the transaction parties; (2) prospectus summaries; (3) modifications of underlying assets; (4) static pool information; and (5) other disclosure requirements that rely on credit ratings.

Rules Regarding Transaction Parties. *Identification of Originators.* Final Reg AB II adopts a requirement to identify each originator originating less than 10% of the pool assets if the cumulative amount of assets originated by parties other than the sponsor and its affiliates exceed 10% of the total pool assets. This requirement will likely result in the identification of more originators in prospectuses than was previously required.

Financial Information Regarding a Party Obligated to Repurchase Assets. The recent financial crisis revealed that the mere existence of repurchase requirements resulting from breaches of representations and warranties provided investors little comfort when the parties required to repurchase were financially unable to do so. Final Reg AB II requires disclosure of the financial condition of the parties required to repurchase assets when there is a breach of a representation and warranty related to pool assets. Specifically, information regarding the financial condition of the sponsor or an originator of 20% or more of the pool assets is required when such party's financial condition would have an effect on its ability to comply with any repurchase obligations in a manner that could have a material impact on pool performance or performance of the ABS. Final Reg AB II states that the specific information regarding financial condition to be provided will depend upon the particular facts of the transaction.

Economic Interest in the Transaction. Final Reg AB II requires the sponsor, servicer and any 20% or more originator to disclose (a) their retained interest in the securitized pool of assets, including the amount and nature of any interest so retained in order to comply with law (including the final risk retention rules when adopted) and (b) any hedge materially related to the credit risk of the securities entered into by such parties or, if known, by any affiliate of such parties to offset any risk position held. In recognition of the fact that the exact amount of retained interest may be unknown until closing and may fluctuate between pricing and closing,

Final Reg AB II provides that the preliminary prospectus need only disclose the amount and nature of the interest intended to be retained. However, the final prospectus must disclose the actual amount and nature of the retained interest.

Prospectus Summary. Final Reg AB II adopts new instructions for prospectus summaries provided in ABS prospectuses to address concerns that these summaries often generally summarize information common to all securitizations of an asset class, rather than highlighting material characteristics of the particular ABS being offered. The instruction notes that these summaries may include, among other things, statistical information regarding: (1) the types of underwriting or origination programs; (2) exceptions to underwriting or origination criteria; and (3) if applicable, modifications made to the pool assets after origination. In addition to disclosing statistical information that is unique to the particular offering related to the topics in the instruction, issuers will also be required to include a cross-reference in the prospectus summary to the location of corresponding disclosure in the body of the prospectus.

Modification of Underlying Assets. The SEC believes that additional detail about the servicer's ability to modify any terms, fees and penalties of securitized assets and the effect of such modification on cash flows will aid investors' understanding of ABS offerings. As such, Final Reg AB II requires Item 1108(c)(6) of Regulation AB[28] to be replaced by a more detailed and specific disclosure requirement in Item 1111. The more detailed disclosure now required includes a description of the provisions in the transaction documents governing modification and disclosure regarding how modifications may affect cash flows from the assets or to the securities.

Static Pool Information. Disclosure Required. Prior to the Original Reg AB II Proposal, the SEC observed a wide variation in the type, category and manner of static pool information disclosed by issuers, even within the same asset class. The SEC expressed concern in the Original Reg AB II Proposal that this variation rendered static pool information disclosed by different issuers incomparable and therefore less valuable to investors. To reduce variation among issuers and increase the clarity, transparency and comparability of static pool information, Final Reg AB II requires: (1) appropriate introductory and explanatory information to introduce the static pool information presented; (2) a description of the methodology used in determining or calculating the characteristics and of any terms or abbreviations used; (3) a description of how the assets in the static pool differ from the pool assets underlying the securities being offered; (4) additional disclosure if an issuer did not include static pool information or included disclosure that is intended to serve as alternative static pool information; and (5) graphical presentation of the static pool information, if doing so would aid in understanding.[29]

Amortizing Asset Pools. The SEC was concerned that inconsistent presentation of delinquencies, losses and prepayments across issuers within the same asset class was unclear and incomparable. To address that concern, Final Reg AB II added an instruction to Item 1105(a)(3)(ii) to require that the static pool information for amortizing asset pools related to delinquencies, losses and prepayments be presented in accordance with Item 1100(b) with respect to presenting such information in 30- or 31-day increments through no less than 120 days. In addition, Item 1105(a)(3)(iv) will now require the graphical presentation of that information for amortizing asset pools. It should be noted that the requirements in Item 1105(a)(3) of Final Reg AB II do not apply to revolving-asset master trusts.

Filing Static Pool Data. Final Reg AB II requires that all static pool disclosure, if filed on a Form 8-K, be filed by the date that the preliminary prospectus is required to be filed under a new

item number so that investors can easily locate the information that is incorporated by reference into the prospectus. Additionally, Final Reg AB II creates a new exhibit number to Item 601 of Regulation S-K for static pool information filed as an exhibit to a Form 8-K or prospectus.

Other Disclosure Requirements that Rely on Credit Ratings. Final Reg AB II modifies two other disclosure provisions that relied on credit ratings. Specifically, Final Reg AB II revises Items 1112 and 1114 to eliminate the exceptions contained therein to the requirement to disclose information regarding significant obligors of an asset pool and significant credit enhancement providers relating to a class of ABS subject to certain conditions including an investment-grade rating. The SEC viewed these as consistent with the requirements of Section 939A of the Dodd-Frank Act to reduce regulatory reliance on credit ratings.

Other Proposed Rules Not Adopted At This Time. The SEC has elected to defer action on certain aspects of the Reg AB II Proposal that it believes merit further consideration, including with respect to certain asset classes that tend to exhibit a lack of uniformity among the types of collateral or underlying contracts (such as equipment loans and leases), contain large volumes of assets in a typical pool or exhibit unique features in the related ABS structure. For these asset classes and certain other portions of the Reg AB II Proposal, the SEC will continue to consider the best methods for providing more information to investors, which may include requiring asset-level disclosure in the future.

The following is a listing of significant rules that were proposed in the Reg AB II Proposal that were not adopted in Final Reg AB II:

- public-style disclosure for private offerings;
- cash flow waterfall program requirements;
- asset-level disclosure requirements for equipment loans and leases, student loans and floorplan financings;
- grouped-account disclosure for credit and charge card ABS;
- filing transaction documents in substantially final form, by the date that the preliminary prospectus is required to be filed; and
- revising the timing of pool disclosure updates on Form 8-K.

Adoption of all these previous proposals remains outstanding.

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Exhibit A

OFFICER'S CERTIFICATE

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.

By: _____

Name: [Chief Executive Officer of the Depositor]

Title: Chief Executive Officer of the Depositor

Date: [Date of the final prospectus]

Exhibit B

FILING REQUIREMENTS FOR FILING A NEW SHELF REGISTRATION STATEMENT USING FORM SF-3

REQUIREMENT	APPLICABLE ENTITIES	COMPLIANCE CHECK DATE	COVERAGE	EFFECT OF NON-COMPLIANCE AND CURE PERIOD (IF APPLICABLE)
Timely Exchange Act Reporting in Previous Shelf Offerings [30]	Depositor or any issuing entity that was previously established by the depositor or an affiliate of the depositor with respect to the same asset class that was subject to the requirements of Section 12 or 15(d) of the Exchange Act during the twelve calendar months and any portion of a month prior to the applicable Compliance Check Date (the "Look Back Period")	Time of filing the shelf registration statement	During the Look Back Period, the applicable entities must have timely filed all Exchange Act filings.[31]	A new shelf registration statement cannot be filed if the condition is not satisfied. No cure period specified for filing of Exchange Act reports.
Timely Filing of Transaction Requirements in Previous Shelf Offerings[32]	Depositor or any issuing entity that was previously established by the depositor or an affiliate of the depositor with respect to the same asset class that was required to comply with the filing requirements of Form SF-3 during the Look Back Period	Time of filing the shelf registration statement	During the Look Back Period, the applicable entities must have timely filed: • all depositor certifications;[33] and • all transaction documents containing the required provisions.[34]	A new shelf registration statement cannot be filed if the condition is not satisfied. A filing failure will be deemed to be cured 90 days after all required filings are filed.

Exhibit C

FILING REQUIREMENTS FOR TAKEDOWNS FROM FORM SF-3

REQUIREMENT	APPLICABLE ENTITIES	COMPLIANCE CHECK DATE	COVERAGE	CURE PERIOD
Annual Compliance Check Related to Timely Exchange Act Reporting for Takedowns[35]	Depositor or any issuing entity that was previously established by the depositor or an affiliate of the depositor with respect to the same asset class that was subject to the requirements of Section 12 or 15(d) of the Exchange Act during the Look Back Period	90 days after the fiscal year end of the depositor	During the Look Back Period, the applicable entities must have timely filed all Exchange Act filings.	No cure period specified for filing of Exchange Act reports. However, the depositor would be able to complete takedowns from the date of the failure up to the Compliance Check Date.
Annual Compliance Check Related to Timely Filing of Transaction Requirements for Takedowns[36]	Depositor or any issuing entity that was previously established by the depositor or an affiliate of the depositor with respect to the same asset class that was required to comply with the filing requirements of Form SF-3 during the Look Back Period	90 days after the fiscal year end of the depositor	During the Look Back Period, the applicable entities must have timely filed: • all depositor certifications; [37] and • all transaction documents containing the required provisions. [38]	A filing failure will deemed to be cured 90 days after all required filings are filed so that the Depositor would be able to make the required certification in Year 2 following the lapse in filing. The depositor may not use the existing shelf filing during the period from the time of the yearly certification in Year 1 to the time of the yearly certification in Year 2. However a new shelf filing on Form SF-3 would be permitted after the cure period (See Exhibit B).

Endnotes

1 The SEC originally proposed amendments to Regulation AB in April 2010 (the "Original Reg AB II Proposal"). *See* SEC Release No. 33-9117, available at: http://sec.gov/rules/proposed/2010/33-9117.pdf. Key proposed changes in the Original Reg AB II Proposal included: (i) requiring risk retention for shelf offerings; (ii) requiring disclosure of asset-level data, both in offering disclosure and ongoing reports; (iii) changing the prospectus format for asset-backed securities shelf takedowns; (iv) requiring public-style disclosure and ongoing reporting for private offerings of "structured finance products"; and (v) eliminating the "de-listing" option for asset-backed securities offered under shelf registrations. For a summary of the Original Reg AB II Proposal, see "Summary of the US SEC's ABS Rule Change Proposal," Mayer Brown Securitization Update, April 21, 2010, available at: http://www.mayerbrown.com/publications/summary-of-the-us-secs-abs-rule-change-proposal-04-21-2010/).

On July 26, 2011, the SEC issued a re-proposal of the Original Reg AB II Proposal (the "Reg AB II Re-Proposal," and together with the Original Reg AB II Proposal, the "Reg AB II Proposal"). See SEC Release No. 33-9244, available at: http://www.sec.gov/rules/proposed/2011/33-9244.pdf. The Reg AB II Re-Proposal was issued to align the Original Reg AB II Proposal with the various subsequent rulemaking initiatives under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), address certain comments on the Original Reg AB II Proposal received by the SEC and seek additional comments on numerous aspects of the shelf registration rules and various other provisions. For a summary of the Reg AB II Re-Proposal, see "SEC Re-Proposes Shelf Eligibility Conditions for Asset-Backed Securities," Mayer Brown Legal Update, August 4, 2011, available at: http://www.mayerbrown.com/publications/SEC-Re-Proposes-Shelf-Eligibility-Conditions-for-Asset-Backed-Securities-08-04-2011/.

The SEC then re-opened the comment period on February 25, 2014 for certain proposed amendments to Regulation AB related to disclosure of asset-level information to investors and potential investors in ABS. *See* SEC Release No. 33-9552, available at: https://www.sec.gov/rules/proposed/2014/33-9552.pdf. The SEC stated that it re-opened the comment period to "permit interested persons to comment on an approach for the dissemination of potentially sensitive asset-level data."

2 See SEC Release No. 33-9638, available at: http://www.sec.gov/rules/final/2014/33-9638.pdf

3 Any offering commenced after these dates must comply with the applicable provisions of Final Reg AB II.

4 The full text of the certification is set forth in Exhibit A.

5 Section 11 imposes liability on the executives who sign the registration statement for any untrue statement of a material fact in the registration statement or the omission to state a material fact in the registration statement necessary to make the statements therein not misleading. In addition to certifying as to the facts and omissions in the prospectus, the certification must include a statement as to the characteristics of the securitized assets, the structure of the securitization and the risks of ownership of the securities as well as the expected cash flows of the transaction. The certification uses language that has been specifically tailored to asset-backed transactions and, therefore, has not yet been interpreted by courts or the SEC staff in prior decisions.

6 We note that many ABS issuers already conduct an internal review process for ABS offerings, including in connection with Rule 193 requirements. Existing procedures may need to be formalized or further documented to support the certification.

7 Final Reg AB II did not define "delinquencies" in this context. Issuers may have differing determinations of what constitutes a delinquency based on the number of days payment is past due or the percentage of payment received.

8 Final Reg AB II requires that the delinquency threshold be calculated as a percentage of the aggregate dollar amount of delinquent assets in a pool of assets compared to the aggregate dollar amount of all the assets in that pool.

9 The transaction documents must clearly define mechanics for the investor vote in the second prong of the test.

10 Disclosure is not required for any investor request to communicate for potential marketing or resale purposes.

11 These requirements are contained in General Instruction I.A. of the new Form SF-3.

12 See Securities Act Rule 424(h)(1). Pursuant to new Rule 430D, the preliminary prospectus must include all information previously omitted from the prospectus filed with the registration statement except for information with respect to the offering price, underwriting syndicate, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters depended upon the opening price to the extent such information is unknown or not reasonably available to the issuer.

13 See Securities Act Rule 424(h)(2).

14 See Securities Act Rule 15c2-8(b).

15 See Item 1100(f) of Regulation AB.

16 The Reg AB II Re-Proposal suggested a five-day waiting period. Citing issuer's concerns that the waiting period would result in losses due to the exposure in the volatility of the market and the results of an examination

of the time series changes in the price of the Bank of America Merrill Lynch U.S. Fixed Rate Asset Backed Security Index (R0A0) over the period from 2004 to 2013, the SEC concluded that a reduced period, three business days, was appropriate.

[17] Issuers expressed concern that the earlier filing of transaction documents would be costly and difficult and would delay their access to markets.

[18] See General Instruction IV of Form SF-3.

[19] See General Instruction IV of Form SF-3. Final Reg AB II clarifies that master trusts with multiple affiliated depositors would be reviewed as a single transaction with multiple registrants.

[20] See Securities Act Rule 456(c). The cover of the prospectus must state that the filing fee will be paid on a "pay-as-you-go" basis. Unused fees can be applied to future takedowns from the same registration statement or to another registration statement of the same depositor or affiliates of the depositor pursuant to Securities Act Rule 457(p).

[21] See Securities Act Rule 190(d) and Rule 457(t).

[22] The SEC did not adopt asset-level disclosure for other asset classes as had been proposed in the Reg AB II Proposal, including equipment loans and leases, credit cards, student loans and floorplan financings.

[23] Periodic reports are required to be filed on Form 10-D within 15 days after each required distribution date.

[24] http://www.sec.gov/comments/s7-08-10/s70810-306.pdf.

[25] In light of privacy concerns raised by various industry participants and the CFPB's ability-to-repay requirements under the Truth in Lending Act, which includes minimum standards for creditors to consider in making an ability-to-pay determination when underwriting a mortgage, the SEC eliminated certain data about obligor income such as wage income, total income and monthly debt. The SEC also did not adopt the proposed monthly bankruptcy and monthly foreclosure data points due to privacy concerns.

[26] Note the government-sponsored enterprise mortgages are exempt from Reg AB II asset-level disclosure requirements.

[27] It is unclear whether vehicles used for commercial rather than personal use are included in this disclosure requirement. It is also unclear whether fleet lease vehicles are included.

[28] Item 1108(c)(6) required disclosure, to the extent material, of any ability of the servicer to waive or modify any terms, fees, penalties or payments on the assets and the effect of exercising such ability, if material, on the potential cash flows from the assets.

[29] *See* Final Reg AB II at 292.

[30] See Form SF-3, General Instruction I.A.

[31] The SEC made exceptions for (1) any report that is filed solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01 or 6.03 of Form 8-K and (2) any report filed by an affiliated depositor that became an affiliate because of a business combination prior to the business combination transaction.

[32] See Form SF-3, General Instruction I.A.

[33] See Shelf Eligibility Requirement #1.

[34] See Shelf Eligibility Requirements #2-#4.

[35] See Securities Act Rule 401(g)(4) as set forth in Final Reg AB II.

[36] ld.

[37] See Shelf Eligibility Requirement #1.

[38] See Shelf Eligibility Requirements #2-#4.