

Securities and Exchange Commission

§ 229.1113

(12) A statement of whether, and if so, how, investors will be notified of changes to the asset pool.

[70 FR 1597, Jan. 7, 2005, as amended at 76 FR 4243, Jan. 25, 2011]

§ 229.1112 (Item 1112) Significant obligors of pool assets.

(a) *Descriptive information.* Provide the following information for each significant obligor:

(1) The name of the obligor.

(2) The organizational form and general character of the business of the obligor.

(3) The nature of the concentration of the pool assets with the obligor.

(4) The material terms of the pool assets and the agreements with the obligor involving the pool assets.

(b) *Financial information.* (1) If the pool assets relating to a significant obligor represent 10% or more, but less than 20%, of the asset pool, provide selected financial data required by Item 301 of Regulation S-K (§ 229.301) for the significant obligor, provided, however, that for a significant obligor under Item 1101(k)(2) of this Regulation AB, only net operating income for the most recent fiscal year and interim period is required.

(2) If pool assets relating to a significant obligor represent 20% or more of the asset pool, provide financial statements meeting the requirements of Regulation S-X (§§ 210.1-01 through 210.12-29 of this chapter), except § 210.3-05 of this chapter and Article 11 of Regulation S-X (§§ 210.11-01 through 210.11-03 of this chapter), of the significant obligor. Financial statements of such obligor and its subsidiaries consolidated (as required by § 240.14a-3(b) of this chapter) shall be filed under this item.

Instructions to Item 1112(b): 1. No information need be provided pursuant to paragraph (b) of this section if the obligations of the significant obligor as they relate to the pool assets are backed by the full faith and credit of the United States.

2. No information need be provided pursuant to paragraph (b) of this section if the obligations of the significant obligor as they relate to the pool assets are backed by the full faith and credit of a foreign government (as defined in § 240.3b-4(a) of this chapter) if the pool assets are investment grade securities as defined in Item I.B.2 of Form S-3

(§ 239.13 of this chapter). If the pool assets are not investment grade securities, information required by paragraph (5) of Schedule B of the Securities Act (15 U.S.C. 77aa) regarding the foreign government may be incorporated by reference from a Commission filing in lieu of providing the financial information required pursuant to paragraph (b) of this section.

3. If the significant obligor is an asset-backed issuer and the pool assets relating to the significant obligor are asset-backed securities, provide the following information in lieu of the information required by paragraph (b) of this section:

a. For a registration statement under the Securities Act or the Exchange Act or a prospectus to be filed pursuant to § 230.424 of this chapter, the information required by Items 1104 through 1115, 1117 and 1119 of this Regulation AB regarding such asset-backed securities; and

b. For an Exchange Act report on Form 10-K or Form 10-D (§ 249.310 or 249.312 of this chapter), the information required by General Instruction J. of Form 10-K regarding such asset-backed securities for the period for which the last Form 10-K of the asset-backed securities was due (or would have been due if such asset-backed securities are not required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)).

4. If the significant obligor is a foreign business (as defined § 210.1-02 of this chapter):

a. Paragraph (b)(1) of this section may be complied with by providing the information required by Item 3.A. of Form 20-F (§ 249.220f of this chapter). If a reconciliation to U.S. generally accepted accounting principles called for by Instruction 2. to Item 3.A. of Form 20-F is unavailable or not obtainable without unreasonable cost or expense, at a minimum provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements used as a basis for the selected financial data from those accepted in the U.S.

b. Paragraph (b)(2) of this section may be complied with by providing financial statements meeting the requirements of Item 17 of Form 20-F for the periods specified by Item 8.A. of Form 20-F.

§ 229.1113 (Item 1113) Structure of the transaction.

(a) *Description of the securities and transaction structure.* In providing the information required by Item 202 of Regulation S-K (§ 229.202), address the following specific factors relating to the asset-backed securities, as applicable:

(1) The types or categories of securities that may be offered, such as interest-weighted or principal-weighted classes (including IO (interest only) or PO (principal only) securities), planned amortization or companion classes or residual or subordinated interests.

(2) The flow of funds for the transaction, including the payment allocations, rights and distribution priorities among all classes of the issuing entity's securities, and within each class, with respect to cash flows, credit enhancement or other support and any other structural features designed to enhance credit, facilitate the timely payment of monies due on the pool assets or owing to security holders, adjust the rate of return on the asset-backed securities, or preserve monies that will or might be distributed to security holders. In addition to an appropriate narrative discussion of the allocation and priority structure of pool cash flows, present the flow of funds graphically if doing so will aid understanding. In the flow of funds discussion, provide information regarding any requirements directing cash flows from the pool assets (such as to reserve accounts, cash collateral accounts or expenses) and the purpose and operation of such requirements.

(3) In describing the interest rate or rate of return on the asset-backed securities and how such amounts are payable, explain how the rate is determined and how frequently it will be determined. If the rate to be paid can be a combination of two or more rates (such as the lesser of a variable rate or the actual weighted average net coupon on the pool assets), provide clear information regarding each rate and when each rate applies.

(4) How principal, if any, will be paid on the asset-backed securities, including maturity dates, amortization or principal distribution schedules, principal distribution dates, formulas for calculating principal distributions from the cash flows and other factors that will affect the timing or amount of principal payments for each class of securities.

(5) The denominations in which the asset-backed securities may be issued.

(6) Any specified changes to the transaction structure that would be

triggered upon a default or event of default (such as a change in distribution priority among classes).

(7) Any liquidation, amortization, performance or similar triggers or events, and the rights of investors or changes to the transaction structure or flow of funds if such events were to occur.

(8) Whether the servicer or other party is required to provide periodic evidence of the absence of a default or of compliance with the terms of the transaction agreements.

(9) If applicable, the extent, expressed as a percentage, the transaction is overcollateralized or undercollateralized as measured by comparing the principal balance of the asset-backed securities to the asset pool.

(10) Any provisions contained in other securities that could result in a cross-default or cross-collateralization.

(11) Any minimum standards, restrictions or suitability requirements regarding potential investors in purchasing the securities or any restrictions on ownership or transfer of the securities.

(12) Security holder vote required to amend the transaction documents and allocation of voting rights among security holders.

(b) *Distribution frequency and cash maintenance.* (1) Disclose the frequency of distribution dates for the asset-backed securities and the collection periods for the pool assets.

(2) Describe how cash held pending distribution or other uses is held and invested. Also describe the length of time cash will be held pending distributions to security holders. Identify the party or parties with access to cash balances and the authority to invest cash balances. Specify who determines any decisions regarding the deposit, transfer or disbursement of pool asset cash flows and whether there will be any independent verification of the transaction accounts or account activity.

(c) *Fees and expenses.* Provide in a separate table an itemized list of all fees and expenses to be paid or payable

out of the cash flows from the pool assets. In itemizing the fees and expenses, also indicate their general purpose, the party receiving such fees or expenses, the source of funds for such fees or expenses (if different from other fees or expenses or if such fees or expenses are to be paid from a specified portion of the cash flows) and the distribution priority of such expenses. If the amount of such fees or expenses is not fixed, provide the formula used to determine such fees or expenses. The tabular presentation should be accompanied by footnotes or other accompanying narrative disclosure to the extent necessary for an understanding of the timing or amount of such fees or expenses, such as any restrictions or limits on fees or whether the estimate may change in certain instances, such as in an event of default (and how the fees would change in such an instance or the factors that would affect the change). In addition, through footnote or other accompanying narrative disclosure, describe if any, and if so how, such fees or expenses can be changed without notice to, or approval by, security holders and any restrictions on the ability to change a fee or expense amount, such as due to a change in transaction party.

(d) *Excess cash flow.* (1) Describe the disposition of residual or excess cash flows. Identify who owns any residual or retained interests to the cash flows if such person is affiliated with the sponsor, depositor, issuing entity or any entity identified in Item 1119(a) of this Regulation AB or if such person has rights that may alter the transaction structure beyond receipt of residual or excess cash flows. Describe such rights, as material.

(2) Disclose any requirements in the transaction agreements to maintain a minimum amount of excess cash flow or spread from, or retained interest in, the transaction and any actions that would be required or changes to the transaction structure that would occur if such requirements were not met.

(3) To the extent material to an understanding of the asset-backed securities, disclose any features or arrangements to facilitate a securitization of the excess cash flow or retained interest from the transaction, including

whether any material changes to the transaction structure may be made without the consent of asset-backed security holders in connection with these securitizations.

(e) *Master trusts.* If one or more additional series or classes have been or may be issued that are backed by the same asset pool, provide information regarding the additional securities to the extent material to an understanding of their effect on the securities being offered, including the following:

(1) Relative priority of such additional securities to the securities being offered and rights to the underlying pool assets and their cash flows.

(2) Allocation of cash flow from the asset pool and any expenses or losses among the various series or classes.

(3) Terms under which such additional series or classes may be issued and pool assets increased or changed.

(4) The terms of any security holder approval or notification of such additional securities.

(5) Which party has the authority to determine whether such additional securities may be issued. In addition, if there are conditions to such additional issuance, disclose whether or not there will be an independent verification of such person's exercise of authority or determinations.

(f) *Optional or mandatory redemption or termination.* (1) If any class of the asset-backed securities includes an optional or mandatory redemption or termination feature, provide the following information:

(i) Terms for triggering the redemption or termination.

(ii) The identity of the party that holds the redemption or termination option or obligation, as well as whether such party is an affiliate of the sponsor, depositor, issuing entity or any entity identified in Item 1119(a) of this Regulation AB.

(iii) The amount of the redemption or repurchase price or formula for determining such amount.

(iv) The procedures for redemption or termination, including any notices to security holders.

(v) If the amount allocated to security holders is reduced by losses, the

policy regarding any amounts recovered after redemption or termination.

(2) The title of any class of securities with an optional redemption or termination feature that may be exercised when 25% or more of the original principal balance of the pool assets is still outstanding must include the word “callable,” *provided, however*, that in the case of a master trust, a title of a class of securities must include the word “callable” when an optional redemption or termination feature may be exercised when 25% or more of the original principal balance of the particular series in which the class was issued is still outstanding.

(g) *Prepayment, maturity and yield considerations.* (1) Describe any models, including the related material assumptions and limitations, used as a means to identify cash flow patterns with respect to the pool assets.

(2) Describe to the extent material the degree to which each class of securities is sensitive to changes in the rate of payment on the pool assets (e.g., prepayment or interest rate sensitivity), and describe the consequences of such changing rate of payment. Provide statistical information of such effects, such as the effect of prepayments on yield and weighted average life.

(3) Describe any special allocations of prepayment risks among the classes of securities, and whether any class protects other classes from the effects of the uncertain timing of cash flow.

§ 229.1114 (Item 1114) Credit enhancement and other support, except for certain derivatives instruments.

(a) *Descriptive information.* To the extent material, describe the following, including a clear discussion of the manner in which each potential item is designed to affect or ensure timely payment of the asset-backed securities:

(1) Any external credit enhancement designed to ensure that the asset-backed securities or pool assets will pay in accordance with their terms, such as bond insurance, letters of credit or guarantees.

(2) Any mechanisms to ensure that payments on the asset-backed securities are timely, such as liquidity facilities, lending facilities, guaranteed in-

vestment contracts and minimum principal payment agreements.

(3) Any derivatives whose primary purpose is to provide credit enhancement related to pool assets or the asset-backed securities.

(4) Any internal credit enhancement as a result of the structure of the transaction that increases the likelihood that payments will be made on one or more classes of the asset-backed securities in accordance with their terms, such as subordination provisions, overcollateralization, reserve accounts, cash collateral accounts or spread accounts.

Instructions to Item 1114(a): 1. Include a description of the material terms of any enhancement or support described, including any limits on the timing or amount of the enhancement or support or any conditions that must be met before the enhancement or support can be accessed. The enhancement or support agreement is to be filed as an exhibit. Also describe any provisions regarding the substitution of enhancement or support.

2. This Item should not be construed as allowing anything other than an asset-backed security whose payment is based primarily by reference to the performance of the receivables or other financial assets in the asset pool.

(b) *Information regarding significant enhancement providers—(1) Descriptive information.* If an entity or group of affiliated entities providing enhancement or other support described in paragraph (a) of this section is liable or contingently liable to provide payments representing 10% or more of the cash flow supporting any offered class of asset-backed securities, provide the following information:

(i) The name of such enhancement provider.

(ii) The organizational form of enhancement provider.

(iii) The general character of the business of such enhancement provider.

(2) *Financial information.* (i) If any entity or group of affiliated entities providing enhancement or other support described in paragraph (a) of this section is liable or contingently liable to provide payments representing 10% or more, but less than 20%, of the cash flow supporting any offered class of the