Securities and Exchange Commission

§229.1115 asset-backed securities, provide financial data required by Item 301 of Regulation S-K (§229.301) for each such entity or group of affiliated entities.

(ii) 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 20% or more of the cash flow supporting any offered class of the asset-backed securities, 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 such entity or group of affiliated entities. Financial statements of such enhancement provider and its subsidiaries consolidated (as required by §240.14a-3(b) of this chapter) shall be filed under this Item.

Instructions to Item 1114: 1. The requirements in paragraph (b) of this section apply to all providers of external credit enhancement or other support, other than those described in Item 1115 of this Regulation AB. Enhancement may support payment on the pool assets or payments on the asset-backed securities themselves.

2. No information need be provided pursuant to paragraph (b)(2) of this section if the obligations of the enhancement provider are backed by the full faith and credit of the United States.

3. No information need be provided pursuant to paragraph (b)(2) of this section if the obligations of the enhancement provider are backed by the full faith and credit of a foreign government (as defined in §240.3b-4(a) of this chapter) if the enhancement provider has an investment grade credit rating, as the term investment grade is used in Item 1B.2 of Form S-3 (§239.13 of this chapter). If the enhancement provider does not have an investment grade credit rating, 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)(2) of this section.

4. If the pool assets are student loans guaranteed, provide financial information required pursuant to paragraph (b)(2) of this section:

a. The number of pool assets and aggregate outstanding principal balance of pool assets guaranteed by the guarantee agency (both by number and percentage of the asset pool as of the cut-off date or other applicable date).

b. Disclosure of the following with respect to the guarantee agency, as applicable, including a brief description regarding the method of calculation, covering at least five federal fiscal years:

i. Aggregate principal amount of all student loans guaranteed.

ii. Reserve ratio.

iii. Recovery rate.

iv. Loss rate.

v. Claims rate.

5. If the enhancement provider is a foreign business (as defined §210.1-02 of this chapter): a. Paragraph (b)(2)(i) of this section may be complied with by providing the information required by Item 3.A. of Form 20–F (§239.220f 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)(ii) 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.

§229.1115 (Item 1115) Certain derivatives instruments.

This item relates to derivative instruments, such as interest rate and currency swap agreements, that are used to alter the payment characteristics of the cashflows from the issuing entity and whose primary purpose is not to provide credit enhancement related to the pool assets or the asset-backed securities. For purposes of this section, the “significance estimate” of the derivative instrument is to be determined based on a reasonable good-faith estimate of maximum probable exposure, made in substantially the same manner as that used in the sponsor’s internal risk management process in respect of similar instruments. The
“significance percentage” is the percentage that the amount of the significance estimate represents of the aggregate principal balance of the pool assets, provided, that if the derivative instrument relates only to one or more classes of the asset-backed securities, the “significance percentage” is the percentage that the amount of the significance estimate represents of the aggregate principal balance of such classes.

(a) Descriptive information. (1) Describe the following regarding the external counterparty:
   (i) The name of the derivative counterparty.
   (ii) The organizational form of the derivative counterparty.
   (iii) The general character of the business of the derivative counterparty.
(2) Describe the operation and material terms of the derivative instrument, including any limits on the timing or amount of payments or any conditions to payments.
(3) Describe any material provisions regarding substitution of the derivative instrument.
(4) At a minimum, disclose whether the significance percentage, as calculated in accordance with this section, is less than 10%, at least 10% but less than 20%, or 20% or more.
(5) File the agreement relating to the derivative instrument as an exhibit.

(b) Financial information. (1) If the aggregate significance percentage related to any entity or group of affiliated entities providing derivative instruments contemplated by this section is 10% or more, but less than 20%, provide financial data required by Item 301 of Regulation S-K (§229.301) for such entity or group of affiliated entities.
(2) If the aggregate significance percentage related to any entity or group of affiliated entities providing derivative instruments contemplated by this section is 20% or more, 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 such entity or group of affiliated entities. Financial statements of such entity and its subsidiaries consolidated (as required by §240.14a-3(b) of this chapter) shall be filed under this item.

Instructions to Item 1115: 1. Instructions 2, 3 and 5 to Item 1114 of this Regulation AB apply to the information contemplated by paragraph (b) of this item.
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.

§ 229.1116 (Item 1116) Tax matters.

Provide a brief, clear and understandable summary of:
(a) The tax treatment of the asset-backed securities transaction under federal income tax laws.
(b) The material federal income tax consequences of purchasing, owning and selling the asset-backed securities. If any of the material federal income tax consequences are not expected to be the same for investors in all classes offered by the registration statement, describe the material differences.
(c) The substance of counsel’s tax opinion, including identification of the material consequences upon which counsel has not been asked, or is unable, to opine.

§ 229.1117 (Item 1117) Legal proceedings.

Describe briefly any legal proceedings pending against the sponsor, depositor, trustee, issuing entity, servicer contemplated by Item 1108(a)(3) of this Regulation AB, originator contemplated by Item 1110(b) of this Regulation AB, or other party contemplated by Item 1100(d)(1) of this Regulation AB, or of which any property of the foregoing is the subject, that is material to security holders. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

§ 229.1118 (Item 1118) Reports and additional information.

(a) Reports required under the transaction documents. Describe the reports or other documents provided to security holders required under the transaction agreements, including information included, schedule and manner of