

Securities and Exchange Commission

§ 239.45

under the Investment Company Act of 1940.

(1) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F-X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

[56 FR 30065, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-80, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 239.42 Form F-X, for appointment of agent for service of process and undertaking for issuers registering securities on Form F-8, F-10, or F-80 (§§ 239.38, 239.39, 239.40, or 239.41), or registering securities or filing periodic reports on Form 40-F (§ 249.240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F, or 14D-9F (§§ 240.13e-102, 240.14d-102, or 240.14d-103 of this chapter), by any non-U.S. person acting as trustee with respect to securities registered on Form F-7 (§ 239.37), F-8, F-10, or by a Canadian issuer qualifying an offering statement pursuant to Regulation A (§ 230.251 *et seq.* of this chapter) on Form 1-A (§ 239.90), or by any non-U.S. issuer providing Form CB (§ 249.480 of this chapter) to the Commission in connection with a tender offer, rights offering or business combination.

Form F-X shall be filed with the Commission:

(a) By any issuer registering securities on Form F-8, F-10, or F-80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40-F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40-F, if it has not previously filed a Form F-X in connection with the class of securities in relation to which the obligation to file a report on Form 40-F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F, or 14D-9F;

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F-7, F-8, F-10, or F-80;

(f) By a Canadian issuer qualifying an offering statement pursuant to the provisions of Regulation A; and

(g) By any non-U.S. issuer providing Form CB to the Commission in connection with a tender offer, rights offering or business combination.

[73 FR 972, Jan. 4, 2008, as amended at 76 FR 46620, Aug. 3, 2011]

§ 239.43 Form F-N, appointment of agent for service of process by foreign banks and foreign insurance companies and certain of their holding companies and finance subsidiaries making public offerings of securities in the United States.

Form F-N shall be filed with the Commission in connection with the filing of a registration statement under the Act by those entities specified in rule 489 (17 CFR 230.489).

[56 FR 56299, Nov. 4, 1991]

§ 239.44 Form SF-1, registration statement under the Securities Act of 1933 for offerings of asset-backed securities.

This Form shall be used for registration under the Securities Act of 1933 of all offerings of asset-backed securities, as defined in 17 CFR 229.1101(c).

[79 FR 57333, Sept. 24, 2014]

§ 239.45 Form SF-3, for registration under the Securities Act of 1933 for offerings of asset-backed issuers offered pursuant to certain types of transactions.

This Form may be used for registration under the Securities Act of 1933 (“Securities Act”) of offerings of asset-backed securities, as defined in 17 CFR 229.1101(c). Any registrant which meets the requirements of paragraph (a) of this section may use this Form for the registration of asset-backed securities (as defined in 17 CFR 229.1101(c)) under the Securities Act which are offered in any transaction specified in paragraph (b) of this section provided that the requirements applicable to the specified transaction are met. Terms used have the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

(a) *Registrant requirements.* Registrants must meet the following conditions in order to use this Form for registration under the Securities Act

of asset-backed securities offered in the transactions specified in paragraph (b) of this section:

(1) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form required to comply with the transaction requirements in paragraphs (b)(1)(i) through (iv) of this section with respect to a previous offering of asset-backed securities involving the same asset class, the following requirements shall apply:

(i) Such depositor and each such issuing entity must have filed on a timely basis all certifications required by paragraph (b)(1)(i) of this section; and

(ii) Such depositor and each such issuing entity must have filed on a timely basis all transaction agreements containing the provisions that are required by paragraphs (b)(1)(ii) through (iv) of this section.

(iii) If such depositor or issuing entity fails to meet the requirements of paragraphs (a)(1)(i) and (ii) of this section, such depositor or issuing entity will be deemed to satisfy such requirements for purposes of this Form 90 days after the date it files the information required by paragraphs (a)(1)(i) and (ii) of this section; provided however that if the information is filed within 90 days of evaluating compliance with this paragraph (a) such depositor and issuing entity will be deemed to have been in compliance with such requirements for purposes of this Form 90 days after the date it files the information required by paragraphs (a)(1)(i) and (ii) of this section.

Instruction to paragraph (a)(1). The registrant must provide disclosure in a prospectus that is part of the registration statement that it has met the registrant requirements of paragraph (a)(1) of this section.

(2) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time

during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required 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 (17 CFR 249.308). If §240.12b-25(b) of this chapter was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by §240.12b-25(b) of this chapter. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of “affiliate” in §230.405 of this chapter.

(b) *Transaction Requirements.* If the registrant meets the registrant requirements specified in paragraph (a) of this section, an offering meeting the following conditions may be registered on this Form SF-3:

(1) Asset-backed securities (as defined in §229.1101(c) of this chapter) to be offered for cash where the following have been satisfied:

(i) *Certification.* The registrant files a certification in accordance with Item 601(b)(36) of Regulation S-K (§229.601(b)(36) of this chapter) signed

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by the chief executive officer of the depositor with respect to each offering of securities that is registered on this Form.

(ii) *Asset review provision.* With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) The selection and appointment of an asset representations reviewer that is not:

(1) Affiliated with any sponsor, depositor, servicer, or trustee of the transaction, or any of their affiliates; or

(2) The same party or an affiliate of any party hired by the sponsor or the underwriter to perform pre-closing due diligence work on the pool assets;

(B) The asset representations reviewer shall have authority to access copies of any underlying documents related to performing a review of the pool assets;

(C) The asset representations reviewer shall be responsible for reviewing the underlying assets for compliance with the representations and warranties on the pool assets, and shall not otherwise be the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. Reviews shall be required under the transaction documents, at a minimum, when the following conditions are met:

(1) A threshold of delinquent assets, as specified in the transaction agreements, has been reached or exceeded; and

(2) An investor vote to direct a review, pursuant to the processes specified in the transaction agreements, provided that the agreement not require more than:

(i) 5% of the total interest in the pool in order to initiate a vote and

(ii) A simple majority of those interests casting a vote to direct a review by the asset representations reviewer;

(D) The asset representations reviewer shall perform, at a minimum, reviews of all assets 60 days or more delinquent when the conditions specified in paragraph (b)(1)(ii)(C) of this section are met; and

(E) The asset representations reviewer shall provide a report to the trustee of the findings and conclusions of the review of the assets.

Instruction to paragraph (b)(1)(ii). The threshold of delinquent assets shall be calculated as a percentage of the aggregate dollar amount of delinquent assets in a given pool to the aggregate dollar amount of all the assets in that particular pool, measured as of the end of the reporting period. If the transaction has multiple sub-pools, the transaction agreements must provide that:

1. The delinquency threshold shall be calculated with respect to each sub-pool; and

2. The investor vote calculation shall be measured as a percentage of investors' interest in each sub-pool.

(iii) *Dispute resolution provision.* With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) If an asset subject to a repurchase request, pursuant to the terms of the transaction agreements, is not resolved by the end of a 180-day period beginning when notice of the request is received, then the party submitting such repurchase request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method.

(B) If the party submitting the request elects third-party arbitration, the arbitrator shall determine the allocation of any expenses. If the party submitting the request elects mediation, the parties shall mutually determine the allocation of any expenses.

(iv) *Investor communication provision.* With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must contain a provision requiring that the party responsible for making periodic filings on Form 10-D (§249.312 of this chapter) include in the Form 10-D any request received during the reporting period from an investor to communicate with other investors related to investors exercising their rights under the terms of the transaction agreements. The disclosure regarding the request to communicate is

required to include no more than 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 the Form 10-D has received a request from such investor, stating that such investor is interested in communicating with other investors with regard to the possible exercise of rights under the transaction agreements, and a description of the method other investors may use to contact the requesting investor.

Instruction to paragraph (b)(1)(iv). If an underlying transaction agreement contains procedures in order to verify that an investor is, in fact, a beneficial owner for purposes of invoking the investor communication provision, the verification procedures may require no more than the following:

1. If the investor is a record holder of the securities at the time of a request to communicate, then the investor will not have to provide verification of ownership, and
2. If the investor is not the record holder of the securities, then the person obligated to make the disclosure may require no more than a written certification from the investor that it is a beneficial owner and one other form of documentation such as a trade confirmation, an account statement, a letter from the broker or dealer, or other similar document.

(v) *Delinquent assets.* Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(vi) *Residual value for certain securities.* With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(2) Securities relating to an offering of asset-backed securities registered in accordance with paragraph (b)(1) of this section where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of §230.190(c)(1) through (4) of this chapter.

[79 FR 57337, Sept. 24, 2014]

§§ 239.46–239.62 [Reserved]

§ 239.63 Form ID, uniform application for access codes to file on EDGAR.

Form ID must be filed by registrants, third party filers, or their agents, to whom the Commission previously has not assigned a Central Index Key (CIK) code, to request the following access codes to permit filing on EDGAR:

(a) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(b) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(c) Password (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(d) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

[69 FR 22710, Apr. 26, 2004]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ID, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 239.64 Form SE, form for submission of paper format exhibits by electronic filers.

This form shall be used by an electronic filer for the submission of any paper format document relating to an otherwise electronic filing, as provided in Rule 311 of Regulation S-T (§232.311 of this chapter).

[58 FR 14682, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form SE, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 239.65 Form TH—Notification of reliance on temporary hardship exemption.

Form TH shall be filed by any electronic filer who submits to the Commission, pursuant to a temporary hardship exemption, a document in paper format that otherwise would be required to be submitted electronically,