

guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae.

Unlike the exclusion provided by Rule 3a-7, the exclusion provided by Section 3(c)(5) is not subject to any conditions specifically addressing the Investment Company Act-related concerns presented by asset-backed issuers.<sup>121</sup> Whether an asset-backed issuer has the option of relying on Section 3(c)(5) as an alternative to Rule 3a-7 generally depends on whether the issuer is primarily engaged in purchasing or otherwise acquiring a particular type of financial assets.<sup>122</sup> Rule 3a-7, in contrast, was generally designed to encompass any asset-backed issuer that meets the rule's conditions, regardless of the type of financial assets that it holds.

When first considering Rule 3a-7 in 1992, the Commission noted that, absent a statutory amendment precluding asset-backed issuers from relying on Section 3(c)(5), asset-backed issuers that rely on that section and those that rely on Rule 3a-7 would be subject to somewhat disparate treatment based solely on the type of the financial assets that they held. Accordingly, when the Commission proposed Rule 3a-7 in 1992, it also requested comment on, among other things, whether it should seek statutory amendments to Section 3(c)(5) that would preclude asset-backed issuers from continuing to rely on the Section.<sup>123</sup> Most commenters then argued that it would be inappropriate to narrow the scope of Section 3(c)(5), at least until both the market and the Commission gained experience with Rule 3a-7.<sup>124</sup> In response to commenters' concerns, the Commission decided not to pursue any regulatory changes with respect to Section 3(c)(5) at that time.<sup>125</sup>

Now that the market and the Commission have gained almost twenty years of experience with Rule 3a-7, we believe that it is appropriate to revisit this issue as part of our review of the rule. We also believe that revisiting the ability of asset-backed issuers to rely on the exclusion provided by Section 3(c)(5) is appropriate in the aftermath of the recent financial crisis and the role that issuers of mortgage-backed securities have played in that crisis.<sup>126</sup> Accordingly, the Commission once

again is seeking comment on whether Section 3(c)(5) should be amended to limit the ability of asset-backed issuers to rely on Section 3(c)(5).<sup>127</sup> The Commission also requests comment on whether it should engage in any rulemaking, consistent with Section 3(c)(5), that would define terms used in that section so as to limit its availability to those companies that are intended to be encompassed by the statutory exclusion. We also seek comment on whether there are any structural or operational reasons that make it necessary for certain asset-backed issuers to rely on Section 3(c)(5) rather than Rule 3a-7.

- If there are such structural or operational reasons, what are they?
- What types of asset-backed issuers rely on Section 3(c)(5)?
- What would be the effect on asset-backed issuers, the securitization market and on capital formation if asset-backed issuers could no longer rely on Section 3(c)(5)?
- Are there revisions to Rule 3a-7 that could be made to better facilitate asset-backed issuers' reliance on the rule rather than on Section 3(c)(5) and what would be the economic impact of such revisions?

Commenters also are requested to provide any other observations, suggestions and data on the interplay between Rule 3a-7 and Section 3(c)(5) today and as the asset-backed securities markets may develop in the future.

#### IV. General Request for Comment

In addition to the issues raised in this release, the Commission requests and encourages all interested persons to submit their views on any issues relating to the treatment of asset-backed issuers under the Investment Company Act. This release is not intended in any way to limit the scope of comments, views, issues or approaches to be considered. The Commission particularly welcomes statistical, empirical, and other data from commenters that may support their views and/or support or refute the views or issues raised in this release.

Dated: August 31, 2011.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

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<sup>127</sup> See also Section 3(c)(5)(C) Concept Release, *supra* note 30; 2011 ABS Re-proposal, *supra* note 13 at n.110 and accompanying text (requesting comment on whether compliance with Rule 3a-7 should be one of the shelf eligibility requirements).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 73

[Docket Nos. FDA-2011-C-0344 and FDA-2011-C-0463]

#### CooperVision, Inc.; Filing of Color Additive Petitions

##### Correction

In proposed rule document C1-2011-16089 appearing on page 49707 in the issue of Thursday, August 11, 2011, make the following correction:

On page 49707, in the first column, in the nineteenth line, "methacryloxyethyl)phenlyamino]" should read "methacryloxyethyl)phenylamino)".

[FR Doc. C2-2011-16089 Filed 9-6-11; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-137125-08]

RIN 1545-B165

#### Certain Employee Remuneration in Excess of \$1,000,000 Under Internal Revenue Code Section 162(m); Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains a correction to a notice of proposed rulemaking (REG-137125-08) relating to the deduction limitation for certain employee remuneration in excess of \$1,000,000 under the Internal Revenue Code. The document was published in the **Federal Register** on Friday, June 24, 2011 (76 FR 37034).

**FOR FURTHER INFORMATION CONTACT:** Concerning these proposed regulations, Ilya Enkishev at (202) 622-6030 (not a toll-free number).

##### SUPPLEMENTARY INFORMATION:

##### Background

The correction notice that is the subject of this document is under section 162 of the Internal Revenue Code.

##### Need for Correction

As published, a notice of proposed rulemaking (REG-137125-08) contains

<sup>121</sup> See *supra* section III.A. See also *supra* note 115.

<sup>122</sup> See *supra* note 115.

<sup>123</sup> Proposing Release, *supra* note 15 at section II.B.

<sup>124</sup> Adopting Release, *supra* note 4 at n.88 and accompanying text.

<sup>125</sup> *Id.* at text following n.89.

<sup>126</sup> See generally 2010 ABS Proposing Release, *supra* note 10.