

## US

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## SEC proposals relating to MBS and ABS

The Securities and Exchange Commission (SEC) has released proposed revisions relating to the registration and ongoing disclosure obligations for mortgage-backed securities (MBS) and asset-backed securities (ABS). The 700-plus pages describe substantial changes to the current framework. For example, in order to be eligible to use a short-form registration statement in connection with ABS, an issuer must retain a portion of each tranche of offered securities, for the term of such securities.

The eligibility criteria for use of a short-form registration statement would be significantly modified. The CEO of the depositor will be required to certify at issuance that he has a reasonable belief that the assets underlying the securities will yield cash flows sufficient to satisfy the payment obligations described in the offering materials. The issuer will undertake ongoing SEC filing requirements. Both the initial offering document and periodic reports will require asset-level disclosures. Some of these disclosures will be required to be provided electronically.

Issuers availing themselves of an exemption from registration for the initial offering of ABS, including Rule 144A or Regulation D, must agree to provide the same type of disclosure that would have been required if the offering had been registered. These requirements would not be required in the case of Section 4(2) exempt offerings, or Regulation S offerings to offshore investors. Offering participants would be subject to a 48 hour waiting period between delivery of a preliminary prospectus to investors and confirmation of sales. This period is intended to give investors more time to consider the terms of the securities. However, it does contradict the SEC's actions in connection with Securities Offering Reform. The proposals would also affect repackaged securities as well as traditional structured finance securities. The nature of the proposals means it is likely that there will be many comments during the next 90 days.

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