



Overview of Pool Asset Reviews

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Introduction

On January 20, 2011, the SEC adopted final regulations implementing Section 943 of Dodd-Frank, including regulations requiring issuers to perform pool asset reviews.

Pool Asset Reviews

New Rule 193 under the Securities act requires issuer registering the offer and sale of ABS to perform a review of the underlying pool assets, and amendments to Item 1111 of Regulation AB require issuer to disclose the nature, findings and conclusions of that review in the prospectus forming a part of the related registration statement.

Transition

Only registered ABS offerings commencing with an initial bona fide offer after December 31, 2011 must comply with these new pool asset review regulations.

Minimum Standard for Review

Rule 193 requires that, at a minimum, the pool asset review be “designed and effected to provide reasonable assurance that the disclosure regarding the pool assets in the... prospectus... is accurate in all material respects.”

Third-Party Review

Third-Party Review; Expert Liability

- Rule 193 permits issuer to engage third party to perform the requisite review of the pool assets. If the findings and conclusions of review are attributed to third party, then third party must be named in the registration statement and must consent to being named as an expert, which would expose third party to liability under Section 11 of the Securities Act.
- If, instead, issuer engages third party to conduct its Rule 193 review, but adopts the findings and conclusions of review as its own, then third party need not be named in the registration statement, thereby avoiding the issuer of third-party consent and expert liability.
- Issuer may not rely on review performed by an unaffiliated originator. Conversely, issuer may rely on a review performed by an affiliated originator if review is undertaken for purposes of the securitization (as opposed to review undertaken to originate the asset).

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