



Insights

SEC Adopts Final Rules Regarding ABS Third-Party Due Diligence

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On August 27, 2014, in a 3-2 vote, the SEC approved final rules applicable to nationally recognized statistical rating organizations (NRSROs). The final rules implement 14 rulemaking requirements under the Dodd-Frank Act and are designed to improve the quality of credit ratings and increase credit rating agency accountability by enhancing governance, protecting against conflicts of interest, and increasing transparency.

Of particular interest to securitization market participants, the final rules adopt new requirements for issuers, underwriters, and third-party due diligence service providers to promote the transparency of the findings and conclusions of third-party due diligence as it relates to asset-backed securities (ABS). These new requirements include:

- **Disclosure of ABS Third-Party Due Diligence Reports:** New Exchange Act Rule 15Ga-2 requires an issuer or underwriter of an ABS that is to be rated by an NRSRO to furnish a Form ABS-15G on the EDGAR system containing the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter. Rule 15Ga-2 applies to both registered and unregistered offerings of ABS.
- **Certification of ABS Third-Party Due Diligence Provider:** The Dodd-Frank Act amended the Exchange Act to require a provider of third-party due diligence services for ABS to provide a written certification to any NRSRO that produces a credit rating to which the services relate. New Rule 17g-10 establishes the form and content of that written certification in new Form ABS Due Diligence-15E. The new form elicits information about the due diligence, including a description of the work performed, a summary of the findings and conclusions of the third party, and the identification of any relevant NRSRO due diligence criteria that the third party intended to meet in performing the due diligence. The final rules require the NRSRO to disclose any certification it receives with each rating action to which such certification relates.

The portions of the final rule relating to ABS third-party due diligence reports will be effective 9 months after publication of the new rules in the Federal Register.

In addition to the rules described above, which are specifically aimed at regulating the ratings process for ABS, the final rules also adopt requirements that are generally applicable to NRSROs, including rules addressing internal controls, conflicts of interest, disclosure of credit rating performance statistics, procedures to protect the integrity and transparency of rating methodologies, disclosures to promote the transparency of credit ratings and standards for training, experience, and competence of credit analysts. The final rules also provide for an annual certification by the CEO of a NRSRO as to the effectiveness of internal controls and additional certifications to accompany credit ratings attesting that the rating was not influenced by other business activities.

This overview is based on the remarks of the SEC Commissioners and staff at the open meeting on August 27, 2014. We will provide further information and analysis upon further review of the adopting release and the final rules.

For a copy of the adopting release, [click here](#).