

NEBRASKA ADMINISTRATIVE CODE

~~Title 48 – DEPARTMENT OF BANKING & FINANCE~~

~~CHAPTER 34 – REGISTRATION OF ASSET-BACKED SECURITIES~~

~~001 – GENERAL~~

~~001.01 – This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120(3) of the Securities Act of Nebraska (“Act”).~~

~~001.02 – The Department has determined that this Rule relating to the registration of asset-backed securities is consistent with investor protection and is in the public interest.~~

~~001.03 – The Director may, on a case by case basis, and with prior written notice to the affected persons, require adherence to additional standards or policies, as deemed necessary in the public interest.~~

~~001.04 – The definitions in 48 NAC 2 shall apply to the provisions of this Rule, unless otherwise specified.~~

~~001.05 – Federal statutes and rules of the Securities and Exchange Commission (“SEC”), the Financial Industry Regulatory Authority (“FINRA”), or the Financial Accounting Standards Board (“FASB”) referenced herein shall mean those statutes and rules as amended on or before the effective date of this Rule. A copy of the statutes or rules referenced in this Rule is available as an appendix to this rule at <http://www.ndbf.ne.gov/legal/title48.shtml>.~~

~~002 – DEFINITIONS. The following definitions, in addition to definitions contained in 48 NAC 2, shall apply to this Rule:~~

~~002.01 – Acquisition cost means the cost of an eligible asset as reflected on the issuer’s balance sheet, net of applicable acquisition expenses and origination fees.~~

~~002.02 – Acquisition criteria means the specified characteristics an eligible asset is required to possess in order for it to be sufficiently similar to other eligible assets to make possible a reliable prediction of the cash flows associated with the eligible assets when pooled in large numbers.~~

~~002.03 – Acquisition expenses mean all direct and indirect expenses incurred by the issuer in connection with the selection and acquisition of eligible assets, whether or not acquired, other than origination fees.~~

~~002.04 – Allowed expenses means trustee fees, ongoing fees paid to rating agencies, servicing fees, origination fees, acquisition expenses, liquidation expenses, bank service charges, taxes, attorneys’ fees, audit fees, and other direct charges incurred by the issuer in the ordinary course of the issuer’s business, exclusive of organizational and offering expenses, conversion expenses and extraordinary expenses.~~

~~002.05—Asset-backed securities mean securities that provide a stated rate of return to security holders and that are primarily serviced as to both return of investment and return on investment by the cash flow from designated eligible assets, excluding:~~

~~002.05A—The securities of an investment company subject to the Investment Company Act of 1940; and~~

~~002.05B—Equity interests in limited partnerships or other direct investment vehicles subject to other applicable registration Rules.~~

~~002.06—Cash flow means the amount of cash generated from operations, calculated in compliance with Financial Accounting Standard 95, plus receipts from the disposition or liquidation of eligible assets.~~

~~002.07—Collections account means the account in a financial institution created to receive cash flow generated by the eligible assets and to maintain the segregation of such cash from other assets of the servicer.~~

~~002.08—Conversion expenses means the expenses associated with changing from one servicer to another servicer or one trustee to another trustee.~~

~~002.09—Credit enhancement means insurance, letters of credit, lines of credit, over-collateralization, seller recourse, reserve accounts, senior claim guarantees, and other arrangements intended to decrease the likelihood of default on the asset-backed securities.~~

~~002.10—Eligible assets means financial or commercial assets, either fixed or revolving, which are:~~

~~002.10A—Generally homogenous in nature;~~

~~002.10B—Subject to reasonably objective valuation; and~~

~~002.10C—For other than asset-backed securities with an investment grade rating:~~

~~002.10C1—Self-liquidating or easily liquidated; and~~

~~002.10C2—Capable of generating a predictable cash flow.~~

~~002.11—Investment grade means a rating that is in one of the four highest rating categories as determined by a rating agency.~~

~~002.12—Issuer means the person formed to issue the asset-backed securities and to hold ownership of, or a security interest in, the eligible assets.~~

~~002.13—Liquidation expenses means the expenditures necessary to convert residual or non-performing eligible assets, or any underlying collateral, into cash, including expenditures necessary to collect on insurance or other credit enhancements.~~

~~002.14— Net worth means the excess of total assets over total liabilities as determined by generally accepted accounting principles.~~

~~002.15— Obligor means a person obligated to make the payments on or under an eligible asset.~~

~~002.16— Operating account means the account in a financial institution created to receive offering proceeds and revenues from the collections account which are not required to be transferred to the trust account, and from which payments are made for additional eligible assets and allowed expenses.~~

~~002.17— Origination fees means all fees, commissions, or other consideration, other than the purchase price of the eligible assets, paid by any party to any party in connection with the origination and sale of eligible assets to the issuer, but not including initial fees paid to rating agencies and professional fees paid to attorneys, accountants, appraisers, and similar professionals for providing routine professional services, which fees shall be deemed acquisition expenses.~~

~~002.18— Originator means a person, which may or may not be the sponsor, that creates or originates, directly or indirectly, eligible assets to be sold or pledged, to the issuer.~~

~~002.19— Organizational and offering expenses means all expenses incurred in connection with and in preparing the asset-backed securities for registration and subsequently offering and distributing the asset-backed securities to the public. Organizational and offering expenses include, but are not limited to, total underwriting and brokerage discounts and commissions, including fees of the underwriters' attorneys; initial fees paid to rating agencies; expenses for printing, engraving, and mailing; salaries of employees while engaged in sales activity; charges of transfer agents, registrars, trustees, escrow holders, depositories, and experts; expenses of qualification of the sale of the securities under federal and state laws, including taxes and fees; and accountants' and attorneys' fees.~~

~~002.20— Paying agent means the trustee or other person responsible for disbursing funds from the trust account to the security holders in satisfaction of the issuer's obligation for payments on the asset-backed securities.~~

~~002.21— Prospectus means the primary disclosure document(s), by whatever name known, utilized for the purpose of offering and selling asset-backed securities to the public.~~

~~002.22— Rating agency means Standard and Poor's Ratings Group, a division of McGraw Hill Company; Moody's Investors Service, Inc.; Fitch Investors Service, Inc.; or Duff & Phelps Credit Rating Co.; or a successor to any of the foregoing.~~

~~002.23— Security holders means the persons in whose names the issuer's asset-backed securities are held and to whom payments pursuant to the terms of the trust agreement are entitled to be made.~~

~~002.24~~— Servicer means the person responsible for the management of the issuer's assets and the conversion of such assets into the cash flow necessary to make stated payments on the asset-backed securities.

~~002.25~~— Servicing agreement means the contract that establishes the responsibilities and compensation of the servicer.

~~002.26~~— Servicing fees means compensation paid to the servicer pursuant to the terms of the servicing agreement.

~~002.27~~— Special purpose entity means a trust, corporation, partnership, limited liability company, or other legal entity formed for the purpose of making one or more offerings of asset-backed securities, holding an ownership interest or a security interest in the eligible assets, and forwarding the cash flows from the eligible assets to the security holders.

~~002.28~~— Sponsor means any person directly or indirectly instrumental in organizing, wholly or in part, an issuer or any person, other than the trustee, who will control, manage, or participate in the management of an issuer or its assets, but shall not include:

~~002.28A~~— Any person whose only relationship with the issuer is that of an independent servicer of the issuer's eligible assets and whose only compensation is as such; or

~~002.28B~~— Wholly independent third parties such as attorneys, accountants, rating agencies, and underwriters whose only compensation is for professional services rendered in connection with the offering of asset-backed securities.

~~002.29~~— Stated rate of return means a return where the security holder is entitled to receive either:

~~002.29A~~— A stated principal amount;

~~002.29B~~— Interest on the principal amount, which may be a notional principal amount, calculated by reference to:

~~002.29B1~~— A fixed rate, or

~~002.29B2~~— A standard or formula which does not reference any change in the market value or fair value of eligible assets.

~~002.29C~~— Interest on a principal amount, which may be a notional principal amount, calculated by reference to:

~~002.29C1~~— Auctions among security holders and prospective security holders;

~~002.29C2~~— A periodic remarketing of the asset-backed security;

~~002.29D~~—An amount representing specified fixed or variable portions of the interest generated by the underlying eligible assets; or

~~002.29E~~—Any combination of the above.

~~002.30~~—Trust account means the account in a financial institution created to receive funds from the collections account and the operating account and from which payments are made on the asset-backed securities of the issuer.

~~002.31~~—Trust agreement means the governing document(s), by whatever name, which defines the pooling arrangements and which establishes the rights, privileges, duties, and responsibilities of the trustee, the issuer, the security holders, and, when relevant, the servicer in connection with the issuance of the asset-backed securities.

~~002.31A~~—The trust established by the trust agreement may or may not be a taxable entity and it may or may not serve as the issuer of the asset-backed securities.

~~002.31B~~—The trust agreement may include the servicing agreement.

~~002.32~~—Trustee means the financial institution meeting the requirements under Section 006, below, which is party to the trust agreement and which has the primary responsibility of representing the interests of the security holders by assuring the terms of the trust agreement are enforced.

~~002.33~~—Trustee fees means the fees and other consideration paid to the trustee for performing services under the trust agreement.

~~003~~—REQUIREMENTS OF SPONSOR.

~~003.01~~—For other than asset-backed securities with an investment grade rating, the sponsor or its management shall demonstrate the knowledge and expertise necessary to supervise the origination, pooling and servicing of the type of eligible assets being securitized.

~~003.02~~—Financial Condition.

~~003.02A~~—The sponsor shall demonstrate that it is solvent and will, with reasonable certainty, be able to meet any financial obligations to the issuer.

~~003.02B~~—If the Director deems it relevant, the sponsor shall provide complete audited financial statements for its most recent fiscal year and, if necessary, unaudited financial statements prepared within one hundred thirty-five days of the date that the application for registration of the asset-backed securities is made effective by the Director.

~~003.03~~—Credit Enhancements.

~~003.03A~~—The sponsor shall make or cause to be made an equity contribution to the issuer or shall provide or cause to be provided other

substantial credit enhancements to help establish a reasonable likelihood that the stated rate of return will be realized, unless:

~~003.03A1~~—The asset-backed securities have an investment grade rating, or

~~003.03A2~~—The Director waives this requirement.

~~003.03B~~—The sponsor shall describe the credit enhancement in the prospectus, including summary information regarding any third party which is providing the credit enhancement.

~~003.04~~ Portfolio Characteristics.

~~003.04A~~—For other than asset-backed securities with an investment grade rating, the sponsor shall demonstrate, based on designated acquisition criteria or specifically identified eligible assets, that the eligible assets being pooled will generate sufficient cash flow to make all scheduled payments on the asset-backed securities after taking allowed expenses into consideration.

~~003.04B~~—For other than asset-backed securities with an investment grade rating, if a significant portion of the cash flow is anticipated to come from the liquidation of tangible assets underlying the eligible assets, additional evidence should be provided establishing the issuer's or servicer's ability to reliably predict the value of such tangible assets.

~~003.04C~~—For other than asset-backed securities with an investment grade rating, if the cash flow is primarily based upon the credit quality of the obligors, the sponsor shall demonstrate that adequate measures will be taken to qualify obligors.

~~003.04D~~—The sponsor shall disclose, in the prospectus, the following information regarding the identified eligible assets:

~~003.04D1~~—The outstanding principal balance of the eligible assets;

~~003.04D2~~—The outstanding principal balance of the eligible assets as a percentage of the total amount of asset-backed securities being offered;

~~003.04D3~~—The cash flow currently being generated by the eligible assets as a percentage of the total amount of asset-backed securities being offered;

~~003.04D4~~—A description of what constitutes a default;

~~003.04D5~~—The amount of eligible assets in default;

~~003.04D6~~—The amount of eligible assets in default as a percentage of the total amount of asset-backed securities being offered; and

~~003.04D7~~—The amount of eligible assets in default as a percentage of the credit enhancement.

~~003.05~~—Asset-backed securities must have a stated rate of return.

~~003.06~~—Asset Selection.

~~003.06A~~—Acquisition criteria for the eligible assets or the relevant characteristics of any specified pool of eligible assets shall be set forth in the prospectus and the trust agreement.

~~003.06B~~—If eligible assets are selected from a larger pool of eligible assets owned or controlled by the sponsor, the selection process must be random, unless a reasonable basis exists for selecting eligible assets on a non-random basis.

~~003.06C~~—Any selection method used must be fair and must be fully disclosed in the prospectus.

~~003.07~~—Asset Repurchase and Substitution.

~~003.07A~~—The sponsor may repurchase an eligible asset or may substitute one or more eligible assets which are part of the collateral underlying the asset-backed securities with new eligible assets if:

~~003.07A1~~—The eligible assets which are to be repurchased or replaced are found not to meet the acquisition criteria or are otherwise found not to comply with the requirements set forth in the trust agreement; and

~~003.07A2~~—The repurchase or substitution is not made for the purpose of recognizing gains or decreasing losses resulting from market value changes in the issuer's portfolio of eligible assets.

~~003.07B~~—The sponsor or another person may repurchase the eligible assets when the pool of eligible assets has been reduced to fifteen percent or less of the original eligible assets.

~~003.07C~~—A repurchase must be made at a price determined by a fair and reasonable formula set forth in the original prospectus.

~~003.07D~~—If a substitution takes place, the new eligible asset must have equal or greater scheduled cash flow, approximately the same term; and, if appropriate, equal or greater liquidation value than the eligible asset to be replaced. Compliance with this requirement must be verified by a certified public accountant, or if the eligible asset is readily marketable, by documentation of the current market value of the eligible asset.

~~003.07E~~—If any repurchases or substitutions take place and the asset-backed securities are rated at the time of the initial offering, then the initial rating must be maintained.

~~003.07F~~—The sponsor shall provide a report representing compliance with these requirements to the trustee simultaneously with consummating the repurchase or substitution.

~~003.07G~~—The sponsor shall disclose, in the prospectus, any obligation it has to repurchase eligible assets.

~~003.08~~—Cash flow not needed for stated payments on the asset-backed securities, reserve deposits, or other designated purposes, may be reinvested in additional eligible assets which meet acquisition criteria.

~~003.09~~—Distributions of excess cash flow or eligible assets to the sponsor, or other residual owners of the issuer, while the asset-backed securities are outstanding will be allowed, provided that:

~~003.09A~~—The specific circumstances permitting such distributions are fully disclosed in the prospectus; and

~~003.09B~~—The ability of the issuer to make all subsequent stated payments on the asset-backed securities, as determined on the date of such distributions, is not materially diminished as a result of such distributions.

~~003.09C~~—For other than asset-backed securities with an investment grade rating, the issuer must provide reasonable evidence that such distribution rights will not impact the credit quality of the asset-backed securities at the time the asset-backed securities are registered.

~~004~~—REQUIREMENTS OF ISSUER.

~~004.01~~—The issuer must be a special purpose entity.

~~004.01A~~—The issuer will generally not be permitted to:

~~004.01A1~~—Have employees, other than non-compensated officers; or

~~004.01A2~~—Incur obligations other than allowed expenses, conversion expenses, organizational and offering expenses and other extraordinary expenses arising from a change of servicer or similar extraordinary event.

~~004.01B~~—The issuer may make more than one offering, if the asset-backed securities have an investment grade rating or if each offering is secured by a distinct pool of assets, with cross-defaults and cross-collateralization prohibited by contract or otherwise.

~~004.01C~~— If the issuer is not a trust, there must be a supplemental trust agreement administered by a trustee.

~~004.02~~— For other than asset-backed securities with an investment grade rating, the issuer's interest in the eligible assets must be an ownership interest or a security interest. The eligible assets may be held by a special purpose entity other than the issuer if the issuer's ownership interest or security interest in the eligible assets is supported by an opinion of counsel as required by Section 004.03B, below.

~~004.03~~— For offerings where the issuer acquires ownership of the eligible assets, the Director may require the issuer to provide an opinion of qualified counsel to the effect that, in the event of a bankruptcy by the sponsor or an originator or other seller of eligible assets to the issuer, the transfer of eligible assets would be treated as a true sale.

~~004.03A~~— For offerings where the issuer acquires a security interest in the eligible assets, an opinion may be required indicating:

~~004.03A1~~— That the security interest will be perfected based on procedures set forth in the trust agreement; and

~~004.03A2~~— Whether financial statements under the Uniform Commercial Code are necessary to perfect security interests in the eligible assets.

~~004.03B~~— If a special purpose entity, other than the issuer, is established to hold the eligible assets that are pledged to the issuer, an opinion may be required indicating that, in the event of a bankruptcy by the sponsor or an originator or other seller of eligible assets to the special purpose entity, the transfer of eligible assets would be treated as a true sale.

~~004.04~~— For other than asset-backed securities with an investment grade rating, the minimum amount of proceeds required to close the offering shall be sufficient to allow the issuer to acquire all specified eligible assets or a sufficient amount of unspecified eligible assets to diversify the pool of eligible assets to the extent necessary to achieve a high level of confidence with respect to the statistical characteristics of the portfolio.

~~004.05~~— All funds received prior to achieving the minimum offering shall be deposited in an interest-bearing account with an independent escrow agent whose name and address shall be disclosed in the prospectus.

~~004.05A~~— In the event that the established minimum is not reached, all paid subscriptions shall be returned to the investors, plus interest earned, on a pro-rata basis.

~~004.05B~~— The Director may require the available proceeds from offerings that do not have an investment grade rating to be fully invested in eligible assets within two months from the date such proceeds are released from escrow.

~~004.06~~—The offering period may not exceed one year from the date of effectiveness unless permitted by the Director.

~~004.07~~—For other than asset-backed securities with an investment grade rating, cash held in collections accounts, operating accounts, trust accounts or reserve accounts, cash held pending investment in eligible assets, cash held pending distribution to security holders, and other temporary cash balances may be invested, either directly or through money market funds, in securities that are direct obligations of, or fully guaranteed by, the U.S. Government or a U.S. Governmental agency or instrumentality, certificates of deposit, demand or time deposits, and bankers acceptances from any state or federally chartered depository institution having an investment grade rating.

~~004.08~~—If the asset-backed securities are rated at the time of the initial offering, the issuer must agree to pay to have that rating monitored at least annually.

~~004.09~~—The trust agreement shall provide that the issuer or trustee shall cause to be prepared and distributed to the security holders the following reports:

~~004.09A~~—A report containing relevant information regarding the performance of the issuer's portfolio of eligible assets, including cash flows, delinquency rates, gross and net loss rates, substitution, and changes in the outstanding principal balance of eligible assets, if applicable, which report shall be prepared concurrently with distributions to security holders;

~~004.09B~~—A table comparing any forecasts previously provided with the actual results during the period covered by the report, which shall be prepared at least annually; and

~~004.09C~~—An annual audited financial statement of the issuer.

~~005~~—REQUIREMENTS OF SERVICER.

~~005.01~~—For other than asset-backed securities with an investment grade rating, the servicer or its management must have at least three years' experience servicing eligible assets similar to the assets to be acquired by the issuer.

~~005.01A~~—A greater amount of experience may be required if the portfolios of eligible assets require intensive levels of servicing.

~~005.01B~~—The servicer may be required to provide supplemental summary information regarding the performance of prior pools of similar eligible assets which it has serviced.

~~005.02~~—For other than asset-backed securities with an investment grade rating, the servicer must demonstrate that it is solvent and possesses the financial resources necessary to perform under the servicing agreement and/or trust agreement.

~~005.02A~~—For other than asset-backed securities with an investment grade rating, a servicer which is to provide any financial guarantees or advances in connection with the issuance of the asset-backed securities must

~~demonstrate its ability to perform on such guarantees or advances under a default.~~

~~005.02B—For other than asset-backed securities with an investment grade rating, if the Director deems it relevant, the servicer shall provide complete audited financial statements for its most recent fiscal year end and, if necessary, unaudited financial statements prepared within one hundred thirty-five days of the date that the application for registration of the asset-backed securities is made effective by the Director.~~

~~005.03—The servicer may not be affiliated with the trustee.~~

~~005.03A—For other than asset-backed securities with an investment grade rating, the servicer may not be affiliated with any obligor under any eligible asset.~~

~~005.03B—The trustee may serve as successor servicer if it is otherwise qualified to perform the servicing function.~~

~~005.04—The servicing agreement shall require that the servicer prepare and deliver to the trustee the following reports, if applicable:~~

~~005.04A—On a monthly basis or similar time interval that coincides with the timing of cash flows from the eligible assets:~~

~~005.04A1—For other than asset-backed securities with an investment grade rating, a report containing relevant information regarding the performance of the portfolio of eligible assets, including cash flows, delinquency rates, gross and net loss rates, substitutions, and changes in the outstanding principal balance of eligible assets;~~

~~005.04A2—Information regarding the status of credit enhancements, including the extent to which any such credit enhancements have been utilized by the servicer to supplement the cash flow associated with the eligible assets; and~~

~~005.04A3—For other than asset-backed securities with an investment grade rating, notification of any default in the payment of principal and interest on any other asset-backed securities issued by a special purpose entity with the same sponsor, servicer, and business plan.~~

~~005.04B—On a quarterly basis:~~

~~005.04B1—Information regarding the identity of each originator or seller of eligible assets to the issuer, and if the originator or seller has guaranteed any aspect of performance of any eligible assets, complete financial statements of the originator or seller as of the most recent date available together with specific~~

information regarding the historical performance of the originator's or seller's portfolio of eligible assets;

~~005.04B2~~—Information regarding the percentage of eligible assets acquired from each originator or seller; and

~~005.04B3~~—Information regarding the diversification of each originator's or seller's portfolio of eligible assets with respect to underlying obligors, if applicable.

~~005.05~~—The servicer may not voluntarily withdraw as servicer, except as may be required by law, or upon at least thirty days prior notice to the trustee, provided that a qualified successor servicer has been retained, effective as of the resignation date of its predecessor.

~~005.05A~~—In the event that the trustee, sponsor, or security holders terminates the servicer, the servicing agreement shall designate a qualified successor servicer or shall specify the criteria for selecting a qualified successor servicer.

~~005.05B~~—The successor servicer must be approved by the trustee and must be capable of commencing the servicing of the eligible assets within a commercially reasonable period of time.

~~006~~—REQUIREMENTS OF TRUSTEE.

~~006.01~~—There shall at all times be one or more trustees under the trust agreement, with at least one trustee at all times being a corporation organized and doing business under the laws of the United States or of any state or territory thereof or of the District of Columbia which:

~~006.01A~~—Is authorized under such laws to exercise corporate trust powers;

~~006.01B~~—Is subject to supervision or examination by federal, state, territorial, or District of Columbia authority; and

~~006.01C~~—Has a rating, or is a subsidiary of an institution having a rating, issued by a nationally recognized bank or financial institution rating organization, in one of the four highest categories.

~~006.02~~—The trustee or one or more of its corporate trust officers must have at least three years' relevant experience. The trustee in its commercial capacity must have origination or servicing experience with respect to similar eligible assets.

~~006.03~~—The trustee may not be affiliated with the servicer, the sponsor, or the issuer.

~~006.03A~~—The trustee may serve as successor servicer if it is otherwise qualified to perform the servicing function.

~~006.03B~~—The trustee may not have received within the last five years and may not receive during the term of the trust agreement more than five percent of its total revenue from all sources, including trustee's fees, from the sponsor and the servicer on a combined basis.

~~006.03C~~—The trust agreement shall provide that no more than five percent of the loan portfolio of the trustee or its affiliates may be loans to either the issuer, the sponsor, or the servicer.

~~006.04~~—If the trustee voluntarily withdraws as trustee, the issuer or sponsor shall designate a successor trustee or the withdrawing trustee may petition a court to appoint a successor trustee.

~~006.04A~~—The withdrawing or resigning trustee must continue to perform under the trust agreement until the successor trustee is designated by the issuer, the sponsor, or the court.

~~006.04B~~—If the trust agreement allows the trustee to be terminated by the security holders or by the issuer, there must be a reasonable procedure set forth in the trust agreement for replacing the trustee.

~~006.05~~—The trust agreement shall provide that it shall be the responsibility of the trustee to:

~~006.05A~~—Maintain the custody of the documentation delivered to it evidencing title or perfected security interest in the issuer's eligible assets.

~~006.05B~~—Verify all funds deposited in the trust account for the benefit of the security holders and use its best efforts to verify all payments called for under the terms of the trust agreement.

~~006.05C~~—Verify the delivery of all reports and other instruments required pursuant to the terms of the trust agreement and the Securities Exchange Act of 1934.

~~006.05D~~—Examine all reports or other instruments furnished to the trustee pursuant to the terms of the trust agreement and determine, based on the information provided, whether there is a violation of any of the terms and conditions set forth in the trust agreement.

~~006.05E~~—In the event that the trustee determines there has been a default under the terms of the trust agreement, the trustee shall be responsible for the timely notification of security holders and the implementation of appropriate remedial actions and may not first seek additional indemnification other than that provided in the trust agreement from the security holders before taking such actions.

~~006.05E1~~—The trustee shall be entitled to reimbursement for all costs relating to a default.

~~006.05E2~~—The trustee shall not be indemnified for its breach of contract, misconduct or gross negligence.

~~006.05F~~—Upon notification of a default, under Section 005.04A3, above, the trustee may, if it deems appropriate, replace the servicer and take any other steps necessary for the protection of security holders.

~~006.06~~—The trustee shall provide an annual report to the security holders which indicates whether the trustee has fulfilled its obligations under the trust agreement and whether there have been any known uncured defaults under the trust agreement.

~~007~~—SUITABILITY OF SECURITY HOLDERS.

~~007.01~~—The sponsor shall establish minimum income and net worth standards which are reasonable given the risks associated with the purchase of the asset-backed securities. Offerings with greater investor risk shall have minimum suitability standards with a greater income and net worth requirements.

~~007.01A~~—The provisions of this Section shall not apply to asset-backed securities:

~~007.01A1~~—Which have an investment grade rating;

~~007.01A2~~—Which are firmly underwritten; or

~~007.01A3~~—For which the sponsor is able to demonstrate that there will be a substantial and active secondary market.

~~007.01B~~—The Director shall evaluate the standards proposed by the sponsor when the issuer's application for registration is reviewed, which evaluation may involve the following:

~~007.01B1~~—Potential for variances in cash flows;

~~007.01B2~~—Intensity of the servicing function;

~~007.01B3~~—Potential security holders;

~~007.01B4~~—Relationships among potential security holders and the sponsor;

~~007.01B5~~—Liquidity of the asset-backed securities;

~~007.01B6~~—Prior performance of similar pools formed by the sponsor;

~~007.01B7~~—Financial condition of the sponsor;

~~007.01B8~~—Credit enhancements;

~~007.01B9~~—Transactions between the issuer and the sponsor;
and

~~007.01B10~~—Any other relevant factors.

~~007.02~~—Unless the Director determines that the risks associated with particular asset-backed securities would require greater suitability standards, security holders shall have:

~~007.02A~~—A minimum annual gross income of seventy thousand dollars (\$70,000.00) and a minimum net worth of seventy thousand dollars (\$70,000.00); or

~~007.02B~~—A minimum net worth of two hundred fifty thousand dollars (\$250,000.00).

~~007.02C~~—Net worth shall be determined exclusive of home, home furnishings, and automobiles.

~~007.02D~~—In the case of sales to fiduciary accounts, the minimum suitability standards may be met by the beneficiary, by the fiduciary account, or by the donor or grantor who directly or indirectly supplies the funds to purchase the asset-backed securities if the donor or grantor is the fiduciary.

~~007.02E~~—The sponsor shall set forth in the final prospectus:

~~007.02E1~~—A description of the type of prospective security holder who might benefit from an investment in the asset-backed securities; and

~~007.02E2~~—The minimum suitability standards imposed on security holders.

~~007.03~~—The sponsor and each person selling asset-backed securities on behalf of the sponsor or issuer shall make every reasonable effort to determine that the purchase of asset-backed securities is a suitable and appropriate investment for each security holder.

~~007.03A~~—In making this determination, the sponsor and/or each person selling shares on behalf of the sponsor shall ascertain that the prospective security holder:

~~007.03A1~~—Meets the minimum suitability standards established by the issuer;

~~007.03A2~~—Can reasonably benefit from the asset-backed securities based on the prospective security holder's overall investment objectives and portfolio structure;

~~007.03A3~~—Is able to bear the economic risk of the investment based on the prospective security holder's overall financial situation; and

~~007.03A4~~—Has apparent understanding of:

~~007.03A4a~~ The fundamental risks of the investment; and

~~007.03A4b~~ The lack of liquidity of the asset-backed securities.

~~007.03B~~—Each person selling asset-backed securities on behalf of the sponsor or issuer shall make the suitability determination on the basis of information it has obtained from a prospective security holder, including the age, investment objectives, investment experience, income, net worth, financial situation, and other investments of the prospective security holder, as well as any other pertinent factors.

~~007.03C~~—Each person selling asset-backed securities on behalf of the sponsor or issuer shall maintain records of the information used to determine that an investment in asset-backed securities is suitable and appropriate for a security holder for at least six years.

~~007.03D~~—The issuer shall disclose in the final prospectus the responsibility of each person selling asset-backed securities on behalf of the sponsor or issuer to make every reasonable effort to determine that the purchase of asset-backed securities is a suitable and appropriate investment for each security holder, based on information provided by the security holder regarding the security holder's financial situation and investment objectives.

~~007.04~~—Security holders shall be required to complete and sign a written subscription agreement.

~~007.04A~~—The sponsor may require that security holders make certain factual representations in the subscription agreement, including the following:

~~007.04A1~~—The security holder meets the minimum suitability standards established for the issuer;

~~007.04A2~~—The security holder is purchasing the asset-backed securities for his or her own account;

~~007.04A3~~—The security holder has received a copy of the prospectus; and

~~007.04A4~~—The security holder acknowledges that the asset-backed securities will not be readily marketable.

~~007.04B~~—The security holders must separately sign or initial each representation made in the subscription agreement. Except in the case of fiduciary accounts, the security holders may not grant any person a power of attorney to make such representations on their behalf.

~~007.04C~~—The sponsor and/or each person selling asset-backed securities on behalf of the sponsor or issuer shall not require security holders to make representations in the subscription agreement which are subjective or unreasonable and which:

~~007.04C1~~—Might cause the security holder to believe that he or she has surrendered rights to which he or she is entitled under federal or state law; or

~~007.04C2~~—Would have the effect of shifting the duties regarding suitability, imposed by law on broker-dealers, to the security holders.

~~007.04C3~~—Prohibited representations include, but are not limited to the following:

~~007.04C3a~~ The security holder understands or comprehends the risk factors associated with an investment in the asset-backed securities;

~~007.04C3b~~ The investment is a suitable one for the security holder;

~~007.04C3c~~ The security holder has read the prospectus; and

~~007.04C3d~~ In deciding to invest in the asset-backed securities, the security holder has relied solely on the prospectus, and not on any other information or representations from other persons or sources.

~~007.04C4~~—The sponsor may place the content of the prohibited representations in the subscription agreement in the form of advisory disclosures to security holders, but the disclosures may not be contained in the security holder representation section of the subscription agreement.

~~007.05~~—The sponsor or persons selling the asset-backed securities shall send all security holders a confirmation of their purchase.

~~008~~—FEES, COMPENSATION AND EXPENSES.

~~008.01~~—For other than asset-backed securities with an investment grade rating, the sponsor shall demonstrate that the total amount of consideration of all kinds which may be paid, directly or indirectly, to all parties is fair, competitive, commercially

reasonable, and not less favorable to the issuer than fees or expenses between unrelated third parties.

~~008.01A~~—The sponsor shall subordinate its interest in the cash flow and liquidation value of eligible assets and the underlying collateral, if any, to the interest of the security holders.

~~008.01B~~—The prospectus must fully disclose, in tabular form, an itemization of:

~~008.01B1~~—The consideration which may be received in connection with the issuer's activities directly or indirectly by the sponsor, the servicer, and the selling agents;

~~008.01B2~~—The reason for which the consideration is paid; and

~~008.01B3~~—The method for paying the consideration, including the time when payment will be made.

~~008.02~~—All items of compensation to underwriters or selling agents, including, but not limited to, selling commissions, expenses, rights of first refusal, consulting fees, finders' fees and all other items of compensation of any kind or description paid by the issuer, directly or indirectly, shall be taken into consideration in computing the amount of allowable organizational and offering expenses. Generally, organizational and offering expenses will not be permitted to exceed fifteen percent of gross proceeds.

~~008.03~~—For other than asset-backed securities with an investment grade rating, origination fees and acquisition expenses paid or to be paid by the issuer, sponsor, or their affiliates must be fully justified based on actual services provided and expenses incurred in connection with acquiring the eligible assets.

~~008.04~~—Other than allowed expenses, organizational and offering expenses, and conversion expenses, the issuer may only be charged for the actual cost of goods and services used or incurred for or by the issuer and obtained from persons other than the sponsor, servicer, or their affiliates.

~~008.04A~~—No reimbursement shall be permitted for goods or services for which the sponsor or servicer are entitled to compensation by way of separate fees. Items excluded from permitted expenses include, but are not limited to, the following:

~~008.04A1~~—Rent or depreciation, utilities, capital equipment, and other administrative items of the sponsor or servicer; and

~~008.04A2~~—Salaries, fringe benefits, travel expenses, and other administrative items incurred or allocated to any controlling person of the sponsor or servicer.

~~008.04B~~—For other than asset-backed securities with an investment grade rating, the prospectus shall contain a table showing an itemized listing of

~~the fees and expenses expected to be incurred by the issuer annually, with the amounts expressed in dollars and as a percentage of the gross proceeds of the offering.~~

~~008.05— For other than asset-backed securities with an investment grade rating, servicing fees must be demonstrated to be fair and reasonable based on the actual services performed.~~

~~009— CONFLICTS OF INTEREST.~~

~~009.01— For other than asset-backed securities with an investment grade rating, the issuer will not be permitted to acquire an interest in eligible assets in which the sponsor or servicer has an interest unless the following conditions are met:~~

~~009.01A— The transaction occurs at the closing of the offering and is fully disclosed in the prospectus or, in the case of revolving and substituted eligible assets, the terms and conditions of all transfers are fully disclosed in the prospectus; and~~

~~009.01B— The eligible assets are acquired upon terms fair to the issuer and at a price not to exceed fair market value, inclusive of origination fees and acquisition expenses.~~

~~009.02— Notwithstanding the requirements of Section 009.01, above, the sponsor or servicer may purchase or generate eligible assets in its own name or the name of a nominee and temporarily hold title thereto, for the purpose of facilitating the acquisition of the eligible assets by the issuer. If the offering does not have an investment grade rating, the following additional conditions must be met:~~

~~009.02A— The eligible assets must be purchased by the issuer for a price no greater than the cost of the eligible assets to the sponsor or servicer, adjusted for intervening cash flow and expenses; and~~

~~009.02B— There may be no other benefits arising out of such transaction to the sponsor or servicer apart from compensation otherwise permitted by this Rule and disclosed in the prospectus.~~

~~009.03— For other than asset-backed securities with an investment grade rating, a sponsor or servicer shall not be permitted to acquire eligible assets from the issuer, except for:~~

~~009.03A— Repurchases or substitutions permitted under Section 003.07, above;~~

~~009.03B— Repurchases where there has been a breach of a representation or warranty pursuant to the trust agreement with respect to eligible assets; and~~

~~009.03C— Circumstances where the proceeds are used to redeem one hundred percent of the outstanding principal amount of asset-backed~~

~~securities, together with interest accrued to the date of redemption, without any penalty to the issuer.~~

~~009.04—Except as provided below, the assets of the issuer shall not be commingled with the assets of any other person.~~

~~009.04A—For other than asset-backed securities with an investment grade rating, all cash flows generated by the eligible assets shall be deposited, daily, into a segregated collections account.~~

~~009.04B—For other than asset-backed securities with an investment grade rating, in no event shall the servicer hold cash flow in its own account for more than two business days, unless such amounts are guaranteed by a letter of credit, a segregated reserve account, or other arrangement acceptable to the Director. Amounts in the collections account may be transferred to an operating account for reinvestment and the payment of allowed expenses or directly to a trust account for distribution to security holders.~~

~~009.05—For other than asset-backed securities with an investment grade rating, if the Director deems appropriate, the Director may delay the registration of asset-backed securities of another special purpose entity formed by the sponsor to purchase similar eligible assets until:~~

~~009.05A—The offering of the asset-backed securities is completed; and~~

~~009.05B—Seventy-five percent of the proceeds of the offering have been invested, or committed to investment, in eligible assets.~~

~~009.06—For other than asset-backed securities with an investment grade rating, the trust agreement shall provide that all transactions between the issuer and the sponsor or the servicer or their affiliates will be on terms no less favorable to the issuer than could be obtained from a nonaffiliated entity in an arm's-length transaction.~~

~~010—DISCLOSURE AND MARKETING.~~

~~010.01—Sales material, including, but not limited to, books, pamphlets, movies, slides, article reprints, television and radio commercials, materials prepared for broker-dealer use only, sales presentations, including prepared presentations to prospective security holders at group meetings, materials to be made available through the Internet, and all other advertising used in the offer or sale of asset-backed securities, shall conform to filing, disclosure, and adequacy requirements under the Act and any applicable rules and regulations. Statements made in sales material communicated directly or indirectly to the public may not conflict with or modify risk factors or other statements made in the prospectus.~~

~~010.02—Prospectus and its Contents.~~

~~010.02A—In connection with the offering and sale of asset-backed securities, neither the sponsor(s) nor the underwriter(s) may, in writing or~~

otherwise, directly or indirectly, represent or imply that the Director has approved the merits of the investment or any aspects thereof.

~~010.02A1~~—Any reference to compliance with this Rule or any provisions herein which connotes or implies compliance shall not be allowed.

~~010.02A2~~—The title of the issuer may not include the words “mutual fund” or “fund.”

~~010.02B~~—A forecast of the issuer’s economic performance may be included in the prospectus and in the sales material for the offering if it complies with all of the following requirements:

~~010.02B1~~—The forecast is realistic in its predictions and clearly identifies the assumptions made with respect to all material features of the presentation.

~~010.02B2~~—The forecast is examined by an independent certified public accountant in accordance with the Guide for Prospective Financial Statements and the Statement on Standards for Accountant’s Services on Prospective Financial Information as promulgated by the American Institute of Certified Public Accountants.

~~010.02B3~~—The report of the independent certified public accountant is included in the prospectus.

~~010.02B4~~—If any part of the forecast appears in the sales material, the entire forecast, including notes, must be presented.

~~010.02B5~~—The forecast is for a period equal to the term of the asset-backed securities.

~~010.02B6~~—If supplemental projections are included in the prospectus or the sales material, they must be accompanied by the complete forecast.

~~010.02C~~—For other than asset-backed securities with an investment grade rating, the prospectus shall disclose relevant facts and performance information for previous offerings by the sponsor made within the prior ten years of the date the registration application is filed with the Director.

~~010.02C1~~—Information regarding offerings made within six months of the date the registration application is filed with the Director need not be included in the disclosure.

~~010.02C2~~—The Director may allow the disclosure to be limited to offerings of asset-backed securities supported by eligible assets similar to those identified for the current offering unless it

is determined that information about other offerings is also relevant.

~~010.02C3~~—The disclosure should generally include the following:

~~010.02C3a~~—The acquisition criteria defining the eligible assets;

~~010.02C3b~~—Information indicating whether all stated payments have been made as scheduled;

~~010.02C3c~~—The structure and key features of the previous offering, if applicable;

~~010.02C3d~~—The size of the portfolio;

~~010.02C3e~~—Statistical data on losses, delinquencies, recoveries, turnover, and diversification; and

~~010.02C3f~~—Types and amounts of credit enhancements.

~~010.03~~—A marked copy of all amendments and supplements to an application shall be filed with the Director as soon as the amendment or supplement is available.

~~011~~—WAIVER OF RULE. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain provisions of this Rule may be waived by the Director.