

CESR

ANNEX 4

**CESR Proposal for the Asset Backed
Securities Registration Document**

Building Block

	<p><i>The disclosure requirements set out below shall apply to issuers of asset backed securities that are special purpose vehicles or entities, as well as co-issuers that are special purpose vehicles or entities, if appropriate. Where a special purpose vehicle or entity has no separate legal identity, the issuer is the [financial services firm] that has set up the special purpose vehicle or entity.</i></p>	<p>ESF Comment</p> <p>It should be made clear that Annex 1 is not applicable to asset backed securities and that Annex 4 applies instead of it (save where I.C.4 is applicable). In addition, in relation to issuers which do not have a legal identity (including fiduciary issuers) it is not the financial services firm that set them up which is relevant but rather the management company which manages them. Disclosing shareholdings in such companies would be inappropriate as their role is to manage the issuer within the prescribed limits of the transaction or to effect the issue as fiduciary.</p> <p>Another important point is that a distinction should be made between issuers which are SPVs (in relation to which very limited disclosure should be required) and operating companies (in relation to which wider disclosure, as contemplated below, may be appropriate).</p>
I.A	<u>Declarations</u>	
I.A.1	Provide the name and registered office of legal persons responsible for the prospectus or, as the case may be, for certain parts of them, with, in the latter case, an indication of those parts.	
I.A.2	Provide a declaration by those responsible for the prospectus that, to the best of their knowledge, the information given in that part of the prospectus, for which they are responsible, is in accordance with the facts and contains no omission likely to affect the import of the prospectus.	
I.A.3	Provide the names, addresses and qualifications of the auditors to the issuer.	
I.A.4	Where a statement or report attributed to a person as an expert is included in	

	the document, a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of that person, who has authorised the contents of that part of the document.	
I.B	<u>The issuer and its capital</u>	
I.B.1	A statement that the issuer or fund has been established as a special purpose vehicle or entity for the purpose of issuing asset backed debt securities, if applicable.	
I.B.2	The legal and, where applicable, commercial name of the entity [and, if that entity has no separate legal identity, also provide the legal and commercial name of the financial services firm that established it.]	See general comment above in relation to the wording in square brackets. For this reason, the wording in square brackets is therefore inappropriate and should be deleted.
I.B.3	The domicile and legal form of the issuer, the legislation under which the entity operates, its country of incorporation, website address, if any, and the address and telephone number of its registered office (or principal place of business if different from its registered office).	An SPV issuer may not have a website.
I.B.4	The date of incorporation and the length of life of the issuer, except where indefinite.	
I.B.5	The place of registration of the issuer and its registration number.	
I.B.6	<p>A statement that for the life of the prospectus the following documents (or copies thereof), where applicable, may be inspected:</p> <ul style="list-style-type: none"> (a) the memorandum and articles of association of the issuer; (b) any trust deed of the issuer relating to the asset backed securities issued; (c) each material contract referred to in the registration document; and (d) all reports, letters, other documents, balance sheets, valuations and statements prepared in each case by any expert any part of which is included or referred to in the registration document; <p>The issuer shall provide an indication of where any documents concerning the issuer which are referred to in the document may be inspected, by physical or electronic means.</p>	We propose the changes indicated for clarity. In addition, if any of these documents are in a language other than that of the Prospectus, there should be no requirement for a translation.
I.B.7	Except where requirement III.A of the “Securities Note: Debt Securities Schedule” is complied with, the amount of the issuer’s authorised and issued capital and the amount of any capital agreed to be issued, the number and classes of the securities of which it is composed with details of their principal characteristics; if any part of the issued capital is still to be paid up, a statement of the number, or total nominal value, and the type of securities not yet fully paid up, broken down, where applicable, according to the extent to which they have been paid up.	
I.B.8	If the issuer belongs to a group of undertakings, a brief description of the	

	group and of the issuer's position within it, or in so far as is known to the issuer, the name of any person other than a director who, directly or indirectly, has a notifiable interest under the issuer's national law in the issuer's capital or voting rights, together with the amount of each such person's interest.	
I.B.9	The document shall prominently disclose risk factors in a section headed "Risk Factors" or "Investment Considerations" that are specific to the issuer and its industry.	In relation to SPV issuers, disclosure of this kind relating to the issuer and its industry is inappropriate. Any relevant disclosure would be covered by III.C in Annex L and by Annex 10.
I.C	<u>The issuer's activities, financial position and assets and liabilities</u>	
I.C.1	A brief description of the issuer's principal activities.	
I.C.2	Information on any legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous 12 months) a significant effect on the issuer's ability to fulfil its obligations or an appropriate negative statement.	
I.C.3	Where, since the date of incorporation or establishment, an issuer has not commenced operations and no accounts have been made up as at the date of the prospectus, a statement to that effect must be provided in the registration document.	
I.C.4	Where, since the date of incorporation or establishment, an issuer has commenced operations and financial statements have been made up, the registration document must contain the financial information required under Section VII.A of the "Wholesale Debt Registration Document Building Block", for 2 years or its period of existence, if shorter.	In the vast majority of cases an issuer of asset backed securities will have been incorporated only shortly before the issue takes place. Where the issue is part of a programme or, for some other reason the issuer is already in existence and the securities are "limited recourse", only basic financial information should be required as opposed to the disclosure required by Annex L.
I.C.5	Where an issuer has prepared financial statements, it must include a statement that there has been no material adverse change in the financial position or prospects of the issuer since the date of its last published accounts. Where a material adverse change has occurred, this must be disclosed in the registration document.	

I.D	<u>The management</u>	
I.D.1	The full name, business address and function [in the group] of each of the directors of the issuer and an indication of the principal activities performed by them [outside the group] where these are significant [with respect to the group].	The reference to “group” will usually be inappropriate and is therefore confusing in this context. It should be deleted in the first and last lines or changed in the last line to “issuer” where there is no group.