

## Mortgage-Backed Securities of Government-Sponsored Enterprises

### 9. How are certain mortgage-backed securities issuers sponsored by government-sponsored enterprises (“GSEs”) treated under the final rule’s covered funds provisions?

**Posted: 11/13/2014**

Section 351.10(c)(12)(ii) of the final rule excludes from the definition of a covered fund an issuer that may rely on an exclusion or exemption from the definition of “investment company” under the Investment Company Act of 1940 other than the exclusions contained in section 3(c)(1) and 3(c)(7) of that Act. The SEC has stated that, “certain federally sponsored structured financings, such as those sponsored by the Federal National Mortgage Association, are exempted from the [Investment Company] Act under section 2(b), which exempts, among other things, activities of United States Government instrumentalities and wholly owned corporations of such instrumentalities.”<sup>1</sup> To the extent that an issuer may rely on section 2(b) of the Investment Company Act, the issuer would be relying on an exemption from regulation under the Investment Company Act other than the exclusions contained in section 3(c)(1) or 3(c)(7), and thus would qualify for the exclusion from the covered fund definition provided by section 351.10(c)(12)(ii) of the final rule.

---

<sup>1</sup> See *Exclusion From the Definition of Investment Company for Certain Structured Financings*, Investment Company Act Rel. No. 18736 (June 5, 1992). In addition, staff in the SEC’s Division of Investment Management have taken the position, based on the facts and representations presented to the staff in each case, that certain GSE-sponsored mortgage-backed securities issuers would not be required to register under the Investment Company Act in reliance on section 2(b) of that Act. See, e.g., Federal National Mortgage Association, SEC No-Action Letter (May 25, 1988) (expressing the staff’s view that the Federal National Mortgage Association (“Fannie Mae”) “is excluded from the 1940 Act under Section 2(b) as an instrumentality of the United States” and that Fannie Mae, rather than certain trusts, is the issuer for purposes of sections 3(a)(1) and 3(a)(3) of the Investment Company Act).