



The Commonwealth of Massachusetts

*Secretary of the Commonwealth
State House, Boston, Massachusetts 02133*

*William Francis Galvin
Secretary of the Commonwealth*

August 3, 2010

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Asset-Backed Securities
Release Nos. 33-9117; 34-61858
File No. S7-08010; RIN 3235-AK37

Dear Ms. Murphy:

The Massachusetts Securities Division (the "Division") welcomes this opportunity to comment on the U.S. Securities and Exchange Commission's (the "Commission") proposal to overhaul the disclosure requirements and rules for asset-backed securities ("ABS"). The Division supports the Commission's proposals generally, but urges that the Commission not promulgate disclosure requirements for privately sold asset-backed securities under Regulation D, or in the alternative that it raise the Regulation D financial qualification standards for investors to purchase asset-backed securities to match the Qualified Institutional Buyer standard used in SEC Rule 144A.

The Massachusetts Securities Division is a department within the Office of the Secretary of the Commonwealth of Massachusetts. The Securities Division is charged with the responsibility to implement and enforce the Massachusetts securities laws. As such, the Secretary of the Commonwealth is the chief securities regulator for Massachusetts.

There is a Clear Need to Improve Regulation of, and Increase Disclosure for, Asset-Backed Securities.

World financial markets are still coming to grips with the consequences of a financial crisis that was fueled by an array of improper practices in the markets for structured finance products (asset-backed securities), including mortgage-backed securities.

Many mortgage-backed securities were used to collateralize other instruments, such as collateralized debt obligations and collateralized loan obligations (CDOs and CLOs) -- types of mortgage-backed securities that were sold in private placements. CDOs in

particular contributed significantly to the collapse in liquidity in the financial crisis. Moreover, because CDOs were often components of other asset-backed securities, there were many instances of unpredictable and catastrophic failures of those instruments.

We applaud the Commission's proposals to overhaul and upgrade the regulation of these investments. We strongly support the measures that the Commission proposes to increase the amount and quality of disclosure (including detailed asset-level disclosure) for these securities.

We support the Commission's upgrading of the shelf registration rules for ABS. The market and investors will benefit from improved asset-level disclosure, the prospectus delivery rules, the requirement that ABS sponsors retain a portion of the risks of each tranche, and the ongoing information requirements for these securities.

The Commission Should Not Tie Disclosure Requirements for Privately-Issued Structured Finance Products to Regulation D.

In Section VI of the Proposal, the Commission proposes, for structured finance products, to condition the safe harbor provided by Rule 506 of Regulation D on the requirement that the issuer provide a high level of disclosure to purchasers in connection with the initial distribution of those securities (basically, the same level of information required on registration forms S-1 or SF-1).

The need for greater disclosure is clear. Privately sold structured finance products, particularly CDOs and CDO-squareds, were at the heart of the financial crisis. These instruments became "toxic assets" in the portfolios of many institutions, because those investors failed to know and understand their risks.

Privately issued structured finance securities are typically traded in the Rule 144A market, which is limited to Qualified Institutional Buyers (QIBs), investors that meet high standards of financial qualification. Simply described, a QIB is an investing entity that owns and invests at least \$10 million to \$100 million in securities (depending on the type of entity) on a discretionary basis.

The Rule 144A definition of Qualified Institutional Buyer may describe a type of entity that can fend for itself in the ABS market. However, it is completely inappropriate for ABS to be offered and sold under Rule 506 of Regulation D, because Regulation D's financial qualification standards are so low. Rule 506 permits sales to up to 35 non-accredited investors and an unlimited number of accredited investors (a category that includes individuals with a \$1 million total net worth or an annual income of at least \$200,000).¹ The Regulation D definition of Accredited Investor does not describe a

¹ We note that while the recently passed Dodd-Frank Bill anticipates that the Commission will study and increase the financial standards for investors to be accredited under Regulation D, even such increased standards will probably be far below the Rule 144A Qualified Institutional Buyer standard.

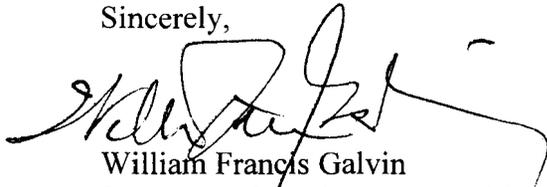
category of investors who can fend for themselves in the market for complex and high risk asset-backed securities.²

If this rule is adopted as proposed, we can expect some issuers and placement agents will use the comparatively low financial qualification standards in Regulation D to determine who is an appropriate purchaser for these securities. Regulators have seen this problem already, including instances where sponsors and placement agents for tenant-in-common tax shelters and speculative oil and gas programs have asserted that sales to individual investors were appropriate because the investors were accredited.

We do not believe it is the Commission's intention in these proposals to create a channel, via Regulation D, for asset-backed securities to be sold to investors who merely meet the accredited investor definition. We urge the Commission to adopt improved disclosure requirements for privately sold asset-backed securities by some other means than Regulation D, or to raise the Regulation D financial qualification standards for asset-backed securities to match the Qualified Institutional Buyer standard that is used in SEC Rule 144A.

Please contact me or Bryan Lantagne, Director of the Massachusetts Securities Division, at (617) 727-3548, if you have questions about these comments or I can assist in any way.

Sincerely,



William Francis Galvin
Secretary of the Commonwealth
Commonwealth of Massachusetts

² The Commission has noted that asset-backed securities are currently distributed pursuant to the private offering exemption provided under Section 4(2) of the Securities Act of 1933, and that issuers may use that exemption in the future. Nonetheless, we are concerned that tying the distributions of asset-backed securities to Rule 506 will have the result of incorporating the low financial qualification standards of Regulation D into those sales.