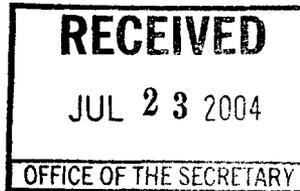


43

**VIA UPS OVERNIGHT**

Securities and Exchange Commission  
450 Fifth Street, N.W.



July 16, 2004

Washington, DC 20549-0609  
Attn: Jonathan G. Katz, Secretary

**Re: Asset-Backed Securities**  
**Release Nos. 33-8419, 34-49644 (File No. S7-21-04)**

Ladies and Gentlemen:

UBS Securities LLC (“UBS Securities”) is submitting this letter in response to the request of the Securities and Exchange Commission (the “Commission”) for comments on its release regarding registration, disclosure and reporting requirements for asset-backed securities (the “Proposed Rules”). UBS Securities appreciates this opportunity to be heard in connection with the Commission’s efforts to promulgate regulations that will balance the needs of ABS investors with the demands of the ABS markets for liquidity and funding.

UBS Securities is a full service broker-dealer that engages in asset-backed transactions in the United States and through its affiliates throughout the world as an underwriter and dealer. UBS Securities is a subsidiary of UBS AG and is involved with and underwrites many forms of asset-backed securities. An affiliate of UBS Securities is a commercial mortgage loan originator that sells commercial mortgage loans on a regular basis to unaffiliated entities that issue commercial mortgage-backed securities. UBS Securities is also a leading underwriter in most if not all of the major “private label” residential mortgage-backed securitization programs in the United States in addition to having its own active residential mortgage-backed securitization program. As such, UBS Securities appreciates, and would like to continue to avail itself of, the enhanced liquidity, transparency and pricing afforded by the public market for registered asset-backed securities.

UBS Securities has participated in the preparation of the comment letters being submitted by the Bond Market Association (the “BMA Letter”) and by the Commercial Mortgage Securities Association (the “CMSA Letter”), and we have reviewed the letter being submitted by the American Securitization Forum (the “ASF Letter”) and the American Bar Association (collectively, the “Associations’ Letters”). We are familiar with and fully support the concerns, comments and proposals expressed in the Associations’ Letters. Without limiting

our general support of the Associations' Letters, we would like to take this opportunity to highlight and emphasize three issues of particular concern to us.

### **Form S-3 Eligibility**

We are particularly concerned with the provisions of the Proposed Rules that would require twelve months of compliance with the reporting requirements of the Securities Exchange Act of 1934 (the "Exchange Act") as a condition to using a currently effective Form S-3 registration statement. We believe this rule is overly harsh, since a depositor could be immediately disqualified in any given month by a defective filing relating to a prior transaction. This will lead to uncertainty in the marketplace, inefficient execution and higher costs of financing. We are particularly concerned, in light of the substantial increase, in the type and amount of information to be filed under the Proposed Rules, much of which necessarily must be provided by persons unaffiliated with the depositor. Put plainly, the Proposed Rules greatly increase the opportunity for error in providing timely and complete Exchange Act reports, and at the same time substantially increase the penalty for failure to timely and completely file these reports (even if such failure is inadvertent or results from errors or failures by persons over whom the depositor has no control).

In addition, this rule will have particularly drastic consequences when applied in conjunction with the Commission's proposed extension of the reporting compliance requirement to the sponsor. The term "sponsor," as currently drafted, could be interpreted to include any party that sells assets into a particular securitization. In many securitizations one or more parties that sell assets to the depositor also sell assets to other unaffiliated depositors. If each of those selling entities is deemed a "sponsor" of each securitization into which it sells assets, the resulting network of sponsorships across different securitization programs would result in complex situations in which the non-compliance by one securitization trust would cause multiple financial institutions to immediately lose their ability to sell assets of any type in a public securitization.

While all parties currently responsible for making timely and accurate filings should take these responsibilities very seriously, we believe that any rule that disqualifies a sponsor from securitization of all asset types is overly harsh and does not consider the reality of large diverse financial institutions, in which separate business teams securitize different asset types. Nor does such rule consider the lack of evidence of investor harm occasioned by instances of non-compliance given the monthly reports currently distributed to and relied upon by the investor community. We also believe that any rule restricting a sponsor's ability to securitize its assets must take into consideration the reality in which the responsibilities of preparation and filing of Exchange Act reports are allocated. The Proposed Rules require inclusion of extensive information that can only be provided by unaffiliated third parties. It is fundamentally unfair to restrict the depositor's Form S-3 eligibility as a result of a violation of a reporting requirement that is not effectively subject to its control.

We believe that a more appropriate approach would be along the lines of the proposal advanced in the Associations' Letters, under which the ability to file a new Form S-3 registration statement would be denied only to the depositor that did not timely file its required Exchange Act reports during the preceding twelve month period (subject to the proposed

exception for immaterial and inadvertent failures) or any other depositor subsequently established by the controlling entity of the ineligible depositor for the purpose of securitizing assets of the same asset class.

### **Static Pool Data**

We are also concerned with the requirement in the Proposed Rules for the disclosure of static pool data. We fully support the concerns expressed in the ABA Letter, the BMA Letter and the CMSA Letter with respect to the materiality of static pool data. As stated in the ABA Letter, after years of experience, and trillions of dollars of ABS issuances, there has developed no practice of providing, or even defining, static pool data. In our view, this is evidence of the lack of materiality of this data. If such information were to be required, even if the requirement contains a materiality standard, we are very concerned with the potential exposure to Section 11 and Section 12(a)(2) liability for the presentation of information as to which there is no current market standard and no custom or practice to rely on, and where, in many cases, that information may need to come from unaffiliated third parties.

We are also concerned that Rule 426 when read together with Rule 167 could capture all static pool data that issuers voluntarily post on their websites (which likely includes more than the minimum data required by the Proposed Rules) within the scope of the term “prospectus” and require such data to be filed. This form of voluntary disclosure should be encouraged and not discouraged by increasing the burdens of filing and exposure to liability.

Accordingly, we request that the Commission provide for a safe harbor under which persons that provide static pool data would not be liable under Section 11 and Section 12(a)(2) for untrue statements or omissions, unless such untrue statements or omissions were knowingly false or misleading. This approach is similar to the approach the Commission has taken for forward-looking statements. We also request clarification that static pool data available on a web site during the offering process would not be a prospectus.

### **Repackagings**

Lastly, we are concerned with the provisions of Item 1100(c)(2)(iii) of the Proposed Rules, as applied to repackaging or re-securitization transactions. This rule would require an issuer to provide an undertaking to terminate a transaction or portion of a transaction in the event that the underlying security issuer that is a “significant obligor” ceases to be eligible to register securities on Form S-3 or ceases to file its periodic reports. We believe that it is inherently unfair that investors in the repackaging transaction would be forced to sell their interest in the underlying asset-backed security while direct holders of that security would have no such obligation. Also, the repackaging trust’s failure to provide required information should not disqualify its sponsor from ability to use Form S-3 if the information about the underlying securities is not delivered by the underlying security issuer on a timely basis.

Accordingly, we endorse the proposal in the BMA Letter and the ASF Letter that the issuer of a repackaging transaction should be required to verify that the underlying securities are those of the reporting companies that have satisfied their reporting obligations for the 12-month period preceding the initial issuance of repackaged securities, but if an underlying security

issuer fails to meet its reporting obligations (or is no longer obligated to provide such reports) there should be no impact on the issuer of the repackaged securities.

\* \* \* \*

While we have highlighted only three of our concerns, we reiterate our general support of all the concerns, comments and proposals made in the Associations' Letters. We thank the Commission for its undertaking to update and codify the rules and regulations applicable to asset-backed securities.

Very truly yours,

UBS Securities LLC



Louis Eber  
Managing Director and General Counsel