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WORKING UNDER THE SUPERVISION OF PRINCIPALS OF THE WASHINGTON OFFICE.

February 7, 2011

By e-mail: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Proposed Rule on Asset-Backed Securities
File Number S7-02-11

Dear Ms. Murphy:

We are submitting this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments regarding the Commission's proposed rule (the "Proposed Rule") governing the termination of reporting under the Securities Exchange Act of 1934 (the "Exchange Act") in relation to asset-backed securities ("ABS") contained in Exchange Act Release No. 34-63652 (January 6, 2011); 76 Fed. Reg. 2049 (January 12, 2011) (the "Proposing Release"). We appreciate the opportunity to provide comments on the Proposed Rule.

We agree with the Commission's statement that "post-issuance reporting of information by an ABS issuer provides investors and the markets with transparency regarding many aspects of the ongoing performance of the securities and the servicer" and that this "transparency is important for investors and the market in evaluating transaction performance and making ongoing investment decisions." Proposing Release at 76 Fed. Reg. 2049. We note, however, that the goal of transparency is not unique to the ABS market, and that reporting under the Exchange Act involves

substantial costs which must be weighed against the benefits of the reported information to the market. In some cases investors themselves should be given the right to balance these considerations. Moreover, for certain securities – securities which rely on reference information pursuant to Item 1100(c)(2) of Regulation AB – information required to be reported under the Exchange Act can become not merely expensive, but impossible to obtain. In this circumstance the ability to terminate reporting obligations under the Exchange Act has been an important means of avoiding losses to investors and should be retained. We briefly explore each of these points below.

1. The Commission should allow termination of Exchange Act reporting where reference information under Item 1100(c)(2) of Regulation AB is unavailable.

Under Regulation AB, where an ABS is backed by a sufficient concentration of obligations of an entity, the disclosure requirements in relation to that ABS include a requirement for audited financial information of that entity to the same extent as would be required in a registered offering by the entity itself. See Item 1112(b) of Regulation AB (significant obligors), Item 1114(b)(2) of Regulation AB (credit enhancement providers) and Item 1115(b) of Regulation AB (derivative counterparties).¹ These reporting requirements have important implications for ABS in which the underlying assets consist of corporate debt – generally referred to as repackagings. In a repackaging transaction, the sponsor of the transaction purchases the underlying corporate debt securities in the secondary market, and has no arrangement with the issuer of the underlying securities in connection with the repackaging. Where the requirements of Rule 190 under the Securities Act are met -- including that (i) “neither the issuer of the underlying securities nor any of its affiliates has a direct or indirect agreement, arrangement, relationship or understanding, written or otherwise, relating to the underlying securities and the asset-backed securities transaction” and (ii) “the offering of the asset-backed security does not constitute part of a distribution of the underlying securities” – the issuance of the ABS is not also registered as a primary distribution of the underlying corporate debt securities. Provided that the issuer of the corporate debt securities is an Exchange Act reporting company meeting the requirements of Item 1100(c)(2)(ii) of Regulation AB, and the issuer of the ABS meets requirements in Item 1100(c)(2)(i) of Regulation AB similar to the provisions of Rule 190, the disclosure requirements of Item 1112(b) of Regulation AB may be met by reference to available public reporting for the issuer. Many repackaging transactions have been registered and meet their ongoing Exchange Act reporting obligations on this basis.

Notwithstanding these provisions, it sometimes becomes impossible for issuers of repackaging transactions to meet their obligations under Regulation AB where a significant obligor ceases its Exchange Act reporting. Such a circumstance would generally arise where a merger or acquisition results in the significant obligor ceasing to have any securities held by the public, or where the significant obligor withdraws its securities from listing on an exchange and meets the threshold requirements for termination of reporting under Section 15(d) of the Exchange Act. The Commission has recognized the difficulties posed by this situation, and has permitted the terms of repackaging transactions to provide that the repackaging will liquidate if this circumstance arises:

¹ For ease of reference we will refer to all such entities as “significant obligors” for purposes of this letter.

Because of the possibility that corporate debt issuers can suspend their Exchange Act reporting requirements, the staff has acceded to the requests of ABS issuers securitizing such debt to include a provision that, if an ABS issuer is unable or unwilling to provide the significant obligor's financial information, the transaction, or the portion of the transaction, will terminate, such as by distributing the pool assets to investors or selling the pool assets and liquidating the asset backed securities. If the third party ceases to report, the reference or incorporation by reference alternative will no longer be available because the obligor will no longer file reports with the Commission, but the requirement to provide the financial information about the significant obligor remains.

Securities Act Release No. 33-8518 and Exchange Act Release No. 34-50905 (December 22, 2004), 70 Fed. Reg. 1506, 1553 (January 7, 2005).

While a provision for liquidation of the ABS transaction resolves the question of the ABS issuer's reporting obligations by terminating the issuer's existence, this mechanism has an adverse effect on investors. It may be impossible to distribute assets of the ABS issuer to investors in kind. An unanticipated, mandatory liquidation of the ABS issuer's assets into uncertain market conditions may cause an issuer to obtain an undesirable sale price, and at the very least incurs the costs of sale. Indeed, depending on the reason why the significant obligor ceased public reporting, the requirement to liquidate the related assets may come at an especially disadvantageous time from the investors' point of view. Moreover, liquidation may result in a realization of tax gains and losses that investors wish to avoid as a matter of timing. Finally, the early termination of any derivatives associated with the ABS transaction – again, a necessary result of liquidating the issuer -- may further impose losses on investors.

At present, issuers in repackaging transactions have the additional option of terminating their reporting obligations with respect to the ABS pursuant to the automatic suspension under Section 15(d) of the Exchange Act. Termination of Exchange Act reporting by the ABS issuer is a logical response to termination of Exchange Act reporting by a significant obligor. Holders of the ABS backed by corporate securities in this circumstance are essentially in the same position as direct holders of those corporate securities: disclosure was originally provided to them, but because the threshold number of holders is no longer met under Section 15(d), public disclosure has been discontinued. The ABS securities remain outstanding, with investors in the ABS on the same footing as direct holders of the relevant corporate securities, and the costs and potential losses associated with early termination are avoided. However, if the Commission removes this option under the Proposed Rule, the only option remaining to repackaging issuers will be to terminate as described above. This will impose unnecessary costs on investors, generally in situations where it would be impossible for the ABS issuer to provide the requisite disclosure.

We therefore suggest that the Proposed Rule be modified to provide an additional circumstance where reporting under Section 15(d) of the Exchange Act would be automatically

suspended. This modification would provide that reporting obligations for an ABS² are suspended as to any fiscal year, other than the fiscal year within which the registration statement became effective, where

- (1) the assets of the ABS consist primarily of one or more of the following: (i) obligations of “significant obligors” under Item 1112(b)(1) or (2) of Regulation AB, (ii) obligations of a credit enhancement provider subject to Item 1114(b)(2)(i) or (ii) of Regulation AB or (iii) obligations of a derivative counterparty subject to Item 1115(b)(1) or (2) of Regulation AB,
- (2) the conditions for reference to available information under Item 1100(c)(2)(i) and Item 1100(c)(2)(ii) were met or the requirement referred to in subparagraph (1) (i), (ii) or (iii) did not apply with respect to such obligors or obligations on the date of issuance of the ABS, and
- (3) the conditions for reference to available information under Item 1100(c)(2)(ii) are not met in relation to one or more of the obligors and obligations referred to in subparagraph (1).

Should the Commission wish to narrow this exception further, the right to terminate Exchange Act reporting could also require as a fourth item that the conditions for reference to available information under Item 1100(c)(2)(i) of Regulation AB are met as of the date of the suspension in relation to the obligors and obligations referred to in subparagraph (1) above. This would limit the provision for these transactions to circumstances where the issuer continues to meet the requirement that “[n]either the third party nor any of its affiliates has had a direct or indirect agreement, arrangement, relationship or understanding, written or otherwise, relating to the asset-backed securities transaction, and neither the third party nor any of its affiliates is an affiliate of the sponsor, depositor, issuing entity or underwriter of the asset-backed securities transaction.” In any event, we submit that for transactions that consist primarily of obligations for which corporate financial statements are the relevant disclosure, the termination of Exchange Act reporting where the original Section 15(d) threshold ceases to be met is consistent with the policies of the Dodd-Frank Act.

Indeed, notwithstanding that repackagings have been registered as ABS pursuant to Regulation AB, there may be sound reasons to exclude such securities entirely from the definition of “asset-backed securities” under the Exchange Act as added by Section 941(a) of the Dodd-Frank Act. Notwithstanding the important goals of increased disclosure and transparency in relation to ABS in general that are emphasized within the Dodd-Frank Act, there is no apparent rationale for requiring greater disclosure in relation to ABS backed primarily by corporate securities than there would be for the corporate securities themselves. Such an exclusion of

² We note that the Proposed Rule does not specify whether the definition of “asset-backed security” under the Proposed Rule is taken from Item 1101(c) of Regulation AB, or from the definition added to the Exchange Act by Section 941(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The intent is presumably the latter, given that the Proposed Rule is being enacted in response to Section 942(a) of the Dodd-Frank Act, but because securities “registered pursuant to § 230.415(a)(1)(x) of this chapter” as described in subparagraph (a) of the Proposed Rule will have been based on the Regulation AB definition, the Commission may wish to clarify this.

repackagings as defined above from the definition of “asset-backed security” under the Dodd-Frank Act, if mirrored in the Proposed Rule, would also resolve the concern we raise here.

2. The Commission should permit termination of reporting where it is requested by investors.

The importance of reporting in an ABS transaction is greatest to investors in the earlier years a security is outstanding. The performance of securitized portfolios is heavily influenced by the quality of underwriting, and would rarely be expected to change dramatically in the later years a security is outstanding. At the same time, for an issuer of ABS to continue transaction reporting even when the portfolio is well seasoned, and the principal balance of the outstanding securities and the assets held by the issuer are greatly reduced, may be nearly as expensive as the reporting in the earlier years of the transaction. After the securities have been outstanding for a minimum period of time or have amortized sufficiently, it may well be the case that investors in the transaction would desire to terminate some aspects of continued Exchange Act reporting in return for recovering the attendant costs. Investors ought to be given this option. Thus, the Commission should provide that after a minimum period of time a transaction has been outstanding or after a minimum amount of amortization of the securitized pool, investors in the transaction may by a specified vote (of at least a majority in principal amount of all outstanding classes of securities as a whole) terminate the obligations of the issuer for continued reporting. Possible thresholds in this regard could allow such a vote to permit termination after either (i) amortization of the securitized pool to less than 50% of its original balance, subject to the previous filing of at least two annual reports on Form 10-K by the issuer or (ii) the previous filing of at least four annual reports on Form 10-K by the issuer. For the purpose of any such vote, securities of the issuer held by the depositor or its affiliates would be required to be disregarded.

We would be pleased to respond to any inquiries regarding this letter or our views on the Proposed Rule generally. Please contact Michael A. Mazzuchi at 202-974-1572 or Raymond B. Check at 212-225-2122.

Very truly yours,

CLEARY GOTTlieb STEEN & HAMILTON LLP