August 2, 2010

VIA email to rule-comments@sec.gov
Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Proposed Rule for Asset-Backed Securities
(Release Nos. 33-9117; 34-61858; File No. S7-08-10)

Dear Ms. Murphy:

Citigroup Global Markets Inc. ("Citi")[1] is pleased to have this opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposed rule (the "Proposal") for asset-backed securities ("ABS").[2] Citi supports transparency and meaningful disclosure in the securitization market and Citi believes that a robust securitization market is necessary for liquidity in the credit market, particularly consumer loans, and is essential for financial recovery in the United States. Citi recognizes the importance of investor confidence to the securitization market but believes that overly burdensome disclosure requirements or outsized liability will create a hostile regulatory framework that will force market participants[3] to search for alternative funding mechanisms or possibly exit the securitization market altogether. Consequently, in considering the Proposal, Citi urges the Commission to balance the informational needs of investors and the burdens imposed on market participants.

In connection with the Proposal, Citi participated in the drafting of the letters by the Securities Industry and Financial Markets Association, the American Securitization Forum ("ASF"), and the American Bankers Association and ABA Securities Association (collectively, the "Association Letters"). Citi generally supports the sponsor and dealer responses reflected in the Association Letters. Citi is writing separately to highlight certain issues in regard to the Proposal and some differences in approach from the Association Letters.

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[1] Citi is registered as a broker-dealer in all 50 states, the District of Columbia, Puerto Rico, Taiwan and Guam, and is also a primary dealer in U.S. Treasury securities and a member of the principal United States futures exchanges. Citi is a wholly owned indirect subsidiary of Citigroup Inc. Citigroup Inc. is a diversified global financial services holding company whose businesses provide a broad range of financial services to consumer and corporate clients as well as governments and other institutions. Citigroup Inc. does business in more than 100 countries. Additional information may be found at www.citigroup.com or www.citi.com.

[2] For purposes of this letter, the term "ABS" is used to include mortgage-backed securities ("MBS") unless otherwise specified.

[3] For purposes of this letter, the term "market participants" is used to refer to issuers, originators, sponsors and dealers, unless otherwise specified.

Timing and Coordination of Rule Making

Citi requests that the Commission coordinate the implementation and effectiveness of the Proposal with both the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Reform Act") and the Federal Deposit Insurance Corporation's Notice of Proposed Rulemaking regarding Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After September 30, 2010 (the "FDIC NPR"). The Proposal, the Reform Act and FDIC NPR often cover the same topics, such as risk retention and dates of implementation, in different, and sometimes conflicting, ways. The uncertainty created by the various regulatory proposals is harmful to the securitization market, and, looking forward, conflict among the regulatory agencies or a perceived lack of finality in the regulations will materially impede the securitization market.

Disclosure

Citi supports transparency and meaningful disclosure in connection with the issuance of ABS. If a market participant has data available, and such data is material, it should be provided to investors who require that data. However, market participants should not be burdened with disclosure requirements that are not material, and should be able to rely upon Rule 409 of the Securities Act of 1933 (the "Securities Act"), which provides, in part, that "[i]nformation required need be given only insofar as it is known or reasonably available to the registrant." Market participants should not be required to expend unreasonable effort or expense to provide data they do not possess. However, the availability of Rule 409 has been called into question by the statement in the Proposal that "[h]owever, 'not applicable,' 'unknown' or 'other' would not be appropriate responses to a significant number of data points and registrants should be mindful of their responsibilities to provide all of the disclosures required in the prospectus and other reports."[4] As this statement conflicts with the plain language of Rule 409, Citi requests that the Commission clarify that Rule 409 is available to registrants in connection with the new disclosure proposals, particularly Items 1111, 1111A, 1111B, 1121, 1121A (collectively, the "AB2 Disclosure Proposals").

Many of the new disclosure fields specified under the AB2 Disclosure Proposals have not been weighed for materiality or shown to affect the performance of the securities or the pricing of securities. Despite lacking these new data fields, (a) the current secondary market for ABS, including MBS, is relatively robust, and (b) the primary market for ABS, other than private-label MBS, is also relatively robust.[5] With respect to private-label MBS, the lack of new disclosure fields is not the primary obstacle to new issuance, as demonstrated by the relatively robust market for new issue re-REMIC securities and secondary trading market for private-label MBS.[6]

In addition, while many of the data fields in the AB2 Disclosure Proposals seem to mirror the disclosure fields proposed by the ASF in its Project RESTART RMBS Disclosure and Reporting Packages Final Release ("ASF Final Release"), the ASF Final Release specifically states under a separate heading entitled "The Project Does Not Determine Materiality" that "[n]othing in this

[4] 75FR23357-23358 (May 3, 2010).

[5] The ABS new-issue market's recovery was assisted by the Federal Reserve Bank of New York's Term Asset-Backed Loan Facility ("TALF") and has continued to be active despite the end of new funding under TALF.

[6] The reason for the lack of new issue private label MBS is likely a complex mix of micro and macro economic factors such as loan pricing, home valuations, credit rating agency subordination levels, competition from government supported enterprises, competition from other fixed income instruments, regulatory and legal uncertainty, and changing accounting and financial strategies.

Final Release should be read as any statement or acknowledgment as to the materiality of the information in the aggregate or in any individual field for securities law purposes." The ASF Final Release also states that "[i]f production of information would require unreasonable effort or expense, the ASF acknowledges that such information may not be disclosed unless the party responsible for producing such information determines that it is material." Furthermore, the ASF Final Release acknowledges that the proposed disclosure fields may not be applicable to all pools and that certain pools "might be exempt from many of the data requests" and that "[i]t is also understood that certain fields will be more important for particular transactions than others." Clearly, the securitization industry has not agreed as to the materiality or application of these data fields to various types of MBS, let alone ABS generally.

Citi strongly opposes an all-or-none framework which mandates securitization sponsors to either provide every proposed data field under the AB2 Disclosure Proposals or be denied access to the securitization market. Citi believes the appropriate balance in addressing both market participant and investor interest can be reached by requiring issuers to disclose the applicable list of AB2 Disclosure Proposals and either provide the applicable data, or clearly disclose which data fields will not be provided (the "Suggested Disclosure Proposal"). Investors will be able to readily determine which data fields are not being provided and can make their investment decisions accordingly, and market participants will not be foreclosed from accessing the capital markets due to their inability to meet every requirement of the AB2 Disclosure Proposals.

The Suggested Disclosure Proposal should apply across the spectrum of securitization products, but particularly in respect of resecuritizations. Resecuritization issuers will often be unable to meet all of the AB2 Disclosure Proposals because they generally do not have access to the underlying asset level files. Resecuritizations have an important role in the securitization market and should remain available to market participants without undue restrictions. Recently, resecuritizations have been vital to investors in working out their portfolio of securities and were material to the recovery of the MBS secondary trading market. Resecuritizations have helped avoid fire-sale situations by providing an alternative to a forced outright sale of bonds that no longer meet internal credit rating criteria due to credit rating downgrades. The inability to resecuritize would have a direct and materially negative impact on investors.

The Suggested Disclosure Proposal also addresses the problem of legacy assets and future assets that are not originated in contemplation of securitization, such as portfolio loans, neither of which will have all of the required data fields under the AB2 Disclosure Proposals. Unless the Commission either (a) applies the Suggested Disclosure Proposal or (b) exempts such assets, both loans and securities, from the AB2 Disclosure Proposals, the result will be a massive pool of assets that will be shut out from the securitization market, resulting in reduced liquidity for these assets and potentially shutting down the securitization market until assets that meet the new disclosure proposals are originated in volume. Preventing the securitization of these legacy assets would be akin to the Commission stopping all secondary market trades of existing ABS securities simply because those prior securities do not conform to the AB2 Disclosure Proposals. Consequently, Citi urges the Commission to (i) apply the Suggested Disclosure Proposal to all securitizations, or (ii) at a minimum, (A) permanently exclude legacy assets, both loans and securities, originated prior to the implementation date of the Proposal from the AB2 Disclosure Proposals and (B) create explicit safe harbors for later-originated assets that may not be able to satisfy all of the AB2 Disclosure Proposals. For the safe harbors, the standards set forth in Rule 409 seem appropriate.

Rule 144A Transactions

Citi believes that it is important to maintain the distinction between registered offerings and private offerings. Transactions conducted under a private placement exemption allow market participants and sophisticated investors to negotiate transactions away from rigid registration requirements, to execute transactions which may not meet or strictly fit within the public disclosure regime, or to conduct confidential bespoke transactions.[7] The proposed requirement under Rule 144A(d)(4)(iii) (the "Rule 144A Proposal") would generally remove the public-private distinction by requiring market participants to provide the same information as would be available if the offering were registered on Form S-1 or Form SF-1, including the AB2 Disclosure Proposals, or else risk fraud liability under proposed Rule 192.

Despite the paradigm shift in the regulatory framework contemplated by this rule change, the Commission does not set forth a compelling rationale for the proposed change. Notably, there is no claim in the Proposal that purchasers of the securities failed to receive material information about their securities at the time of sale. Instead, the Proposal focuses on a single type of ABS, collateralized debt obligation transactions ("CDO"), and states that "other market participants and regulators did not have access to important information."[8] The Commission also proffers the rationale that "information about the assets and the parties in the securitization chain facilitates an understanding of the valuation of asset-backed securities", which, while true, is not determinative as to whether material information about the transaction has been conveyed to investors.[9] Finally, there is statement that that "the costs of information asymmetry for ABS issuances can differ significantly from those incurred in the issuances of most other securities", which is not only debatable, but is also not a statement that purchasers of ABS failed to receive material information at the time of purchase.[10]

The Commission does make a negative inference that "purchasers of asset backed securities in Rule 144A transactions may receive only a minimal amount of information about their investment."[11] This is generally not an accurate statement, since investors have typically received information on par with registered offerings,[12] but more importantly, even if true, this inference does not address whether investors received the information they required to make an investment decision. Investors in the Rule 144A market are highly sophisticated and capable of making their own investment decision and negotiating the terms of their investment, including disclosure.[13]

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[7] "Issuers reportedly participate in the private market to preserve confidentiality; to avoid the rating process; to issue securities with complicated or unusual terms; to reduce costs of issuance; to avoid delays associated with registration; and to delay take-down of funds." 53FR44020 (November 1, 1988).

[8] 75FR23394. Also, while CDOs did have a role in the financial crisis, the performance of CDOs was primarily based on the performance of the underlying securities, which were generally MBS and other ABS securities.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] In addition, these transactions have generally been conditioned, for due diligence defense purposes, upon the receipt by the underwriters of negative assurance letters from outside counsel asserting that such counsel is not aware of any material omissions in the offering document. The language is generally as follows: "nothing came to our attention that caused us to believe that the offering document, as of its date, contained any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading."

[13] "Generally, the reasons given for investors' participation in the U.S. private market are yield incentives, asset/liability matching, the ability to take large participations, better call protection and better covenant protection." 53FR44020.

The Commission itself noted in connection with the promulgation of Rule 144A that "Congress and the Commission historically have recognized the ability of professional institutional investors to make investment decisions without the protections mandated by the registration requirements of the Securities Act."[14] The Commission specifically noted that the "'investing public' intended to benefit from the registration provisions of the Securities Act was unsophisticated, individual investors."[15] In this respect, the ASF Final Release also recognized that qualified institutional buyers are "experienced investors who have direct access to issuers and substantial information in the market and are capable of negotiating their own terms."

Given the history of Rule 144A, it is unclear why the Commission proposes to override mutually satisfactory negotiations between an issuer and a sophisticated investor, particularly where the Commission does not have knowledge of the specific facts and circumstances of the transaction or the needs and requirements of the issuer and investor. To the extent the purpose of stepping between deal parties is to address material deficiencies in information, investors already have access to a remedy under Rule 10b-5 of the Securities Exchange Act of 1934 (the "Exchange Act").

The existence of the Rule 10b-5 remedy raises questions about the need for proposed Rule 192. Also, the application and basis for Rule 192 are unclear. The Proposal notes that "ABS investors should be able to rely on the continued availability of information to themselves and prospective purchasers as a prophylactic measure against the possibility of fraud…. failure to provide such information upon request may constitute a fraud in the offer of securities."[16] While fraud at the time of the offering is covered by Rule 10b-5, it's unclear how proposed Rule 192 would retroactively impose fraud "in the offer of securities" for a future failure to provide information to a subsequent purchaser. Also, it's not clear that a future contractual breach to provide information would constitute fraud absent scienter, either "in the offer of securities" or at the time of the breach of contract.[17]

Citi requests that the Commission retract the Rule 144A Proposal, or in the alternative to employ the Suggested Disclosure Proposal described above. In either case, for the reasons noted above, Citi requests that Rule 192 be retracted.

Finally, in connection with the definitional changes for Rule 144A, the proposed addition to the definition of "structured finance product" in §230.144A(a)(8)(ii)(G) of "[a] security that at the time of the offering is commonly known as … a structured finance product" is circular and confusing. This clause should be either refined or deleted. While there are still questions surrounding the applicability of the term "asset-backed security", there is some general agreement as to what constitutes ABS; however, there is no agreement on the definition of "structured finance product." This term could range from standard ABS to any product that is not straightforward equity or debt. For example, an equity warrant or any security that incorporates a feature, like a guarantee, option, or swap, could be viewed as a structured finance product.

[14] Ibid at 44022.
[15] Ibid at 44023.
[16] 75FR23396.
[17] Ibid, fn 472. Given the language differences between Section 17(a)(3) and proposed Rule 192, it is not clear that the Commission's citation of Aaron vs SEC, 446 US 680 (1980) is appropriate.

Waterfall Model

Citi requests that the Commission confirm that the waterfall model requirement in proposed Item 1113(h) will be satisfied by the filing of a model that reflects the payment structure described in the offering document and that liability will be measured against conformity with the description in the offering document. Requiring a model equivalent to a commercial application that allows manipulation of cash flows and assumptions, and which provides access to collateral and valuation data, like that provided by Intex Solutions, Inc., is not practicable and may be impossible for many market participants. Requiring such a model would be unreasonable and an inappropriate barrier against access to the capital markets.

With respect to liability, market participants cannot be responsible for changes made by the end-user, including changes in assumptions or scenarios not contemplated by the prospectus, or for the outputs from the model that are derived based on end-user manipulation of the model. Also, liability for market participants should not attach for computer related issues, such as incompatibility, accessibility, or installation, compilation or transmission errors subsequent to filing. Finally, models do not, by their nature, purport to reflect actual performance, and consequently, any liability based upon or related to a security's actual performance would be inappropriate.

Conclusion

In this letter, Citi has focused its response on a limited number of broader issues; however, Citi requests that the Commission consider the overall Proposal in the light of materiality to investors, burden on market participants, and potential unintended consequences.[18] While investor confidence is important to a well-functioning market, a regulatory infrastructure that overburdens market participants, either upon issuance or through reporting requirements, will not benefit the securitization market, investors or underlying borrowers. And, while the Proposal has been focused on various elements of disclosure, it is not certain (i) that a lack of disclosure was a primary, or even proximate, cause of the financial crisis, (ii) that the implementation of the Proposal prior to the financial crisis would have prevented the crisis, or (iii) whether additional disclosure will fundamentally change investor views about the securitization market.[19] On the other hand, it is fairly likely that penalizing market participants will lead to less issuance, less choice for investors, and ultimately, less liquidity and higher expenses for the end consumer.

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[18] Given the breadth and scope of the Proposal that go directly to the liability and burdens on market participants, particularly obligations that continue for the life of the transaction, it seems highly likely that the Proposal will have implications far beyond the intent of the specific rule-making.

[19] As previously referenced, the ABS primary and secondary trading markets, including re-REMICs, but excluding new issue private-label MBS, are relatively robust.

Citi appreciates the opportunity to comment on the Proposal. Please do not hesitate to contact me should you have any questions or if I may be of assistance to you as you consider these issues.

Very truly yours,

/s/ Myongsu Kong
Myongsu Kong
Director and Counsel