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20 August 2010

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

Re: File No. S7-08-10; Asset-Backed Securities

Dear Ms. Murphy:

CFA Institute, ("CFA Institute")[1], with the counsel of its Capital Markets Policy Council[2], appreciates the opportunity to comment on the U.S. Securities and Exchange Commission's proposed revisions to Regulation AB and other rules related to asset-backed securities.

Executive Summary

Time to Review the Prospectus

We strongly support the proposed requirement to provide a prospectus at least five business days before the first sale in a shelf offering. This change in current practice would be a key improvement in allowing investors adequate time to review the basics of their investment.

Elimination of Required Credit Rating

We support the Commission's proposals to eliminate the current requirement for investment-grade ratings for ABS offerings as a condition of shelf registration. However, we do not support substituting a risk-retention requirement for shelf registration because this could convey unfounded impressions about the quality of the underlying assets and the securities themselves. A better alternative for determining which issuers benefit from shelf registration would be how complete the offering documents describe any

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[1] CFA Institute is a global, not-for-profit professional association of over 102,000 investment analysts, advisers, portfolio managers, and other investment professionals in 139 countries, of whom nearly 90,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 135 member societies in 58 countries and territories.

[2] The Capital Markets Policy Council ("CMPC") consists of investment professionals with extensive expertise on issues and experience in the global capital markets. In this capacity, the CMPC provides analysis and practitioner expertise on issues affecting the integrity of global capital markets.

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pending offerings. Likewise, repeat issuers with a good track record of performance, or an issue that is part of a revolving master trust structure also should benefit from shelf registration.

Information Required at Loan Level

We support proposed requirements to provide additional information on particular assets in a pool. This information will help investors better analyze the quality of underlying assets at the time of securitization and thereafter. However, we believe that the amount of information staff is proposing to be provided through "data points" threatens to overwhelm investors with information that may undermine its usefulness. Instead, we suggest an aggregation approach to requiring information on this level.

Discussion

In a number of ways, the process for providing information to the market relating to ABS offerings has lagged that for other securities, to the extent that investors have been disadvantaged. Thus, we strongly commend the SEC for proposing changes intended to provide investors with the tools that enable them to assess risks in the ABS market. We believe that the requirement to provide information early in the process is a particularly important step. But equally significant is the proposed elimination of reliance upon certain ratings in the ABS market. Both changes reflect the needs of investors and are responsive to the realities of such an offering process. We comment on these, and a number of the other proposed changes, below.

I. Registration Under the Securities Act of 1933—New Eligibility and Shelf-Registration Requirements

Timely Prospectus Review Waiting Period

We believe that one of the most important changes addressed in this release is the proposal to revise the filing deadlines for ABS offerings so that investors have relevant information in time to adequately and diligently review each bond offering. To ensure that investors have adequate time to thoroughly and thoughtfully review the underlying structures, the quality of the underwriting and underlying assets, and other terms and conditions before buying these instruments for their clients, we believe a "cooling-off" period is appropriate.

We appreciate the distinct qualities of ABS offerings that pose challenges to providing information in the same manner and timeframe as for other classes of securities. However, the information provided to investors and the marketplace has been incomplete and traditionally occurred after the investor has felt the need to make an investment decision. Consequently, this market has often moved on decisions that were made without the types of information that provides a reasonable understanding of the underlying investments.

The lack of time afforded investors to review the offering terms has long been a problem.[3] We therefore strongly support the proposed requirement that issuers file a preliminary prospectus with transaction-specific information. While a five-business-day cooling-off period prior to the first takedown in each offering is beneficial, we would be satisfied with a cooling-off period of as little as two (2) business days for repeat offerings. Regardless of the time provided, we believe this type of cooling-off period balances investors' needs for relevant information prior to investing with the urgency of issuers to quickly access the capital markets when conditions are best.

New Registration Forms

We support the proposal to have a new shelf-registration form dedicated specifically to ABS offerings. This would help address the new requirement that each takedown be accompanied by a separate prospectus containing information unique to that offering.

As proposed, ABS offerings using shelf registration will be required to file on a new form—Form SF-3—rather than the current Form S-3 which also requires an investment grade rating. As proposed, the investment grade requirement would be replaced with four new eligibility requirements for use of shelf registration via Form SF-3, including the following: risk retention; third-party review of repurchase obligations; depositor's CEO certification; and an undertaking to file ongoing reports. While we support the latter three of these eligibility factors, please see our discussion about risk-retention requirements below.

Elimination of Credit Rating Requirement

We also support the Commission's efforts to find ways to reduce reliance on NRSRO credit ratings while ensuring that offerings still meet certain requirements to safeguard the quality of the offerings. Consequently, we also strongly support the proposed elimination of the current reliance on investment grade ratings in order to qualify for shelf registration. As we have noted in other contexts, we believe that too much reliance has been placed on requirements to obtain certain credit ratings and have advocated for eventual elimination of such requirements.[4]

We understand that one of the requirements that would replace the investment-grade rating requirement needed in order to register on a delayed shelf would be a risk-retention requirement. One of the reasons given for imposing this requirement to qualify for shelf-registration status is that it is seen as a way of ensuring that high-quality securities remain in the pool.

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[3] See 15 July 2004 letter from Patrick M. Miner and James C. Allen to Jonathan G. Katz, Secretary of Securities and Exchange Commission (File No. S7-21-04--*Asset-Backed Securities*) (noting some investors' inability to review relevant documentation until after the deal closes).

[4] See March 26, 2009 letter from Kurt N. Schacht and Linda L. Rittenhouse to Elizabeth Murphy, Secretary of Securities and Exchange Commission (File Nos. S7-18-08, S7-17008, and S7-19-08—*References to Ratings of Nationally Recognized Statistical Rating Organizations).*

While we support risk retention as a risk-management tool, we do not believe that such a requirement will automatically lead to higher-quality securities. Indeed, at least one study has shown that commercial banks were hurt not because they didn't retain enough risk in these securities, but rather because they retained too much.[5]

Consequently, while we support reducing and even eliminating reliance on credit ratings for future ABS offerings, we do not support imposition of risk-retention as a substitute requirement that would automatically permit an issuer to use the shelf-registration process. On the contrary, we believe that the issuer should describe the credit quality of the securities and the underlying assets, and describe on what basis that credit quality is determined before benefiting from shelf-registration status.

(a) Risk Retention

As proposed, the sponsor of any securitization would have to retain a five percent "skin in the game" interest on an ongoing basis to be able to offer securities through the expedited shelf-registration process. The reasoning for this requirement is that it would encourage, institutions to originate loans that have higher repayment and lower delinquency and default rates. These higher-quality assets, therefore, would avoid the kinds of loan problems experienced in recent years.

As noted above, we are not convinced that such retention requirements will lead to higher-quality securities. Therefore we do not believe such a requirement should be a prerequisite for offering, whether through the shelf-registration process or not.

Regarding risk retention, the Dodd-Frank Act (the "Act") includes risk-retention requirements that vary based on the type of assets involved, and will include a number of exemptions. These retention requirements will be determined by federal banking regulators together with the Commission, and with regards to residential mortgages, the Secretary of Housing and Urban Development and the Federal Housing Finance Agency. Consequently, the question of whether such risk-retention requirements are needed and in what cases will be determined by implementation of the Act. In light of these new requirements, we recognize that the Commission will have to adjust its proposals to coordinate with the Act's requirements.

The question left for the Commission, therefore, is whether issues of securities that are considered exempt from the risk-retention requirements by the Act should receive shelf-registration status. We believe investors would benefit more from a shelf-registration process that depends on how completely the offering documents describe any pending offering than a process focused on risk retention. A complete offering document will help investors make a more informed decision than a risk-retention requirement which, in fact, might give false investor false comfort about the quality of the underlying assets.

Other practical reasons for shelf registration might include the following:

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[5] See Acharya and Richardson, http://www90.homepage.villanova.edu/michael.pagano/Acharya%20Richardson%20Critical%20Review%20Article%20Final.pdf

- A repeat issuer of a certain type of asset-backed securities, so long as the relevant documents include relevant information about both the current offering and , by reference, ongoing reports on performance of previous offerings; and
- An issue that is part of a revolving master trust structure, such as a credit card offering that benefits from the credit quality of the other loans in the trust

New issuers, on the other hand, should not be permitted to issue ABS from a shelf registration.

(b) Filing of reports

Another proposed requirement relating to shelf registration for ABS offerings would require an undertaking by the issuer to file Exchange Act section 15(d) reports with the SEC on an ongoing basis. This requirement would give investors important information about the performance of the underlying securities and the servicer. The prospectus would also have to disclose whether an issuing entity had failed in the past year to file an Exchange Act report as required by a rule or an undertaking.

We support this proposed requirement. Performance information is relevant not only as the basis for ongoing assessments about existing investments, but also as a basis for determining whether an issuer/originator is maintaining their lending standards.

Other Requirements in Order to File on Form SF-3

(a) Mortgage-Related Securities

Currently, issuers may offer mortgage-related securities through shelf registration even if the offering does not qualify to be registered on the form for other ABS offerings—currently Form S-1 (proposed to be new Form SF-3). Under this proposal, mortgage-related securities would now have to meet the same requirements as other asset-backed securities in order to be offered on a shelf registration basis.

The proposal also would eliminate the need for shelf registered securities to maintain an investment grade rating. Elimination of this requirement is consistent with relevant provisions of the Act.

In light of our views noted above relating to shelf registration and credit ratings, we agree with both approaches proposed here. We know of no compelling argument to apply different standards to mortgage-related securities vs. ABS offerings in terms of allowing shelf eligibility.

(b) Preliminary Prospectus Delivery

Currently, shelf-eligible ABS issuers are not required to provide a preliminary prospectus 48 hours prior to sending a confirmation of sale, as are reporting issuers. The proposal would eliminate this exception so that a preliminary prospectus would have to be delivered for all offerings, including those of master trusts.

We support this approach. Given that the proposal would require a form of a preliminary prospectus to be filed with the SEC five business days prior to sale, it is not expected that this would raise additional timing problems for the issuer.

Information Included in the Form of Prospectus

As proposed, issuers would file one “form of prospectus” as the base document, and then a single prospectus for each shelf offering. The form of prospectus that is filed with the SEC could continue to include multiple pieces of information that will replace the “brackets” in the base document. However, only information specific to the takedown for a specific offering would be allowed in the prospectus that is given to investors and filed with the SEC. Thus, each registration statement would cover only one asset class.

In addition, this proposal seeks to codify the SEC’s current position that when issuers want to provide information relating to new structural features or credit enhancements, they cannot simply add the information to the prospectus being filed with the SEC. Instead, the proposal would require that they file a post-effective amendment. An introduction of new assets would require creation of an altogether new registration statement.

We agree with both proposed aspects, in the belief that they will provide investors with clearer information relating to the assets that are the subject of the takedown, unencumbered by information that may not relate to that particular transaction. We also appreciate that use of post-effective information to add relevant information provides the SEC staff with time to focus on the credit enhancements or structural changes.

II. Additional Disclosure Requirements

Enhancing Information on Asset and Pool Levels

(a) Asset level disclosure

We support the proposed requirements to have issuers provide information in offering documents and later in Exchange Act reports relating to the assets underlying the asset-backed securities. The lone exception would be credit card issuers who could, instead, group their account data. We also support the proposal to increase the information available to allow better analysis of the entire pool.

Providing investors with information about the particular assets in the pool will help investors to match up the loans (risk) with the type of borrower (creditworthiness and thus, ability to pay). It also will enhance understanding about the quality of the underlying assets at the time of securitization and thereafter. The events of the last several years have highlighted the lack of transparency in this area and heightened the need for this information. Likewise, proposals to standardize this information for comparison among assets within a pool and among other pools should give investors a key tool for evaluating underlying data.

The Commission also proposes to require issuers to include additional “data points” for both the prospectuses and ongoing reports. These data points would related to each asset in the pool **at the time of offering** and would focus on the payment related to an asset, including terms, and terms of payments. The release provides an example for automobile loans, where the issuer would have to disclose data points on the type of each car in the pool, the models, and the value of each. The 11 asset classes on which the proposal would require additional information are: residential mortgages (137 additional data points); commercial mortgages (61 data points); auto loans (31 additional data points); auto leases (33 additional data points); equipment loans (five additional data points); equipment leases (eight additional data points); student loans (28 additional data points); floorplan financings (six additional data points); corporate debt (nine additional data points; and resecuritizations (same Schedule L data as currently required for corporate debt-backed securities and for assets underlying those securities).

While we generally support greater transparency as a means of enabling better investment decisions, we are concerned that these data requirements may overwhelm investors while at the same time not provide useful information. To the contrary, we believe an aggregation of this data including, for example, the following items would better serve the needs of investors:

- distribution of assets by geographic location;
- distribution of assets by credit score of the borrower;
- distribution of assets by type of asset (i.e., car, truck, make, model, or home equity versus first mortgage loan);
- distribution by loan-to-value ratios;
- percentage of loans originated in-house versus those originated by third parties;
- if more than 10 percent of loans are originated by third parties, than a list of the largest originators showing the dollar value of loans originated; and
- to-date delinquency and default information about the loans in the pool, among other things.

(b) Pool level disclosure

The proposal would require additional or revised changes to what is now required for deviations from the underwriting standards that are disclosed, the level of diligence required of the originator when using information to underwrite the assets, and the treatment of remedies relating to pool assets that investors may use, when disclosed in the transaction agreements. These changes are intended to alert investors to any changes in underwriting standards that might develop over time. In general, we agree with the proposed approach.

We believe it is appropriate to amend item 1111 of Regulation AB to require specific information about assets that do not meet the origination standards that had been presented to investor. This is a basic piece of information that investors deserve to have. Similarly, investors should receive information on the steps the originator took to verify the underlying information used in the solicitation, credit-granting or underwriting of the assets in the pool. The third piece of the proposed disclosure would require transaction agreements to tell investors more about certain remedies that are available to them.

Transaction Parties

The proposal would require three changes to the disclosure requirements relating to the purchase of pool assets from third-party originators.

First, the issuer would have to identify all third-party lenders who originated 10 percent or more of the pool assets. Current regulations require identification of an originator who is not the sponsor or an affiliate only if that originator's share of pool assets is 10 percent or more. The proposal would require identification of all such originators if 10 percent or more of the total pool comes from third-party originators.

Second, the proposals would require expanded disclosure relating to the obligation to repurchase assets, including disclosure of the amount subject to a repurchase demand during the last three years, These disclosures also would require financial information about the party who was obligated to repurchase the asset for breaches of representation/warranty.

Finally, the proposal would require disclosure about "a sponsor's, a servicer's or a 20% originator's interest retained in the transaction, including amount and nature of the interest."

In general, we support the enhanced disclosure requirements from the second and third points—relating to repurchase obligations and retained interests—as we believe the benefits to investors in the form of better knowledge about the source of pool assets outweigh the costs of compliance.

Regarding the identification of third-party originators, we do not support the current proposals. Rather, we would prefer disclosure when 10 percent or more of a pool was originated by third parties, and the listing of all originators who provided 5 percent or more of the pool by dollar value. We believe this information is more valuable to investors than a complete listing of all originators, including those that may have originated just one small loan.

Prospectus Summary

We agree that the current approach and requirements for the prospectus summary may not adequately alert investors to the materials risks of the assets in the ABS pool. We therefore strongly support new instructions that clarify issuers' obligations to provide statistical information on the types of underwriting or origination programs applicable to the loans in the asset pool, whether they were underwritten as exceptions to the programs and the types of modifications made to the pool assets after origination. This type of information helps to highlight potential risks relating to the underwriting of the underlying pool assets.

Static Pool Information

The Commission proposes to require narrative disclosures that describe the static pool information already required by prior rules. It also calls for a description of the methodology used to determine the characteristics of static pool information, and it calls for a description of how assets in the static pool differ from assets underlying the securities being offered. We support each of these proposals.

Among the proposals specific to amortizing trusts would be a requirement that issuers present static pool data graphically for delinquency, loss, and prepayments. We strongly support this proposal as graphic presentations of this type provide immediate recognition of changes in asset performance in successive pools, thus providing an indication of the underwriting standards of the issuer.

Likewise, we support the proposals relating to static pool presentation for revolving master trust structures. However, we would support disclosure of delinquencies, monthly payment rates, and losses by vintage year and credit score, as this information would help identify any changes in underwriting standards and performance for these kinds of trusts.

Finally, while we support requiring these disclosures be filed with the Commission via EDGAR, we do not support permitting such information being submitted as .pdf files. Such formats make more detailed analyses time-consuming and difficult for analysts and investors, and thus should not be used.

Conclusion

We appreciate the opportunity to comment on proposed changes to the regulatory requirements for asset-backed securities. Particularly in light of market practices that have come to light during the last three years, we believe that many of these changes are necessary to provide investors with the substantive information they deserve and need.

Should you have any questions about our positions, please do not hesitate to contact James C. Allen, CFA at james.allen@cfainstitute.org or 434.951.5558; or Linda L. Rittenhouse at linda.rittenhouse@cfainstitute.org or 434.951.5333.

Sincerely,

/s/ James C. Allen

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