

MEMORANDUM

To: Commission File No. S7-08-10

From: Katherine Hsu
Senior Special Counsel
Office of Rulemaking
Division of Corporation Finance
U.S. Securities and Exchange Commission

Date: August 20, 2010

Re: Proposing Release on Asset-Backed Securities (Release Nos. 33-9117; 34-61858)

On August 17, 2010, Paula Dubberly, Katherine Hsu, Rolaine Bancroft, Jay Knight and Eduardo Aleman of the Division of Corporation Finance; Wesley Bricker of the Office of the Chief Accountant; and Eric Emre Carr of the Division of Risk, Strategy and Financial Innovation met with Brian Furlong (New York Life Investments), Gary Horbacz (Prudential), Chuck Scully (MetLife), John Fitzpatrick (Allstate), Rich Banno (Pacific Life), and Carolyn Natale (Wellington Management). Mark Warner (Blackrock) and Meena Pursnani (Capital Research and Management) participated by phone. Among the topics discussed was the Commission's April 7, 2010 proposing release regarding asset-backed securities. Handouts are attached to this memorandum.

Attachment

SEC/INSTITUTIONAL CMBS INVESTOR MEETING – DISCUSSION TOPICS

AUGUST 17, 2010

I. REFORMS ARE NEEDED FOR PUBLIC OFFERINGS, 144A OFFERINGS AND LEGACY CMBS

II. MOTIVATING GOOD UNDERWRITING

- A. 5% vertical retention by issuers and originators
- B. B-Piece investor retention
- C. Rep and warranty reform
- D. CEO certifications
- E. Clear and broad disclosure

Any flexible approach must be limited to options that are independently robust.

III. ADDRESSING CONFLICTS OF INTEREST WITH SPECIAL SERVICERS

- A. Junior bond holders wield heavy influence on special servicing outcomes, and junior bondholder interests may conflict with the collective interest of the bondholders.
- B. Special servicers are paid by fees generated from borrowers and the trust. Efforts to maximize those fees can run contrary to the interests of bondholders.
- C. Fair value purchase options allow insiders to selectively purchase defaulted loans from CMBS trusts at prices set by special servicers rather than the open market.

Reporting on troubled loan resolutions has been scant and needs bolstering. Required reports should explain what special servicing action was taken, what fees were charged, how the action taken compared to alternative possible actions, and why the action taken was in the best interest of certificate holders.

IV. OTHER DISCLOSURE PRIORITIES FOR INVESTORS

- A. Trust and Servicing Agreement
- B. For large loans (i.e., top 15 +/- loans):
 - a. Loan agreements
 - b. Inter-creditor or participation agreements
 - c. Detailed income and expense histories, compared to underwriting
- C. Better information on rent rolls and leases in place.
- D. Use of an electronic information depository
- E. Use of a web board for communications between investors, servicers and trustees