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September 27, 2011

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

Re: File Number S7-08-10

Ladies and Gentlemen:

This letter is in response to the request for comments regarding the re-proposal of shelf eligibility conditions for asset-backed securities and other matters (the "Proposed Rules") proposed by the Securities and Exchange Commission (the "Commission") in Release No. 33-9244 (the "Release"). The section references and comments below correspond to the section references and request for comment numbers set forth in the Release.

Please note that the comments contained herein express solely the views of Kutak Rock LLP and may not necessarily represent the views of any or all of our clients.

Section II. Securities Act Shelf Registration

Q.1. We believe that the proposed certification would not provide any additional oversight than what is presently required with regard to the signers of a registration statement. As a result, we do not believe that the proposed requirement would necessarily lead to a higher quality security. If the SEC wants someone to assume more responsibility for disclosure, we suggest requiring an executive officer with a title such as "chief transaction officer" to sign the registration statement.

Q.4. No. A certification attesting to the quality of the assets, and ultimately of the securities being offered, is not a requirement for any other debt or equity offerings and is unprecedented under the federal securities laws. In this connection, even junk bonds and speculative IPOs do not require certifications such as the one suggested and we see no rational basis for distinguishing these financings from securitizations. If a certification from an executive officer is required, we believe the certification as proposed is too broad and should focus solely on the disclosure in the prospectus and not on the performance of the assets being securitized by eliminating the fourth bullet point of the proposed certification at the top of page 22 of the Release. In our opinion, it is inappropriate to require an executive officer to provide a judgment as to the cash flow adequacy of a transaction rather than a rating agency or persons whose business include obtaining the expertise required to analyze and determine asset performance and adequacy of credit enhancement for a given credit quality or rating. An executive officer will likely have no such expertise, and such a certification would provide little comfort to investors. If the proposed certification requirement is retained, we believe that issuers will most likely be forced to hire an additional executive officer with such expertise, thus adding to the costliness of the Proposed Rules. See our discussions in Q.7. and Q.105. below, which also apply to this proposed certification.

Q.7. As described in response to Q.4. above, we do not believe a certificate should be required. If a certification is required, we believe that paragraph numbered 2 should be revised to relate only to the information in the prospectus to be reviewed as specified in paragraphs numbered 1 and 3. The reason for this suggestion is that the certifying executive officer is not being asked to review various portions of the prospectus (such as information that may be provided by trustees, underwriters, placement agents and other third-parties). Thus, no certification should be required for such information provided by third-parties. In addition, the form of certification should be revised to clarify that the executive officer executing the certificate is not providing a Rule 10b-5 type certification with respect to any waterfall computer program included in the prospectus or filed with the registration statement because in all likelihood the certifying officer will not also be a programmer or software engineer.

Q.9. We believe that in many instances, a certifier would want to obtain assistance from an independent evaluator or the issuer would want to use an independent evaluator. This is particularly true with respect to evaluating the structure of a transaction. Structures are often the product of investment bankers or other third parties who know what securities will sell in the market and not the product of issuers. In addition, in most cases it is these third parties and not the issuers who have the computer software to run the complex structures being sold in the market.

Q.12. While we do not believe that a certification should be required to be provided, if one is required, we believe that a certification by an "independent evaluator" should be allowed.

What the SEC is proposing for shelf eligibility, is for an executive officer to know the intricate details of the SEC's rules regarding asset-backed offerings as well as the myriad interpretations relating thereto. These rules, as in effect and as proposed, collectively are literally mind boggling. To think that entrepreneurs should be able to read and comprehend this maze of regulations, where they may be involved in only one or two transactions a year, is not reasonable. Thus, we believe that independent evaluators are going to be needed and essential if a certification of the type proposed is to be required.

If an independent evaluator is required to provide an "opinion," we believe that it should be substantially similar to the proposed certification by an executive officer.

Q.13. Requiring an independent evaluator to be an "expert," we believe, would substantially inhibit independent evaluators to act as such. In this regard, the Commission should make it clear, if the Proposed Rules are finalized, why an independent evaluator should be deemed an expert any more so than rating agencies which have not heretofore been deemed to be experts. In addition, whether or not independent evaluators are deemed to be experts or are just required to be named will substantially increase the costs of securitizations and these increased costs should be built in to the Cost Burden Estimates contained in the Release. See our discussion in Section VII. Q.105. below.

Q.17. We believe that an independent evaluator should be allowed to serve as an independent evaluator in other ABS transactions of the same sponsor or depositor, but with reasonable restrictions. These restrictions could include a requirement that they in some way be required to be periodically rotated.

Q.21. If an independent evaluator provides an opinion, we believe that the prospectus should include specified information regarding such person, including the name of the evaluator, the manner in which it is compensated, and any affiliations between the evaluator and the transaction parties. We do not believe that the other information suggested in Q.21. should be required since such information is generally not required with respect to the selection of auditors or counsel giving opinions. In this regard, we see no rational basis for requiring information regarding the selection of evaluators in ABS transactions that is any different from what is required in the selection of auditors or counsel in other contexts under the federal securities laws.

Q.22. The purpose of a credit risk manager is unclear. The Release on page 32 proposes that upon the happening of specified events, the credit risk manager would "review the underlying assets of the ABS for compliance with the representations and warranties on the underlying pool assets." The Release on page 34 goes on to provide as follows:

> "We believe it would be appropriate for the credit risk manager to review defaulted assets when the credit enhancements (including structural supports, such as subordination), fall below the required target levels, as specified in the underlying transaction agreements, because if that happens, then losses may be higher than originally expected, thereby calling into question whether the defaulted assets met the representations and warranties provided in the underlying transaction documents."

It should be noted that representations and warranties with respect to assets securitized generally do not relate the performance of those assets, because to do so and to require repurchase of such assets for performance related issues would raise serious true sale and non-consolidation issues. Sellers of assets in a true sale context do not guarantee payment performance of the assets sold; these risks are transferred to and assumed by the buyer (in this case the issuer). Thus, the example cited in footnote 72 would indicate that losses have occurred, but would not necessarily indicate that there has been a breach of a representation or warranty that the transaction documents would require repurchase or substitutions of assets. In our opinion, any such review of assets in the case of credit enhancement falling below target levels would be expensive and a waste of financial resources.

Q.25. Since the duties of a credit risk manager are not being specified, we suggest that it be made clear that if a credit risk manager is to review underlying documents, a statistically representative sample can be considered sufficient depending upon the relevant circumstances, including the asset class in question. Depending upon pool size, if the underlying documents of each asset are required to be reviewed, the costs to the issuer and, thus, the investors could be significant.

Q.28. See our response to Q.22. above. The triggers suggested in the Proposed Rules generally occur when underlying loans or assets default. Default of an asset after a sale is generally not an event that would result in a breach of any representation or warranty that would result in a repurchase, substitution or other remedy, otherwise this would be inconsistent with a true sale of assets. What we believe is more important is the question presented in Q.35.; namely being able to assert a claim on behalf of the issuer/trust.

Q.35. On the basis of our experience, we believe that the credit risk manager should be able to assert a claim on behalf of the issuer/trust. We would see the basis for a claim arising more in the context of the action or inaction of the servicer pursuant to the servicing agreement. If the servicer breaches its duties under the servicing agreement, an entity, such as a credit risk manager, should be able to assert a claim against the servicer because in our experience the trustee will not take any such action without investor or other indemnification. The Proposed Rules, when finalized, should also set forth some parameters as to which party will be responsible for the costs of any such claims (e.g., the non-prevailing party or as determined by the appropriate adjudicator), or else the issuer/trust (and therefore the investors) will in all likelihood pay that expense. These comments also apply to Q.40. as to the payment of mediation or arbitration costs relating to repurchase requests.

Q.40. See our response to Q.35. We do not believe that a trustee would assume these duties and, thus, would suggest that these duties fall on the credit risk manager, if so requested by the trustee.

Q.58. We believe that if an evaluation is to be required, that it be on an annual basis as of a date that is 90 days after the depositor's fiscal year.

Q.59. We believe that a cure period should be provided and that the period should be at least 30 days after discovery of a breach. Thirty days should be sufficient time for the market (if there is one) to react to the cure and is an adequate penalty for non-compliance.

Q.61. In view of the complexity of the ABS rules, adopted and proposed, we believe that (i) risk retention, where applicable, and (ii) continued Exchange Act reporting are sufficient replacements of investment grade rating conditions to eligibility without any of the additional proposals set forth in the Release and the 2010 ABS Proposing Release. These rules taken together, even without risk retention, are much more onerous than rules relating to any other type of financing, save for regulated investment companies that have an entirely different regulatory scheme.

Section III. Disclosure Requirements

Q.64. We do not believe that the proposed amendment is appropriate. The reason simply is that final documents generally are not available at the time of filing the preliminary prospectus. In our experience, documents are constantly being revised (although in most cases, not materially) until the final prospectus is filed.

Q.99 There are abundant reasons not to require structured finance product issuers that utilize the safe harbors to comply with the proposed asset-level disclosure requirements and/or ongoing information if required under Regulation AB. These reasons include the following:

1. The information is excessive and burdensome, and the threshold of materiality is too low compared to any other non-structured finance products offered or registered. In this regard, the low level of materiality versus non-asset-backed products does not appear to have been justified.

2. Where structured finance products are sold to accredited investors or qualified institutional buyers, those investors can fend for themselves if they wish to invest.

3. The proposed definition for a "structured finance product" is too broad and should be further refined so as not to burden issuers with these disclosure requirements except those involving traditional asset-backed securities. In this regard, the credit crisis was caused primarily by real estate related asset-backed transactions, and the Proposed Rules should be substantially narrowed to only address those transactions.

4. These requirements are extremely costly for safe harbor private placements and will deter private capital formation. These costs should be closely analyzed against whatever benefits are thought to be derived from this requirement.

Section VII. Economic Analysis

Q.105. We believe that the estimate of an additional 100 burden hours per Form SF-3 response is wholly inadequate and the additional cost estimate is not realistic. First, and as discussed above, in all probability, the executive officer making the suggested certification will need to rely on an independent evaluator or evaluators. Each of those parties will probably also rely on advice of counsel. The increased burden hours of all these parties alone will exceed 100 hours. If an independent evaluator is used and that person is required to be named in the prospectus and/or be named as an expert, the cost for such activities will not be based on hours but rather on a risk basis which could easily exceed $50,000. Their counsel's time would be in addition to that amount. In addition, if an independent evaluator is not used or is not provided for and an issuer does not employ an executive officer with the expertise necessary to be able to provide the certification, the cost of employing such an executive officer should be added to the additional cost estimate.

Secondly, the same can be said for the costs of retaining a credit risk manager and its counsel. If a credit risk manager is named, issuers will be charged a risk fee for being named and consenting thereto.

Third, a repurchase request resolution could easily exceed the 100 burden hour estimate by itself.

The overall additional cost per transaction, taking only the above-described items into account and the on-going reporting obligation, could in our opinion easily exceed $200,000. This estimate, of course, is in addition to the estimated costs relating to other asset-backed proposals and adopted rules.

Q.106. In view of our estimate of the added costs per transaction to comply with the Proposed Rules, we believe that it is highly likely that many issuers may opt to use proposed Form SF-1 rather than SF-3 or may have no option to register as a result of an inability to conduct an at-the-market offering on Form SF-1. While we would likely recommend that an issuer use a private placement rather than using proposed Form SF-1, because many of the proposed ABS rules may now extend to Rule 144A and Rule 506 transactions, depending on the final rules relating thereto, it remains to be seen how often issuers may opt for public versus private offerings.

Even if more private deals are not publicly registered, these new requirements, which in many cases would now extend to private transactions, would substantially increase the cost of private transactions. These incremental costs for private transactions, as discussed in more detail below, also should be accounted for in the cost-benefit analysis.

We note that there have been a myriad of proposals made and rules adopted relating to asset-backed securities. Each proposal and rule has presented an economic analysis with respect to the particular proposal or rule on a piece-meal basis, but there has been no economic analysis prepared of which we are aware that combines an analysis of all of the proposals or rules relating to asset-backed securities. Our observation is that the proposals and rules in the aggregate will increase the costs of preparing and selling asset-backed securities by a staggering amount.[1] As a result, because of the substantial added costs of these rules and proposals, capital formation for all except the largest securitizers will be eliminated or severely impaired thus depriving smaller securitizers a ready market for issuing asset-backed securities off the shelf. We believe that the Commission should seriously reconsider the rules and proposals relating to asset-backed transactions or else they will significantly impact these transactions in a negative way and make them an extremely cost inefficient way to finance the origination and financing of cash flowing assets by the private sector.

General

As noted in our comments, we are extremely concerned about the impact of the Proposed Rules on private offerings exempt under Rule 144A and Rule 506 and the inconsistency of this approach with the application of the federal securities laws over the past 75 years. In this regard, the Release indicates that various matters contained in the 2010 ABS Proposing Release continue to be proposed and it is, thus, unclear what the overall proposed ABS rules will encompass except that the Regulation AB requirements relating to Form SF-1 will be required to be provided in private offerings utilizing Rule 144A and Rule 506, if requested (including both offering document disclosure and ongoing reporting requirements). To require such Regulation AB information to be provided, if requested, means that in private transactions the issuers and related parties must be prepared to provide that information at the beginning of the offering, even if they are never asked to provide it to investors. In addition, for some asset classes, the information required may involve extraordinary expense or may be unavailable. As a result, the 2010 ABS Proposing Release together with the Proposed Rules will make these privately offered transactions substantially more expensive and will negatively affect capital formation. We believe that the Economic Analysis section should clearly and separately discuss these additional costs as they relate to private offerings.

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[1] In addition to the proposals made and rules adopted, there is also a concept release and an advanced notice of proposed rulemaking relating to asset-backed securities, that, if adopted, will undoubtedly add even more costs to asset-backed transactions. See Release No. IC-29778 and Release No. IC-29779.

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If you would like to discuss any of our comments, please contact Bob Ahrenholz or Josh Kerstein at (303) 297-2400 or Mark Ellis at (402) 346-6000.

Sincerely yours,

Robert J. Ahrenholz

Joshua M. Kerstein

Mark A. Ellis