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BY WEBSITE: http://www.sec.gov/ rules/proposed.shtml

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

Re: Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities
File Number S7–08–10
17 CFR Parts 229, 230, 239 and 249
[Release Nos. 33–9244; 34–64968; File No. S7–08–10]
RIN 3235–AK37

Dear Ms. Murphy,

Prudential Investment Management, Inc. (PIM) sincerely thanks the U.S. Securities and Exchange Commission ("SEC" or "Commission") for its continued work on Regulation AB. We believe the proposed rules, especially in the areas of credit risk managers, investor communication and comprehensive disclosures, will allow investors to better diligence structured finance transactions and strengthen the market.

PIM, the largest investment advisory business within Prudential Financial, Inc. (Prudential) with $583 billion (as of June 30, 2011) in assets under management, was among the earliest institutional investors to embrace structured products in the late 1980s. Our primary public fixed income asset management business, Prudential Fixed Income, is one of the largest fixed income managers in the United States[1] with $299 billion (as of June 30, 2011) of assets under management.

In 1991, Prudential Fixed Income formed a dedicated group of analysts to focus solely on the structured products market, and we continue to maintain this specialized approach today. We have been a lead investor in many structured transactions, with approximately $65 billion (as of June 30, 2011) under

[1] *Source: Institutional Investor, July/August 2010, based on domestic fixed income securities held as of 12/31/09.*

management in mortgage-backed and structured securities for both affiliated and third party institutional clients, as well as for retail investors.

Our structured product holdings contain public and private investments across the capital structure of asset-backed securities (ABS) transactions, including collateralized loan obligations (CLO), commercial mortgage-backed securities (CMBS), residential mortgage-backed securities (RMBS), commodity consumer and commercial sectors (e.g., autos, credit cards, equipment, student loans) and small "esoteric" ABS sectors (e.g., containers, franchise, timeshare).

PIM also maintains a dedicated CLO and corporate credit synthetic obligations (CSO) asset management platform, and a PIM affiliate was involved in the issuance of CMBS for many years. Our decades of active involvement with structured securities, as an investor, manager and issuer provides the Commission with an experienced, balanced and unique perspective that only few institutions can offer.

PIM's continued interest in the structured finance market as an investor and potential issuer will be directly affected by the reforms ultimately adopted by the SEC and other federal agencies as well as the resulting best practices adopted by all market participants. We thank the Commission for giving consideration to our comments. Please contact us for any follow-up.

Sincerely,

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EXECUTIVE SUMMARY

The following five points formulate the key guiding principles to PIM's response:

1. While the proposed rules are specific to public shelf registration (Form SF-3), we recommend the principles of the Regulation AB proposal should apply to all publicly registered structured products (Form SF-1 and Form SF-3) and for all securities sold with reliance on Securities Act Rule 144A (Rule 144A). If the scope of the proposed rules is not broadened, we are concerned the intended objective of this proposal may be circumvented by simply utilizing Form SF-1 or Rule 144A.

2. To help strengthen investor protections, we believe that a credit risk manager, working on behalf of investors, should be responsible for ongoing monitoring of representations and warranties of the loan originator and the loan servicer, making claims for breaches when appropriate and following a claim through to resolution. Transaction documents should also provide for a review initiated by investors, as well as a review triggered by adverse performance. A binding, non-appealable, arbitration process should handle any unresolved repurchase requests.

3. The trustee should maintain the current contact information for each noteholder and facilitate communication among transaction parties, including at the request of any current noteholder. Given their current responsibilities, trustees are uniquely and well positioned for this role.

4. Draft operative documents should be provided at least five business days prior to the first sale in the offering, and executed operative documents should be provided with the Securities Act Rule 424(b) (Rule 424(b)) filing. A "blackline" version of documents should also be provided, as it would greatly assist market participants in identifying changes in documents.

5. Asset-level disclosure, as currently proposed by the Commission, that is commercially reasonable for an issuer to provide and does not allow the identification of the obligor, should be provided at offering and ongoing through the life of a securitization. We believe group-level data, outside of large master trust structures, will not produce sufficient transparency to investors.

As part of this response, we would also like to direct the Commission to PIM's August 2, 2010 submission to the 2010 ABS Proposing Release, http://www.sec.gov/comments/s7-08-10/s70810-95.pdf.

PIM's response is organized by the section headings utilized in the Re-Proposal. We offer specific commentary to the credit risk manager questions (Q 22 – Q 41) and general commentary on other topics raised by the Re-Proposal.

II. B. 1. b.) Credit Risk Manager and Repurchase Request Dispute Resolution Provisions

PIM has considered questions 22 – 41 in the proposed rules and offers the Commission the following thoughts:

Response to Question 22:

- We support the Commission's proposal to require a credit risk manager to review the underlying assets as a condition for shelf eligibility. Structured transactions have lacked a formal process by which investors could identify and direct a review of loan representation and warranties and a mechanism to enforce breaches. The credit risk manager role would provide a much needed and formalized policing of issuer and servicer representations and warranties, thereby increasing investor confidence in structured products.

- A credit risk manager, working on behalf of investors, should be responsible for ongoing monitoring of representations and warranties of all transaction parties, including but not limited to the loan originator and the loan servicer, making claims for breaches when appropriate and following a claim through to resolution. The credit risk manager will improve investor protections within structured finance transactions, resulting in reduced spreads from increased investor confidence and ensuring efficient and sustainable funding advantages to issuers and consumers from stronger securitizations.

- If every asset in the collateral pool is subject to upfront diligence, like in CLOs, that confirms the asset meets the collateral eligibility criteria prior to its inclusion in the collateral pool, the role of the credit risk manager may be meaningfully reduced.

- We believe the credit risk manager could be the appropriate entity to be the independent collateral agent to review and certify the asset-level tape for accuracy and certify that all required asset related documents have been provided. (Please refer to page 5 of our August 2, 2010 submission.)

Response to Questions 23, 24 & 37:

- We support the Commission's proposal to require the credit risk manager to be appointed by the trustee. The transaction documents, however, should provide investors with the ability to remove and reappoint a credit risk manager. The removal terms should be sufficiently reasonable and enforceable to ensure the credit risk manager is effective and diligent in its responsibilities. A vote of 25% of the noteholders should be sufficient to initiate a replacement of a credit risk manager, if necessary.

- A credit risk manager should be replaced if a quorum of noteholders responds in the affirmative. We would suggest language similar to the following terms in a recent CMBS transaction as an example of a potentially more effective voting mechanism:

> "Additionally, if the holders of at least 15% of the voting rights of the certificates … request a vote to replace the operating advisor, then the operating advisor may be replaced by the holders of more than 50% of the voting rights of the certificates … that exercise their right to vote; provided that holders of at least 50% of the voting rights of such certificates exercise their right to vote."

- For CMBS, the operating advisor (senior trust advisor) could serve as the credit risk manager.

- The trustee should not serve as the credit risk manager. We do not believe the trustee possesses the specialized expertise required to determine breaches of representation or warranties, and given the substantial economic relationships the trustee or their affiliates may have with other transaction parties, potential conflicts of interest may exist.

<u>Response to Questions 24, 33 & 36:</u>

- It is critical that credit risk managers avoid conflicts of interest and must immediately disclose any conflicts if and when they arise.

- To avoid any appearance of a conflict of interest, the credit risk manager should be, as proposed, independent and unaffiliated with any party with an economic interest in the transaction and should be prohibited from making an investment in the securitization.

- The proposed disclosure requirements related to the credit risk manager are appropriate and any change of credit risk manager should be disclosed through a regulatory filing.

- At issuance, the credit risk manager should represent that no conflict of interest exists and should immediately notify all transaction parties when a conflict of interest arises. We would recommend that the credit risk manager be required to attest (on an annual basis) to their ability to fulfill their obligations set forth in the transaction documents and that no conflicts of interests exist in the performance of their obligations.

<u>Response to Questions 25 & 26:</u>

- We support the Commission's proposal to require the credit risk manager be given access to all underlying documents related to the pool, and we recommend expanding the scope of documentation to include underwriting guidelines as well.

- The credit risk manager should be provided with unfettered access to all information (i.e. all underlying documents related to the pool assets, underwriting guidelines, …) necessary to evaluate a loan. The underlying documents must be made available at the time of issuance, as access may be more difficult if the issuing party is impaired or uncooperative at a future time. To protect private information adequately, the credit risk manager must enter into appropriate confidentiality agreements.

Response to Question 27:

- Credit risk managers should possess certain qualifications in order to adequately carry out their responsibilities.

- The criteria to select a credit risk manager should include the following: the credit risk manager (i) must be regularly engaged in the business of advising clients about the type of assets that are included in the trust; (ii) have at least three years of experience in collateral analysis and loss projections; and (iii) have at least three years of experience in the workout and management of distressed assets. These requirements may be met with experience in the type of asset being securitized, or reasonably similar assets.

Response to Questions 28-30, 34 & 35:

- A defined review and repurchase process should exist where the credit risk manager, noteholders or a trigger mechanism can initiate a review of representations and warranties.

- As we commented in our August 2, 2010 response: "Each ABS asset class should apply an objective and consistent standard for identifying breaches of representations and warranties, and triggering a post-closing asset document review. The use of such a carefully tailored objective standard, coupled with a clear process for pursuing any resulting claims, should help ensure the effectiveness of the investors' contractual remedies, while satisfying all parties' desire for fairness."

  Credit Risk Manager Initiated Review

  - We believe the credit risk manager should perform ongoing monitoring for representation and warranty breaches. If the credit risk manager believes a breach claim is appropriate, the credit risk manager should inform investors of its findings and conduct a poll of investors to determine if a breach claim should be initiated. If a certain percentage of noteholders (such percentage not to be greater than 25%) respond in the affirmative, the credit risk manager should initiate a representation and warranty breach claim.

  Noteholder Initiated Review

  - Noteholders should be permitted to request a credit risk manager review if 25% of the noteholders believe a review is warranted. A 25% threshold would serve to limit both the number of frivolous claims and any unnecessary credit risk manager expenses.

Trigger Initiated Review

- A trigger mechanism should be a failsafe mechanism to initiate credit risk manager loan reviews. The SEC should detail minimum trigger tests to ensure consistent application between transactions. Triggers related to target credit enhancement levels, while appropriate and useful, may be insufficient as delinquencies may be increasing dramatically while the enhancement levels remain high until losses are realized. Two potential methods to address these concerns are the following two rules:

  1) Review any loan in a trust that becomes 90 days delinquent within six months of the loan's origination or four months from being included in a securitization's collateral pool.

  2) If the 60+ day delinquencies percentage is greater than the currently available credit support: Review all 60+ day delinquent loans and prior defaults.

- For securitizations with a limited number of assets, like CMBS, triggers are not appropriate as the underlying loans are highly concentrated and are heterogeneous. For CMBS, the special servicer would be in the best position to identify potential breaches of representations and warranties. The special servicer should have the ability to request a credit risk manager review of any specially serviced loan for breaches of representations and warranties.

<u>Response to Question 31:</u>

- While the proposal contemplates the trustee using the credit risk manager's report to determine if a claim of a representation and warranty breach is appropriate, we believe the credit risk manager is the appropriate party to make the breach of representation and warranty claim and settle such claims on behalf of investors. The credit risk manager should have a 90-day window from the start of the review to complete their analysis and provide a final recommendation.

<u>Response to Question 32, 36 & 38:</u>

- The final recommendation of the credit risk manager should be disclosed to all transaction parties, subject to confidentiality, along with the reasons supporting the recommendation. The report should be included in the regular monthly reporting package issued on a timely basis (final reports should be included in the next monthly reporting package). A report summarizing all final resolutions of breach claims (including all repurchase payments received by the trust and expenses incurred) should also be provided in the monthly report. The Schedule L-D data file should contain information regarding each loan reviewed by the credit risk manager, each loan that had a breach claim, the status of the claim, and the amount of the repurchase, if any.

- All reviews undertaken by the credit risk manager should be disclosed to all transaction parties, subject to confidentiality.

Response to Questions 39 & 41:

- The Commission's proposal to allow the obligated party 180 days to respond seems reasonable. The process for dispute resolution should be clearly delineated (including mediation and negotiated settlements). If no resolution is reached between the credit risk manager and the obligated party within the initial 180-day period, the claim should be resolved through binding, non-appealable, third-party arbitration. There also should be some timeframe (we propose 90 days) for the completion of the binding arbitration process. If the obligated party fails to agree to arbitration of any unresolved repurchase dispute within a specified timeframe from the initial request, the obligated party should be required to honor the repurchase request.

Response to Question 40:

- The third party arbitrator should determine how expenses should be paid as part of the arbitration decision. If a breach claim is resolved without the use of a third party arbitrator and the obligated party agrees to a repurchase, then the obligated party should pay all expenses from outside of the trust. Otherwise, all expenses should be paid by the trust and should be treated as an "additional expense" under the waterfall.

II. B. 1. c.) Investor Communication

Recent experience has underscored the importance of communication amongst investors and between investors and the issuer. Unfortunately, existing obstacles have hindered effective communication among parties to a transaction.

We support a new process to ensure timely and effective means of communication as a necessary enhancement for all public and Rule 144A securitizations. Since the trustee is the party that currently directs communications within structured transactions, the trustee is the logical choice to maintain the current holders list and facilitate communication among parties.

Given that nearly every major trustee has a website portal through which investors can access servicer reports, we believe a requirement for shelf eligibility, and for any public or Rule 144A structured issuance, should be that the trustee maintains all relevant information on a website accessible by current holders; including, but not limited to the following:

- All original and amended operative documents of a securitization
- All servicer reports and loan level disclosure
- All EDGAR filings
- All proposed corporate actions / supplemental indentures
- All requests for investor communication
- All representation and warranty work
- Any other reports or filings that are required under the trust documents or by regulation

Many trustee websites have notification capabilities that allow investors to sign up for an alert when new documents have been added for a transaction. This notification mechanism should be a required functionality of every trustee website.

Given that the trustees already have developed websites where they provide investors access to servicer reports, we do not believe the inclusion of this material information would be burdensome or costly to implement.

In response to Question 48, the following language has been included from a recent transaction. These certificate holder communication and special noteholder provisions enable investor communication that otherwise would be difficult to accomplish:

> Certificateholder Communication:
>
> Access to Certificateholders' Names and Addresses
>
> Upon the written request of any Certifying Certificateholder, any Companion Interest holder or the Master Servicer, the Certificate Registrar will promptly furnish or cause to be furnished to such requesting party a list of the names and addresses of the Certificateholders as of the most recent Record Date, at the expense of the requesting party.
>
> Special Notices
>
> Upon the written request of any Certifying Certificateholder, the Certificate Administrator will transmit a special notice to all Certificateholders at their respective addresses appearing on the certificate register stating that the requesting Certificateholder wishes to be contacted by other Certificateholders, setting forth the relevant contact information and briefly stating the reason for the requested contact, at the expense of the requesting Certificateholder. The Certificate Administrator will be entitled to reimbursement from the Certifying Certificateholder for the reasonable expenses of posting such special notices.

III. A. EXHIBITS TO BE FILED WITH RULE 424(H) FILING

Given the operative documents in structured transactions (e.g. Indenture/Pooling & Serving Agreement, swap confirmations, administrative agreements, …) are the legal contracts between the issuer and investors, not the Securities Act Rule 424 (h) ("the red herring") or the Rule 424(b) ("the black"), a draft set of operative documents should be released at least five business days prior to the first sale in the offering.

Releasing draft operative documents prior to the first sale in the offering should eliminate the possibility of having any translation errors between the offering materials and operative documents, as all transaction parties would be able to review the operative documents.

The executed set of operative documents should be released with the Rule 424(b) filing (at least three (3) business days prior to closing). With the Rule 424(b) filing, any changes to the operative documents should be handled by the amendment provisions described in the operative documents.

In order to better understand any financial engineering that occurred between transactions, or during the marketing period, investors should be provided with blacklined documents, as described below:

- If there is a prior set of documents that form the basis of the new transaction, a blackline of the current Rule 424(h) filing to the prior transaction's Rule 424(b) filing and a blackline of the draft operative documents to the prior transaction's executed operative documents should be released with the Rule 424(h) filing. The blackline documents would greatly assist market participants in identifying the changes introduced since the last transaction.

- A blackline of the executed operative documents and Rule 424(b) filing against the draft operative documents and Rule 424(h) filing should also be released with the Rule 424(b) filing. The blackline documents would greatly assist market participants in identifying the last minute financial engineering that occurred since the start of the marketing period.

Releasing operative documents during the marketing period and blacklining documents are two reasonable and cost effective steps that would greatly improve transparency and the market's understanding of a transaction. The filings and timeframes for such filings should be mandated by the Commission for all public and Rule 144A securities. A market standard is necessary to bring about these changes and ensure consistent disclosure across transactions.

To the extent an asset class, like CMBS, has industry developed model representations and warranties provisions, the Rule 424(h) prospectus and Rule 424(b) prospectus should disclose how the issuer's representations and warranties compare against the industry developed model provisions.

We believe these principles should apply to all public and Rule 144A structured securities.

III. B. Requests for Comment on Asset-Level Information

We continue to be very supportive of asset-level disclosures at offering and ongoing through the life of a securitization for all public and Rule 144A securitizations, with the exception of sizeable master trust structures, such as credit cards. As stated previously, we do not believe pool level or group level data will produce a sufficient level of transparency to adequately assess risk.

Our desire for loan level data is based upon the following points:

- Loan level data, as contemplated by Schedule L and Schedule L-D, provides investors the opportunity to analyze the broad set of loan characteristics and to assess credit risks based on the set of loan characteristics the investor believes is most predictive of expected losses. At issuance and over the life of a securitization, the loan pool can be run though the risk model to assess the current risk of the collateral pool, including the changing composition of the pool. Group level data does not provide investors the opportunity to develop the same level of credit risk understanding.

- As part of the evaluation and due diligence of the credit risk within a collateral pool, investors attempt to identify and evaluate factors that are predictive to the frequency of loss and the severity of loss (e.g. FICO, Loan-To-Value (LTV), Debt-To-Income, make and model of the collateral, State, …). Investors also consider broad economic variables (e.g. unemployment, current property capitalization rates and asset correlations) as part of the loss analysis. The risk implied by one predictive factor cannot be fully assessed on a stand-alone basis. Rather, predictive risk factors must be evaluated in conjunction with other factors, as individual loan characteristics can add or diminish the risk of a given loan.

- Access to loan level information will greatly support and encourage the use of more robust analytical tools to evaluate the credit risk profile of a securitization. Enhanced use of such tools will not be possible through general pool level or group level data.

- If a Rule 144A securitization contains any assets covered by the Schedule L and Schedule L-D reporting scheme, investors should be able to receive the same information content that would be available under a shelf registration.

- If a public or Rule 144A securitization contains any assets not covered by the Schedule L and Schedule L-D reporting scheme, then the issuer should still be required to provide loan level data on those assets. While there would not be a predetermined set of data fields, the issuer should provide collateral information (conceivably asset class specific) consistent with the spirit of Schedule L and Schedule L-D in other assets class.

III. B. 3. Additional Requests for Comment on When to Require Schedule L

As the SEC noted in footnote 167 of the Re-Proposal, we commented, and continue to support, that the issuer should be required "to file a Schedule L at issuance and each month new assets are added to the collateral pool. The transparency provided by the Schedule L and Schedule L-D asset-level files will allow investors to evaluate the changing nature of the risk layering introduced by the new assets."[1]

[1] **Federal Register** / Vol. 76, No. 151 / Friday, August 5, 2011 / Proposed Rules, page 47970

Investors in structured securities that permit new collateral to be added after the closing date should have the ability to assess the changing risk of the collateral pool by the introduction of the new assets. As new assets are added to a collateral pool, there should be robust disclosure, using Schedule L, for investors to review the quality of the newly added collateral and the consistency of the assets against the expected origination practices of the issuer. The newly originated collateral should also appear on Schedule L-D, so investors can efficiently assess how the new assets influence the risk profile of the overall collateral pool.

III. B. 4. Additional Requests for Comment on Privately-Issued Structured Finance Products

We believe the comments we made in our August 2, 2010 submission on Privately-Issued Structured Finance Products are still relevant to your recent questions.

In particular, we want to highlight our recent experiences with Rule 144A transactions. During the marketing period of recent new issue CLO transactions, we were provided with draft operational documents and asset level disclosures. For "public like" ABS transactions that utilize Rule 144A, we generally have not been able to receive any incremental statistical data to what is in the offering material or draft operational documents. A common response is that if this information were provided to one investor, then the information would have to be provided to all investors. This lack of transparency only heightens the concerns we mentioned in our August 2, 2010 response of issuers using Rule 144A issuance to circumvent the public reporting requirements of Regulation AB.

While the proposed rules are specific to public shelf registration (Form SF-3), we recommend the scope of the Regulation AB proposal should be broadened to apply to all publicly registered structured products (Form SF-1 and Form SF-3) and for all securities sold with reliance on Securities Act Rule 144A (Rule 144A). If the scope of the proposed rules is not broadened, we are concerned the intended objective of this proposal may be circumvented by simply utilizing Form SF-1 or Rule 144A.

IV. Transition Period

We believe the release of operative documents and blacklined documents should begin in an expedited manner, as this information is critical to an investor's understanding of a securitization. We recommend that the implementation period for our comments in Section III. A. should be 30 days after adoption of the new rules.

Given the breadth and depth of other proposed changes, it would be helpful (especially with regards to asset-level files) for sponsors to proactively commence preparing beta versions of new informational releases so investors can begin retooling their systems in advance of the proposal becoming effective.

CONCLUSION

PIM is very supportive of the SEC's original and re-proposed rules related to Regulation AB. Our recommendations are based on a set of core principles that we believe will maximize the effectiveness of the proposed reforms: consistent application across all Form S-1, Form S-3 and Rule 144A structured issuances, an effectively developed credit risk manager model, accelerated releases of operative documents, a more effective communication process for transaction parties, and loan level data disclosure. While these reforms will undoubtedly increase transaction costs, we believe the rules will instill stronger origination and servicing of securitized assets, allow for more complete investor reviews and foster a more stable securitization market, which is a benefit to all borrowers, lenders and investors.