May 12, 2010

Mary Shapiro
Chairman, Securities and Exchange Commission
Attention: Comments, Notice of Proposed Rulemaking

Re: Public Comment on the Notice of Proposed Rulemaking Entitled "Asset-Back Securities"

Dear Chairman Shapiro:

I appreciate the opportunity to present views on the above mentioned Notice of Proposed Rulemaking ("NPR"), published on April 7, 2010 in the Federal Register.

I am a third year law student at Stanford Law School, and will be an academic fellow at Stanford's Rock Center for Corporate Governance in 2010-2011. As a Fellow, I will conduct research on United States banking and securities law. This comment represents my own views and not necessarily those of Stanford Law School, the Rock Center, or any other organization.

At the outset, I would like to commend the SEC for its efforts to change the incentives structure facing those who originate and sell the securitized instruments that are at the heart of the financial crisis of 2008-2009. While I take issue with some of the specifics of this proposal, this in no way diminishes my admiration and respect for the Commission in its efforts to change the way that the securitization of asset-back securities is structured and disclosed to the marketplace.

The following comments are offered on the proposed rules.

Proposed section II.1.A – Rule 424(h) Filing

I applaud the SEC's efforts to make those who would use "off-the-shelf" filing for ABS disclose the underlying assets involved in each successive issuance. As a new observer of the securities markets, it comes as a great surprise to me that previous issuers of ABS could use off-the-shelf registration forms without making these kinds of disclosures.

That said, I question whether using Form SF-3 for ABS continues to be a viable and necessary system. The convenience of "off-the-shelf" registration forms is very clear; issuers need not go through the same cumbersome process for subsequent issuances that are roughly similar to previous issuances. The justification for SF-3 is also clear. There would be nothing gained from full compliance under the standard registration process if subsequent issuances do not deviate from previous ones.

While the question of convenience of Form SF-3 remains still obvious in the ABS context, the justification is far less clear. By their very nature, subsequent CDOs are completely different than previous ones. Each will contain different mortgages, with different credit profiles, from different parts of the country, and containing different mortgage terms. While the proposed

rulemaking goes to great lengths to address that difference—which I think a positive step toward making the registration of CDOs more rational—I question whether use of SF-3 at all makes sense, unless a given list of particulars are held constant. If it is true that each CDO is very different from previously issued CDOs, then SF-3 is no more applicable to CDOs than it would be to issuing stock of different companies. Even though IBM and Microsoft have many similarities, Microsoft could not use SF-3 to register an issuance on the heels of an IBM standard registration. For CDOs, the analogy holds true. If each security is unique, then off-the-shelf registration seems inappropriate

Broad Comments on the Rulemaking

In general, I find this proposed rulemaking to be highly effective at the relatively small target at which it is directed. My last comment, though, is about this very problem: the target of the proposed rulemaking—the 700 page document that the SEC has produced to explain and justify the rulemaking notwithstanding—is small, and almost certainly unrelated to the financial crisis. As the SEC notes, "[m]any of the problems giving rise to the financial crisis involved structured finance products, including mortgage-backed securities."[1] That said, this proposed rulemaking is almost a non-sequitur – the MBS at the heart of the financial crisis were CDOs, which, by the SEC's own admission "[i]n the U.S., all CDO issuances have taken place in private exempt markets," to which the SEC's new disclosure rules are inapplicable.[2] Although the proposed rulemaking does increase the disclosure requirements for these private placements if the investor initiates the request,[3] it is difficult not to view this proposed rulemaking as something of a relatively toothless change. This may be beyond the bailiwick of the SEC alone, but a regulation that forces similar equity retention, disclosure requirements, and waiting periods for *all* CDOs would be an important step at truly reforming our financial system in light of the lessons learned from 2007-2008.

Respectfully submitted,

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[1] Notice for Proposed Rulemaking: Asset-Backed Securities, page 10.
[2] *Id.* at 269.
[3] *Id.* at 272