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June 1, 2010

Elizabeth M. Murphy, Secretary — Via Electronic Mail
United States Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-3628

Katherine Hsu, Esq.
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Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-3628

In Re: Release Nos. 33-9117; 34-61858; File No. S7-08-10; (the "Release")

Dear Ms. Murphy and Ms. Hsu:

Thank you for the opportunity to comment on and respond to questions posed in the Release. It is a privilege to participate in governmental decisions and process in this manner. With respect thereto, the following are my comments:

All CMBS data points seem generally appropriate.

They and others should be included in Schedule L. This seems minimally necessary to provide an investor with prima facie evidence that some competent due diligence has been performed on each loan. This also provides prospective investors with sufficient information to understand generally, the stability of each loan and its probability for timely servicing and repayment.

Additional fields should include / answer the following:

If the loan is a purchase or refinance loan, and the cash equity the mortgagor has in the property as of the date of loan origination or assumption by the mortgagor?

What has been the loan payment history of the current mortgagor on the loan being offered for sale? How many times late in the last 12 months? Last 24 months?

If the loan is personally guaranteed by the mortgagor?
If the mortgagor is an individual or entity?

If an entity, is it an SPE? Is the entity bankruptcy remote?

Has the mortgagor had an event of default, monetary or non-monetary, with the loan being offered for sale?
With respect to the items appearing on page 144 et. seq. of the Release, the following:

With respect to item 6, if the loan is interest only with a balloon payment, has the loan been underwritten with a DSCR only as to the interest only payments? To the contrary, has it been underwritten to a fully amortized rate, and if so, at what rate? Does that fully amortized rate take into consideration reasonably projected interest rates in effect at the time of loan maturity?

With respect to item 7, the amount of any prepayment penalty should be expressed in both a dollar amount and as measured in terms of months of interest on the loan.

With respect to item 8, negative amortization, if and to the extent this exists in commercial loans, which to my knowledge does not, any loan that offers it should not be eligible for resale into the ABS market. Investors in ABS are not seeking foreclosure as a remedy for default, which they could be subject to in such event.

With respect to item 9 e, has underwriting for the loan examined anticipated net operating income at the time of refinance and the extent to which there will be sufficient debt coverage to refinance the loan at maturity, assuming lifetime maximum loan interest is in effect?

With respect to all loans underlying the ABS pool:

Has there been underwriting to determine the plan and method for repayment?

Does the repayment plan anticipate or rely upon any loan guarantee program from a GSE? If so, describe.

Other important disclosures would include the following:

When did the mortgagee last physically inspect the property?

Is the mortgagor currently in any threatened or actual litigation as a defendant?

Does the mortgagor have other commercial loans with the mortgagee? If so, have any of them ever had an event of default; monetary or non-monetary?

As to the question of a requiring a narrative as posed on pages 147-148, the following:

A narrative by the seller or their agent is subject to inherent subjective perspective and conflicts of interest. To mitigate the financial risks arising therefrom, it would be prudent and preferential to provide the investor unedited, raw asset data to study about each loan in the ABS pool. Allowing the seller or their agent to comment upon any singular or group of mortgages in the ABS pool is very problematical, for several reasons, to wit:

1. It invites an analysis of the economics of the pool by a party that has different motivations in effecting the takedown than investors in the pool.

2. In the worst case, it is another invitation to repeat Wall Street and institutional bank fraud covertly practiced upon innocent investors.

3. In the best case, it opens the seller and their agent up to liability for expressing an opinion as to the investment grade and likely performance of the ABS pool, even if such opinion is only implied.

As you have correctly cited on page 12 in the Release, "In addition, market participants have expressed a desire for expanded disclosure relating to the assets underlying securitizations. Investors have complained that the mechanisms for enforcing the representations and warranties contained in securitization transaction documents are weak, and thus are not confident that even strong representations and warranties provide them with adequate protection.

In deed, the only thing that will provide them with adequate protection is unedited raw data, containing full and accurate disclosure about all the assets of the ABS pool being offered, and an opinion of counsel that the information as presented is true, complete and correct as of the date of the offering. It will be up to the investor to study the offering circular, review it with their advisors, and determine the efficacy of the ABS pool insofar as their investment risk profile, investment needs, etc. Anything less is simply a prescription for a repeat of CMBS institutional fraud.

Page 148 of the Release states:

We are proposing to require an indicator that shows how the debt service coverage ratio was calculated for commercial mortgages. The code options for this indicator would be: (1) Average- not all properties received financial statements, and the servicer allocates debt service only to properties where financial statements are received; (2) Consolidated – all properties reported on one "rolled up" financial statement from the borrower, (3) Full- all financial statements collected for all properties, (4) None Collected – no financial statements were received; (5) Partial – not all properties received financial statements and servicer to leave empty; and (6) "Worst Case" – not all properties received financial statements, and servicer allocates 100% of debt service to all properties where financial statements are received. Are these codes appropriate?

To the question as to whether the codes are appropriate, I respectfully submit NO. If you were buying a real property secured mortgage, what would you want to know at a minimum, about the property, the borrower, the ratio of the loan to current value, the history of loan payments made by the borrower to the lender, and what options the borrower has to repay the principal in full when due? Do you not think ***every*** investor is entitled to that same information, and more? Is that not the purpose of full disclosure?

Quite candidly, the above proposed indicator is an invitation for another CMBS market meltdown. No loan should be saleable into an ABS pool that has not undergone complete underwriting by the lender, with a complete due diligence package handed to the ABS pool underwriter for further analysis including but not limited to the same level of information you or any sophisticated investor would want to know prior to making an investment into such debt. Anything less is to court fraud *ab initio*, and invite financial institutions and Wall Street to go back to business as usual in bundling bad loans and passing them off as investment grade investments to unsuspecting investors.

One of the core issues I see with the Proposed Rules, is while well intended, they are at best, a mixture of some basic underwriting considerations with a plan to design and implement a set of codes for disclosure purposes, that in effect will result in the ABS pool underwriter conducting secondhand due diligence on information provided by the seller of the loans, and thereupon classifying loans based on h/her best guess of the quality of the loans being offered and concordant interpretation and application of the 'codes' as it regards disclosure. In the end, that will complicate the CMBS process and achieve little in favor of investor protection.

In a larger sense, NONE of this speaks to the **core** issue of implementing a set of Proposed Rules that mandate good underwriting by the initial lender as a prerequisite for sale of a loan into an ABS pool, requires the lender to retain some equity in each loan offered to the pool, and allows for real due diligence by the ABS pool underwriter and consequent loan selection. (Ergo, if the loan is good enough to sell, it should be good enough for the initial lender to retain some part of it. The secondary market has to stop being a landfill dumpsite for bad loans.) The net effect of this is help assure that the mortgages in the ABS pool are in every respect, independently determined to be well underwritten loans with a very high probability of payment according to their terms and repayment in full at maturity.

Further, the Proposed Rules should compel the seller of every loan into the ABS pool to repurchase any loans that default, or replace them with a loan of comparable size, yield and maturity. This will provide incentive to the seller to only offer for sale to the ABS pool underwriter, that which the seller knows or has reason to honestly believe are good loans that will perform according to their terms.

Every loan offered to the pool underwriter should be accompanied with an SEC-standard loan analysis due diligence package, containing a minimum set of data and documents for review by the pool underwriter. The pool underwriter should then have a reasonable time in which to review each due diligence package on each loan, request additional information from the seller, and conduct such other due diligence as the underwriter in h/her/its determination or as advised by counsel, is reasonable or necessary to make a determination to purchase or not purchase the loans being offered to the pool in whole or in part.

Absent this, the environment for lenders to package questionable loans and dump them into a public pool will persist, and the liar's poker game will continue, and in the end, investors in ABS pools will *again* suffer investment losses as they are again left holding the bag with no one to buy their defaulted paper. Separately, if a pattern develops in servicing failure within a pool, based on some percentage established by the SEC, the ability of the pool to rely on the exemptions afforded by 144A as a liquidity mechanism should be suspended until the servicing within pool is stabilized and seasoned. The absence of this limitation would promote abuse of this privilege in response to such servicing failures.

As a commercial real estate broker for more 36 years, with a substantial level of commercial loan originating and underwriting, I am personally committed to the protection of private and institutional investors when making investments in commercial real estate debt. It is appalling that we find ourselves in the national capital markets distress that exists. It is criminal that activities have occurred at a financial institution level that have decimated belief in our capital markets worldwide. But for the consciousness of greed that prevailed upon our markets in the recent past, and still prevails, the Proposed Rules would not need to be proposed, and the SEC could be focusing its most valuable talent and resources on other measures to mitigate investor fraud. If we do not stop the fraud at its inception—at the loan origination level, and mandate uniform underwriting and best lending practices on all loans sold into an ABS pool, in due course, the SEC will need to seek public comment on another Proposed Rule to address the issues not addressed by the one proposed in the Release.

The question before the SEC with respect to the Proposed Rule is simple: When will the SEC use its powers to stop the madness of institutional fraud at the level of securitized debt? The disappearance of the CMBS capital market is for one reason and only one reason: institutional and investment bank FRAUD.

In Adam Smith's *Theory of Moral Sentiments*, the theory of the invisible hand works in the absence of greed that rises to the level of criminal fraud. At least insofar as the securitization of mortgages is concerned, institutional lenders and investment banks have clearly proven they are not to be trusted by investors in the CMBS environment.

What they *have* proven to the great detriment of our nation is their insatiable avarice under constant pressure to achieve increasingly greater levels of "shareholder value". Some have been so bold as to proffer the idea that investors in the banks and investment banking firms that promulgated the fraud were pressured by reason of the shareholder value they needed to provide investors in their companies, so as to encourage continued investment. Not only is that a ponzi scheme, and a continuing criminal enterprise, but it is nothing less than sociopathic behavior at the height of white collar criminal activity!

The representations and warranties made by investment banks as to the soundness of an investment in an ABS pool are worthless. Their statements can reasonably be assumed to be wholly or in part, misrepresentations of fact and/or a willful failure to disclose certain facts which if known, would reasonably be expected to cause a prospective investor in the pool to form a different conclusion as to the investment grade and worthiness of the pool. The complete and intentional disregard for investor protection and fairness in the bargain element is not only pellucid, but frankly disgusting.

My question to the SEC is, can we afford to go to this movie again? We saw this before with the Savings & Loan crisis of the 1980s~90s, leading to the recession of 1990~91. That led to a $164 Bn taxpayer bailout. That of course was pale in comparison to the more than $1 trillion spent to bail out major financial institutions and investment banks, and to jump start the economy after the economic effect of the greed of the banks and investment banks upon our capital markets. This had a material adverse effect on investors from around the world who relied on representations about investments vetted to U.S. SEC disclosure levels. Countries are still reeling from the losses, including our own. How many trillions of dollars will be lost in the next fiasco, if this high stakes fraud game is not stopped? The answer is obvious.

Changes to the CMBS market must be made from the ground up. Everyone involved must have culpability to the extent of their level of participation. Investors are entitled to nothing less than 100% full disclosure, absent any 'opinions' or other selling puffery of the offeror. I respectfully submit that anything less will not work, and in the end, will evidence the SEC failed to implement real change that will, once and for all, end the fraud and establish confidence on solid, permanent footing in the CMBS markets worldwide, once again.

I am fully aware the SEC plays a vital role in maintaining integrity in our capital markets, in which investors throughout the free world want to believe and for which the U.S. needs to validate their faith through our resolve and actions committed to maintaining the strongest, most honest capital markets in the world. If and to the extent the SEC would care to call on me for suggestions in specificity as to effecting any of the foregoing recommendations, it would be my pleasure to be of service to the Commission in that regard.

Sincerely,

John Arno