WL ROSS & CO. LLC

July 30, 2010

By e-mail: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attention: Ms. Elizabeth M. Murphy,
Secretary

Re: Asset-Backed Securities (File No. S7-08-10)

Ladies and Gentlemen:

WL Ross & Co. LLC appreciates the opportunity to comment on the rules proposed (the "Proposed Rules") by the Securities and Exchange Commission (the "Commission") governing registration, disclosure and reporting requirements for asset-backed securities ("ABS") under both the Securities Act of 1933 and the Securities Exchange Act of 1934. WL Ross & Co. LLC through its private equity fund is the majority owner in American Home Mortgage Servicing Inc.

We are interested in the Proposed Rules as they pertain to structured servicer advance facilities ("SAFs"), which provide liquidity to servicers in mortgage-backed securities transactions and allow servicers to finance their contractual rights to reimbursement for advances and expenses paid by servicers ("Servicer Advances") that ensure continuity of payment to investors and preserve the collateral underlying the mortgage securitization market. The rights to be reimbursed for Servicer Advances are referred to as "Servicer Advance Receivables."

The Proposed Rules applicable to transactions under Rule 144A, Rule 144 and Rule 506 under Regulation D (the "Safe Harbors") would require any private issuer of "structured finance products" (i) to give investors the right to obtain the same information that would be required if the offering were registered (and, for offerings under Rules 144 and 144A, to provide the same information on an ongoing basis) and (ii) to file a public notice of the initial placement of such securities with the Commission.[1]

I. Introduction and Overview

Industry groups, including the American Securitization Forum (the "ASF") of which I am a director, are submitting comments that broadly address the Proposed Rules. We are generally supportive, of the ASF's private placement committee regarding the Proposed Rules as they apply to transactions under the Safe Harbors.

[1] The definition of "structured finance product" under the Proposed Rules ostensibly encompasses SAF securities.

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We note that the ASF private placement committee suggests that the Commission amend Rule 144A (and make conforming changes to amend Rule 144 and Rule 506) to permit resales of any structured finance products of any issuer to "qualified institutional buyers of structured finance products" ("SQIBs"), or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believe is a SQIB. Similar to the test for QIBs, an investor qualifies as a SQIB by holding a requisite level of invested assets in structured finance products. An issuer who (i) sells only to SQIBs and (ii) obtains a certification from each SQIB stating that such SQIB has the knowledge and experience to invest in structured products could continue to qualify for the Rule 144A safe harbor and remain exempt from the public disclosure requirements under the Proposed Rules. We support the position of the ASF's private placement committee regarding SQIBs.

Nevertheless, if the Commission continues to believe that the disclosure requirements applicable to public offerings should apply to asset-backed securities private offerings, even if the offerings were limited to SQIBs, we agree with the ASF that this expansion should not apply to all types of structured finance products. In particular, some types of asset-backed securities have never been offered through the public markets and have never experienced the losses that afflicted other products (such as CDOs and residential mortgage-backed securities), and issuers of these particular classes of ABS should continue to be eligible to use the Safe Harbors without the public offering disclosure requirements. This letter's purpose is to highlight one such type of security that should be exempted from the Proposed Rules – SAF securities.

II. Discussion

Background. Mortgage servicers play a vital role in the securitization markets by managing the mortgage loans underlying billions of dollars of mortgage-backed securities and by ensuring steady cash flows for investors. One way servicers achieve this result is to advance funds or incur expenses, called Servicer Advances, related to the underlying mortgage loans. For example, servicing agreements typically require servicers to advance delinquent principal and interest payments, delinquent property taxes and assessments, delinquent property insurance premiums, and other costs necessary to preserve the value of the underlying mortgaged properties (in all cases, amounts that a borrower is obligated to pay, but has failed to do so). Servicers also work with distressed borrowers to modify loan terms in order to keep borrowers in their homes and, in the event of a borrower's default, incur expenses to foreclose on the property and manage any property acquired by the securitization trust. A typical servicing agreement entitles a servicer to be reimbursed for its Servicer Advances on a first priority basis (that is, before payments to the holders of the mortgage-backed securities) out of any collections or proceeds related to the mortgage loan. In general, if necessary, the Servicer also may be reimbursed for Servicer Advances from any collections on the overall pool of loans in the securitization. Reimbursement, however, may not occur for many months after the Servicing Advance is made, and the servicer is not entitled to receive interest on Servicer Advances. Thus, the Servicer Advance obligations create significant liquidity challenges for mortgage servicers. SAFs provide critical liquidity that enables servicers to preserve the collateral and cash flows underlying mortgage-backed securities.

The vital importance of SAFs to the mortgage securitization industry is demonstrated by the fact that most mortgage-backed securitization transactions expressly anticipate in the governing documents that a servicer will finance the Servicer Advance Receivables. Additionally, the importance of a viable SAF market to the stability of financial system was underscored in March 2009 when the Federal Reserve Board of New York expanded the list of collateral eligible for financing under its Term Asset-Backed Securities Loan Facility to include Servicer Advance Receivables.

Traditionally, Servicer Advances were financed under secured bank lines of credit, involving a pledge of the Servicer Advance Receivables attributable to specified servicing agreements. Today, many sophisticated lending institutions prefer to lend against Servicer Advances through securitization transactions, to ameliorate insolvency risk related to the servicer. The Servicer Advance Receivables created under a group of servicing agreements is transferred to one or more special purpose entities, or SPVs, which are organized to be "bankruptcy-remote" from the servicer. The SPV issues securities backed by or representing interests in the pool of Servicer Advance Receivables. Due to the dislocation in the credit markets, the requirement that SAFs be structured to be bankruptcy remote has become the norm.

SAFs are a fundamental financing technique that servicers use to fund their advance obligations in mortgage loan securitizations. For the reasons discussed below, we request that the Commission carve out SAF securities from the definition of "structured finance products," exempting SAFs from the Proposed Rules for private offerings.

Tailored Disclosure Presently Exists. Investors in SAFs currently obtain the disclosure necessary to understand any risks involved in such transactions. We understand that one reason for the extension of enhanced Reg AB reporting requirements to cover the Safe Harbors is that investors often do not have access to important information about structured securities, and because of this information asymmetry, investors may not fully understand the related risks.[2] Fortunately, this is not a concern in the SAF market. SAFs are typically structured like negotiated credit facilities, where sophisticated lender agents negotiate details on behalf of the lending group, and bear little resemblance to broad securities offerings to passive investors. As a consequence, SAF investors or their lender agents negotiate the reporting terms of the facility directly with the deal sponsors. In the current market investors have negotiated reporting requirements that fully encompass the data they want and need, and there are no concerns from SAF investors that disclosures are or have been inadequate.

Purely Private. Securities offered through SAFs have never been offered or sold publicly. We understand that another rationale for the extension of enhanced Reg AB reporting requirements to cover the Safe Harbors is to prevent issuers in securitizations commonly conducted as public offerings from moving to the private market in order to avoid the enhanced disclosures required in the public markets.[3] This concern is inapplicable to SAFs, because no public market exists or ever has existed for these securities.

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[2] SEC Release No. 33-9117 (April 17, 2010), at 270.

[3] This rationale was noted in a speech by Chairman Mary L. Schapiro at the Commission's open meeting in Washington, D.C., held on April 7, 2010.

Vested Interest. A servicer has a vested interest in a SAF's performance because a servicer's continuing and future access to funding depends on the performance of the loans it services. A SAF's advance rate, a rate based upon a discount of the balance of receivables, determines the amount that the servicer can borrow or the amount of debt it can issue secured by the Servicer Advance Receivables. The advance rate is determined by the rating agencies, which analyze historical reimbursement rates of the receivables in a SAF. In addition, SAFs typically include performance tests and other triggers tailored specifically to the SAF collateral to protect investors should the cash flows on the Servicer Advance Receivables become insufficient to support the outstanding SAF securities. In particular, certain collateral tests must be conducted frequently, and a failure on one of these tests can reduce the amount of funding available to the servicer. As a result, a servicer's ability to tap funding sources is linked directly to the performance of its facilities and, in this regard, SAFs are completely different from arbitrage deals (such as CDOs) in which sponsors walk away from their "sold" assets. This is one reason that SAFs have not contributed to the financial crisis. Indeed, securitized SAFs date back to early 2000, and we are unaware of any SAF in which investors have suffered a loss on their investments.

Incongruous Data Requirements. If the Commission does not exempt SAFs from the Proposed Rules, most of the asset-level data points required to be reported under the Proposed Rule will be applicable to SAFs. The assets in a SAF do not comprise a consumer mortgage loan pool, but are contractual rights to reimbursement arising from performance of obligations under commercial contracts. If the Commission requires loan-level disclosures about the underlying mortgage loans, SAF servicers will not be able to comply because they do not have access to the origination data. Furthermore, most of the 179 data items (including general disclosure data items) proposed for ABS backed by residential mortgage loans are irrelevant to SAF investors because the performance of the SAF securities is not tied directly to this underlying data.[4]

III. Closing

We request an exemption for SAFs from the definition of "structured finance products" under the Proposed Rules for private offerings. Investors in SAFs have access to tailored disclosure for which they have negotiated directly with SAF sponsors. SAFs operate strictly in the private markets so that no amount of enhanced disclosure requirement for registered asset-backed securities will have any effect on SAF issuers' preferences for the private or public markets. SAF servicers already retain significant risk related to the performance of the SAF securities, because their funding is tied directly to the performance of the loans they service. Moreover, servicers do not have access to the asset-level information required to be provided to investors, and that information is inapplicable and ultimately unhelpful for investors.

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[4] A few examples of irrelevant data items for an investor in a SAF security include prepayment penalties, exceptions to underwriting criteria and detailed information regarding the borrowers such as credit scores, debt-to-income ratios and whether a borrower has filed for bankruptcy.

Finally, we believe the Proposed Rules will unnecessarily impair servicers' ability to finance Servicer Advances through the securitization markets, and may even render SAFs cost prohibitive entirely. The SAF market is a relatively small but crucial component of the housing market and by extension the wider financial market. Restricting mortgage servicers' access to such a vital funding source will lead to further disruption in the housing market and, ultimately, indirect harm to consumers. For these reasons, we feel that if SAF securities are not exempted from the extension of the Proposed Rule to the private markets, the regulatory burden on SAF transactions will be disproportionate to any enhanced investor protections created by the Proposed Rule that SAF investors will be required to forego (which we believe to be nonexistent or extremely minimal).

If you have any questions about this letter or would like to discuss the Proposed Rules, please feel free to call James B. Lockhart III at 212-826-2037.

Respectfully,

JAMES B. LOCKHART III
VICE CHAIRMAN