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

2 August 2010

Asset-Backed Securities
(Release Nos. 33-9117; 34-61858)
Commission File No. S7-08-10

Dear Ms. Murphy:

Ernst & Young LLP is pleased to comment on the Securities and Exchange Commission's (the "Commission" or the "SEC") proposed rule *Asset-Backed Securities* (the "Proposed Rule" or "Proposal"). The Proposed Rule would amend Regulation AB regarding the offering, disclosure and reporting processes for publicly issued asset-backed securities and would impose new disclosure reporting requirements for many privately placed asset-backed securities. Our comments are limited to the third party review of repurchase obligations, accounting issues arising with the risk retention mandate, financial information regarding parties obligated to repurchase assets and servicer assessment of compliance with servicing criteria. These are aspects of the Proposal that have accounting or attestation ramifications.

Third party review of repurchase obligations

The Proposal, as a condition for shelf eligibility, would require obligated parties to furnish a third party's opinion relating to any asset for which the trustee has asserted a breach of any representation and warranty and for which the asset was not repurchased or replaced by the obligated party. The third party opinion would be based on an assertion that the asset met the representations and warranties contained in the pooling and servicing or other agreement. The Proposal questions whether a public accountant would be able to provide the proposed opinion under existing AICPA or PCAOB attestation standards. A public accountant can provide opinions under the AICPA's Attestation Standards when there is an appropriate management assertion on the subject matter made using criteria that meet a standard of suitability. However, we believe it would be unlikely that a public accountant would be in the best position to provide such an opinion because (1) public accountants are precluded from providing legal opinions and (2) it would be difficult, at best, to identify suitable criteria for evaluating subject matters such as compliance with consumer credit protection and predatory and abusive lending laws. Accordingly, we would anticipate that such opinions primarily would be provided by attorneys.

More generally, we are not clear how the proposed third party opinion provision would protect investor interests or enhance the protective nature of representations and warranties. It appears that the third party opinion would be a correspondence between the obligated party and the trustee, but only when an asserted breach of representations and warranties has been claimed by the trustee and denied by the obligated party. The third party opinion would not provide a method for resolving individual breach claims because the parties would not be bound to accept the third party opinion. While it would require pooling and servicing agreements to call for such an opinion in the noted circumstances, the Proposal would not require that those agreements incorporate any specific resolution mechanisms or related remedies. We believe a more effective approach would be to condition shelf eligibility on a requirement that pooling and servicing agreements specifically provide for arbitration or another non-judicial method for resolving disputes and claims. Such alternative dispute resolution mechanisms should be both timely and incorporate appropriate due process.

Accounting issues arising from required risk retention

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") mandates the adoption of regulations requiring a minimum 5% credit risk retention in all offerings of asset-backed securities. We believe the mandated risk retention could lead to an increase in financial reporting diversity and consequently a reduction in financial statement comparability.

We agree with the Proposal's assertion that "….satisfaction of the [SEC's proposed] risk retention condition would not, by itself, be determinative as to whether a sponsor's variable interests would be a controlling financial interest resulting in consolidation." Consequently, evaluating whether specific circumstances would result in consolidation will continue to require significant judgment. Appreciating this, we seek to understand whether the SEC would agree that an increase in financial reporting diversity is a reasonable and perhaps appropriate result of the Act's risk retention mandate.

In accordance with ASC 810, *Consolidation*, in order to consolidate a securitization vehicle, the sponsor must have both the right to receive benefits and the ability to direct its most significant activities. Currently, outside of multi-seller arrangements, the sponsor commonly retains the ability to direct the most significant activities through its servicing agreement. Further, the sponsor generally retains benefits in various forms, including certain required retained risks. These required retained risks, beyond standard representations and warranties, include but are not limited to:

- Retention of subordinated tranches of the issued beneficial interests, typically ranging from 5-100% of such tranche
- Servicing arrangements that provide the sponsor market based fees for services, and in some circumstances, subordinated and/or incentive-based fees and other potentially non-market based fees
- Arrangements to provide liquidity and/or credit backstops to enhance the quality of the issued beneficial interests

- Investments in issued beneficial interests by the sponsor's, its affiliates' or related parties' proprietary trading desk

We believe the effects of the mandatory risk retention will not present any unique challenges to registrants and auditors in assessing the quantitative aspect of the accounting consolidation evaluation under ASC 810. However, financial statement preparers and auditors could differ on the extent to which they emphasize the qualitative aspects of the risk retention condition. These differences may lead to an increase in financial reporting diversity. Specifically, some registrants and auditors may place relatively more or less weight on the legislative and regulatory motives underlying the retained risk condition. Consequently, when assessing whether mandatory retained risks, when aggregated with other interests, represent significant benefits to the sponsor, registrants and auditors could reach differing conclusions in similar fact patterns.

The accounting and financial reporting implications of the regulations implementing the Act could be better understood and applied more consistently if regulators as a group would conduct formal, and as permitted by law, informal outreach discussions with various originators, sponsors, auditors and financial statement users to identify and assess the various forms of risk commonly retained in asset-backed securitization arrangements. This outreach could help sponsors and other constituents better understand the statutory and regulatory intent of the mandatory risk retention requirements for purposes of influencing sponsor behavior, which might help registrants and auditors more consistently evaluate the significance of the those requirements in consolidation assessments.

Financial information regarding parties obligated to repurchase assets

As proposed, Item 1104 and Item 1110(b) would be amended to require, in certain circumstances, information on the "financial condition" of sponsors or 20% originators that are obligated to repurchase or replace any pool asset for a breach of a representation and warranty in the transaction agreements. Under the Proposal, information regarding the financial condition of a 20% originator would be required "to the extent there is a material risk that the financial condition could have a material impact on the originator's assets in the pool or on its ability to comply with provisions relating to the repurchase obligations for those assets." Similarly, information regarding the sponsor's financial condition would be required "to the extent that there is a material risk that the financial condition could have a material impact on its ability to comply with the provisions relating to the repurchase obligations for those assets or otherwise materially impact the pool."

Instead, we recommend that the SEC amend the scope of Item 1114 (credit enhancement and other support) to include asset repurchase and replacement obligations. In any event, the threshold and basis for disclosing financial information about repurchase obligors should be consistent with the financial information currently required by Item 1112 with respect to significant obligors and Item 1114 with respect to significant credit enhancements. That is, there should be a clear and objective basis for determining when financial information about a party with a potential asset repurchase or replacement obligation must be provided and the nature of the required financial information. Unlike the proposed amendments to Item 1104 and Item 1110(b) that would require a subjective evaluation of the materiality of the risk, and that are nonspecific as the nature of the appropriate information about financial condition, expanding the scope of Item 1114 to include repurchase obligors would provide an objective standard for determining when and how the requisite financial disclosure should be provided. Under this approach, the required financial information would be (1) the selected financial data specified by Item 301 of Regulation S-K when the obligation exceeds 10% of the asset pool, and (2) audited financial statements that comply with Regulation S-X when the obligation exceeds 20% of the asset pool.

In many cases, the obligation to repurchase or replace assets rests with the originator, which may be a subsidiary that does not prepare separate financial statements or obtain an audit. In appropriate circumstances, we recommend that the Commission accept alternative methods of providing the requisite financial information. If the obligation to repurchase or replace assets is fully and unconditionally guaranteed by a parent, the audited financial statements of the consolidated parent should be accepted in lieu of those of the obligor. Otherwise, in lieu of the separate audited financial statements of a subsidiary obligor, the Commission should accept audited financial statements that include the obligor (and any affiliate guarantors) on a consolidated basis, provided those financial statements include condensed consolidating financial information that includes a separate column for the subsidiary obligor (and any subsidiary guarantor(s)).

The request for comment in the Proposed Rule also asks if there are other situations in which financial information should be required (e.g., all servicers and all sponsors) and whether that information should be audited financial statements. We believe that the framework discussed above would provide investors with financial statements in those circumstances in which the investor's cash flows potentially depend, to a significant degree, on the financial wherewithal of underlying obligors (Item 1112), credit enhancers (Item 1114) and parties with an asset repurchase/replacement obligation (amended Item 1114, as we have suggested). In the absence of an indirect financial obligation regarding the securitized assets, there does not appear to be a need for additional financial information, in the form of audited financial statements or otherwise. That is, if a sponsor does not provide any credit enhancement and is not obligated to potentially repurchase or replace assets, there is no obvious utility to ABS investors from receiving financial information about the sponsor. Further, given that there are numerous parties in the marketplace that could assume servicing functions in the event of the incapacity of one or more servicers, it is unclear that providing additional financial information about servicers would be useful or cost beneficial.

Servicer assessment of compliance with servicing criteria

The Commission seeks input on proposals to (1) expand the disclosures required in Form 10-K about instances of noncompliance and steps taken to remedy a material instance of noncompliance, (2) add a separate criterion addressing the accurate aggregation and conveyance of information by servicers and (3) codify prior staff interpretations relating to the scope of Item 1122. In general, we support the direction of the proposals and offer our suggestions in the following paragraphs.

With respect to instances of non-compliance, such matters are already required to be disclosed under professional standards, provided they meet the standard of material non-compliance. The

Proposal is not clear to us as to whether the proposed disclosure would apply to instances of non-compliance that were not deemed to be material and thus were not identified in the independent accountant's examination report. We believe disclosures should be limited to instances of material non-compliance at the platform level. Disclosure of other instances of non-compliance may undermine the accountant's opinion that the issuer complied in all material respects. Separately, disclosures of remediation activities relative to instances of material non-compliance are not required to be disclosed, but often are provided voluntarily by registrants. Currently, remediation activities are not covered by any form of auditor assurance. We recommend that any final rule make clear that any remediation disclosures are not within the scope of the independent auditor's attestation opinion.

The Proposal would codify an SEC staff interpretation by adding a new servicing criterion to Item 1122 that, "if information obtained in the course of duty is required by any party or parties in the transaction in order to complete their duties under the transaction agreements, the aggregation of such information, as applicable, is mathematically accurate and the information conveyed accurately reflects the information that was obtained." The Commission asked whether timeliness of conveyance of this information also should be included as part of the proposed servicing criterion. We believe the proposal to add a separate criterion addressing aggregation and conveyance of information by servicers would not be a hardship as it is consistent with current practice executed under existing SEC staff interpretations. Suitable criteria under the professional standards are those that are deemed to be objective, measurable, relevant and complete as defined in the standards. We recommend the Commission take steps in codifying those interpretations to ensure that the resultant criterion meet the standard of suitability.

The Proposal also would codify SEC staff interpretations relating to the platform determination by adding an instruction to Item 1122, with which we concur. The Commission asks whether the proposed instruction reflects current servicer practices and whether servicers conduct servicing in any ways different than what is contemplated in the instruction. We are not aware of divergence between the proposed instruction and current servicer practices.

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We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Very truly yours,

Ernst & Young LLP