KPMG LLP
757 Third Avenue
New York, NY 10017

Telephone 212 909 5600
Fax 212 909 5699
Internet www.us.kpmg.com

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

SEC Release Nos. 33-9117; 34-61858; File No. S7-08-10
Asset-Backed Securities Proposed Rule

Dear Ms. Murphy:

We appreciate the opportunity to respond to the Securities and Exchange Commission's (SEC or Commission) proposed rule regarding *Asset-Backed Securities* (the Proposal or the Proposed Rule). We support the regulatory efforts of the Commission to better protect investors in the securitization market by providing them more detailed and timely asset-level data and also better aligning the interests of issuers and investors. We have structured our comments to provide insight as to those matters that may prove challenging for management and the independent public accountant and those where additional guidance or clarification may be required. Our comments and observations relate to the following areas:

- Privately-issued structured finance products
- Third party review of repurchase obligations
- Financial information prospectus disclosures for originators and sponsors
- Risk retention
- Servicer's assessment of compliance with servicing criteria

Privately-Issued Structured Finance Products

The Commission's proposed rule includes a requirement that the underlying transaction agreement for structured finance product securities being issued in reliance on Rule 144A or

Rule 506 of Regulation D, grant potential investors with the right to obtain from the issuer, upon request, the information that would be required if the transaction were registered under the Securities Act and such ongoing information as would be required by Section 15(d) of the Exchange Act. Section 15d-18 of the Exchange Act requires every class of asset-backed security subject to section 15(d) to include in the Form 10-K a report regarding its assessment of compliance with the servicing criteria specified in Item 1122(d) of Regulation AB as well as a report by a registered public accounting firm that attests to, and reports on, the assessment made by the asserting party.

We recommend that the SEC clarify whether it was their intention that issuers relying on Rule 144A or Rule 506 of Regulation D will be subject to all section 15(d) reporting requirements including the auditor's servicing compliance attestation. Clarification of the requirement is important for two reasons. First, issuers relying on Rule 144A or Rule 506 of Regulation D who have not previously been subject to the servicing compliance attestation requirements will incur incremental costs in order to comply with the proposal. Second, neither management nor the auditors have ever been required to apply the servicing criteria in Item 1122(d) of Regulation AB to certain of the structured finance product transactions (e.g., collateralized debt obligations or collateralized mortgage obligations). Accordingly, we believe implementation issues may arise in trying to apply the existing criteria to transactions and asset types not anticipated at the time the criteria were created. Similar to the initial implementation of Regulation AB, we believe that Staff interpretations may be required in order for servicers, trustees and auditors to consistently interpret and apply the criteria to these new asset types. For example, if a CDO transaction is collateralized by residential mortgage-backed securities, would criteria such as Item 1122(d)(3)(vii) (loss mitigation) and (3)(viii) (collection efforts) be deemed not applicable to residential mortgage-backed securities or instead would the criteria be applied to the residential mortgage loans underlying the residential mortgage-backed securities. If the intent is that Rule 144A issuers will be subject to all section 15(d) reporting requirements, we encourage the Commission to consider the costs to issuers and the benefits of the reporting requirements for investors given the issues described above. As part of the consideration of costs and benefits, the Commission should also consider that the usefulness of the auditor's report for investors may be diminished if a number of the criteria are deemed to be not applicable for a particular asset type.

If the Commission's final rule clarifies that the auditor's servicing compliance attestation is applicable to issuers relying on Rule 144A or Rule 506 of Regulation D, it is not clear what the expectation would be regarding the timing for when the management assessment and auditor report would be required to be provided to investors (e.g., available upon request, available within 30 or 90 days, or as specified in the transaction agreements).

Lastly, we encourage the Commission to consider if it is possible that entities relying on Rule 144A issuances for non-structured finance transactions could be unintentionally scoped into the section 15(d) reporting requirements.

Third Party Review of Repurchase Obligations

When the trustee asserts a breach of any representation and warranty related to a securitized asset and the asset is not repurchased by the party obligated under the representations and warranty provisions of the transaction agreements, the Commission is proposing that the obligated party provide the trustee an opinion from a third party (unaffiliated with the obligated party) confirming that the asset did not violate a representation or warranty contained in the transaction agreements. We question whether the Commission's proposal to have the obligated party engage a third party to perform the assessment of whether a breach of any representation and warranty has occurred and provide such opinion to the trustee will provide the trustee with sufficient information to carry out their fiduciary responsibilities and whether such an opinion will compel the parties (i.e., the obligated party and the trustee) to settle the breach claim.

Additionally, the Commission posed the question of whether a public accountant would be able to provide the proposed opinion under existing standards. AICPA Attestation Standards Section AT 101, *Attest Engagements*, and AT 601, *Compliance Attestation*, provides professional standards for public accountants relative to engagements to examine and report upon an entity's compliance with requirements of specified laws, regulations, rules, contracts, or grants. The standards note that in order for a public accountant to perform such an engagement, the accountant must have reason to believe that the subject matter is capable of evaluation against criteria that are suitable and available to users. Suitable criteria must have each of the following attributes: objectivity, measurability, completeness and relevance to the subject matter.

Therefore in order for a public accountant to provide the third party opinion confirming whether any breach of representation or warranty has occurred, the provisions in the transaction agreements governing representations and warranties would need to have the attributes of suitable criteria by which the public accountant could measure the obligated party's performance. In our experience, certain of the representation and warranty provisions are often not objective but rather are subjective and may not permit consistent assessment of compliance. In these circumstances, it would not be appropriate for the public accountant to provide such report on compliance. However, if transaction agreements are modified prospectively and include representation and warranty provisions that are determined to be objective and measurable, or if the Commission (or other interested parties) develop a set of measurable and objective criteria for assessing compliance with representations and warranties, public accountants may be able to play a role in providing such an opinion.

Financial Information Prospectus Disclosures for Originators and Sponsors

The existing asset-backed securities market developed without providing investors with audited financial information of the sponsors of asset -backed securities. Instead, the sponsor files periodic reports with the SEC that are made available to investors regarding the cash flows received from the asset pool and distributions made to investors. The Commission is proposing to amend Item 1104 and Item 1110(b) of Regulation AB to require financial information for a 20% originator when there is a material risk that the financial condition of the 20% originator could have a material impact on the origination of the 20% originator's assets in the pool or on its ability to comply with provisions relating to the repurchase obligations. Similarly, the Commission is proposing to require information regarding the sponsor's financial condition to the extent that there is a material risk that the financial condition of the sponsor could have a material impact on its ability to comply with the provisions relating to repurchase obligations or otherwise materially impact the pool.

The impact of the Commission's proposed amendments to Item 1104 and Item 1110(b) will vary depending on the whether the financial information must be audited and whether the information will be required in interim and annual filings, or both. If the financial information required to be included must be audited, originators and sponsors not previously subject to an audit would incur incremental costs in order to be prepared to provide timely audited financial information in the event that they determine that material risk exists that their financial condition could have a material impact on their ability to comply with provisions relating to the repurchase obligations. We believe the Commission should weigh the cost against the benefit of having originators and sponsors incur the expense of an audit in the event that their financial condition is such that their financial information is required to be filed.

If the Commission ultimately decides to only require originator and sponsor financial information (audited or unaudited) based upon their financial condition, we recommend that the Commission clarify the meaning of "material" as used in the proposed amendment (e.g., "material risk," "material impact," "otherwise materially impact"). We believe the proposal as drafted requires significant interpretation by sponsors, originators and auditors and that disparity in practice is likely to result. For example, originators or sponsors may conclude that a material risk of their financial condition having a material impact on their repurchase obligation exists only in situations where management has expressed doubt about an entity's ability to continue as a going concern. Others may view continued negative earnings trends as an indicator of material risk that would require financial information disclosures.

Risk Retention

The Commission's proposal includes a risk retention requirement, under certain conditions, intended to provide an incentive for the sponsor to take additional steps to consider the quality of the assets that are securitized by exposing sponsors to the same credit risk to which investors will be exposed. In this endeavor, the Commission indicated that it would work closely with the Federal Government, the Federal Deposit Insurance Corporation and other regulators regarding the proposed risk retention requirements. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act), which was enacted into law in July includes risk retention requirements which will generally apply to securitization transactions regardless of whether the sponsor is seeking a shelf registration. The Act, similar to the Commission's proposal, includes certain minimum risk retention requirements (i.e., five percent, net of hedging) for securitizations with assets other than qualified residential mortgages which may preclude the need to include a risk retention requirement in the Proposed Rule. As it relates to risk retention requirements, we encourage the Commission to coordinate the risk retention requirement in the Proposed Rule with the Act in order to reduce the potential for differences which may result in inconsistencies in the application of the risk retention provisions. For example, it may be important to align the requirements related to the prohibition on hedging. The Proposed Rule prohibits direct hedges while the Act prohibits both direct and indirect hedging.

With regard to the risk retention requirement in the Proposed Rule, we believe it is unclear as to whether risk retention that is significant enough to influence sponsor behavior with regard to asset quality would also be presumed to be significant for purposes of evaluating consolidation under ASC Topic 810- *Consolidation*. We recommend that the Commission clarify why the proposed risk retention levels are considered significant for purposes of influencing sponsor behavior, such that, sponsors, auditors and others will be able to differentiate the meaning of significance in this context with the significance criteria applied in evaluating consolidation.

The accounting and financial reporting implications of the regulations, including 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 percentages for purposes of influencing sponsor behavior, which might help registrants and auditors more consistently evaluate the significance of the risk retention percentages in consolidation assessments.

Servicer's Assessment of Compliance with Servicing Criteria

Disclosures Regarding Material Non-Compliance and Remediation

Regulation AB requires management to provide a platform-level assessment of compliance with the servicing criteria specified in Item 1122(d) of Regulation AB. The "platform" level assessment permits a single assessment and assertion regarding compliance for entities involved in multiple asset-backed security transactions, as contrasted with requiring separate assessments for each individual transaction. Management determines the platform level and identifies the transactions included in the platform. Typically, one management assessment which relates to several issuers backed by the same type of assets will be filed as an exhibit to each of the issuers' Forms 10-K.

In situations where the management assessment discloses instances of material non-compliance, the Commission indicates that it may not be clear whether the asset-backed securities covered in the particular issuer's Form 10-K report may have been impacted by the material instances of non-compliance. The Commission is proposing to require that, along with disclosure of material instances of non-compliance with servicing criteria, the body of the annual report also disclose whether the identified instances of non-compliance involved the servicing of the assets backing the asset-backed securities covered in the particular issuer's Form 10-K report. We believe that such disclosure in the Form 10-K may be misleading to investors and should not be required in the Form 10-K.

For example, where an issuer discloses that its asset-backed securities were not impacted by material instances of non-compliance, an investor may believe that the loans or assets backing their securities, serviced on the same platform, were not or could not have been impacted by the control deficiencies that led to the observed instances of non-compliance. While this may be true, without further testing by management and the auditor there can be no assurance that the control deficiencies that led to the material non-compliance identified in the initial sample did not or could not have related to the loans or assets within a particular issuer's asset-backed securities. As a result, the additional testing needed to demonstrate whether or not a particular issuer's asset-backed securities were impacted by the instances of material non-compliance may offset the efficiencies gained by allowing management to provide a platform-level assessment. If the Commission requires such disclosures of management, we believe it is important that the users of the Form 10-K understand that the disclosures regarding the impact on the particular issuer's asset-backed securities is not covered by the auditor's servicing compliance report, as such assessment is made at the platform-level, and that such information should be labeled as unaudited.

We are supportive, however, of the Commission's proposal to require that the body of the annual report discuss any steps taken to remedy a material instance of non-compliance previously identified by an asserting party for its activities made on a platform level. In certain circumstances management responsible for the non-compliance (e.g., servicer management) is not the same as management responsible for filing the Form 10-K (e.g., issuer). Accordingly, we recommend that the Commission clarify that remediation activities should be included in the servicer's management assessment of compliance with the Item 1122(d) criteria, which is included in the Form 10-K, and will provide the basis for the issuer's disclosures regarding remediation activities. Lastly, we recommend that the Proposal clarify that the remediation activity described in the servicer's management assessment is not covered by the auditor's servicing compliance report because the remediation activities are undertaken subsequent to the date of the auditor's report.

Codification of Existing Staff Positions

We support the Commission's proposals to codify certain Staff positions, including the addition of a new servicing criterion to Item 1122(d) to address the aggregation and conveyance of information between a servicer and another party. With regard to the Commission's question regarding the importance of timing as it relates to the new servicing criterion, we believe that timely conveyance of information plays an important role in ensuring that investors receive accurate information within the timeframes specified in the transaction agreements. Accordingly, we recommend that the new criterion address the timely conveyance of information and clarify how timely will be defined (e.g., XX number of days prior to investor reporting deadline or as otherwise defined by the transaction agreements).

Additionally, we recommend that the Commission's final rule clarify whether conveyance by the servicer to the issuer of the asset-level data required by Schedule L-D proposed to be included in the ongoing Exchange Act filings will be subject to the new criterion and the auditor's report on servicing compliance. Historically, the auditor's report has covered the aggregation and conveyance of information between the servicer and the trustee related to investor reporting and other existing Item 1122(d) criteria rather than all information conveyed from the servicer to the trustee. If the Commission's intention is that the asset-level data conveyed by the servicer to the issuer for reporting in Schedule L-D, be subject to the auditor's report on servicing compliance, we recommend that the Commission weigh the costs against the benefits of requiring the asset-level data being subject to the auditor's report on servicing. This assessment should include a consideration of the frequency of filing the information in Schedule L-D for use by investors as compared to the subsequent annual issuance of the auditor's report.

Loan Modification Disclosures

The Proposal would revise Item 1111 of Regulation AB to require a description of the provisions in transaction agreements governing modification of the assets and disclosure regarding how modifications may affect cash flows from the assets or to the securities. Historically, certain transaction agreements have lacked clarity as to what types of modifications, if any, are permitted, and how the modifications are to be made, reviewed and approved. In some instances, the provisions in the transaction agreements governing loan modifications are vague and open to interpretation and may simply defer to the servicer's internal policies and procedures. We are supportive of providing more information to investors regarding loan modifications as an investor may assess risk of the securitization differently depending on the nature and extent of loan modifications permitted by the transaction agreements. We believe requiring clearer descriptions of the provisions governing modifications in the transaction agreements will provide more useful disclosures for investors and provide greater clarity for auditors, servicers, and others responsible for assessing compliance with the Regulation AB 1122(d)(4)(vi) loan modification criterion. As such, we recommend adding language to Item 1111 to clarify the Commission's expectations regarding the nature and extent of modification activity guidance that should be included in the transaction agreements which will serve as the basis for assessing compliance and for disclosures made to investors in the prospectus.

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In closing we would like to reiterate our support of the regulatory efforts undertaken by the Commission to better protect investors in the securitization market by providing them more detailed and timely asset-level data and also better aligning the interests of issuers and investors. We hope that our comments and observations will assist the Commission to that end.

We appreciate the opportunity to submit our comments on the Proposal. If you have any questions regarding our comments or other information included in this letter, please do not hesitate to contact Sam Ranzilla, (212) 909-5837, sranzilla@kpmg.com, or Glen L. Davison, (212) 909-5839, gdavison@kpmg.com.

Very truly yours,

KPMG LLP

cc:

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