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December 8, 2009

Via E-mail rule-comments@sec.gov

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

Re: References to Ratings of Nationally Recognized Statistical Rating Organizations; Release No. 33-9069; 34-60790; IA-2932; IC-28940; File Nos. S7-17-08, S7-18-08, S7-19-08

References to Ratings Of Nationally Recognized Statistical Rating Organizations; Release No. 34-58070; File No. S7-17-08

Security Ratings; Release Nos. 33-8940, 34-58071; File No. S7-18-08

References to Ratings of Nationally Recognized Statistical Rating Organizations; Release Nos. IC-28327, IA-2751; File No. S7-19-08

Dear Ms. Murphy:

Cadwalader, Wickersham & Taft LLP appreciates the opportunity to comment on the referenced releases (the "Releases"), which propose amendments to eliminate references to credit ratings issued by nationally recognized statistical rating organizations ("NRSROs") from the rules (the "Rules") of the Commission promulgated under the Securities Act of 1933 (the "Securities Act"), the Securities Exchange Act of 1934, the Investment Company Act of 1940 (the "Investment Company Act") and the Investment Advisers Act of 1940. This letter specifically relates to certain changes affecting asset-backed securities ("ABS") and reflects the views of Cadwalader, Wickersham & Taft LLP and not the views of any particular client.

The releases were initially proposed for comment in July 2008. We note that many of the comments submitted in response to the proposed amendments opposed the proposed changes to the Rules at that time. The Commission, citing "regulatory developments, comments

received on the proposals, and the continuing public interest in the Proposing Releases,"[1] is now requesting additional comments on certain of the proposed changes.

In requesting additional comments, the Commission has stated that it is "deferring consideration" and is "currently engaged in a broad review of the Commission's regulation of asset-backed securities...".[2] Similarly, the Commission cites proposals being developed with respect to offers and sales of ABS in the discussion regarding the removal of references to NRSRO's credit ratings from Rule 3a-7 of the Investment Company Act, indicating that they may "revisit" the use of these ratings in connection with the offer and sale of ABS. We support this approach by the Commission to develop a comprehensive system of Rules regarding the offer and sale of ABS rather than enacting various amendments in a piecemeal approach.

We generally concur with the views expressed by the American Securitization Forum ("ASF"), the Securities Industry and Financial Markets Association ("SIFMA") and the Commercial Mortgage Securities Association ("CMSA") with respect to the proposed changes to the Rules removing the references to credit ratings of NRSROs in the Rules, particularly the proposed changes to Rule 3a-7 and the proposed changes to Form S-3 eligibility and shelf registration.

We represent a variety of participants in the ABS market, including issuers, underwriters and investors. Under the current Rules, issuers of ABS, including both residential and commercial mortgaged-backed securities ("RMBS" and "CMBS", respectively), are permitted to use Form S-3 to file shelf registration statements to offer securities publicly on a delayed basis if, among other requirements, the securities are rated in one of the four highest categories by NRSROs. Additionally, Rule 415 permits "mortgage-backed securities" to be offered on a delayed basis even if the offer would not otherwise be permitted pursuant to the requirements of Form S-3. In both cases, the proposed changes would replace the credit rating requirement and replace it with two alternative requirements; (a) the securities may only be sold to qualified institutional buyers as defined in Rule 144A(a)(1) ("QIBs") initially and (b) the initial and subsequent sales be made in minimum denominations of $250,000.

We believe that these credit rating requirements should not be removed or replaced with the requirement that initial sales be made to QIBs and that all sales be made in minimum denominations of $250,000. By restricting the universe of potential investors at issuance and requiring these minimum denominations, the changes would encourage ABS issuers to issue

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[1] Release 33-9069.

[2] Id.

securities privately rather than publicly, thereby subverting the Commission's goals. Private ABS offerings are generally made in reliance on various Rules to QIBs, "institutional accredited investors" and/or investors under Regulation S. For an issuer in a public offering, the costs of registration, together with the cost of compliance with the ongoing reporting requirements are substantial. In light of the increased costs (both initial and ongoing) of doing a publicly registered deal, together with a more limited population of potential initial investors, we believe that many issuers would opt for a private offering rather than a registered offering if the proposed Rules are adopted.

As evidenced by, among other things, the enactment of Regulation AB, the Commission has endeavored to increase and standardize disclosure requirements, standardize ongoing reporting requirements and otherwise increase transparency in the ABS market. Currently the Commission is concerned about inappropriate reliance on credit ratings. We support these goals, but believe that the proposed changes will not further them. A fundamental underpinning of that concern is that in order to reduce such reliance, investors must be provided with sufficient information to make their own informed investment decisions. If more ABS offerings are conducted as private offerings that are not subject to uniform disclosure and reporting requirements, the proposed Rules have the potential to make investors more, rather than less, reliant on credit ratings.

Rule 3a-7(b)(2) currently provides that ABS offered to the general public must be rated investment grade by at least one NRSRO; provided that (i) ABS that are "fixed income securities"[3] may be sold to institutional "accredited investors"[4] and (ii) any ABS may be sold to QIBs, in each case regardless of rating or lack of rating on the ABS, if the issuer and the underwriters exercise reasonable care to ensure that such ABS are sold and will be resold to institutional "accredited investors" or QIBs, as applicable. The proposed changes would amend Rule 3a-7 to remove from the exemption investment grade rated ABS sold to the general public. As proposed, only issuers that restrict sales of ABS to "institutional accredited investors" and QIBs, in the manner described in the preceding sentence, would be exempt. In addition, this proposed amendment would likely restrict even the sale of investment grade rated ABS to non-U.S. investors in offshore transactions under Regulation S of the Securities Act to "institutional accredited investors" and QIBs, depriving U.S. issuers of the benefits of marketing to non-U.S. investors under Regulation S. Due to the fact that the definitions of the terms "accredited investors" and "qualified institutional buyers" often categorize entities by

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[3] As defined in Rule 3a-7(b)(2).

[4] As defined in paragraphs (1), (2), (3) and (7) of Rule 501(a) under the Securities Act.

reference to their regulatory status under United States laws, many non-U.S. investors may not be able to technically meet the "institutional accredited investor" or QIB requirement.

The Commission indicated that it believed "most asset-backed securities are issued by special purpose vehicles that do not rely on Rule 3a-7 to exclude them from application of the Investment Company Act...instead they rely on Section 3(c)(7)...".[5] In our view, this is not correct. In fact, many issuers do rely on Rule 3a-7 in certain circumstances, as well as other available exemptions, such as Section 3(c)(5)(C).

As discussed above, these changes would again limit the universe of potential investors of ABS, particularly RMBS and CMBS and further increase the likelihood that issuers would opt for privately offered transactions. We oppose this change for the same reasons we oppose the above discussed changes to the requirements for Form S-3 and shelf registration. Further, if all the above discussed changes to the Rules were enacted, Rule 3a-7 would permit sales to QIBs and "institutional accredited investors" while Form S-3 and the shelf registration Rules would permit initial offerings only to QIBs, which seems to be an inconsistent result. Although we feel strongly that the proposed Rules should not be enacted, if these or similar proposals are enacted, they should consistently permit sales to QIBs and "institutional accredited investors" in both cases.

A comprehensive approach to the regulation of the offer and sale of ABS securities is currently being considered and developed by the Commission. Deferring the proposed changes until such a comprehensive approach can be developed is prudent and will prevent hastily enacted and potentially damaging overreactions to the disruptions that have taken place in the credit markets.

We appreciate the opportunity to comment on these proposed amendments. Should you have any questions regarding our comments, please feel free to contact Michael Gambro ((212)-504-6298 or michael.gambro@cwt.com) or Lisa Pauquette ((212)-504-6298 or lisa.pauquette@cwt.com).

Very truly yours,

Cadwalader, Wickersham & Taft LLP

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[5] Release IC-28327 and IA-2751.