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November 23, 2009

Via e-mail to: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090  
Attn: Elizabeth M. Murphy, Secretary

RE: File No. S7-23-09

Release No. 33-9074

Extension of Filing Accommodation for Static Pool Information in Filings with Respect to  
Asset-Backed Securities

Ladies and Gentlemen:

This letter is submitted on behalf of the Committee on Federal Regulation of Securities and the Committee on Securitization and Structured Finance (the "Committees" or "we") of the Section of Business Law (the "Section") of the American Bar Association (the "ABA") in response to the request by the Securities and Exchange Commission (the "Commission") for comments on its October 19, 2009 proposing release referenced above (the "Proposing Release").

The comments expressed in this letter represent the views of the Committees only and have not been approved by the ABA's House of Delegates or Board of Governors and therefore do not represent the official position of the ABA. In addition, this letter does not represent the official position of the Section, nor does it necessarily reflect the views of all members of the Committees.

**Overview**

The Commission's adoption of Regulation AB in 2004 represented a massive and impressive undertaking to provide a comprehensive set of rules tailoring the requirements of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, to the distinct characteristics of asset-backed securities ("ABS") and ABS issuers. In addition to codifying at least twenty years of effort by the Staff of the Commission and participants in the ABS industry to accommodate ABS issuances into a regulatory regime designed for operating companies, Regulation AB reflected a number of significant new requirements, not the least of which was Item 1105, requiring the

disclosure of static pool data in prospectuses included in registration statements for ABS offerings.

In imposing this new requirement, the Commission had the great foresight to create a temporary filing accommodation, allowing ABS issuers, if certain conditions were met, to provide the static pool disclosure on their Internet Web sites under Rule 312 of Regulation S-T rather than including such information directly in prospectuses. We believe that this accommodation has been highly successful, and that Web site presentation of this often voluminous statistical data has been of great value to investors.

As the Proposing Release notes, absent action by the Commission at this time, Rule 312 will expire on December 31, 2009. We are pleased to have the opportunity to comment on the proposed extension of Rule 312. The Committees strongly endorse the Commission's proposal to extend Rule 312 for a period of not less than one year or such longer period of time as may be necessary for the Commission to develop a practical alternative to issuer-Web site disclosure and for ABS issuers to be able to comply with such alternative. Further, for the reasons noted below, we urge the Commission to consider eliminating the Rule 312 sunset provision.

### **Questions**

In recommending extension of this rule, we have taken into careful consideration the questions asked by the Commission in the Proposing Release (which we repeat below), and provide the following responses to those questions:

*Is an extension of the filing accommodation appropriate? What would be the consequences if the accommodation lapsed on December 31, 2009 and static pool information was required in an EDGAR filing beginning January 1, 2010?*

The extension of the filing accommodation for at least one year or longer is appropriate. The Proposing Release notes that the Commission is currently undertaking a broad review of a number of aspects of Regulation AB. In addition, the Obama Administration and Congress have recently proposed changes to the regulatory regime for ABS that may have a significant impact on the ABS market. The potential changes may alter reporting requirements and impose additional burdens and costs on ABS issuers and, perhaps, other market participants. Against the backdrop of these legislative and regulatory developments, we believe it would be in the best interests of ABS issuers, as well as the ABS marketplace, for the Commission to extend Rule 312 for at least one additional year (if not longer) and to address any further changes to Rule 312 within the broader context of its review of Regulation AB and the other proposed changes. Further, we believe that a decision not to extend the Rule may make it more difficult for issuers to present their static pool data and may delay certain transactions that would otherwise occur early in calendar year 2010.

*How could static pool information be filed with the Commission in a cost-effective manner that continues to allow the information to be provided in a format that promotes utility and functionality? Are there alternative filing mechanisms that could replace or supplement Rule 312?*

The Commission's adoption of Rule 312 of Regulation S-T was consistent with the Commission's dual mission of investor protection and capital formation, and acknowledged that communication of certain information by Web site posting was as useful (and possibly more useful) to investors than direct presentation of such information in prospectuses. We also agree with the Commission's observation in the Proposing Release that the vast majority of issuers of residential mortgage-backed securities and a significant portion of ABS issuers in other asset classes have relied on the accommodation provided by Rule 312 to disclose static pool data on Internet Web sites. We agree with the Commission's observation that it would be difficult to file the same information electronically on EDGAR as it exists today and that it would be difficult for investors to use the data even if it were provided in EDGAR format. In our view, the Commission's experiment has been successful: the Internet has proven to be a reliable and cost-effective alternative to direct prospectus disclosure.

Although we acknowledge that there may be some value in the use of a single repository (such as the Commission's EDGAR database) for static pool data, we do not believe that the EDGAR system's current functionality adds value relative to Web site posting authorized by Rule 312.

*Have investors or other market participants had any difficulties with locating, accessing, viewing or analyzing static pool information posted on an Internet Web site pursuant to the filing accommodation provided by Rule 312 of Regulation S-T? Has the information remained on the Web site for the required duration and have updates and changes been appropriately reflected?*

We are not aware that investors or market participants have encountered difficulties in locating, accessing, viewing or analyzing static pool information posted on Internet Web sites.

*Have issuers found that the Internet Web site posting accommodation provided by Rule 312 has enabled them to provide the required static pool information in a cost-effective, efficient and useful manner? Have issuers encountered any issues or problems with Internet Web site posting pursuant to Rule 312? How should we address those issues or problems?*

Because the vast majority of ABS issuers are using Internet Web sites to post their static pool data, we believe they have found the accommodation afforded by Rule 312 to be the most cost-effective and efficient method to disclosing such information. Issuers who have relied on Rule 312 have invested significant resources in designing, building and maintaining Web sites dedicated to static pool data. We believe that the use of Web sites also provides a cost-effective means of providing on-going and up-to-date static pool disclosure to investors. In fact, we believe that ABS issuers have provided more information to the markets than they otherwise may have been required to provide, because such issuers constantly are updating the data on their Web sites. Under present market conditions, significantly less updated static pool data would have been available to investors had most ABS issuers provided the data directly in prospectuses prepared solely for discrete issuances of ABS.

*Would the proposed one-year extension present particular problems for investors? Would a shorter or more narrowly tailored extension ameliorate those concerns? Should the filing accommodation be extended for longer than one year, for example, two, three or five years, or made permanent? If so, are there any revisions to the rule that should be made?*

We believe that the accommodation afforded by Rule 312 of Regulation S-T should, if possible, be extended without a sunset provision. As noted above, we believe the Commission's experiment with Rule 312 has been successful and that the use of Internet Web sites has enabled ABS issuers to communicate information to investors in a reliable, efficient and cost effective manner that also furthers the Commission's goal of enhancing utility and functionality. Further, amending Rule 312 to eliminate the sunset provision would provide assurance to issuers that the cost and effort of developing, maintaining and expanding their Internet Web sites to comply with the Rule are worthwhile undertakings. The continuing ability to use the Internet in this manner would, we believe, encourage continued innovation and technological enhancements. We understand that the Commission is undergoing a thorough review of Regulation AB and may propose changes to it in the near future. The Commission may, of course, revision the presentation of static pool disclosure at that time. In the interim, however, we believe that Rule 312 would benefit from the deletion of the sunset provision..

If the Commission believes that an extension of Rule 312 without a sunset provision would be beyond the scope of the proposed rulemaking, we suggest that the Commission, in its final rule, provide a longer extension period, such as 18 or 24 months<sup>1</sup>. We believe that the longer the extension approved by the Commission, the more confident ABS issuers will be in enhancing and refining their Web sites relating to static pool information. Conversely, the risk that the accommodation will be removed may create a disincentive for such enhancements, and a risk that the accommodations may be removed on short notice may be disruptive to ABS issuers.

*Are there any other changes we should consider making to Rule 312 of Regulation S-T?*

The Committees are not recommending any additional changes to Rule 312 at this time.

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<sup>1</sup> As an alternative in the event that the Commission determines not to eliminate the sunset provision, the Commission may want to consider whether it is able to provide that Rule 312 shall remain in effect on a year-to-year basis unless the Commission determines, not fewer than six months prior to the expiration of any yearly period, to change or terminate the Rule. By providing for a rolling period, the Commission would not be obligated to undertake yearly rulemaking if it determined to extend the Rule. This continuity would assist ABS issuers by eliminating the disruption that would arise if a change to the system were imposed too abruptly.

The Committees, on behalf of the Section, appreciate the opportunity to offer our recommendations in response to the Proposing Release. We fully support the Commission's proposal to extend the filing accommodation afforded by Rule 312. For the reasons noted above, we also request that the Commission consider extending Rule 312 longer than one year or eliminating the sunset provision altogether. If you have any questions or wish to discuss this matter further, please do not hesitate to contact either of the undersigned.

Sincerely,

/s/ Jeffrey W. Rubin

Jeffrey W. Rubin  
Chair, Committee on Federal Regulation of Securities

/s/ Vicki O. Tucker

Vicki O. Tucker  
Chair, Committee on Securitization and Structured Finance

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