November 15, 2010

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

Re: Proposed Rule on Asset-Backed Securities
File Number S7-26-10

Dear Ms. Murphy:

The Loan Syndications and Trading Association[1] (the "LSTA") welcomes the opportunity to provide the Securities and Exchange Commission (the "Commission") with comments on proposed Rule 15Ga-2 under the Securities Exchange Act (the "Proposed Rule" and the "Exchange Act"). The Proposed Rule is contained in Release Nos. 33-9150, 34-63091 (October 13, 2010); 75 Fed. Reg. 64182 (October 19, 2010) (the "Proposing Release").

Proposed Rule 15Ga-2, which implements Section 932 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") requires the issuer or underwriter of an asset-backed security ("ABS") to file a form (proposed Form ABS-15G) containing "the findings and conclusions of any report of a third party engaged for purposes of performing a review of the pool assets obtained by the issuer or underwriter five business days prior to the first sale in the offering." The LSTA and its members seek clarification of the Proposed Rule with respect to certain materials that may be prepared in connection with CLOs, for which disclosure would not serve the objectives of the Proposed Rule. Specifically, LSTA requests that the Commission clarify the Proposed Rule or provide guidance to the effect that:

- Closing Date Letters (as described below) provided by accountants in connection with CLO transactions are not "a review of the pool assets" for purposes of the Proposed Rule; and

- Internal credit evaluation materials prepared by CLO managers (i) are not "reports" and/or (ii) are not obtained from a "third party" for purposes of the Proposed Rule.

[1] The Loan Syndications and Trading Association was founded in 1995 and is the trade association for the corporate loan market, dedicated to advancing the interests of the marketplace as a whole and promoting the highest degree of confidence in corporate loans. The LSTA is active on a wide variety of activities intended to foster the development of policies and market practices designed to promote a liquid and transparent marketplace. More information about LSTA is available on its website at www.lsta.org. This comment letter was prepared in consultation with the LSTA's CLO Committee, which includes representatives of institutions active in the CLO market as investors, asset managers and underwriters.

I. Background on CLO Transactions

A CLO transaction involves the creation of a special purpose entity ("SPE") issuer which issues tranched debt and/or equity securities to investors and invests the proceeds of these securities in a diversified pool of assets consisting primarily of secured or unsecured corporate loans. CLOs are generally issued only in private placements and/or distributed pursuant to Rule 144A under the Securities Act. The Proposed Rule applies to both registered and unregistered ABS, and thus it extends to privately placed CLOs.

Unlike many other "asset-backed securities" as defined for purposes of the Proposed Rule, a CLO is actively managed by an asset manager pursuant to an asset management agreement between the asset manager and the SPE. The asset manager in a CLO selects loans for purchase by the CLO from time to time from a variety of sources, subject to certain eligibility and asset concentration criteria set forth in the indenture governing the CLO. The asset manager also monitors the performance of the CLO assets over time, substituting or liquidating individual loans in accordance with the CLO's reinvestment parameters. The foregoing feature means that CLOs have historically been excluded from the definition of "asset-backed security" under Item 1101(c)(3) of Regulation AB under the Securities Act; however, a CLO would appear to be included in the definition of "asset-backed security" in Section 3(a)(77) of the Exchange Act that is incorporated in the Proposed Rule.

The role of the asset manager in a CLO affords CLO investors access to a portfolio that is selected by experts in the loan market, and the benefit of the ongoing attention of the asset manager who is able to take active measures to adjust the portfolio to changing market conditions. The manager also plays a key role in establishing the investment criteria applicable to the CLO transaction at its outset. The benefit of an experienced manager makes CLOs attractive to investors and provides an additional level of credit analysis missing from securitizations based on an "originate to distribute" model. This increased level of credit discipline is a key reason CLOs have fared better than other categories of ABS, such as collateralized debt obligations and mortgage-backed securities, in the recent credit crisis.

II. The Proposed Rule Should Exclude CLO Closing Date Letters

Due to the flexible nature of a CLO's investments, generally only a certain percentage of the CLO proceeds is invested at the time the CLO securities are issued. Then, during a so-called "ramp up" period of approximately three to six months after closing, the remainder of the proceeds of the offering is applied to the purchase of additional assets selected by the asset manager. Both before and after this "ramp up" period, asset managers are permitted to sell assets in the portfolio and reinvest sale proceeds in accordance with the criteria set forth in the indenture.

In many CLOs, at the time of closing the issuer or underwriter obtains from a third party accountant firm a letter (a "Closing Date Letter") confirming that the assets included in the pool at closing conform to certain criteria specified in the CLO indenture. These criteria focus on the financial and quantitative characteristics of the CLO assets – such as general asset

category, ratings, industry sectors of the borrowers, interest rate period, type or index, currency and maturity characteristics, concentrations of particular asset or borrower types, and similar features which are relevant to assessing conformity of the loans to the modeled criteria of the CLO. After the conclusion of the ramp up period, a similar confirmation may be obtained from the accounting firm as to the status of the portfolio at the completion of the ramp up.

A Closing Date Letter does not evaluate the credit characteristics of the CLO assets or the soundness of the underwriting standards or procedures of the banks that originated the loans. In addition, since originators of assets in the CLO context do not make representations or warranties to CLO issuers, Closing Date Letters do not address compliance of CLO assets with such representations and warranties – and therefore the potential rights of the issuer for breach of such representations and warranties – as is the case with mortgage assets and other ABS. As such, Closing Date Letters do not provide the "review of the pool assets" envisioned by the Proposed Rule. Indeed, the statutory language of Section 932 of Dodd-Frank speaks to "third party due diligence reports" rather than "reports" more broadly. The LSTA submits that Closing Date Letters are not within the "third party due diligence reports" envisioned by Section 932 of Dodd-Frank or the Proposed Rule.

Moreover, Closing Date Letters are necessarily not available until closing, after the investors in a CLO have made their investment decisions in relation to the CLO securities. As noted above, a CLO is governed by its investment criteria, but within those criteria the asset manager has substantial discretion as to which assets to acquire. Until specific assets are actually acquired at closing, the asset manager may choose different assets and may trade and substitute assets over time. Only a fraction of the overall initial CLO portfolio is actually known at closing, and even after the ramp up period the CLO assets are subject to change based on the CLO criteria. The contents of a Closing Date Letter therefore, would not be material to the investment decisions made by CLO investors. Compare, e.g., Rule 159 under the Securities Act (excluding information conveyed after the "time of sale" from being taken into account for purposes of liability under Section 12(a)(2) of the Securities Act). Because Closing Date Letters would not be available within the time frame envisioned by the Proposed Rule, they would not serve the Commission's purpose of "allow[ing] investors and NRSROs time to consider the disclosure about a third-party's findings and conclusions" (Proposing Release at p. 64188) and should thus be excluded.

III. The Proposed Rule Should Exclude Internal Materials Prepared by Asset Managers

CLO asset managers may undertake credit reviews of particular borrowers or particular assets that might be purchased on behalf of the CLO. Such materials are not intended to be distributed to third parties at all, much less made public, and requiring public disclosure of such materials would significantly chill this internal function of the CLO manager. The LSTA therefore requests that the Commission clarify either that a CLO manager is not a "third party" for the purposes of the Proposed Rule, or that internal materials prepared by the manager in connection with its investment management function in relation to the CLO are not "reports."

A. A CLO Manager is Not a "Third Party" as Envisioned by the Proposed Rule

CLO asset managers are generally not affiliated with the SPE issuers and in many cases are also not affiliated with the CLO underwriters. However, an asset manager also should not be considered a "third party" with respect to a CLO, because it has an ongoing investment management relationship with the CLO issuer. CLO investors look to the asset manager's responsibilities, personnel, and asset management history – which are addressed in the disclosure document for the CLO – as part of their investment decision regarding CLO securities. For instance, during the marketing of the transaction, investors typically have an opportunity to meet with the manager to discuss the strategies that will be applied to the portfolio and the type of assets that will be included. The assets in the CLO will change over time based on the CLO manager's investment decisions, and the CLO manager receives compensation linked to the performance of the CLO on an ongoing basis. A party who has an ongoing investment management relationship of this type with the issuer of an actively managed ABS transaction should not be seen as a "third party" but as a participant in the ABS transaction.

B. Internal Credit Materials Prepared by a CLO Manager Should be Expressly Excluded from the Proposed Rule

Asset managers may prepare internal or informal evaluations with respect to borrowers whose obligations may be included in the CLO, or with respect to particular CLO assets. These evaluations are not delivered to the issuer or investors, and are not intended for third parties or public disclosure. Instead, they only arise from the manager's exercise of its internal decision making function in connection with its asset management responsibilities. While it is appropriate for investors to evaluate the personnel and performance of the asset manager itself in connection with their investments, it would impair an asset manager's ability to function if the Proposed Rule were applicable to material prepared by the asset manager for internal use. Absent guidance from the Commission, however, the Proposed Rule's reference to "report" might be interpreted as extending to such materials. The LSTA believes that this would be a misreading of the Proposed Rule, and that the "reports" envisioned by the Proposed Rule and by Dodd-Frank should, in context, be construed only to include "reports" that are actually delivered to the issuer or underwriter. The LSTA urges the Commission to give express guidance in this respect.

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For the reasons discussed above, we submit that the Commission should (i) exclude Closing Date Letters for CLO transactions from the Proposed Rule and (ii) clarify that asset managers are not "third parties" and/or that internal reviews and evaluations of asset managers are not "reports" under the Proposed Rule.

The LSTA and its members appreciate the opportunity to comment on the Proposed Rules. Should you have any questions about the comment, please do not hesitate to contact Elliot Ganz, General Counsel of the LSTA at eganz@lsta.org or 212 880 3003.

Very truly yours,
THE LOAN SYNDICATIONS AND
TRADING ASSOCIATION

Elliot Ganz, General Counsel