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Comments on File No. S7-26-10 Issuer Review of Assets in Offerings of Asset-Backed Securities

The following comments are submitted on behalf of the Maine Municipal Bond Bank (the Bank) and the Maine Health and Higher Educational Facilities Authority (the Authority). The Bank, created by the Maine Legislature in 1972 as a body corporate and politic and instrumentality of the State serving a statutory public purpose, issues tax exempt bonds in pools ranging in size from two to fifty-six borrowers. Under its General Resolution, open bond indenture, the Bank sold its first pooled bonds in 1972. By pooling local government bonds, the Bank is able to achieve a significant cost savings and access to the capital markets for its local governmental borrowers. Currently, the Bank has loans outstanding in its pooled borrowing portfolio to 300 individual local governmental units with a par amount outstanding of approximately \$944M. The statutory public purpose of the Bank is to provide access to the national credit markets at affordable interest rates and lower costs to all local governmental units in the State of Maine, including but not limited to, school districts, counties, cities, towns, water districts, sewer districts and any other governmental entities carrying out essential public services.

The Authority was created by the Legislature as a body corporate and politic and instrumentality of the State of Maine in 1972. The statutorily created public purpose of the Authority is to provide on a state wide basis access to the national credit markets for 501(c)(3) entities which are carrying out public purposes as licensed providers of health care or institutions providing educational services. Since 1991 the Authority has sold pooled bond issues for its eligible borrowers in a program created to reduce interest costs and total costs of borrowing for its eligible non-profit borrowers carrying out needed public services. The Authority, under its Moral Obligation Reserve Fund Bond Resolution, an open indenture, currently has loans outstanding to 87 borrowers with an outstanding par amount of bonds of approximately \$1.3B.

The Bank and the Authority submit the following comments to the Commission in response to the Commission's request for comments in regard to Issuer Review of Assets in Offerings of Asset-Backed Securities:

1. The Bank and the Authority believe that the language in federal law and the intent of the Congress in enacting the applicable legislation does not include or cover so-called Asset-Backed Securities (ABS) as issued by governmental instrumentalities like the Bank and the Authority. Neither the Bank nor the Authority issue registered securities and the bonds issued by both are part of statutorily created State programs directed to achieve a clear public purpose to provide safe access to national debt markets and to reduce costs of borrowing for critical governmental functions and capital investments, particularly by smaller governmental and non-profit entities. The effort directed toward addressing the abuses of Collateralized Mortgage Obligations (CMO) where no direct public purpose was achieved simply does not apply to the types of pooled loans undertaken by the Authority and the Bank for clearly defined and indentified individual local governmental units or non-profits for projects serving clear public purposes and public benefit. Moreover, the financing programs of the Bank and the Authority are subject to additional state and federal laws such as Freedom of Information Acts and TEFRA notice and hearing requirements that provide substantial additional information, readily available to both the general public and potential bond purchasers, that is not available in other circumstances.
2. The State of Maine as part of its efforts to achieve the stated public purposes and achieve the public benefits of the Bank and the Authority has not only created these two instrumentalities but also has given them additional tools to further their ability to achieve the State's public purpose goals. The additional tools available to the Bank and the Authority demonstrate the State's commitment to the public purposes of the two organizations while at the same time providing substantial additional security to the purchasers of Bank and Authority bonds. Both the Bank and the Authority by statute can create reserve funds associated with their bond issues, which, if at any time during the life of the issue fall below an amount needed to satisfy one year's principal and interest on all outstanding bonds in its pool, are subject to replenishment by an act of the Legislature. Further, both the Bank and the Authority have the statutory power to direct the State Treasurer to withhold any funds at the State level which are to be paid to a borrower if that borrower has not paid the debt service on its loan with the Bank or the Authority.

3. The Bank and the Authority in furtherance of the achievement of their public purposes have taken steps to further enhance their ability to provide the lowest possible cost of capital for public projects by creating additional financial reserves to support both their bonds and their operations. These additional steps by the Bank and the Authority, while designed to provide better service to the institutions that the Maine Legislature has directed they serve, provide additional strength to the bonds they issue and security to the holders of their bonds.
4. It would seem to be internally inconsistent that bonds issued by the Bank or the Authority would be considered asset backed securities simply because their bonds are secured by more than one loan made to local governmental units or non-profit organizations when bonds issued directly by any such governmental unit or 501(c)(3) organization would not be considered to be asset backed securities and would have their own exemption from registration under the Securities Act. Thus, programs designed by the State government to reduce costs and simplify local governmental and non-profit access to needed capital would be punished for attempting to use a State level program designed to help them deal with the complications of bond finance and reduce their local costs.

The inclusion of entities like the Bank and the Authority under the proposed rule will result in no additional benefit to the purchasers of Bank and Authority bonds. However, the costs that would be incurred by the Bank, the Authority and the local beneficial governmental and non-profit organizations across the State of Maine that they serve will not be insubstantial. The pooled borrowing mechanisms used by the Bank and the Authority have been in place for almost forty and twenty years respectively. During their existence neither the Bank nor the Authority have failed to make a payment of its debt service, have called upon funds in their reserve funds for money to pay debt service, have asked the Legislature to appropriate funds to replenish their reserve funds or had a borrower default on a loan under the pooled financing programs they operate. The benefits and the record seem to clearly indicate no need or benefit to including Bank or Authority bond issues under the proposed rules.

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