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November 7, 2011

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

Re: File No. S7-35-11; Treatment of Asset-Backed Issuers Under the Investment Company Act

Dear Ms. Murphy:

PHH Corporation ("PHH"), on behalf of itself and its subsidiaries, is pleased to respond to the August 31, 2011, advance notice of proposed rulemaking<sup>1</sup> issued by the Securities and Exchange Commission (the "Commission") with respect to the treatment of asset-backed issuers under the Investment Company Act of 1940, as amended (the "Investment Company Act") and Rule 3a-7 thereunder ("Rule 3a-7"). As a corporation whose operating subsidiaries generate assets that are commonly securitized, and as a sponsor of mortgage securitizations, we appreciate the Commission's interest in re-evaluating the treatment of asset-backed issuers under the Investment Company Act. Our views on certain specific issues raised by the Commission in the ANPR are contained in Section II below.

#### I. About PHH Corporation

PHH was incorporated in 1953 as a Maryland corporation. Between April 30, 1997, and February 1, 2005, we were a wholly owned subsidiary of Cendant Corporation (now known as Avis Budget Group, Inc.) and its predecessors that provided mortgage banking services, facilitated employee relocations and provided vehicle fleet management and fuel card services. On February 1, 2005, PHH began operating as an independent, publicly traded company pursuant to our spin-off from Cendant.

Through our wholly and majority-owned subsidiaries, we are a leading outsource provider of mortgage and vehicle fleet management services. We provide mortgage banking services to a variety of clients, including financial institutions and real estate brokers, throughout the U.S. Our mortgage banking activities include originating, purchasing, selling and servicing mortgage loans through our wholly owned subsidiary, PHH Mortgage Corporation and its subsidiaries. We provide commercial fleet management services to corporate clients and government agencies throughout the U.S. and Canada through our wholly owned subsidiary, PHH Vehicle Management Services Group LLC ("PHH Arval"). PHH Arval is a fully integrated provider of fleet management services with a broad range of product offerings, including managing and leasing vehicle fleets and providing other fee-based services for our clients' vehicle fleets.

We organize and present our business activities in three operating segments: (i) mortgage production/origination (ii) mortgage servicing and (iii) fleet management services. Both our mortgage production/origination and fleet management services segments produce assets (mortgages and leasing receivables, respectively) that are commonly securitized by issuers relying on Section 3a-7.

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<sup>1</sup> Treatment of Asset-Backed Issuers under the Investment Company Act, SEC Rel. No. IC-29779 (Aug. 31, 2011) (the "ANPR").

## II. PHH's Observations on the Rule 3a-7 ANPR

### A. Removal of the Rating Agency Requirement in Rule 3a-7 is Appropriate

As stated in the ANPR, the Dodd Frank Act generally requires that the Commission review and remove references to credit ratings in its regulations.<sup>2</sup> As a result, among other recent changes to Commission regulations, companies seeking to use short-form registration when registering securities for public sale under Forms S-3 or F-3 under the Securities Act of 1933, as amended (the "Securities Act"), are no longer required to obtain credit ratings as a prerequisite to the public sale of such securities.<sup>3</sup> Further, the Commission has proposed removing the rating agency requirements from Regulation AB, which would enable issuers of asset-backed securities to sell such securities to the public without obtaining credit ratings for such securities.<sup>4</sup> In conjunction with these revisions and proposals, the Commission has suggested (and in some cases has already adopted) substitute standards of credit-worthiness in place of credit ratings relating to the sale of securities to the public.

We believe that the removal of rating agency requirements in Rule 3a-7 is appropriate pursuant to Dodd Frank. We note, however, that securities issued by an entity relying on 3a-7 may be sold to "accredited investors" and "qualified institutional buyers" and may, therefore, be privately placed pursuant to exemptions from registration for such securities under the Securities Act. To the extent that such securities are sold in private placements, we do not believe that further standards of credit-worthiness are required in Rule 3a-7. In our view, the investors participating in private placements are sufficiently sophisticated to conduct their own evaluations of the credit-worthiness of the securities offered thereby.

We also believe that Rule 3a-7 does not need to be amended to impose substitute standards of credit-worthiness for sales of securities to the public by issuers relying on Rule 3a-7. To the extent that an issuer of securities of the type contemplated by Rule 3a-7 intends to sell such securities in a public offering, we believe that the eligibility criteria for shelf registration under Regulation AB (in the case of an offering under a shelf registration) and the disclosure, diligence, material accuracy and other obligations that will apply automatically to such sales under the Securities Act and related rules and regulations (as well as the strict liability standard for issuers of publicly offered fixed-income securities that violate the Securities Act and its related rules and regulations) are sufficient to address the investor protection concerns raised by the Commission.

### B. Satisfaction of Regulation AB or the Shelf Eligibility Requirements Should Not be Required as a Condition to 3a-7 Eligibility

We do not believe that an issuer of fixed income securities should be required to satisfy the conditions of Regulation AB or the further limitations found in the shelf eligibility requirements in order to rely on Rule 3a-7. As noted above, Rule 3a-7 securities may be privately placed. If an issuer relying upon Rule 3a-7 intends to sell its securities publicly, it must comply with Regulation AB and other applicable requirements under the Securities Act. Conditioning an issuer's eligibility to rely on Rule 3a-7 on the satisfaction of Regulation AB or the shelf eligibility requirements would effectively require that issuer to comply with requirements applicable to publicly offered securities when such securities may be privately placed to sophisticated investors.

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<sup>2</sup> ANPR at 4.

<sup>3</sup> Security Ratings, SEC Rel. No. 33-9245; 34-64975 (July 27, 2011).

<sup>4</sup> Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment, SEC Rel. 33-9244; 34-64968 (July 26, 2011).

C. The Existing Trustee Requirement is Sufficient for Preservation and Safekeeping of Assets

With respect to the preservation and safekeeping of Rule 3a-7 eligible assets, we are in favor of retaining the existing requirement that an independent trustee have a perfected security interest or ownership valid against third parties in such assets. We note that our asset-backed pools have historically been static pools that do not pose self-dealing collateral substitution risks.

D. The Existing Treatment of Securities of 3a-7-Reliant-Issuers by Entities Relying on Section 3(a)(1)(C) Should be Retained

PHH has historically determined its status as an investment company under Section 3(a)(1)(C) of the Investment Company Act. We rely on the status of our operating subsidiaries as entities exempt from the definition of investment company pursuant to sections other than 3(c)(1) and 3(c)(7) of the Investment Company Act in order that we may not be deemed to be an investment company under Section 3(a)(1)(C). It is our belief that treating the securities of Rule 3a-7-reliant entities as "investment securities" under 3(a)(1)(C) would seriously complicate the ability of diversified operating companies such as PHH to rely on 3(a)(1)(C) and may lead companies like us to explore expensive and time consuming alternatives, including the pursuit of exemptive orders from the Commission, in order to remain unregistered under the Investment Company Act.

We believe some Section 3(a)(1)(C)-reliant companies may be unable to continue their operations if securities of their Rule 3a-7 issuer subsidiaries were treated as "investment securities" because, absent an appropriate exemption, such companies may be required to register as investment companies and become subject to the provisions of the Investment Company Act. Regulation under the Investment Company Act may make the continued operation of such entities unworkable and have a deleterious effect on effective capital formation and on the economy generally. We therefore support maintaining the existing treatment of securities issued by majority-held subsidiaries reliant on Rule 3a-7.

E. Entities Should Continue to be Permitted to Rely on Both Section 3(c)(5) and Rule 3a-7

As noted in the ANPR, although issuers of asset-backed securities typically meet the definition of an investment company, as a practical matter they cannot operate under certain of the Investment Company Act's requirements and restrictions.<sup>5</sup> As a result, many asset-backed issuers rely on Rule 3a-7, but they have also relied on Section 3(c)(5) of the Investment Company Act to the extent they are eligible to do so based on factors including the assets they hold and the characteristics of those assets.<sup>6</sup> Many issuers of asset-backed securities also rely on Section 3(c)(5) in order to access capital from a greater number of investors than would otherwise be possible under Rule 3a-7. It is our view that precluding issuers of asset-backed securities from relying on Section 3(c)(5) to the extent they are currently able would impede effective capital formation by limiting access of such issuers to investor capital. We believe that such a limitation would hinder the liquidity and growth of the asset-backed securities market, particularly in the exceptionally challenging current economic environment. We also believe that the Commission's investor protection concerns relating to the sale of asset-backed securities to the public are adequately addressed by the requirements for public offerings, including the substitute standards of credit-worthiness already adopted by or otherwise under consideration by the Commission. We therefore support allowing issuers of asset-backed securities to continue to rely on both Rule 3a-7 and Section 3(c)(5).

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<sup>5</sup> ANPR at 10.

<sup>6</sup> We discuss our views on the eligibility of issuers of securities backed by pools of whole mortgage loans to rely on Section 3(c)(5)(C) in Section II.B. of our letter to you dated November 7, 2011, regarding File no. S7-34-11; Companies Engaged in the Business of Acquiring Mortgages and Mortgage-Related Instruments.

U.S. Securities and Exchange Commission  
File No. S7-35-11  
November 7, 2011

We appreciate the opportunity to comment on the ANPR. If you have questions concerning our comments or if a conversation about our analysis would be of assistance to the Commission or to you, please do not hesitate to contact me at (856) 917-6156.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Christopher Clifton". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

J. Christopher Clifton

cc: William F. Brown, Esq.  
Stephen S. Kudenholdt, Esq.  
Curtis Stefanak, Esq.