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July 12, 2004

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Re: File Number S7-21-04

Ladies and Gentlemen:

Kutak Rock LLP (the "Firm") is pleased to comment on the proposal (the "Proposal") to adopt rules (the "Proposed Rules") codifying and proposing disclosure rules and interpretations relating to registration statements involving asset backed transactions, in response to the request of the Securities and Exchange Commission (the “Commission”) set forth in Release No. 33-8419.

The Firm is a multi-city law firm with numerous clients engaged in asset backed transactions representing issuers, underwriters/placement agents and credit enhancers.

General Observations

We applaud and support the Commission in its effort to codify and to improve its disclosure requirements with respect to asset backed registration statements. It is particularly useful to registrants to have rules that are set forth in a central location for such an increasing significant amount of financing transactions.

A large majority of the Proposal we support. We, however, have concerns with respect to certain of the Proposed Rules that amount to more than a codification of existing practices and disclosure, as set forth in more detail below. We are particularly concerned with the significant proposed increase in disclosure in asset backed transactions where, to a large extent, the offerings are made to large institutional investors not needing, we believe, the benefits of increased disclosure. We are also concerned that certain of the proposed additional disclosure may create a hardship on registrants because of the difficulty in obtaining certain new proposed disclosure and in the costs involved in obtaining it.

Securities Act Regulation

Section III.A.2.b. – *Nature of the Issuing Entity*

1. We note the discussion of master trusts and series trusts, both herein and in footnote 63. Generally, we believe that a master trust structure in the asset backed industry is what is being referred to in the Proposal as a series trust. In any event, it is not clear why the Commission is distinguishing between the two types of master trusts, particularly where the same asset class is involved.

The series trust structure is protected in that each series is a separate pool where one series has no rights with respect to the assets backing any other series. In addition, since there is already a requirement that the securities publicly issued by any trust be investment grade rated for the use of Form S-3, the rating agencies already require that if a new series is formed by the issuing entity that such rating agency reconfirm the ratings assigned to the securities issued under prior series by such entity.

We do not believe that series trusts should be restricted at all, but if any restriction is retained, it should not restrict the use of subsequent trusts having the same asset class as earlier trusts.

Section III.A.2.c. - *Delinquent and Non-Performing Pool Assets*

1. We would suggest that some discussion be included regarding the availability to use Form S-3 in the context of master trusts where one pool of assets is used with respect to numerous takedowns such as is often the case in student loan securitizations. Specifically, the timing of the determinations of delinquent loans and non-performing loans is unclear. For instance, where a pool has been formed and one takedown has been completed, on the second takedown there is bound to be at least one student loan (out of thousands already in the asset pool) that is non-performing. The availability to use the shelf for subsequent takedowns would appear to be very limited. As an alternative, we would suggest that, in the context of master trusts, a percentage of the asset pool be then used as a determination of continued eligibility on subsequent takedowns. We would suggest that 5% of the asset pool may be an appropriate test under these circumstances.

We also believe that in the context of any takedowns, it is important that the determination date for both delinquencies and for non-performing assets be calculated as of the cut-off date and not at "the time of the proposed offering." Where there are large asset pools, it is impracticable and probably impossible to make either determination as of the date of the proposed offering. As an alternative, we would suggest that the calculations be as of the cut-off date and that the cut-of date be as of a date that is no more than 60 days prior to the time of the proposed offering such that the calculation date be relatively close to the time of the offering.

2. The 30 day delinquent issue is a problem for FFELP Loans (defined below). Because servicing tapes are run monthly for these loan programs, a borrower who is one day late with a payment or who is $5 delinquent because he or she wrote the wrong amount on a check, will show up as delinquent. The data and the tapes that show the pool information change daily and one could never know if they were complying with this requirement on the closing date. Many borrowers become delinquent for a day or two and then go back into compliance. In addition, because the FFELP Loan program allows borrowers to go into a "forbearance status[1]", it is not clear how this would be treated for purposes of the "30-day delinquent test", as this is not necessarily a status that is 'contractually defined' by both parties. Ninety days would be a preferable period, but 60 days is at least of some help. Also, it is not clear how student loans in "forbearance status" would be classified for non-performing purposes.

Section III.A.2.e. - *Exceptions to the "Discrete" Requirement*

1. The current and proposed definition with respect to a discrete pool of assets appears to not contemplate a pool of short-term assets. For instance, where the asset pool consists of insurance premium finance loans[2] that each have a term of generally nine months, the asset pool must revolve in order to make a securitization economically feasible. To provide a revolving period of one year means that the securitization will have a term of no more than 21 months (9 months plus 12 months). This is not enough time over which to amortize the costs of a securitization to make such an offering economically feasible. This is true particularly when a rating agency rating the securities will allow for a larger revolving period. Even in an offering on Form S-1 where 50% of the asset pool may revolve, as proposed, it would not be economical for a public securitization for these or similar asset types.

We would propose that the revolving period be allowed to be coexistent with the period over which the rating agency will allow the investment grade rating of the securities to exist.[3] In addition, we would propose that in these situations, that the pool assets to be acquired during the revolving period have generally the same characteristics as the original pool.

Section III.A.3.a. - *Form Types*

1. The Proposal states that "Form S-1 would thus become the form for all offerings that meet the basic definition of an "asset-backed security" but do not meet the additional eligibility

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[1] We understand that other comment letters will discuss forbearance and related matters concerning student loan transactions in more detail.
[2] Insurance premium loans are loans made to commercial or individual insureds to finance loans for the purchase of insurance, generally for a one-year period. Usually such loans are made for a period of approximately nine months.
[3] In student loan securitizations, our experience has been that the rating agencies allow for an indeterminate revolving period so long as no trigger events have occurred. In insurance premium loan securitizations, the rating agencies have allowed revolving periods of between three and five years, subject to no trigger event occurring.

for Form S-3…" We believe that it should be clarified that Form S-1 is available for all offerings that do not meet the definition of an asset-backed security, except that Regulation AB would not be available for use. Otherwise, it would appear that no registration form would be available for such offerings.

Section III.A.3.c. - *Form S-3 Eligibility Requirements for ABS*

1. We suggest that the Proposal make clear that non-publicly offered securities, issued in conjunction with public offered securities, need not be investment grade rated. For instance, certain subordinate classes of securities may not be publicly offered while the more senior classes of securities may be publicly offered.

2. In Section III.A.3.c. there is a discussion of four additional conditions for the use of Form S-3 and a reporting requirement proposal. We believe that the reporting requirement should be revised to require that the sponsor have filed all reports required to be filed during the preceding 12 months (or such shorter period that the sponsor was required to file reports). This change would solve any issues where the sponsor inadvertently filed a report late or some other condition existed not in the control of the sponsor causing a late filing. We understand the concerns of the Staff with respect to late or non-filers, but the mere fact that the filing requirements would now be codified would, we believe, result in more timely periodic filings.

3. We would suggest that the Commission consider an alternative to the investment grade requirement for the use of Form S-3. The alternative that we would propose would be a minimum denomination test of at least a certain threshold, such as $100,000. Investors who have at least $100,000 to invest should be sophisticated and experienced persons, and this would provide a "bright line" test. This test would also allow a sponsor to reduce the cost of a securitization by not having to go through a rating agency and investors who have this minimum where-with-all should have the ability to fend for themselves. We propose a minimum denomination test rather than a minimum investment test so that transferees would also have to meet this financial sophistication test, since bonds, notes or certificates would trade in whole denominations.

Section III.A.6. – *Registration of Underlying Pool Assets*

1. In regard to the third paragraph contained in Section III.A.6.b., it is unclear from the language whether the Staff is disregarding the presumptive underwriter doctrine since no mention of it is made in that section. For instance, if 50% of the registered securities of an issuer are included in an asset pool, it is not clear that those registered securities would be freely resellable under the presumptive underwriter doctrine.

Disclosure

Section III.B.3. - *Transaction Parties*

1. The discussion in Section III.B.3.a. regarding static pool data is unclear. If retained, there should be added clear definitions of what is being required to be disclosed. Static pool data with respect to asset classes not included in the subject registered securitization would appear to be of limited value and may be misleading. For instance, sub-prime auto loan data would not be relevant to a CMBS transaction if the sponsor had both asset classes in its overall portfolio. Also, requiring static pool data with respect to yield or geography would appear to be an overwhelming amount of irrelevant information.

With respect to Section III.B.3.d. involving servicers, we question whether requiring information for non-affiliated servicers is practicable since the sponsor generally has no leverage to obtain such information, particularly where an asset pool is acquired in the secondary market on a servicing retained basis. This same comment would also apply to Section III.B.3.f. where unaffiliated originators are involved with respect to assets acquired in the secondary market.

Any information obtained with respect to unaffiliated servicers, originators or intermediate transferors may be suspect and not subject to verification by the sponsor. It is also unclear how reliable any statistical pool data would be that was obtained from such unaffiliated persons, if obtainable at all. In addition, even if obtainable, there would be increased costs involved that would only serve to drive many sponsors back into or keep them in the private placement market and would discourage public offerings.

2. Full disclosure about originators of FFELP Loans may not be possible. All student loans made under the FFELP Loan program have the same underwriting criteria--the criteria set forth by the Department of Education ("DOE") in the Higher Education Act and the DOE Regulations. FFELP Loans included in an asset backed transaction could have been originated by many different originators since most banks and savings and loans (together with private companies through eligible lender trustees) make FFELP Loans. Tracing and disclosing information regarding all of these different originators would be extremely difficult, and since the origination criteria is the same in all cases and all are guaranteed by a Guaranty Agency (referred to below) (and the US government), it would seem unnecessary for this asset class.

Section III.B.7 – *Credit Enhancement and Other Support*

1. Guarantors of Higher Education Act student loans ("FFELP Loans") are non-profits and state agencies (each a "Guarantee Agency") who stand in the middle of the holders of the FFELP Loans (like sponsors) and the DOE. When a FFELP Loan defaults, the Guarantee Agency pays the holder of a defaulted FFELP Loan and the DOE then pays the Guarantee Agency. The US government backs the guarantees of the Guarantee Agency in a situation where

a Guarantee Agency fails. This type of guarantor (where the full faith and credit of the US government back the guarantee) should be carved out of the type of 'guarantor' described in the proposed rules for which full disclosure and audits are required. In some transactions, there are upwards of 30 or more Guarantee Agencies and in revolving transactions, the Guarantee Agencies can change as more student loans are added. A portfolio could contain, for example, one FFELP Loan from one individual Guarantee Agency. Obviously, this would be a burden to add disclosure for one FFELP Loan. Because the individual Guarantee Agency is of no real concern or consequence to the debt holder since the US government stands behind the guarantees, this additional disclosure adds no or little value to the investor and huge burdens to both the Guarantee Agencies and the asset backed student loan sponsors.

General

We believe, as indicated above, that some distinction should be made in Proposed Regulation AB with respect to required disclosure in offerings that are directed to institutional investors, as opposed to offerings directed to retail investors. For instance, if an offering involves auction rate or variable rate demand securities, there is a less than small probability that the investors would be other than institutional. Likewise, if the offering states that the asset backed securities will only be sold to institutional investors or to investors with a high minimum denomination, then disclosure standards as well as plain English requirements should be more relaxed. We believe that such investors are better able to fend for themselves and can read and understand non-plain English disclosure. Consideration should, therefore, be given to differentiating disclosure requirements, where meaningful, between retail and institutional offerings.

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We appreciate the opportunity to comment on the Proposal and the undersigned would be happy to discuss any of our comments with the Staff.

Sincerely yours,

/s/ Robert J. Ahrenholz
Robert J. Ahrenholz