July 12, 2004

By E-Mail: rule-comments@sec.gov

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

Re: Releases Nos. 33-8419; 34-49644 (File No. S7-21-04)

Ladies and Gentlemen:

We submit this letter in response to the request for comments made by the Securities and Exchange Commission (the "Commission") in Release Nos. 33-8419, 34-49644 dated May 3, 2004 (the "Proposing Release") relating to the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act of 1933 and the Securities Exchange Act of 1934.

Specific Comments Regarding the Proposals.

I. Servicers

A. Disclosure Issues

1. General

In Section III.B.3.d. of the Proposing Release, the Commission's proposal would require disclosure of "information regarding the entire servicing function, including a clear description of the roles, responsibilities and oversight requirements of the entire servicing process and the parties involved." This would include detailed information relating to sub-servicers, and, where multiple servicers are used with respect to a single asset pool, information relating to each unaffiliated servicer that services 10% or more of the pool assets. Furthermore, the Commission's proposal would require the disclosure of information with respect to any "special servicer", i.e. a servicer that fulfilled a function material to the performance of the pool and the related asset-backed securities (e.g. work-outs, foreclosures, etc.).

2. 10% Threshold Test

The Commission states that the 10% threshold it proposed is appropriate because it is consistent with other disclosure requirements the Commission currently enforces[1]. We respectfully disagree with the Commission's reasoning on this point. The additional disclosure in the instances discussed in footnote 1 is relevant because it serves to address concerns that would not otherwise be addressed if such additional disclosure was not included. For example, if information relating to an active legal proceeding that could result in damages exceeding 10% of the registrant's assets was not included in the disclosure, the investors would be disadvantaged with no capacity for redress. In other words, the investors would have no other relevant disclosure upon which to rely in making their decision whether to purchase the offered securities. Conversely, in the

[1] Item 101(c)(vii) of Regulation S-K requires the disclosure of information relating to any customer whose transactions with the registrant in the aggregate represents 10% or more of the related registrant's consolidated revenues; Item 503(d) proscribes that, if a registrant uses the proceeds from the sale of the offered securities to repay any outstanding debt or to retire other securities and such repayment changes either (i) the ratio of earnings to fixed charges (for debt security registration) or (ii) the ratio of combined fixed charges and preference dividends to earnings (for equity security registration) by 10% or more, then the registrant must include a ratio showing the application of the proceeds; Item 601(b)(4)(iii) exempts, so long as certain technical requirements are also met, "…any instrument with respect to long-term debt not being registered if the total amount of securities authorized thereunder does not exceed 10% of the total assets of the registrant…" from the general requirement that instruments defining the rights of securityholders be filed as exhibits to the registration statement; Instruction 2 to Item 103 states that a legal proceeding that involves primarily a claim for damages that does not exceed 10% of the registrant's assets does not need to be included in the description of material legal proceedings in any filing with the Commission.

context of servicer disclosure, the detailed information of the master servicer (or other servicer which fulfilled the equivalent function of acting as primary servicer) would be disclosed and available for analysis. The master servicer and any primary servicer on the transaction would have ultimate responsibility for the performance of the pool regardless of the number of sub-servicers they employ to service portions of the pool or to handle specific functions pool-wide. Thus, since the investors are primarily "looking to" the master servicer and any primary servicer to service the pool assets they could generally be satisfied in making their decision by relying on the information provided by the master servicer and the related primary servicer. In certain circumstances, however, an unaffiliated servicer is charged with handling the servicing function with respect to a substantial portion of the pool assets. We feel the threshold constituting a substantial portion should be higher than the 10% threshold proposed by the Commission. Instead, similar to the standard included in the Commission's proposal in Section III.B.7 regarding enhancement providers[2], we would propose that a breakpoint of 25% is more appropriate for the additional disclosure of servicers. The additional 10% of pool assets would merit greater attention because now one-fifth of the overall deal would be serviced by a single entity. In those circumstances, additional disclosure pertaining to such an unaffiliated servicer would be warranted.

The 10% threshold test also raises concerns for certain transactions which utilize multiple servicers. On a transaction that has a single pool serviced by multiple servicers, the 10% threshold would create an administrative burden and potentially cause inefficiencies to occur due to the additional work of compiling all of the information relating to the servicer's portfolio, collection processes, billing processes and computer systems for each unaffiliated servicer.

Based on the foregoing, we respectfully request that the Commission revise the proposed disclosure requirements, so that the threshold for servicer information disclosure is increased to 25%. The 25% threshold would be more appropriate because it would provide information for servicers that are servicing a substantially large portion of the pool, without being too burdensome or causing any inefficiencies with respect to deals that utilize multiple servicers.

3. Special Servicers

The Proposing Release is not clear as to whether the disclosure requirement for special servicers discussed in Paragraph I.A.1 above would be contingent on any concentration threshold. Therefore, a special servicer of this type may be required to disclose information relating to its servicing experience, portfolio of serviced assets,

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[2] The Commission here drew a distinction between enhancement providers that provided support for 10% or more, but less than 20%, of the cashflow supporting any class of the asset-backed securities, on the one hand, and those enhancement providers that provided support for 20% or more of such cashflow, on the other. An enhancement provider that fell under the latter category would have to provide audited financial statements, whereas an enhancement provider that fell under the former category would only have to submit selected financial data.

collection procedures, billing processes, computer systems and back-up systems when it is essentially just "waiting" for the specific situation to arise that it has been designated to remedy. We respectfully request that the disclosure requirement for special servicers be deleted, or alternatively, be limited to information specifically related to the function that such special servicer is designated to handle. For example, a special servicer charged with handling all of the foreclosures in an asset pool would be required to disclose its experience relating to handling foreclosure matters as opposed to providing detailed information of such special servicer's entire portfolio, collection processes, billing processes and computer systems. Additionally, we respectfully request that the Commission clarify in its final rule that if the special servicer has not contracted to perform its servicing obligations with respect to 20% or more of the pool assets, no disclosure would be required of such special servicer.

4. Prior Defaults/Triggering Events on Unrelated Deals

Also in Section III.B.3.d of the Proposing Release, the Commission indicates that information that may be considered material and that could be disclosed, if applicable, is the occurrence of a default, an early amortization or performance trigger due to servicing considerations with respect to any prior securitizations involving the servicer. This proposal is not in line with market practices and depending on the circumstances surrounding the related adverse event, such an occurrence may not present an accurate portrayal of the servicer's ability to service the assets related to a particular transaction. This would be especially true if the prior securitization consisted of assets that behave differently from, and therefore require different servicing tactics than, the assets in the current securitization (e.g. with respect to mortgage securitizations, a prior securitization of prime mortgage loans versus a current securitization of sub-prime mortgage loans). We respectfully request that the Commission not include this requirement in its final rule or, alternatively, limit the requirement to apply only in the event that the prior securitization involved an asset type similar to that of the current securitization.

B. Servicing Compliance

1. General

In Section III.D.7.b. of the Proposing Release, the Commission's proposal includes a modification of the existing method of reporting on servicer compliance. Specifically, the Commission proposes to require that a "responsible party" on a particular transaction make an assertion relating to "compliance with specified servicing criteria". Such assertion would be accompanied by a report issued by a registered public accounting firm and filed as an exhibit to the issuer's 10-K filing. The Commission defines "responsible party" as either the depositor or the master servicer, depending on which entity provided the officer that signed the 10-K report and the Section 302 certification. Furthermore, the proposal seeks to define the scope of the assertion broadly enough so that the responsible party is required to assess whether the parties performing the servicing functions that are material to the overall performance of the pool assets are in material compliance with all of the servicing criteria.

2. Depositor as Responsible Party

The Commission's proposal raises particular issues for a depositor acting as responsible party. The depositor would be responsible for assessing the material compliance of servicers without having the requisite information to make such assessment. The Commission states that the responsible party should use "reasonable means" to make its determination, however this "standard" may be insufficient guidance for an entity that does not regularly provide servicing functions. Furthermore, it would be unduly burdensome for the depositor to be charged with acting as the responsible party on transactions which included multiple servicers, even if the depositor relied on information provided by the unaffiliated servicers. A uniform method of reporting such information does not currently exist, thus requiring the depositor to synthesize large amounts of information from multiple forms. We respectfully request that the Commission provides clarification in the final rule that the master servicer could be the entity designated as the responsible party on transactions involving multiple servicers whether or not the depositor has signed the 10-K report and Section 302 certification.

The Commission's proposed requirement that the assertion be accompanied by a report issued by a registered public accounting firm is not feasible on transactions where the depositor does act as the responsible party and multiple servicers are used. We do not believe that a registered public accounting firm would be willing to issue such a report covering unaffiliated parties without conducting its own diligence with respect to the third party servicers covered by the responsible party's assertion. Such diligence would be onerous and would add significant cost to the transaction without a commensurate benefit. We respectfully request that the Commission delete this requirement from its final rule.

3. Scope of Assessment

The scope of the assessment requirement is also problematic. The Commission has not included any threshold requirement for the inclusion of a particular servicer in the responsible party's assertion. As discussed in Section III.B.3.d. of the Proposing Release, the Commission's proposal requires the disclosure of information relating to each unaffiliated servicer that services 10% or more of the pool assets[3]. We feel that a threshold test is reasonable with respect to the responsible party's assertion in order to ensure an efficient process of providing bondholders with the most relevant information pertaining to servicer compliance. We respectfully request that the Commission adopt a threshold test for the responsible party assertion requirement, so that such assertion would only cover servicers that service 20% or more of the pool assets.

II. Disclosure Relating to Originators.

In Section III.B.3.f. of the Proposing Release, the Commission proposes to require disclosure relating to the underwriting and credit-granting processes of any originator(s) (other than the sponsor) that has originated, or is expected to originate 10% or more of

[3] See our comment to such proposal in Paragraph I.A.1 above.

the pool assets. Similar to the proposed rule relating to servicer disclosure discussed above in Paragraph I.A.1., the Commission states that the 10% threshold is appropriate because it is consistent with other thresholds relating to disclosure that the Commission currently enforces. Also similar to servicer disclosure, we respectfully disagree with the Commission's reasoning on this point. As in the case of servicer disclosure, the investors are not left without information to look to in order to assess the risks associated with the potential investment. In many cases, the sponsor analyzes an originator's underwriting and credit-granting processes when the sponsor purchases assets from such originator with the intent to securitize such assets. In other cases, when the sponsor purchases assets on the secondary market, originator information may not be readily available. In either event, the sponsor takes on certain obligations (i.e. repurchase) with respect to the assets in the event of a material breach of certain representations and warranties relating to such assets. In situations where the originator is not making any representations and warranties to the deal and the sponsor is the only entity "standing behind" the transaction (in a limited sense, of course, since the obligations represented by the asset-backed securities are non-recourse to the sponsor), the bondholders are essentially relying on the sponsor's ability to determine whether the originator(s) it purchases assets from conducts its origination business using underwriting and credit-granting practices that are reasonably prudent considering all relevant factors. On the other hand, in situations where the originator is responsible to the deal for certain representations it makes with respect to the related assets, it may make sense to require disclosure for such originator; provided that it has or is expected to originate 10% or more of the pool assets. Accordingly, we respectfully request that the Commission modify the requirement that any originator(s) that has or is expected to originate 10% or more of the pool assets provide relevant disclosure information so that such requirement will only apply if the originator, in addition to meeting the 10% threshold requirement, actually is responsible to the deal for the representations that it makes with respect to the related assets.

III. ABS Informational and Computational Material.

In Section III.C.1.c. of the Proposing Release, the Commission proposes a single definition of "ABS informational and computational material." ABS informational and computational material is generally defined in such section as a written communication consisting of one or some combination of the following: (i) a brief summary of the asset-backed offering, including name of issuer, size of offering and the structure of the offering, (ii) factual information describing the characteristics of the pool assets, (iii) static pool data for the sponsor's portfolio or (iv) statistical information relating to a particular class of asset-backed security, including yield, average life, expected maturity, interest rate sensitivity, cash flow characteristics and other related information. Not specifically included in this definition, but included in "computational materials" commonly used in the asset-backed industry, is information related to (A) certain tax matters, such as how the offered securities expect to be treated for federal tax purposes (e.g. debt or a regular interest in a REMIC), and (B) whether the offered securities will be considered eligible investments for ERISA plans. We respectfully request that the Commission include in its final rule clarification that such information relating to tax and ERISA matters fits within the definition of "ABS informational and computational material."

IV. Conclusion

In conclusion, we feel that the arguments presented herein are based on sound principles and market practices. We appreciate the opportunity to respond to the Proposing Release and welcome the opportunity to discuss any of the foregoing with the Commission in the future.

DEWEY BALLANTINE LLP