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VIA E-MAIL

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: File Number S7-21-04
Proposed Rule - Asset-Backed Securities

Dear Commissioners

We are pleased to have this opportunity to respond to the Commission's referenced proposed rule for asset-backed securities transactions. Having participated in numerous ABS transactions over the past almost 20 years, we appreciate the effort the Commission has invested in seeking to formalize the rules applicable to such transactions. The scope and depth of the proposed rules notwithstanding, we respectfully request that the Commission consider the following comments in connection with its deliberations on the proposed rules:

Definition of "Asset-Backed Security"

The proposed definition of an "asset-backed security" is built upon the foundation of the definition previously applied for Form S-3 eligibility. The definition is said to be flexible and intended to expand the asset types covered by the definition. However, neither the discussion of the definition nor the distinction made by reference to synthetic securities removes potential ambiguity as to whether certain assets will meet the requirement that they convert into cash within a finite time period.

It is unclear from the proposal whether the asset being securitized must include a specific minimum payment obligation within a finite time period, or merely that the asset may require some cash payment within a finite time period. For instance, license agreements for use of trademarks, patents or copyrights may not necessarily require a fixed minimum monthly or annual payment, but only an obligation to make royalty payments to the extent the use of the licensed right generates revenue for the licensee. An individual license may not generate any cash flow within a finite period, such as the life of the license agreement, but a pool of such agreements with many licensees may nonetheless generate substantial royalty cash flows during the lives of the various licenses in the pool. The issue would be resolved simply by adding the

words "are reasonably anticipated to" between the words "terms" and "convert" in the proposed definition.

The proposed modification should not create any increased risk for investors as the securities offered would still need to be rated investment grade in order to qualify for use of Form S-3. Moreover, the new proposed registration and disclosure rules are clearly more apt to securities backed by a discrete pool of such license agreements than the traditional Form S-1 rules. Finally, during the review process the staff would always be able to take the position that the information provided about the assets supporting the securities to be issued does not show that the anticipated conversion to cash within a finite time is "reasonable".

Form S-3 Eligibility

It is understandable that in order to ensure compliance with reporting requirements a penalty (loss of Form S-3 eligibility) is being proposed. However, that penalty may be excessive in certain circumstances and we suggest that in those circumstances the proposal should include relief from that penalty.

A sponsor or depositor may have, during the course of a single year, several ABS transactions outstanding as to which the obligation to report has not yet been terminated. Those transactions may require monthly distributions to the holders of the issued securities. A proposed Form 10-D will be required within 15 days of each distribution date (as proposed) for each of those several transactions. Unlike a traditional Form S-3 filer that may be required to file as few as four reports annually, a sponsor or depositor may be obligated to make several dozen filings during that same period. Yet, the inadvertent failure to timely file a single Form 10-D will deprive that sponsor or depositor from the use of Form S-3 for twelve months.

This is a draconian penalty for a sponsor or depositor that has timely provided all distribution date reports to the trustee(s) for all outstanding transactions, has paid all required distributions in a timely manner to the holders of all outstanding issued securities and has timely posted to its website copies of the distribution date reports. To the extent the information intended to be included in the new Form 10-D is otherwise available to current and potential investors from the sponsor's or depositor's website, the inadvertent late filing of a Form 10-D would have no material adverse consequence to current or potential investors. In such circumstances, the inadvertent late filing should not create a 12 month disability from the use of Form S-3.

Accordingly, we urge the Commission to modify the proposed rule as to the eligibility to use Form S-3 to provide that a sponsor or depositor will not be precluded from eligibility for new ABS filings on Form S-3, notwithstanding one or more reports required to be filed were not timely filed, provided:

(a) all required reports have been filed as of the time a new registration statement is filed on Form S-3,

(b) the distribution date reports included within the late filed reports were timely distributed to the trustee(s) or holders of the securities,

(c) the distributions of funds described in the distribution date reports were timely made, and

(d) the distribution date reports included within the late filed reports were posted to the sponsor's or depositor's website within the time period when the required reports were due to be filed with the Commission.

The suggested modification will ensure that those sponsors and depositors that make full disclosure of required information but inadvertently fail to timely file a report (but do in fact ultimately file it) will not be so severely penalized, while those sponsors and depositors that fail to provide timely information and distributions to trustees and investors directly and by posting to their websites will not gain the advantage of eligibility to use Form S-3. We believe this balance is appropriate as it ensures that eligibility to use Form S-3 is available only to those sponsors and depositors that have made required information available to both current and potential investors without imposing a harsh penalty for the untimely filing of that same information with the Commission.

Issuing Entity Activities

The definition of "asset-backed security" includes the requirement that the issuing entity's activities be limited to passively owning a pool of assets, issuing securities supported by those assets and other activities reasonably incidental thereto. We are concerned that if this definition is applied strictly it may preclude certain actions historically taken to ensure that an ABS transaction will be accounted for under GAAP as an on-balance sheet financing rather than an off-balance sheet sale.

One method of ensuring that the issuing entity will be consolidated for accounting purposes with the sponsor or depositor such that the issuance will be accounted for by the sponsor or depositor as a financing is to include in the organizational documents of the issuing entity a limited authority to actively invest in United States treasury securities (or other narrowly defined securities) for profit. This authority is typically limited to a very modest amount of cash that is immaterial to the overall performance of the issuing entity, but sufficient to enable the sponsor's or depositor's auditors to conclude that the issuing entity must be consolidated with the sponsor or depositor under GAAP. We understand that it is the mere authority to so invest that results in the desired accounting effect, not the actual exercise of that authority. We likewise understand that auditors have accepted as sufficient the authority to invest as little as $100,000 by an issuing entity that has pool assets in excess of more than $1.0 billion.

Accordingly, in order to permit sponsors and depositors to continue to utilize methods currently in place to ensure the desired GAAP accounting treatment for their ABS transactions, we suggest that the Commission add to the activities permitted to issuing entities the authority to

invest for profit a minimal amount of its available cash in other investment grade rated assets. In the alternative, the definition could provide that the issuing entities activities be "predominantly" limited to those currently set forth in the proposed definition.

In conclusion, we thank the Commission in advance for its consideration of our comments and welcome the opportunity to add to or clarify our comments to the extent requested by the Commission.

Very truly yours,

/S/ ANDREW E. KATZ

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