64

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

Ladies and Gentlemen:

RE: Proposed Rule on Asset-Backed Securities (File No. S7-21-04)

KPMG LLP is pleased to provide our comments on the Securities and Exchange Commission's proposed rule entitled, *Asset-Backed Securities* (the "Proposed Rule"). KPMG strongly supports the Commission's efforts to comprehensively address the registration, disclosure, and reporting requirements for asset-backed securities ("ABS") under the Securities Act of 1933 and the Securities Exchange Act of 1934. Our comments on certain elements of the Proposed Rule are presented below for your consideration.

OVERALL BASIC APPROACH

In the Proposed Rule, the Commission proposes to codify certain existing practices related to financial reporting and compliance with servicing criteria by ABS issuers. Those reporting practices have developed over time and generally include providing investors selected unaudited financial information, including periodic "distribution reports," as well as providing an auditor's attestation report on compliance with specified servicing criteria. Given that investors seem to be satisfied with the reporting regime that has evolved, we are broadly supportive of the Commission's proposal to codify those existing practices. We observe that, due in part to the current lack of such a codification, there is diversity in the application of those practices. Because the Commission's Proposed Rule will eliminate or narrow those differences, we believe that the Proposed Rule is a much needed improvement that will enhance comparability and consistency of reporting among ABS issuers. We have the following specific comments related to certain aspects of the Commission's proposed reporting regime.

Report on Compliance With Servicing Criteria vs. Financial Statement Audit

The Proposed Rule requires ABS issuers to file an "attestation opinion" of a registered public accounting firm on compliance with specified servicing criteria. The Commission has requested comment on whether audited financial statements of ABS issuers should be required instead or, alternatively, whether agreed-upon procedures would provide an acceptable level of assurance. In general, subject to the comments below, we support the proposal to require an attestation opinion on compliance with specified servicing criteria. Due to the fact that the financial information provided by ABS issuers is not required to be audited, we believe that the auditor's attestation opinion on compliance with specified servicing criteria should cover the entire fiscal year, and not simply be "as of" a point in time.

We also believe that agreed-upon procedures reports should not be permitted in filings of ABS issuers because they do not provide an opinion on compliance and their use is restricted to named specified parties who have agreed that the procedures are sufficient for their particular purposes. For those reasons, agreed-upon procedures reports are not appropriate in filings with the Commission.

In addition, although we support the Commission's conclusion not to require ABS issuers to file audited GAAP-basis financial statements, we believe that the limitations of that approach should be clearly communicated to investors. For example, because the proposed reporting regime does not require an audit of any financial information, we believe prominent disclosure should be made that the financial data in the filing is unaudited, and that the auditor's attestation opinion on specified servicing criteria provides no assurance on the issuer's financial information contained in the filing.

Finally, in light of the fact that the Proposed Rule provides for an attestation opinion on compliance with servicing criteria *in lieu of* requiring audited financial information, we recommend that the Commission consider allowing ABS issuers the alternative to provide audited financial information. Such audited financial information might take the form of (1) GAAP-basis audited financial statements, (2) cash-basis audited financial statements (which probably would largely include a summarized version of the information contained in the distribution reports), or (3) an examination-level attestation report on some or all of the financial information in the filing. We believe audited financial information provides a higher level of assurance to investors than the compliance approach.

Platform Level vs. Transaction Level

The Commission proposes to continue the existing practice of assessing compliance with servicing criteria at the "platform" level, rather than at the transaction level. This approach is analogous to assessing the effectiveness of internal control at a holding company level, even though the particular issuer may be a small subsidiary. Because investors appear to be satisfied with the existing practice of assessing compliance at the platform level, and the alternative of assessment at the transaction level would be very costly, we support the Commission's proposal to continue assessing servicing compliance at the platform level. However, we believe that the limitations of the platform approach should be prominently disclosed. For example, the assets and activity of a particular ABS transaction might be an insignificant part of the total assets and activities at the platform level. In that case, the scope of the auditor's attestation engagement would not be designed to detect instances of noncompliance that would be material to the particular ABS transaction. The fact that instances of noncompliance that would be material to a particular ABS transaction may not be detected by the auditor's examination should be prominently disclosed by the issuer in the filing.

We also believe that ABS issuers should be required to disclose known instances of material noncompliance at the transaction level, or state that none have been identified. Even though the assessment of compliance is at the platform level, that does not justify nondisclosure of known material noncompliance at the transaction level.

REPORTING ISSUES

The Commission's proposal would require the "responsible party" to prepare a report on its assessment of compliance with the servicing criteria set forth in Item 1120(d) as of and for the period covered by Form 10-K. The proposal also would require that a registered public accounting firm issue an attestation report on the responsible party's assessment of compliance. Both the responsible party's report and the registered public accounting firm's report would be included in the issuer's Form 10-K.

We strongly support the Commission's efforts to introduce a uniform framework to address the diverse practices that have evolved related to (1) the servicing criteria against which compliance is evaluated and (2) the inconsistent involvement by registered public accounting firms, both as to the scope of their work and the form of their reports. However, primarily because of its focus on a single "responsible party," we believe that, in cases where the servicing activities are performed by multiple unaffiliated parties, the proposed framework will prove to be unworkable in practice. We also are concerned that, in those cases, registered public accounting firms may be unable to render an opinion because of the inherent scope limitations in performing substantial portions of the

work necessary to support the report. Our concerns are explained in more detail in the following paragraphs.

In practice, the various servicing functions contemplated in the Commission's proposed servicing criteria often are performed by unaffiliated parties. In some structures, compliance with even a single criterion may depend upon servicing activities performed by multiple servicers. Under the Commission's proposal, the responsible party must *assess compliance* with the servicing criteria regardless of the number of parties involved in the various servicing activities. Similarly, but not the same, PCAOB Interim Standard SSAE 10, Chapter 6, requires the responsible party to *accept responsibility* for compliance and for internal control over compliance. Although responsible parties may be willing to assess compliance, they may not be willing to accept responsibility for activities performed by unaffiliated third parties, as would be required under PCAOB Interim Standard SSAE 10, Chapter 6. In addition, although the proposal states that the responsible party may place reasonable reliance upon information provided by unaffiliated third parties, it is unclear how such reliance would be consistent with PCAOB Interim Standard SSAE 10, Chapter 6, which requires the acceptance of direct responsibility.

Another practical issue is the ability of registered public accounting firms to report on servicing compliance in situations where they are not in a position to test substantial portions of the required servicing activities. This situation can occur when the activities contemplated by the servicing criteria are performed by multiple unaffiliated entities. In those cases, it may not be practicable for the registered public accounting firm to examine a sufficient portion of the servicing activities to support the issuance of an examination report. We believe that PCAOB Interim Standard SSAE 10, Chapter 6, would require procedures to cover each significant component and activity related to the proposed "platform" approach to assessing compliance with the servicing criteria. If the registered public accounting firm also does not examine the servicing activities at the subservicer level, the firm may not be able to render an overall opinion because its own work may not be sufficient to serve as the "principal" auditor. This is analogous to AU Section 543, *Part of Audit Performed by Other Independent Auditor*, which provides guidance for an auditor to consider whether his or her own work is sufficient to serve as principal auditor and report on the financial statements. Similar guidance on scope is included in the PCAOB's Auditing Standard No. 2, *An Audit of Internal Control over Financial Reporting Performed in Conjunction with an Audit of Financial Statements* (Auditing Standard No. 2).

In order to address these concerns in a cost effective manner, we suggest that the proposed framework be modified to permit the responsible party to include, in Form

10-K, auditors' reports on servicing compliance for servicing activities that are material to the satisfaction of the servicing criteria. Materiality should be assessed individually and in the aggregate; for example, the issuer might be required to include (1) a compliance report for any servicing entity whose activities relate to more than a specified percentage (for example, ten percent) of the assets in the structure and (2) compliance reports for a sufficient number of servicing entities whose activities collectively relate to a minimum percentage of the assets (for example, 80 percent). Under this approach, we suggest that the certification provided under Item 601 of Regulation S-K also certify that the filed compliance reports satisfy the minimum scope of asset coverage and that collectively the compliance reports address the relevant servicing criteria. We believe this approach would satisfy the practical issues described above without sacrificing the level of assurance on compliance with the servicing criteria that would be provided to investors.

Finally, we believe that the Commission should provide additional guidance about the documentation and evidence that should be prepared and accumulated by the assessing parties to support their assertions on compliance with the servicing criteria. We believe that the appropriate standard for documentation and evidence of compliance should be similar to that specified by Auditing Standard No. 2, which will apply to audits of internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act.

Reporting period for servicing compliance

Under the proposal, the responsible party, and the registered public accounting firm, will need to obtain sufficient evidence of compliance with the specified servicing criteria for the reporting period to support the responsible party's assertion and the auditor's attestation opinion. When there are multiple parties involved in performing the servicing functions, another practical difficulty may arise involving the period covered by compliance assertions, and related attestations, for the various servicing parties. As proposed, compliance must be reported for the entire period covered by the ABS issuer's Form 10-K. However, the fiscal period of a particular ABS transaction may not coincide with the compliance assessment period for each party involved in performing the servicing functions.

As a result, we suggest that the Commission recognize that a "lag period" is acceptable (i.e., a difference between the end of the period covered by the responsible party's assertion of compliance and the end of the period covered by a "subservicer's" assertion

of compliance). In this circumstance, under the Commission's proposed approach to reporting servicing compliance, we suggest that the Commission provide guidance regarding the extent of evidence required to assess the subservicer's compliance during the lag period. Such guidance should be broadly analogous to the guidance in paragraphs B25-27 of PCAOB Auditing Standard No. 2, and the related Item 25 of the PCAOB Staff's FAQ. That is, the responsible party, and the registered public accounting firm, would consider the lag period and, if deemed necessary, perform additional procedures regarding the subservicer's compliance during the lag period. However, the extent of those procedures would depend on the length of the lag period and the significance of the procedures performed by the subservicer to the overall assertion of compliance. Under the alternative approach to reporting servicing compliance that we suggest above, an acceptable lag period could be as long as a year. However, in that case, when subservicer compliance reports and the related auditor attestations become available for any periods subsequent to those for which the respective reports were filed in the ABS issuer's Form 10-K, the Commission could require those subsequent reports to be filed either in a Form 8-K or by an amendment to the ABS issuer's Form 10-K.

A similar circumstance may arise when the reporting period regarding servicing compliance at the "platform level" does not correspond to the fiscal period of a particular ABS transaction. In this case, we recommend that the Commission accept a lag period not exceeding a year (i.e., the difference between the end of the fiscal period of an ABS transaction and the end of the period covered by the servicing compliance report at the platform level). However, when the platform level compliance report, and related auditor attestation, become available for any periods subsequent to the period for which the reports were filed in the ABS issuer's Form 10-K, we recommend that the Commission require those reports to be filed either in a Form 8-K or by an amendment to the ABS issuer's Form 10-K.

SERVICING CRITERIA

The Commission has proposed standard servicing criteria organized into four broad categories – general servicing considerations, cash collections and administration, investor remittances and reporting, and pool asset administration. Under the Commission's proposal, the auditor would issue an examination-level attestation opinion on compliance with the Commission's standard servicing criteria.

As background, under current practice, most ABS issuers include an attestation report on compliance with the Mortgage Bankers Association of America's *Uniform Single Attestation Program for Mortgage Bankers* (USAP), which was designed specifically for the servicing of residential mortgage loans, or with compliance with the specified terms of a transaction's pooling and servicing agreement. Today, USAP is the only set of

generally accepted servicing criteria available to evaluate compliance. Accordingly, under the applicable attestation standards, use of reports on compliance with other criteria are restricted as to use.

We support the Commission's establishment of standard servicing criteria to be used by ABS issuers and their auditors to assess compliance. The Commission's criteria go beyond what is included in USAP and would be used for all the various classes of asset-backed securities. Although we recommend that the Commission's standard servicing criteria be adopted on an interim basis, we also recommend that they be considered a "work-in-process" subject to continuous improvement. We believe the most important improvement would be the development of servicing criteria that would take into account the unique characteristics and requirements of each of the various major classes of asset-backed securities (e.g., residential mortgages, commercial mortgages, auto loans, credit card receivables, student loans, trade receivables, etc.). We hope the Commission will encourage appropriate industry groups to develop servicing criteria for each of the major asset classes. The ultimate incorporation of such industry-developed servicing criteria into the Commission's rules would be subject to the Commission's acceptance of those criteria as an improvement over the Commission's initial standard servicing criteria, and would be subject to the Commission's normal rulemaking due process.

TRANSITION

We believe that issuers should be afforded a reasonable period of time to properly comply with the Proposed Rule. We also believe that transition should differ for different types of structures. For example, we recommend that the Commission consider adopting the new rules on a prospective basis for "closed-end" securitization structures (i.e., non-revolving structures). Existing closed-end structures have a finite life and we do not believe the cost and effort to update systems and procedures and, potentially, to amend contractual arrangements are justified. Therefore, we believe that applying the new rules prospectively to closed-end ABS transactions entered into after a specified date would be a reasonable approach to transition. Under this approach, for new closed-end transactions subject to the new rules, we recommend that the effective date be for the first fiscal year beginning on or after the enactment date of the final rules.

Revolving structures, on the other hand, do not have a finite life and we believe the new rules should apply to all revolving structures. A reasonable amount of time is needed for ABS issuers to effect the necessary changes to contractual arrangements, systems, and procedures. Similar to our recommendation on closed-end structures, we believe the effective date for revolving structures should be for the first fiscal year beginning on or after the enactment date of the final rules.

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We would be pleased to discuss our comments with you at any time. Please call Michael D. Foley at (212) 909-5517 or Teresa E. Iannaconi at (212) 909-5426 if you have any questions.

Very truly yours,

KPMG LLP