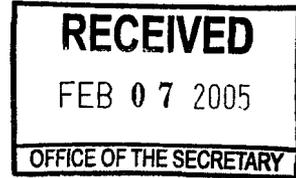




Fixed Income Division  
One Spartan Way  
Merrimack, NH 03054

February 4, 2005

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

**Re: File Number S7-38-04 – Securities Offering Reform Proposed Rules**

Dear Mr. Katz:

Fidelity Management & Research Company (“FMR”) thanks the Securities and Exchange Commission (the “Commission”) for the opportunity to comment upon the proposed rules, under the Securities Act of 1933 (the “Securities Act”), regarding the registration, communication and offering processes for securities (the “Securities Offering Reform Proposals”).

The Securities Offering Reform Proposals are broad in scope. This comment letter does not attempt to address all of the issues raised in the Securities Offering Reform Proposals but instead focuses on the impact of such proposals on the asset-backed securities (“ABS”) markets. Funds and accounts managed by FMR are very active investors in the ABS markets. As a leading manager of mutual funds and other fiduciary accounts, FMR supports the Commission’s efforts to modernize the securities offering process and improve the timeliness of the delivery of information available to investors. As a fiduciary, FMR has an obligation to obtain and analyze all material information before making an investment decision on behalf of a shareholder or customer. FMR supports the goal of the Securities Offering Reform Proposals of making all material information available to investors prior to the time of sale.

The proposed rules reflect extensive research and thoughtful deliberation on the part of the Commission. As stated above, FMR generally supports the Commission’s broad-based efforts and submits the following limited comments, which we ask the Commission to consider in connection with the promulgation of final rules.

A. Liability Issues and Importance of Information Conveyed at the Time of Sale

On December 22, 2004, the Commission adopted final rules with regard to asset-backed securities (the “Final ABS Rules”).<sup>1</sup> A portion of the Final ABS Rules amended Rule 15c2-8(b) under the Securities Exchange Act of 1934 to make clear that the requirement of a broker or dealer, under circumstances described in Rule 15c2-8(b), to deliver a copy of a preliminary prospectus to an investor 48 hours prior to sending a confirmation does not apply

<sup>1</sup> Securities and Exchange Commission, Asset-Backed Securities, Release Nos. 33-8518, 34-50905, 70 Fed. Reg. 1506 (January 7, 2005).

to asset-backed securities.<sup>2</sup> This modification to Rule 15c2-8(b) codified a series of Commission no-action letters providing relief from the requirements of Rule 15c2-8.<sup>3</sup>

In the Final ABS Rules, the Commission made reference to the Securities Offering Reform Proposals. Specifically, the Commission noted that “we agree with investors that materially accurate and complete information regarding an offering should be available to investors at the time they make an investment decision, and we issued an interpretation and proposed an interpretative rule to support that unassailable proposition.”<sup>4</sup> Additionally, the Commission stated its belief that investor “concerns about the availability of adequate information for ABS offerings raise the same issues as those discussed in the [Securities Offering Reform Proposals] and are best addressed through those proposals.”<sup>5</sup> Accordingly, the Commission “encourage[d] ABS market participants to comment specifically on the proposals in the [Securities Offering Reform Proposals] to address information availability issues.”<sup>6</sup> FMR commends the Commission for recognizing and supporting the unassailable proposition that materially accurate and complete information regarding an offering should be available to investors at the time they make an investment decision. Moreover, FMR agrees with the Commission that this unassailable proposition applies to all securities markets, including ABS markets.

The Securities Offering Reform Proposals seek to codify the Commission’s staff interpretation that Section 12(a)(2) and Section 17(a)(2) of the Securities Act reflect a core concept of the Securities Act that materially accurate and complete information regarding an issuer and the securities being sold should be available to investors at the time of an investment decision.<sup>7</sup> New Rule 159 under the Securities Act would clarify that any information conveyed to the purchaser of securities after the time of sale will not be taken into account for the purpose of determining, (i) under Section 12(a)(2) of the Securities Act, whether a prospectus or oral statement included an untrue statement of material fact or omitted to state a fact necessary to make the statements, in light of the circumstances in which they were made, not misleading at the time of sale and, (ii) under Section 17(a)(2) of the Securities Act, whether a statement includes or represents any untrue statement of material fact or any omission to state a material fact in order to make the statements made, in light of the circumstances under which they were made, not misleading at the time of sale.<sup>8</sup>

FMR supports this clarification of the timing when liability attaches as a means to provide that investors receive materially accurate and complete information regarding an issuer and the securities being sold prior to making an investment decision. The benefits of this approach could be significant in the ABS market. As stated in FMR’s letter to the

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<sup>2</sup> *Id.* (to be codified at 17 C.F.R. §240.15c2-8).

<sup>3</sup> *See id.* at 1528.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Securities and Exchange Commission, Securities Offering Reform, Release Nos. 33-8501, 34-50624, 69 Fed. Reg. 67392, 67423 (November 17, 2004).

<sup>8</sup> *See id.* (to be codified at 17 C.F.R. §230.159).

Commission, dated August 24, 2004, with regard to the Proposed Rules Regarding Asset-Backed Securities (File No. S7-21-04) (the "FMR ABS Comment Letter"), "it is imperative that each investor receive detailed information regarding the structure of an ABS transaction and the characteristics of the assets to be securitized in a timeframe that allows the investor an opportunity to analyze meaningfully the information received and to make an informed investment decision." This is often not the current practice in the ABS markets. FMR recommended in the FMR ABS Comment Letter that the Commission require that dealers deliver a preliminary prospectus at least 48 hours prior to sending a confirmation notice, as Rule 15c2-8(b) prescribes for all other securities. FMR supports new Rule 159 and the staff interpretation in the Securities Offering Reform Proposals in seeking to accomplish the objective of making all material information for all securities, including ABS, available to investors prior to the time of sale and the making of an investment decision. FMR applauds the SEC's investor protection efforts in this regard.

B. Disclosure of ABS Informational and Computational Material

On December 22, 2004, as part of the Final ABS Rules, the Commission promulgated a new Rule 167 under the Securities Act.<sup>9</sup> This new rule codifies a series of no-action letters in which the Commission granted relief from the general rule, under Section 5(b)(1) of the Securities Act, which provides that, until a final prospectus is delivered, the only written information that may be provided to a prospective investor must take the form of a preliminary prospectus in accordance with Section 10 of the Securities Act.<sup>10</sup> Under new Rule 167, however, certain ABS informational and computational materials may be provided to investors after the effectiveness of the applicable registration statement, but before the delivery of a final prospectus meeting the requirements of Section 10(a).<sup>11</sup> Under new Rule 426 pursuant to the Securities Act, such ABS informational and computational materials must be filed on Form 8-K by the later of (i) the due date for the filing of the final prospectus relating to the ABS offering or (ii) two business days after first use.<sup>12</sup>

In contrast, under the Securities Offering Reform Proposals, ABS informational and computational materials "would be considered free writing prospectuses, and their use would be conditioned upon satisfying the conditions of proposed Rule 164 and proposed Rule 433."<sup>13</sup> Proposed Rule 433(d) provides that a free writing prospectus should be filed "no later than the date of first use."<sup>14</sup> Accordingly, the Securities Offering Reform Proposals would shift the time of the filing requirement for ABS informational and computational material earlier than under new Rule 426 of the Final ABS Rules so that such essential data would be available to investors sooner. FMR supports this change from the Final ABS Rules. As noted in the FMR ABS Comment Letter:

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<sup>9</sup> 70 Fed. Reg. 1615 (to be codified at 17 C.F.R. §230.167).

<sup>10</sup> *Id.* at 1554.

<sup>11</sup> *See id.* at 1615.

<sup>12</sup> *See id.* at 1616 (to be codified at 17 C.F.R. §230.426).

<sup>13</sup> 69 Fed. Reg. at 67443.

<sup>14</sup> *Id.* at 67473.

[f]rom a principles-based perspective, the objectives of this disclosure are to allow investors to project cash flows and to discount those cash flows at appropriate rates, considering all credit, legal, cash flow and marketability risks of a security. Investors require an appropriate level of information and a sufficient amount of time in order to perform this analysis.

The treatment of ABS informational and computational materials as free writing prospectuses, which would be required to be filed no later than the date of first use, is consistent with the principles-based approach quoted above and would result in better and more timely information to investors.

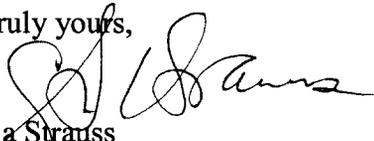
C. Explanation of Impact of Securities Offering Reform Proposals on ABS Markets

The Commission asks in the Securities Offering Reform Proposals whether “it would be helpful for us to explain how any other parts of today’s proposal would apply to ABS offerings.”<sup>15</sup> FMR would encourage the Commission to explain how any other parts of the Securities Offering Reform Proposals apply to the ABS markets and respectfully requests that the Commission provide such clarification in any final rules issued in connection with the Securities Offering Reform Proposals.

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Once again, FMR appreciates the opportunity to comment on the proposed rules regarding the registration, communication and offering processes under the Securities Act. If you or your staff have any questions with regard to our views, please contact me at 603-791-7740 or Nancy Prior, Assistant General Counsel, at 603-791-6308.

Very truly yours,

  
Cynthia Strauss  
Vice President  
Director of Taxable Bond Research

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<sup>15</sup> *Id.* at 67444.