

NEW YORK
CITY BAR

**COMMITTEE ON INVESTMENT
MANAGEMENT REGULATION**

KENNETH J. BERMAN
CHAIR
555 13TH STREET N.W., SUITE 1100E
WASHINGTON, D.C. 20004
Phone: (202) 383-8050
Fax: (202) 383-8118
kjberman@debevoise.com

JOHN G. JEROW
SECRETARY
919 THIRD AVENUE
NEW YORK, NY 10022
Phone: (212) 756-2763
Fax: (212) 593-5955
john.jerow@srz.com

November 7, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1080

Re: File No. S7-35-11
Treatment of Asset-Backed Issuers under the Investment Company Act

Dear Ms. Murphy:

The Committee on Investment Management Regulation of the Association of the Bar of the City of New York (the "Committee") is composed of lawyers with diverse perspectives on investment management issues, including members of law firms, and counsel to financial services firms, investment company complexes and investment advisers. A list of our current members is attached as Annex A.

This letter responds to the request of the Securities and Exchange Commission (the “Commission”) on the Commission’s Release IC-29779 (August 31, 2011) (the “Release”) seeking comments on the possible amendment to Rule 3a-7 under the Investment Company Act of 1940 (the “Investment Company Act”).

The Commission is considering proposing amendments to Rule 3a-7 and is soliciting comment on a number of questions arising out of its apparent concerns that companies investing in securities, particularly equity securities, of issuers relying on Rule 3a-7 (“Rule 3a-7 Issuers”) might themselves more appropriately be regarded as being in the business of investing in “securities”. The Release suggests alternatively that (i) Rule 3a-7 Issuers should be considered investment companies for the limited purpose of the definition of “investment securities” in Section 3(a)(2)(C)(i) of the Investment Company Act or (ii) Rule 3a-7 be recast to provide that a Rule 3a-7 Issuer would be an investment company but would be exempted from the requirements of the Investment Company Act.

Although the Committee expresses no views on the concerns discussed in the Release that holders of securities issued by Rule 3a-7 issuers pose serious status questions under the Investment Company Act or that those questions could not be dealt with otherwise than by amendments to Rule 3a-7, the Committee is concerned that including Rule 3a-7 Issuers within the definition of “investment company” under the Investment Company Act, particularly by means of alternative (ii) above, would pose significant and unwarranted problems for *registered* investment companies under Section 12(d) of the Investment Company Act.

As the Commission and the staff are aware, Section 12(d) imposes individual issuer and aggregate percentage limitations on investments by registered investment companies in securities issued by other investment companies. The legislative concerns underlying the limitations of

Section 12(d) are twofold: (1) the ability of an investment company to exercise undue control and influence over a registered investment company and (2) the pyramiding of management fees and other expenses to the detriment of shareholders of registered investment companies. The Committee submits that neither of these concerns is present in respect of registered investment company investments in Rule 3a-7 Issuers. Thus, the Commission should not treat Rule 3a-7 Issuers as investment companies for purposes of Section 12(d)(1). This would be consistent with the treatment under Sections 12(d)(1)(A) and (B) of issuers excepted from the definition of investment company by virtue of Sections 3(c)(1) and (7).

The Committee therefore suggests that the Commission not inadvertently create a problem for registered investment companies that can be avoided and, with respect to any approach taken to address the status issue, not impose, by virtue of Section 12(d), any constraints on the acquisition by a registered investment company of securities issued by Rule 3a-7 Issuers.

The Committee stands ready to discuss this comment with the Commission staff at its convenience. If we can be of any further assistance in this regard, please do not hesitate to contact the undersigned at (202) 383-8050 or kjberman@debevoise.com.

Very truly yours,

Kenneth J. Berman
Chair,
Committee on Investment
Management Regulation

cc: The Honorable Mary Schapiro, Chairman
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

Eileen Rominger, Director
Division of Investment Management

Annex A

The Committee on Investment Management Regulation

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John E. Baumgardner, Jr
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