Center for
Public Company
Audit Firms
Committed to Audit Quality

American Institute of Certified Public Accountants • Harborside Financial Center, 201 Plaza Three • Jersey City, NJ 07311–388
201.938.3030 • 888.817.3277 • fax 201.521.5436 • www.aicpa.org/cpca

July 29, 2004

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

File No.: S7-21-04
Proposed Rule: Asset-Backed Securities
Release Nos. 33-8419; 34-49644;

Dear Mr. Katz:

The Center for Public Company Audit Firms (the "Center") of the American Institute of Certified Public Accountants ("AICPA") respectfully submits the following written comments on the Securities and Exchange Commission's (the "SEC" or the "Commission") proposed rule *Asset-Backed Securities* (the "Release" or "Proposed Rule").

The Center was established by the AICPA to, among other things, provide a focal point of commitment to the quality of public company audits and provide the Commission and the PCAOB, when appropriate, with comments on its proposals on behalf of Center member firms. The AICPA is the largest professional association of certified public accountants in the United States, with more than 330,000 members in business, industry, public practice, government and education.

We commend the Commission's efforts to address comprehensively the registration, disclosure and reporting requirements for asset-backed securities (ABS) under the Securities Act of 1933 and the Securities Exchange Act of 1934. Overall, we support the issuance of the Proposed Rule. Our comments on certain specific aspects of the Release are presented below.

ALTERNATIVE FINANCIAL REPORTING REGIME FOR ABS ISSUERS

Should the required reporting package for ABS issuers be different than that required for other issuers?

The ABS market has developed without providing investors with audited financial statements of the ABS issuer (i.e., the entity that holds the pool of assets). Instead, ABS issuers file periodic "distribution reports" on Form 8-K providing investors with information regarding the cash flows from the asset pool and related distributions to securities holders. The SEC has proposed to codify this existing practice by requiring distribution reports to be filed using the new Form 10-D. However, the SEC also has proposed that the information provided in the distribution reports must be supplemented by additional disclosures, if necessary, in the Form 10-D and Form 10-K in order to provide all of the information set forth in proposed Item 1119 of Regulation AB.

Given that investors appear to be satisfied with the alternative ABS financial reporting regime in lieu of GAAP basis financial statements, we concur with the SEC's proposed approach to not begin requiring the filing of the financial statements of each ABS issuer. Given that ABS market participants have functioned without audited financial statements, we expect that the costs of mandating the universal presentation of annual or interim financial statements would exceed the benefits. Moreover, we observe that ABS market participants also have functioned without any direct form of assurance from an independent auditor on the financial data presented in the SEC filings of the ABS issuer. In the absence of a market demand for direct attestation to ABS financial data, we also concur with SEC's proposed approach to not begin requiring direct auditor attestation to the financial data filed for each ABS issuer. Instead, we believe that ABS issuers should be encouraged to experiment with alternative forms of financial reporting beyond the minimum proposed requirements. For example, an ABS issuer should be allowed to file GAAP-basis financial statements, which could be full or partial financial statements, and which could be either audited or unaudited, if it so desires. Further, an ABS issuer should be allowed to file an attestation opinion of a registered public accounting firm covering all or part of the financial data filed in the Form 10-K in satisfaction of proposed Item 1119 of Regulation AB. The SEC should also consider a provision that would allow such an examination opinion as to the Item 1119 financial data to be filed as an alternative to an attestation opinion on compliance with specified servicing criteria which, as discussed below under "Reporting Issues," may be difficult in some circumstances. In this manner, financial reporting innovations could respond to any evolution of ABS investor and market needs in the future.

We concur with the SEC's proposed approach that would not require the filing of financial statements of the depositor or servicer. However, the SEC has proposed to require the filing of audited annual financial statements in certain cases related to significant obligors or credit enhancers. It seems anomalous to require annual audited financial statements in these circumstances when financial data presented

related to the aggregate pool of assets would continue not to be required to be subject to any form of direct attestation by an auditor.

AUDITOR INVOLVEMENT WITH SERVICER COMPLIANCE

Would audited financial statements of the ABS issuer or servicer be more useful to an ABS investor than a report on servicing compliance and a related attestation report by a registered public accounting firm?

The SEC has proposed to codify existing practice by requiring the Form 10-K of an ABS issuer to include the attestation opinion of a registered public accounting firm on the service providers' compliance with specified servicing criteria. With respect to any required reporting on compliance in SEC filings, we concur that the acceptable form of report should be limited to an opinion based on an examination performed in accordance with standards of the PCAOB, currently set forth in PCAOB Interim Standard SSAE 10, Chapter 6. We agree that it would not be appropriate for an SEC filing to require or allow the presentation of a report based on the application of agreed-upon procedures. As currently set forth in PCAOB Interim Standard SSAE 10, Chapter 2, a report on agreed-upon procedures does not provide an opinion and its distribution and use are restricted to specified parties.

As proposed, the required auditor involvement with the Form 10-K of an ABS issuer would continue to be the rendering of an opinion on compliance of service providers with specified servicing criteria. Unlike the Form 10-K of any other issuer, the auditor would not attest to the fair presentation of any of the financial data included in the Form 10-K of an ABS issuer. This approach is analogous to an issuer, which is a subsidiary of a public company, filing its unaudited financial statements and the opinion of a registered public accounting firm on the effectiveness of its parent's internal control over financial reporting. In either case, an investor would not be provided independent assurance as to the fair presentation of the financial data presented about the issuer of the registered security. Should the SEC proceed as proposed, we believe that it is important that the SEC's final rule acknowledge that an auditor's opinion on servicing compliance does not provide any form of assurance on the financial data presented in the Form 10-K regarding the asset pool, and investors should not interpret the auditor's association with the filing as providing any assurance as to the fair presentation of the financial data included therein.

We also believe that it is important to remind investors of the extent and limitations of the auditor's involvement. Accordingly, we recommend that the financial data presented in the Form 10-K of an ABS issuer be required to be labeled "unaudited" (absent an examination level attest report from a registered public accounting firm). As an alternative, the SEC could consider requiring the Form 10-K of an ABS issuer to provide prominent disclosure of the limitations of the auditor's attestation opinion on servicing compliance including, among other things, that such an

opinion does not address the fair presentation of any financial data included in the Form 10-K.

SCOPE OF SERVICE COMPLIANCE AT PLATFORM LEVEL VERSUS TRANSACTION LEVEL

Does a "platform" level assessment provide adequate assurances even if no testing was performed at the individual trust level for the particular Form 10-K report? What would be the relative costs of a "transaction" level requirement in relation to the incremental benefits?

We support the adoption of the current industry practice of assessing compliance with servicing criteria on a "platform" level because it is more practical and cost-effective than assessing compliance with respect to the specific ABS transaction. Investors appear to be satisfied with the assessment of compliance at a platform level. We believe that assessing compliance with respect to the particular ABS transaction would be cost prohibitive and would cause a tremendous strain on the resources of the servicer and its auditor. For example, for an issuer involved in multiple securitization transactions, if compliance were required to be evaluated and reported separately for each securitization transaction, the number of assertions and attestation reports, and the related reporting and administrative costs, would increase significantly.

However, in many cases, the assets and activity of a particular ABS transaction may be only a minor aspect of the assets and activity subject to the servicing controls at the platform level. In those circumstances, an ABS investor would be unable to conclude that there was material compliance with the specified servicing criteria during the period with respect to the assets and activity of a particular ABS transaction. Should the Commission proceed as proposed, we believe that it is important that the Commission's final rule acknowledge that an assertion about servicing compliance at a platform level, and the related attestation by the registered public accounting firm, would not necessarily identify material instances of noncompliance with respect to the asset pool underlying the specific ABS transaction.

We also believe that it is important to remind investors of this important limitation of a platform level assessment of compliance by requiring prominent disclosure in the Form 10-K of an ABS issuer. We believe that this disclosure should include the amount of assets subject to servicing at the platform level at the beginning and end of the period covered by the compliance report. In this manner, an investor could understand the significance of the assets of the specific ABS transaction to the scope of the assertion about compliance at the platform level.

When compliance is assessed at a platform level, a material instance of noncompliance with respect to the particular ABS transaction may not affect the

platform level assertion and attestation. Nonetheless, material instances of noncompliance that have been identified with respect to the particular ABS transaction should be reported in its Form 10-K. In our view, a platform level assessment should not allow material noncompliance affecting the specific ABS to remain undisclosed.

STANDARD SERVICING CRITERIA

Are the proposed Standard Servicing Criteria appropriate?

In Regulation AB, the Commission has proposed Standard Servicing Criteria which consist of four broad categories:

- General servicing considerations
- Cash collections and administration
- Investor remittances and reporting
- Pool asset administration

These servicing criteria would replace the use of the Uniform Single Attestation Program ("USAP"), which was designed specifically for the servicing of residential mortgages. Note that USAP is currently the only such generally accepted servicing criteria available to evaluate compliance.

While the Commission's proposed criteria go beyond what is included in USAP, its utilization would be similar in that it would effectively be used for all the various classes of asset backed securities. We are concerned that if Regulation AB is adopted as proposed, it would permanently exclude from the criteria the consideration of the unique characteristics of each of the major classes of asset backed securities (e.g., residential and commercial mortgages, credit card receivables, auto leases and student loans). We recommend that the Commission's proposed criteria be used as an interim measure until such time as the appropriate industry groups can develop the USAP equivalent for each of the major asset classes.

In addition, we recommend that the Commission also consider the unique characteristics of each major asset class in determining disclosure requirements. For example, disclosures regarding residual values are key to understanding an auto lease securitization just as current economic conditions are key to a securitization of credit card receivables. The most meaningful and relevant disclosures will be those that are tailored to the major classes of asset-backed securities. Conversely, if disclosures are not tailored by major asset class, meaningful information may become diluted to the investor as it is presented with information which may not be particularly relevant.

REPORTING ISSUES

What are the practical difficulties of providing an attestation opinion when servicing activities are performed by multiple unaffiliated parties?

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 attestation report 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 assessing party to *accept responsibility* for compliance and for internal control over compliance. Although responsible parties may be willing to assess compliance, we do not believe they will 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 possible 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 every significant component and activity related to the proposed "platform" approach to assessing compliance with the servicing criteria. 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, reports on servicing compliance from all parties who perform any servicing activities that are material to the satisfaction of the servicing criteria, together with the related attestation reports from registered public accounting firms. 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 would 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 about 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 be used in connection with audits of internal control pursuant to Section 404 of the Sarbanes-Oxley Act.

The reporting period for servicing compliance

Under the SEC 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 SEC 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 SEC's proposed approach to reporting servicing compliance, we suggest that the SEC 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 SEC 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 SEC 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 a 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 SEC require those reports to be filed either in a Form 8-K or by an amendment to the ABS issuer's Form 10-K.

TRANSITION PERIOD

Should transition periods with respect to implementation of all or some of the proposals be provided and if so, should there be different transitions proposals for different proposals?

We believe that a reasonable amount of time will be needed to allow ABS issuers

and servicers to adequately comply with the new disclosure, reporting, and attestation requirements. Sufficient time will be needed, for example, to adjust current systems and procedures for obtaining information and to amend contractual arrangements for existing securitizations. Accordingly, we recommend that the SEC consider an implementation date and transition period that will allow enough time to adequately comply with the new rules. In particular, consideration should be given to applying the rules prospectively as it may be difficult to amend contracts for existing securitizations.

We do not believe that the three to six month transition period referred to in the proposed rule would be sufficient to adequately comply with the new requirements. The Commission recommends a three month transition period for compliance with the proposed rules for new registration statements or takedowns off of existing shelf registration statements. With respect to outstanding ABS, the proposal recommends compliance with the Exchange Act proposals beginning with fiscal years ending six months after the effective date. We believe that a considerably longer transition time would be more appropriate, such as for fiscal years ending one to two years after the effective date of the final rules.

* * * * *

The AICPA appreciates the opportunity to comment on the Release. We would be pleased to discuss these comments with you at your convenience.

Sincerely,

Robert J. Kueppers
Chair
Center for Public Company Audit Firms

Jay P. Hartig
Chair
SEC Regulations Committee

cc: Chairman William H. Donaldson
Commissioner Cynthia A Glassman
Commissioner Harvey J. Goldschmid
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Alan L. Beller
Donald T. Nicolaisen