July 16, 2004

By e-mail: rule-comments@sec.gov

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

Re: Proposed Rule: Asset-Backed Securities
Release Nos. 33-8419; 34-49644 (File Number S7-21-04)

Dear Mr. Katz:

Citigroup Global Markets Inc. ("CGMI")[1] appreciates the efforts of the Securities and Exchange Commission (the "SEC" or the "Commission") in drafting a securities framework for the asset backed securities ("ABS") market, as expressed in Release Nos. 33-8419, 34-49644 (the "Release"). We believe that this framework has the potential to enhance greatly the efficiency and efficacy of the ABS market.

This comment letter supplements and supports the comment letters produced by the Committee on Federal Regulation of Securities of the American Bar Association's Section of Business Law (the "ABA Letter"), the Bond Market Association (the "BMA Letter") and the American Securitization Forum (the "ASF Letter", and collectively, the "Industry Letters"). CGMI has participated in the drafting of the Industry Letters and we concur with and support the recommendations made in the Industry Letters, particularly with respect to the issues not addressed by this letter. We also refer you to the comment letter of Citigroup Inc., submitted under separate cover, which addresses the Release from the perspective of an ABS issuer.

CGMI submits this comment letter to highlight certain issues discussed in the Industry Letters which may benefit from additional emphasis and explanation. This comment letter addresses the following issues: (i) synthetic securitizations and the definition of "asset backed security", (ii) ABS informational and computational materials ("ABS Materials"), (iii) static pool data, (iv) market maker prospectuses, (v) Form S-3 eligibility, and (vi) repackaging transactions.

[1] CGMI is affiliated with Citigroup Inc. CGMI is a registered broker-dealer, and together with its affiliates, is a major participant in the securitization markets.

Synthetic Securitizations Should Be Within the Definition of "Asset Backed Security"
We urge the Commission to reconsider the specific exclusion of all "synthetic securitizations" from the definition of "asset backed security". In this context, we refer to the analysis in the BMA Letter that explores various types of synthetic securitizations and convincingly articulates that certain synthetic securitizations should be considered "asset backed securities". While every synthetic securitization may not fit the definition of ABS, to the extent such transactions do, they should be given the benefit of the ABS framework. The categorical exclusion of synthetic securitizations solely based on a nomenclatural convention is arbitrary and would artificially codify distinctions that do not exist in market practice.

As a primary market participant, CGMI would like to emphasize the importance of synthetic securitizations for investors. Because they are an excellent tool for tailoring an investment's characteristics to investors' specific objectives, synthetic securities have become an integral part of the financial markets. We believe that excluding all synthetic securitizations from the definition of ABS would unnecessarily deny ABS investors the benefits available to other market participants.

ABS Informational and Computational Materials
ABS Materials are used as a medium through which to negotiate the terms of new transactions and are not intended to be the final offering document for an ABS issuance. As noted in the original SEC no-action letters,[2] the information contained in ABS Materials can be conveyed orally to investors, but such conveyance would be impractical because of the quantity and complexity of the information required in an ABS transaction. ABS Materials provide a means of facilitating communications with investors; however, these materials are not meant to be prospectuses (within the meaning of Section 10 of the Securities Act of 1933, as amended (the "Securities Act")) or to replace prospectuses. ABS Materials are by their nature incomplete and preliminary. They contain information that will change to reflect changes to the structure and collateral as a result of interactions with investors, and will contain derived information based on hypothetical scenarios requested by investors which may not be reflected in the prospectus. Multiple drafts of ABS Materials may be distributed during the course of a transaction. As ABS Materials are meant to facilitate oral communications with investors, they are subject to subsequent oral communications or agreements and are not meant to reflect every discussion with investors.

Liability under Section 11 and Section 12(b) under the Securities Act is not appropriate for ABS Materials for the reasons stated in the preceding paragraph. As suggested by the Industry Letters and prior industry letters,[3] if ABS Materials are required to be filed, a fraud liability standard for ABS Materials is most appropriate. At a minimum, any final rule with respect to ABS Materials should recognize the incomplete nature of ABS Materials and include a safe harbor for omissions.

Similarly, prohibiting disclaimers which alert investors to the nature of ABS Materials, as described above, is not appropriate. ABS Materials will have omissions, may be preliminary and may not reflect the final information in the prospectus. A prohibition on the use of standard ABS Materials disclaimers may mislead investors as to the nature and purpose of ABS Materials.

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[2] See, Kidder, Peabody Acceptance Corporation I, et al (May 20, 1994), Public Securities Association (February 17, 1995).
[3] See, eg, Letter from The Bond Market Association to Jonathon G. Katz, Secretary, Securities and Exchange Commission, "The Regulation of Securities Offerings (File No. S7-30-98)" (June 30, 1999).

Static Pool Data
We request that the Commission review the standards for static pool information and clarify guidelines as to how and when such information is required to be provided. While the Release references a materiality standard, there is no market standard for materiality in the context of static pool information, either as to content or presentation, and the Release fails to provide guidelines for making such determinations. Until such time as a market standard for materiality has been established, the rules should contain explicit safe harbors for (i) static pool information provided in good faith (as to the selection and presentation of static pool information, the materiality of such information and the availability of such information) and (ii) static pool information omitted in good faith.

Depending on how the Release is interpreted, we note in summary form some of the larger issues involved in providing static pool information:

1) static pool information may not be available or relevant in certain transactions, such as repackaging transactions, securitization of purchased pools or commercial mortgage backed securitizations;
2) static pool information may not be available or relevant for certain parties, such as entities that securitize purchased pools or for repackaging entities; and
3) the amount of data required may be massive and may require a disproportionate amount of space in a prospectus, lending more importance to such information than would be appropriate.

We note that each pool and transaction is different, even when the collateral is substantially similar (with the possible exception of master trust transactions). That the characteristics of a given asset pool will be identical to another pool or exactly reflect overall portfolio characteristics is highly unlikely. The provision of static pool data may encourage and mislead investors into extrapolating past performance into an indication of future performance. While there may be situations in which static pool data is relevant and useful, we are concerned that there may also be situations in which such information will be irrelevant, inaccessible or misleading.

Market Maker Prospectuses
Market maker prospectuses should not be required for ABS transactions.

The policy basis for requiring an updated market maker prospectus is the fear that the affiliation between the issuer/servicer and the broker-dealer would give an unfair advantage to the broker-dealer. However, we believe that the securities laws already provide sufficient safeguards against such fears. Section 10(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules promulgated thereunder prohibit fraud, manipulation and insider trading. Section 15(f) of the Exchange Act specifically requires broker-dealers to establish policies and procedures to prevent the misuse of material nonpublic information by the broker-dealer or any person associated with the broker-dealer.

While the benefit to investors of requiring marker maker prospectuses is questionable, there is a clear disadvantage to investors. An updated prospectus would benefit investors only if (i) it provided material information known to the broker-dealer that was not available to investors, or (ii) the payment date statements which provide periodic performance data were not available to investors. With respect to the former, even if such information were available to the broker-dealer, the broker-dealer would not be permitted to trade on such information. With respect to the latter, payment date statements are made available to investors, often on a monthly basis, by the

trustee or servicer and also are usually available from issuers and third party electronic information providers. On the other hand, requiring market maker prospectuses discourages broker-dealers from engaging in secondary market transactions with respect to the affected securities. To the extent broker-dealers are discouraged from engaging in secondary market transactions, investors are clearly disadvantaged through a reduction in the liquidity of their securities.

Form S-3 Eligibility

Loss of Form S-3 eligibility should (i) be based on breaches in Exchange Act reporting that would materially and adversely affect investors and (ii) penalize only the applicable registrant. For a late filing of a payment date statement, the proposed rules would suspend Form S-3 eligibility, a penalty disproportionate to the offense. The Release ignores corporate law principles of separateness and requires the sponsor and the depositor, and each entity established by the sponsor or depositor, to have complied with all reporting obligations during the prior 12 month period (the "Reporting Requirement") in order to maintain Form S-3 eligibility for new transactions.

Because investors have ready access to comparable, if not identical, information for a vast majority of filed Exchange Act reports, the severe penalty of losing Form S-3 eligibility bears little relationship to the harm caused by late filing. While certain events are material to investors and should be reported by filing (for example, a change in servicers), in the ABS context, filing breaches are most likely to occur in the context of monthly filings of payment date reports. Some registrants may complete three or more transactions a month, and assuming such transactions require monthly payment date statements, would be responsible for 200 or more monthly filings for a given year, even if reporting was suspended as soon as permitted. On the other hand, the number of Exchange Act reports for events that would otherwise be reportable on Form 8-K would likely be few, at best. In practice, under the proposed rules, the loss of Form S-3 eligibility will be based upon the non-material late filing of a payment date report, and would be disproportionately severe to the harm caused to investors.

Consequently, we suggest that the Commission make Form 10-D, as it relates to payment date information, an elective filing. Filing these reports is generally an administrative burden and expense that is not particularly material or helpful to investors. Investors do not rely on the filed reports because most ABS transactions soon cease filing reports, and the same information is made available to investors by the trustee or servicer of the transaction for the life of the transaction. For many transactions, the same information is also available from third party electronic information providers and directly from the issuers (typically through a web site). A Form 10-D, in this context, would not provide any more information to investors than would otherwise be available. If the Commission mandates the filing of Form 10-D with respect to payment date information, then the failure to file such reports should be recognized as a technical or administrative failure and should not result in the loss of Form S-3 eligibility. The proposed loss of eligibility is particularly onerous since the Release fails to provide for a cure mechanism or even a method by which to request a filing extension.

Also, the requirement in proposed Section 239.13(b) that the "depositor or any issuing entity previously established, directly or indirectly, by the sponsor or the depositor" have each fulfilled the Reporting Requirements ignores fundamental corporate law principles. The fact that one corporate entity has failed to make an Exchange Act filing should have no impact on another corporate entity's ability to access to the capital markets, absent factors supporting piercing of the corporate veil.

As a practical matter, the requirement to check every filing (within the prior 12 months) made by every entity established directly or indirectly by the sponsor or the depositor is not feasible for a large financial institution. For example, for an entity like Citigroup Inc., the literal language of this requirement would theoretically necessitate the review of a multitude of subsidiaries and all of their filings for all of their transactions prior to each take-down. For a third party depositor for which Citigroup Inc. would act as sponsor, these rules would create enormous uncertainty because the depositor would not be able to diligence whether Citigroup Inc. and every issuing entity established by Citigroup Inc. had fulfilled their Reporting Requirements. The proposed definitions of "sponsor" and "depositor" only add to the uncertainty and confusion in trying to ascertain compliance. Given the potential loss of Form S-3 eligibility, and the burden, expense and uncertainty of compliance, we believe the proposed rule would have a chilling effect on the public ABS market and make the private placement market a relatively more attractive venue.

Repackaging Transactions

Repackaging Transactions Should Be Separately Addressed in the Rules

Generally, we refer to the BMA Letter with respect to our concerns regarding issues raised by the Release in connection with resecuritization or repackaging transactions. We reiterate the concern raised in the ABA Letter and the BMA Letter that the Release seems to have been written specifically for traditional ABS securities, like mortgage backed securities, and does not seem to have taken into account non-traditional ABS securities, such as repackaging transactions and collateralized debt obligation transactions. We urge the Commission to revisit the proposed rules in light of these concerns and specify which of the provisions should apply or not apply for repackaging transactions.

Cessation of Obligor's Exchange Act Reporting Should Not Affect ABS Securities

We agree with the BMA Letter that in the context of repackaging transactions, the requirement to terminate a transaction upon an underlying obligor's termination of Exchange Act reporting (a "Reporting Event") would likely result in harm to investors. A forced sale may result in depressed pricing for the underlying security and sale at an inopportune moment. In May 2004, CGMI was involved in two transactions that experienced Reporting Events that resulted in the termination of the transactions and the liquidation of the related trusts. Insofar as the underlying bonds remained outstanding and the credit of the underlying obligors was unimpaired, it was difficult for many investors to understand why the Commission would treat a simple repackaging of a security differently from the underlying security itself and why the fact that the underlying obligors had ceased to be reporting companies should result in the termination of the transactions.

In forcing repackaging transactions to terminate, the Commission has taken the decision-making process away from the investors without a concomitant benefit. In CGMI's experience, investors purchase repackaged securities generally as a substitute for investment in the related underlying securities but modified to reflect features that they desire, such as a smaller face amount. Notwithstanding termination of Exchange Act reporting by the underlying obligor, an investor may desire to maintain its investment in the repackaged security. The securities laws do not require holders of non-repackaged securities to sell their securities upon a cessation of the related obligor's Exchange Act reporting; similarly, there should be no requirement for a mandatory sale in the context of a repackaging transaction.

If the Commission believes that termination is required for repackaged securities in this context, CGMI believes that it would be in the best interest of investors to require the repackaging transaction documents to contain a provision requiring a vote of the investors upon an underlying obligor's Reporting Event. Under this proposal, termination of the transaction would be effected by vote of a majority of the investors. Any investor not satisfied with the result of the voting process would have the option to sell its repackaged securities. This requirement would balance the interests of the investors wishing to maintain their ownership in the repackaged securities against the potential harm to investors arising from a lack of Exchange Act reporting.

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CGMI appreciates the opportunity to comment on this important initiative and we hope that our comments will prove helpful to the Commission and its staff. We would welcome any opportunity to discuss with the Commission the Release and the important issues it raises for our businesses. Please do not hesitate to contact us if you have any questions or if we may be of any assistance to you as you consider these issues.

Very truly yours,

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