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Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 5th Street, NW
Washington, D.C. 20549-0609

Asset-Backed Securities
(Release No. 33-8419; 34-49644)
Commission File No. S7-21-04

Dear Mr. Katz:

We are pleased to comment on the Securities and Exchange Commission's (the "Commission" or the "SEC") proposed rule that addresses 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. Our comments and recommendations for the Commission's consideration, which are limited to the basic reporting and disclosure model for ABS and the related auditor involvement, are discussed in detail below.

ALTERNATIVE FINANCIAL REPORTING REGIME FOR ABS 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 Commission has proposed to codify this existing practice by requiring distribution reports to be filed using the new Form 10-D. However, the Commission 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 Commission'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 the Commission'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 Commission also should consider allowing 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. In this manner, financial reporting innovations could respond to any evolution of ABS investor and market needs.

We concur with the Commission's proposed approach that would not require the filing of financial statements of the depositor or servicer. However, the Commission has proposed to require the filing of annual audited 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

The Commission 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 AT Section 601, *Compliance Attestation* (AT 601). 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 AT Section 201, *Agreed-Upon Procedures Engagements*, 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 both cases, 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 Commission proceed as proposed, we believe that it is important that the Commission'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 Commission 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.

THE "RESPONSIBLE PARTY" REGARDING SERVICING COMPLIANCE

Fundamentally, we support the Commission's proposal to address the diversity in practice among ABS issuers involving (1) the servicing criteria used to evaluate compliance, and (2) the scope of the procedures performed by independent auditors related to servicing compliance. The Commission's proposal would require the Form 10-K of an ABS issuer to include: (1) a "responsible party's" report on its assessment of compliance with specified servicing criteria for the period covered by Form 10-K, and (2) a registered public accounting firm's attestation report on that assertion. However, we are concerned that the proposal would be difficult to implement in many circumstances.

In practice, the various servicing functions often are performed by multiple, unaffiliated parties. As proposed, and consistent with AT 601, a single "responsible party" must assess compliance with the servicing criteria and accept responsibility for such compliance, regardless of the number or affiliation of the various parties providing servicing functions. In many cases, we do not believe a single party would be willing to accept responsibility for overall compliance when servicing functions are performed at one or more independent third parties. In those circumstances, even if a single party were willing to accept responsibility for overall compliance, we are concerned that the registered public accounting firm may be unable to render an attestation report under AT 601 due to its inability to examine or test a sufficient portion of the servicing activities performed by independent third parties. That is, by analogy to AU Section

543, *Part of Audit Performed by Other Independent Auditor*, we are concerned whether a single registered public accounting firm would be able to serve as the "principal auditor" for purposes of the compliance examination report.

As an alternative, when multiple parties are involved in performing the servicing functions, we suggest that the Commission allow the Form 10-K for ABS issuers to include those separate parties' assertions of compliance with the relevant servicing criteria, and the related attestation opinions of the respective registered public accounting firms. Under this approach, we would suggest that the certification provided under Item 601 of Regulation S-K also certify that the filed compliance reports, and related attestations, collectively address (1) all of the relevant servicing criteria, and (2) all, or a minimum specified percentage (e.g., 80%), of the ABS issuer's assets. We believe this approach would provide a practical alternative when a single party is unable or unwilling to provide the assertion of compliance, or when a single registered public accounting firm is unable to serve as the "principal auditor" with respect to the servicing compliance attestation.

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.

DOCUMENTATION

We also believe that the Commission should provide guidance about the extent of documentary evidence that should be prepared and maintained by the assessing parties (e.g., the responsible party and any subservicers) to support their assertions about compliance with the specified servicing criteria. We believe that the appropriate standard for such documentation should be similar to that of PCAOB Auditing Standard No. 2.

"PLATFORM LEVEL" SERVICING COMPLIANCE

The Commission has proposed that servicing compliance may be reported at a "platform level" rather than with respect to the specific ABS transaction. The proposed approach recognizes that multiple ABS transactions may be serviced by a single servicer, which may be either a common master servicer or a complex of servicing parties. We believe that the SEC's proposal represents a practical, cost effective approach to reporting on compliance with specified servicing criteria. Moreover, the SEC's proposed approach would codify current practice, with which ABS investors appear to be satisfied.

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.

SPECIFIED SERVICING CRITERIA

In Item 1120(d) of Regulation AB, the Commission has proposed the servicing criteria to be used for purposes of ABS. We observe that this approach differs from that adopted by the SEC in its rules implementing Section 404 of the Sarbanes-Oxley Act. In that case, rather than establishing the requisite criteria by rule or regulation, the Commission required the evaluation of the effectiveness of an issuer's internal control over financial reporting to be made using "a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment." We urge the SEC to adopt a similar approach regarding the servicing criteria for ABS.

In our view, the Commission should encourage the development of servicing criteria in the private sector, which would be recognized for purposes of the Commission's proposed assessment and attestation requirements. We believe that the private sector will be better able to respond to developments in practice and to refine and enhance the servicing criteria in a timely fashion. If the Commission concludes to proceed with its proposal to embody the servicing criteria within Regulation AB, we encourage the Commission to specify within the regulation that it also would be acceptable to use servicing criteria established by a body or group that has followed due-process procedures, including the broad distribution of the criteria for public comment. This would allow those criteria to be promulgated without unduly delaying implementation of the proposed ABS disclosure regime.

MATERIAL NONCOMPLIANCE

In the event of material noncompliance, AT 601 requires the accountant to render either a qualified or adverse opinion. In either case, AT 601 requires the accountant's report to identify material instances in which an entity did not comply with specified criteria. Consistent with AT 601, we believe that material instances of noncompliance also should be identified and disclosed in the responsible party's assertion of compliance with the specified servicing criteria, even if subsequently cured within the reporting period. Further, given their ultimate effect on the assertion of compliance and related attestation opinion, we would endorse the timely disclosure, in either Form 10-D or Form 8-K, of any material instance of noncompliance identified as of an interim date.

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 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.

Conclusion

We support the Commission's effort to bring clarity and consistency to the disclosure requirements for ABS. However, we are concerned that the proposed form of association of auditors with ABS filings may lead to unwarranted reliance by investors given the nature and scope of the auditors' report. An examination of compliance with servicing criteria does not provide assurance regarding the fair presentation of the financial data included in the Form 10-K of the ABS issuer. Further, an examination of compliance at a platform level would not necessarily identify material instances of noncompliance with respect to the asset pool underlying the specific ABS transaction. We hope that the Commission's final rule will bring greater clarity to the intended scope of the involvement of registered public accounting firms with ABS. We hope that our comments and recommendations will assist that effort.

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We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Very truly yours,

Ernst & Young LLP