PricewaterhouseCoopers LLP

July 12, 2004

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

Re: File No. S7-21-04

Dear Mr. Katz:

PricewaterhouseCoopers LLP appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") Proposed Rule: *Asset-Backed Securities.*

We commend the Commission for its proposal to comprehensively address the registration, disclosure and reporting requirements for asset-backed securities ("ABS") issuers under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). Broadly, the objectives of the proposal are to:

- update and clarify the Securities Act registration requirements for ABS offerings,
- consolidate and codify existing interpretive positions that allow modified Exchange Act reporting,
- provide tailored disclosure guidance and requirements for Securities Act and Exchange Act filings involving ABS,
- streamline and codify existing interpretive positions that permit the use of written communications in a registered offering of ABS.

We support the Commission's undertaking to issue new rules to achieve these objectives. We generally support the Commission's approval of the proposed rule subject to our comments below.

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We have several comments that we respectfully submit to the Commission for consideration.

We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that the staff may have. Please do not hesitate to contact Jay P. Hartig (973-236-7248), David M. Lukach (646-471-3150), or Virginia S. Benson (973-236-5422) regarding our submission.

Sincerely,

PricewaterhouseCoopers LLP

Attachment – Responses to specific questions

1. Disclosure Issue

The variety and complexity of asset-backed security offerings has increased in recent years, creating a multi-trillion dollar market. In the current marketplace, ABS offerings can be categorized into six primary asset classes: (1) credit card receivables, (2) automobile loans, (3) residential mortgage loans (including HELOC's and manufactured housing loans), (4) commercial mortgage loans, (5) student loans, and (6) other receivable classes. These six asset classes represent the majority of the U.S. securitization market. We believe that the disclosure requirements included in the proposed rules should be more focused on the unique characteristics applicable to these six specific classes.

We request comment on our proposed principles-based approach for Regulation AB. Should we provide detailed disclosure guides by asset type instead? In evaluating the proposed items in Regulation AB, do the items provide sufficient clarity in identifying the disclosure concept? Should we be more specific (or less specific) regarding any particular items?

Although we support full disclosure of relevant information underlying asset-backed securities, we believe that the Commission should consider providing tailored disclosure guides by major asset type rather than requiring standardized disclosures for all types of ABS. Requiring generic disclosure irrespective of asset class would not consider the unique characteristics of these securities, and could require disclosure of information that is not relevant or may be confusing to investors. For example, proposed Items 1104 and 1110 of Regulation AB require disclosure of static pool data. Static pool information, however, is generally more relevant for certain classes of assets (e.g., mortgage loans) than for others. With respect to credit card receivables, providing delinquency and loss information for the past three fiscal years would generally not be useful data for understanding future trends. Such securitizations are driven by current economic factors, such as unemployment and interest rates, rather than by past trends. Certain statistical information, such as interest rate sensitivity analyses, may be irrelevant to automobile leases (residual values are more meaningful in this case) but would be useful information for mortgage-backed loans. We believe that detailed disclosure guidance by major asset class would be more relevant than general disclosures which cover all types of ABS.

As a comparison, proposed Item 1119 of Regulation AB, Distribution and Pool Performance Information, specifies that the actual disclosures to be provided would need to be tailored to the asset pool and transaction involved. This Item recognizes the variety of asset types that can be securitized and the variety of transaction structures that can be used and therefore a standardized form for the presentation of such information has not been specified. We believe that similar

flexibility should be considered with respect to all disclosure items in Regulation AB.

2. Reporting: Report of Compliance with Servicing Criteria and Accountant's Attestation

Guidance for Evaluating Compliance with Servicing Criteria

Currently, the Uniform Single Attestation Program ("USAP") is the only servicing criteria used to evaluate compliance. USAP was created by the Mortgage Bankers Association of America to be applicable only to the servicing of residential mortgages. The proposed rules attempt to address the unique servicing criteria of asset classes other than residential mortgages by proposing disclosure-based servicing criteria that would form the basis for an assessment and assertion as to material compliance with such criteria, which we believe is appropriate.

The proposed servicing criteria consist of four broad categories: (1) general servicing considerations, (2) cash collection and administration, (3) investor remittances and reporting, and (4) pool asset administration.

We invite comment on whether suitable criteria could be developed by others to meet the objectives of our proposal. Who would develop such criteria? What would be the process in developing such criteria? What would be the timeframe to develop such criteria? Should we provide flexibility in any final requirement that would allow for substitution of alternate suitable criteria that meet certain requirements? What requirements would be appropriate?

We believe that given an appropriate amount of time (in our estimate, one to two years, see Transition Period section of this letter for further discussion), ABS market participants should develop appropriate uniform servicing criteria by asset class. ABS market participants could include the Mortgage Bankers Association with respect to residential and commercial mortgages, and other groups such as the Bond Market Association and the American Securitization Forum. We believe that an approach similar to that provided for in Section 404 of the Sarbanes-Oxley Act of 2002 should be provided for in the final ABS rule. Under Section 404, the Commission specified that management must base its evaluation of the effectiveness of a company's internal control over financial reporting on a suitable, recognized control framework that is established by a body or group that has followed due-process procedures. The Commission acknowledged that the COSO framework satisfies that criteria, but it did not mandate the use of the COSO framework. Similar to Section 404, we believe that suitable servicing criteria should be established by the private sector after following due-process procedures. These criteria would be identified as standards by industry groups for the six abovementioned asset classes. Although we support the Commission's objective of achieving a level of standardization, we believe that the assistance of industry experts is needed to develop criteria that can be applied to each of the six

asset classes noted above. Without further clarification of the minimum servicing standards for the various specific asset classes, the servicing criteria proposed would be subject to interpretation which would be contrary to the goal of achieving standardization.

The Servicing Function

What alternative approaches would be preferable to the proposed single party approach and why? For example, should separate reports be required for all parties that perform the respective criteria? If so, how will an investor have confidence that all criteria have been assessed? Instead, should the responsible party only assess compliance against the criteria it or an affiliate performs and assess compliance with an additional criterion that it has received reports from unaffiliated parties that perform the other criteria? How should exceptions noted in the unaffiliated parties' reports or the inability to obtain reports be treated? Should the Commission specify the type of reporting that unaffiliated parties must use?

If the responsible party must assess material compliance with all of the servicing criteria applicable to the transaction based on a single party approach, the responsible party must therefore place reliance upon information provided by a number of unaffiliated third parties that are involved in the servicing function. The Commission will need to clarify and give further direction on (1) how a responsible party assesses the level of servicing compliance by unaffiliated parties which may not have originally been part of a transaction and (2) over what time period this assessment will cover. The Commission proposes that the responsible party use reasonable means to assess material compliance with servicing criteria for unrelated third parties. Using a "reasonable means" approach can be subject to interpretation and therefore similar circumstances could yield a differing assessment of material compliance.

Definition of Responsible Party

Item 1120 of Regulation AB requires an exhibit to the Form 10-K of a report of the responsible party on an assessment of compliance with the proposed servicing criteria. The report would include the following:

- a statement of the responsible party's responsibility for assessing compliance with the servicing criteria,
- a statement that the responsible party used the servicing criteria to assess compliance,
- the responsible party's assessment of compliance with the servicing criteria as of and for the period ending the end of the fiscal year covered by the Form 10-K report, including disclosure of any material instance of noncompliance identified by the responsible party, and
- a statement that a registered public accounting firm has issued an attestation report on the responsible party's assessment of compliance with the servicing

criteria as of and for the period ending the end of the fiscal year covered by the Form 10-K report.

The proposal defines "responsible party" as one of the following entities: (1) the depositor, if the depositor signs the report on Form 10-K, (2) the servicer, if the servicer signs the report on behalf of the issuing entity, or (3) if multiple servicers are involved in servicing the pool assets, the master servicer. The proposal notes that the definition of who is the "responsible party" should be consistent with who must sign the report on Form 10-K and sign the Section 302 certification required by the Sarbanes-Oxley Act of 2002.

We request comment on our proposed definition of "responsible party." Should any other entities ever be the "responsible party" (e.g., the trustee?) Should one party be required to assess and report on the entire servicing function?

We believe that there should be some flexibility in the definition of responsible party and that in certain transactions there may be multiple responsible parties. The entity that signs the Form 10-K should not necessarily be the responsible party for assessing compliance with the servicing criteria. The responsible party should be the entity that is best able to gather servicing information which generally is, but is not always necessarily, the servicer. In certain circumstances, multiple servicers and/or subservicers may be involved, in which case, an assessment should be made to determine the roles and responsibilities of each of the multiple responsible parties and their related assessments for those functions. In many ABS transactions, multiple servicers are involved as well as a trustee and/or paying agent. All of these parties may be part of the ABS transaction with no one entity as a clear responsible party under the current definition. The determination of who is the responsible party should, as a result, be dependent on the facts and circumstances in each situation.

Level of Reporting

In lieu of a single assessment of compliance at the servicing "platform" level, should separate assessments of compliance be required with respect to each transaction? Does a "platform" level assessment provide adequate assurance 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?

The proposal requires that servicing compliance be determined at a servicing platform level, rather than requiring detailed testing at a transaction-specific level. We support the proposal of testing at the platform level, but believe that the industry groups representing the underlying asset classes need time to develop servicing criteria by asset class (as previously mentioned) to perform relevant platform testing and provide the basis for an attestation.

Servicing agreements generally specify how cash flows generated by the asset pool will be divided, often referred to as the "waterfall." The waterfall specifies the allocation, order, and payment of cash flows. Because of the structuring complexities and variations of ABS transactions, we believe more guidance is needed for the responsible party to verify waterfall calculations and for the external auditor to provide an attestation. Specifically, with respect to the investor remittances and reporting category, does the Commission intend for the responsible party and the external auditor to recalculate the waterfall when it says "… an explicit assessment of compliance with the flow of funds calculations?" (III.D.7.b.vi.)

The Commission should consider that these recalculations could require a significant amount of time and expense by all parties, depending on the complexity of the securitization. In addition, if such recalculations are necessary, the Commission should consider the additional cost compared to the related benefit from such procedures. It should be noted that such recalculations are currently being performed by paying agents or trustees, neither of whom are likely to be determined to be a responsible party under the proposed rule.

Attestation Report on Assessment of Compliance

Based on SSAE No. 10, in order for an accountant to provide an attestation report, the responsible party must state that it is responsible for (1) the entity's compliance with the specified requirements and (2) the effectiveness of the entity's internal control over compliance. The responsible party must accept responsibility for actual compliance by all entities covered by the assessment as well as for the effectiveness of its own internal controls. Given the nature of ABS transactions where there are multiple interdependent parts of a securitization and different roles of multiple unaffiliated service providers, it is imperative that the definition of responsible party in a securitization with multiple unaffiliated service providers be considered and explained in detail in the final rule.

Form of Report

The proposal would require a registered public accounting firm to attest to, and report on, the assessment of compliance with servicing criteria made by the responsible party. This is in lieu of audited financial statements and Section 404 reporting which we agree would not be useful to an ABS investor. While we agree with the SEC's objective of providing a standardized attestation, as stated previously, the lack of servicing criteria for the various asset classes will leave the application of procedures open to interpretation.

We request comment on our proposal. Should the Commission specify the form of reporting required in ABS annual reports? For instance, should certain ABS transactions be allowed to use a form of agreed-upon procedures to fulfill the accountant report requirement of the modified reporting system? If so, why? If any additional reporting by an accountant is required by the transaction agreements,

should we allow or require it to be filed as an exhibit to the Form 10-K or otherwise described?

> We do not believe that ABS transactions should be permitted to use a form of agreed-upon procedures ("AUP") to fulfill the requirement of the accountant's report. In an AUP letter, the parties agree upon the procedures to be performed based upon the specified needs of the user. Therefore, AUP letters vary based on each specific transaction and the stated procedures could not be consistently applied to all asset classes. As a result of the unique agreement between the auditor and the specified user, AUP letters are also not intended to be relied upon or distributed to third parties. The auditor's report must clearly indicate that its use is restricted to the specified user only.

3. Transition Period

The proposal requests comments regarding various issues related to transition to the new requirements:

Should we provide a transition period with respect to the implementation of all or some portion of our proposals? If so, what proposals should be subject to any transition period and would be an appropriate length for any transition period (e.g., 3 months, 6 months)?

Should there be different transition periods for different proposals? In particular, should there be an extended transition period for the proposed assessment and attestation of compliance with servicing criteria?

Are there special considerations we should take into account in providing a transition period with respect to certain issuers, such as foreign ABS, certain asset classes or existing transactions? Should transactions before a certain point be "grandfathered" from the proposals? How should any remaining capacity under existing shelf registration statements be treated?

> We believe that sufficient time is needed to allow ABS issuers and servicers to adequately comply with the new requirements. If the Commission adopts final rules which provide for specific disclosure requirements by major asset class, ABS issuers and servicers will need significant time to:
>
> - allow ABS market participants to develop uniform servicing criteria and appropriate disclosure requirements for each major asset class
> - accumulate the various reports from multiple sub-servicers in a time frame that is accelerated from current practice
> - develop the systems and processes necessary to capture proposed disclosures, such as static pool information

A short transition period, for example 3 to 6 months as referred to in the Commission's questions noted above, would not be sufficient. A process will need to be created to give third party providers time to amend their systems and to coordinate the timing and delivery of information to satisfy the responsible party's requirements. Existing contracts may need to be amended to provide the responsible party with timely access to relevant information and to consider compensation issues for the parties involved resulting from additional efforts to comply with the rules. We recommend that the Commission reconsider its planned implementation date and consider applying the rules prospectively. 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. For new registration statements or shelf registration statements, implementation would be required beginning three months after the effective date. We believe a more appropriate compliance date would be for fiscal years ending one to two years after the effective date.