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September 2, 2008

Florence E. Harmon, Acting Secretary  
Securities and Exchange Commission  
100 F. Street, NE  
Washington, D.C. 20549-1090

Re: File No. S7-18-08

Ladies and Gentlemen:

This letter is in response to the Commission's request for comments on the proposal (the "Proposal") to adopt revised rules relating to replacing rule and form requirements involving asset-backed transactions on Form S-3 under the Securities Act of 1933, as amended (the "1933 Act"), the Securities Exchange Act of 1934, as amended, and the Investment Company Act of 1940, as amended, with alternative requirements as set forth in Release No. 33-8940. The views expressed herein are solely those of the undersigned and are not necessarily those of Kutak Rock LLP.

### **General Observations**

I support the Commission in its effort to revise various of its rules and forms in an attempt to place less of an emphasis on the security ratings by nationally recognized statistical rating organizations ("NRSROs") with respect thereto.<sup>1</sup>

I support a significant majority of the Proposal. However, there are concerns with respect to certain matters in the Proposal set forth in more detail below because it is believed that the stated objectives or the rule and form changes can be substantially obtained using slightly alternative criteria.

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<sup>1</sup> In this regard, I questioned the appropriateness of using ratings by NRSROs in the Commission's rules in our letter dated October 30, 1981 with regard to File No. S7-893.

Florence E. Harmon, Acting Secretary  
Securities and Exchange Commission  
September 2, 2008  
Page 2

**Shelf Registration for Issuers of Asset-Backed Securities**

Form S-3 Eligibility

1. In commenting on Release No. 33-8419 (File Number S7-21-04), I proposed an alternative to the investment grade requirements for the use of Form S-3.<sup>2</sup> The proposal at that time was to use “a minimum denomination test of at least a certain threshold, such as \$100,000.”<sup>3</sup> I continue to believe that a threshold denomination of \$100,000 is appropriate<sup>4</sup> because investors who have at least \$100,000 to invest in all likelihood generally are sophisticated, knowledgeable and experienced persons.<sup>5</sup>
2. It may be appropriate to extend the minimum purchase threshold to resales for at least some period of time. In this regard, it should be noted that a minimum initial denomination security at some point will be paid down to a lesser amount upon the payment or distribution of principal such that at a future date the transfer or sale of the security would be in an amount less than the original denomination. Rather than requiring the investor to either retain the security in order to meet Form S-3 requirements or to acquire additional securities in the market if principal has been paid down, it is proposed that the minimum denomination requirement be eliminated after a period not to exceed six months. This period should be sufficient to ensure that the minimum denomination requirement can not be easily circumvented by the immediate fractionalization of the initial qualifying investment in the secondary market. Also, during this short period the securities should not have been paid down significantly.<sup>6</sup>
3. I do not believe that Form S-3 eligibility should be limited to “qualified institutional buyers” within the meaning of Rule 144A under the 1933 Act or that any other sophistication test is required, since the minimum investment amount threshold discussed above appears to be high enough to ensure adequate sophistication of investors. If the Commission does determine to retain a sophistication test, we feel that institutional “accredited investors” within the meaning of Rule 501(a)(1), (2), (3) or (7) under the 1933 Act could provide sufficient sophistication, however, that would exclude individuals who could otherwise be sophisticated. As a result, it is believed

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<sup>2</sup> See letter from Kutak Rock LLP at <http://www.sec.gov/rules/proposed/s72104.shtml>.

<sup>3</sup> Id at page 4.

<sup>4</sup> I would be opposed to a threshold exceeding \$250,000.

<sup>5</sup> While retail sales of certain classes of asset-backed securities sometimes do occur, I believe that the Commission’s ultimate threshold should be high enough generally to preclude such sales from happening except in the case of only highly sophisticated individuals.

<sup>6</sup> This period should also be long enough to cover the situation where underwriters or initial purchasers may have purchased the securities and may have been unable to successfully re-distribute them before the initial closing of the offering.

**KUTAK ROCK LLP**

Florence E. Harmon, Acting Secretary  
Securities and Exchange Commission  
September 2, 2008  
Page 3

that the Commission should consider exercising its authority under Section 3(a)(54)(C) of the 1934 Act and adopt a new standard that combines the institutional “accredited investor” standard with those of a “qualified investor” while also lowering the minimum investment threshold for a qualified investor to \$5,000,000 for the use of Form S-3.<sup>7</sup>

I also believe that if the QIB test is retained in the proposed Form change, there would be less of an incentive to publicly register asset-backed securities since a QIB offering can be done almost as effectively through a private placement.

Rule 415

1. I believe that Rule 415 under the 1933 Act should be revised to reflect that Rule 415 will be available if Form S-3 is otherwise available for asset-backed securities. In this regard, it does not appear appropriate to differentiate between mortgage-backed securities and other types of asset-backed securities if the offering and issuer are otherwise eligible to use on Form S-3.

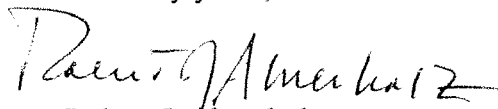
**Investment Company Act – Rule 3a-7**

1. The proposed changes to Rule 3a-7 should conform to the changes adopted with respect to Form S-3.

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I would be glad to discuss any of these suggestions with any member of the staff.

Sincerely yours,



Robert J. Ahrenholz

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<sup>7</sup> Alternatively, Rule 501(a) under the 1933 Act could be revised to add a concept of individuals who have at least \$5,000,000 under investment.