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November 15, 2010

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: File No. S7-24-10

Ladies and Gentlemen:

This letter is in response to the request of the Securities and Exchange Commission (the "Commission") for comments on Rule 15Ga-1, the proposed rule (the "Rule") that would require securitizers of asset-backed securities as defined by Section 3(a)(77) ("Exchange Act-ABS") to disclose fulfilled and unfulfilled repurchase requests across all trusts as set forth in Release Nos. 33-9148, 34-63029 (the "Release").

We support the Commission's effort to implement the asset-backed securities requirements imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"); however we also believe that the draft Rule is both overreaching in its theoretical application to municipal securities and over inclusive in many practical applications.

Asset-Backed Securities and Municipal Securities

In 1975 the Congress amended the Securities Exchange Act of 1934 (the "'34 Act") by adding Section 15B(d) (the "Tower Amendment") to effectively prohibit the SEC from regulating disclosure concerning the issuance of municipal securities, except with respect to the federal anti-fraud rules. And, of course, municipal securities are specifically exempt under both the '34 Act and the registration and prospectus delivery requirements of the Securities Act of 1933.

In the Act, the Congress requires the GFOA to conduct a study of municipal securities and disclosure to evaluate the frequency and quality of municipal disclosure and make recommendations regarding the Tower Amendment. The Senate Committee Report (S. Report 111-176) expressly states: "The Committee believes that to improve investor protection there is merit in considering the revocation of the Tower Amendment, but that this move is significant and deserves a deliberate study before action is taken."

Clearly the Congress believes that SEC regulation of municipal securities is a serious matter not to be taken lightly. This is understandable given the long-standing principles of comity underlying our governmental systems. With that background, it would seem obvious that statutory ambiguities should NOT be resolved in such a manner that the words or spirit of the Tower Amendment is effectively repealed or diminished.

Inasmuch as Section 943 of the Act was enacted to provide investors with information about whether "securitizers" were honoring their obligations to repurchase assets in traditional corporate securitizations, and particularly in light of the Tower Amendment, we believe the Rule should be applicable to only those municipal securities which clearly fall within the Act definitions and intent. In that regard, it is appropriate to consider the structure of various municipal securities vis-à-vis corporate securitizations, for what some characterize as "municipal securitizations" differ dramatically from corporate securitizations and we believe the Rule should recognize those distinctions.

Corporate securitizations (as compared to secured corporate borrowings) involve the deposit of self-liquidating assets in a trust (which is normally a separate entity for securities purposes), which trust then issues securities which represent the right to receive certain levels/priorities of payments from the trust. The depositor/"securitizer" is usually obligated to repurchase/replace assets that do not meet the requisite asset credit tests. Such securitizations are typically "static" structures which do not contemplate or permit post-creation discretionary program administration; in fact, the federal tax laws effectively prohibit that, except on a very limited basis. And investors price such securities based on no discretion in the cash flows administration.

Municipal securities are often payable from specified sources, which sources in some cases could be characterized as "self-liquidating assets." Examples include: (1) street assessment bonds, which are payable from tax liens assessed against residences in neighborhoods; (2) tax increment bonds, payable from the tax increment of area properties; (3) state agency revolving fund bonds, payable from loans made to local municipalities to finance safe drinking water facilities, sewage facilities, roads, or any number of governmental facilities; (4) single family bonds, payable from pledged assets consisting of single family loans to low/moderate income persons, and various investments (i.e., of bond moneys not yet spent on loans, various reserves and collected loan payments); and (5) student loan bonds, payable from pledged assets consisting of federally insured student loans and various investments as in the case of single family bonds. Sometimes such bonds are general obligations of the municipal issuer, whereas other times such bonds are payable only from the pledged assets.

Often such municipal securities have some or many of the following characteristics, which are not found in corporate securitizations:

- The "assets" which ultimately will end up as security for the bonds are not preidentified or prepurchased. Rather, the proceeds from the sale of the bonds are deposited into trust accounts held by the bond trustee and the municipal issuer then requisitions those moneys for the permitted public purpose expenditures, which may be to build or buy a building, resurface a street or buy a loan made to a lower income person or student. In any case, the expenditure must meet certain criteria established by the federal tax laws and state laws.

- The municipal issuer has the authority to use repayments of the assets to redeem bonds, to simply invest those proceeds (within limited criteria), or in some cases to expend the moneys for other public purposes. This is referred to as "recycling."

- The municipal issuer has the right to add or remove assets from the pool of assets which secure the bonds.

- Municipal bonds are often issued in multiple series over long time periods (sometimes decades) under a general "parity" resolution or indenture, quite similar to the first mortgage bonds issued by utilities. All bonds, regardless of their series, are secured on a pari passu basis with all other bonds, which means that all of the cash and other assets held by the bond trustee collectively secure all of the bonds of all series. In the event of cash flow shortages, or a default scenario, the assets would be seized or liquidated by the trustee on behalf of all the bondholders, and all bonds would receive a pro rata share of the proceeds therefrom. In some cases a municipal issuer may have more than 50 series of bonds outstanding under a single resolution or indenture, issued over a period of 20 years or more.

- The municipal issuer has the right to use receipts from any assets, regardless of which series finances them, to redeem bonds of series that did not finance the assets. This is referred to in the industry as "cross-calling." This effectively enables a municipal issuer to use its cash flow to regularly redeem high-cost debt under a parity resolution or indenture.

- The municipal issuer actively administers the cash flow from the pledged "assets", and, as a result, it is routinely the case that after a period of time the amount of assets which are pledged to secure outstanding bonds are substantially in excess of the par value of the bonds which they secure.

If it is determined to apply the Rule to municipal securities, we would suggest that any of the foregoing attributes should exempt such securities from being treated as "asset-backed securities" under the Rule.

In such municipal financings the issuer has certain types of obligations to repurchase or replace assets, which obligations are not typically found in corporate securitizations. These further distinguish municipal securities from corporate asset securitizations, and if they were required to be reported would probably create confusion among investors seeking information about repurchase obligations arising from corporate securitization obligations. These include:

- A municipal issuer must represent that any pledged assets are assets that comport with state law restrictions applicable to the public purposes of the issuer; by law an issuer must repurchase/replace any such assets that do not.

- Municipal issuers must also comply with certain tax requirements set forth in the Internal Revenue Code with respect to the issuance of municipal securities and the use of bond proceeds. If such proceeds are used to finance assets like loans, and the loans fail to meet the tax rules, the issuer must replace/repurchase the asset (or cause it to be replaced). If a third party originates the asset, then the issuer generally requires that it be repurchased/replaced. Usually, it is the municipal entity that enforces any such covenant to repurchase or replace an asset.

If municipal securities are subjected to the Rule, it is our suggestion that the Rule be clarified to exclude any of the foregoing repurchase obligations related to compliance with state law public purpose or Internal Revenue Code requirements, which seem to clearly be beyond the purposes of the Rule.

Additionally, Section 943 of the Act utilizes the Exchange Act-ABS definition, which includes securities collateralized by self-liquidating financial assets that allow the holder of the security to receive payments that depend "primarily on cash flow from the asset." It is unclear whether this "dependence" test would encompass a municipal security that is secured by the revenues of the asset but also backed by the general obligation of the municipal issuer. We would suggest that the Rule be clarified to exclude municipal securities secured by the municipal issuer's general obligation (i) from the representation and warranty repurchase disclosure requirement and (ii) from the Exchange Act-ABS definition.

Administration of Rule 15Ga-1

Edgar Filings. The Rule requires Form ABS-15G to be filed on EDGAR. Purchasers of municipal securities are accustomed to finding information relating to municipal securities on the Municipal Securities Rulemaking Board Electronic Municipal Market Access (EMMA). If municipal securities are subjected to the Rule, we would suggest requiring any filings required of a municipal issuer to be made on EMMA in order to have a uniform depository for municipal security information.

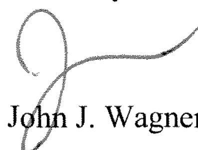
Five-Year Look Back and Monthly Reporting Requirements. The Commission has proposed securitizers look back five years in their initial disclosures and then continue to submit Form ABS-15G on a monthly basis thereafter. Many municipal issuers rely on paper files and do not have the technology or the staff to cost effectively sort through historical files and continue reporting on a monthly basis. If municipal securities are subjected to the Rule, we suggest exempting municipal issuers from the five-year look back requirement and requiring annual reporting thereafter (comporting with their annual financial reporting cycle).

Many municipal securities program utilize third party agents to make/service various types of loans. Often these are small rural or community banks or non-profit organizations. If such municipal securities programs are subjected to the Rule, due to the costs involved (which adversely affect the ability of the issuer to achieve the public purposes of such programs), we also suggest implementing a de minimis rule with regard to such small parties. We seriously doubt the drafters of the Act expected it to be applied to a small community bank or non-profit organization which originates a dozen $5,000 residential energy rehab loans to lower income persons in a targeted area, and sells them to a local improvement agency.

Principles of comity should be applied with respect to municipal issuers. Municipal issuers are created by state law to carry out public purposes of the state. The importance of these public purposes has been recognized by Congress in the application of the Internal Revenue Code, which also serves to highly regulate tax-exempt municipal securities. Any additional requirements imposed on municipal issuers restricts their ability to carry out their public purposes and are especially burdensome due to the limited expense reimbursements allowed to municipal securities under the Internal Revenue Code. Municipal issuers cannot easily absorb additional costs nor can they easily pass the cost along to those individuals being served by the municipal programs being financed.

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

Sincerely,



John J. Wagner