Bond Dealers of America
Council of Infrastructure Financing Authorities
Education Finance Council
Government Finance Officers Association
National Association of Counties
National Association of Health and Educational Facilities Authorities
National Association of Independent Public Financial Advisors
National Association of Local Housing Finance Agencies
National Association of State Auditors, Comptrollers and Treasurers
National Association of State Treasurers
National Council of State Housing Agencies
National League of Cities
Securities Industry and Financial Markets Association
U.S. Conference of Mayors

November 15, 2010

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: File Numbers S7-24-10 and S7-26-10

Dear Ms. Murphy:

The groups listed above appreciate the opportunity to comment on the SEC's proposed regulations on asset backed securities (S7-24-10 and S7-26-10). These organizations represent many segments of the municipal securities market – state and local governments and entities that issue municipal securities, the broker/dealer community, and financial advisors. Additionally, these organizations strongly support and encourage the SEC to carefully review the comments being submitted by the National Association of Bond Lawyers.

Summary of Comments

A summary of our views expressed in this letter are as follows:

- Municipal securities should be excluded from the definition of ABS and the proposed regulatory scheme.
- There is no evidence that Congress intended the SEC to adopt regulations pursuant to the *Dodd-Frank Wall Street Reform And Consumer Protection Act (Dodd-Frank Act)* that would encompass municipal securities.
- Section 941(b) of the *Dodd-Frank Act* directs the SEC to provide municipal securities a "total or partial exemption" from the ABS risk retention and

disclosure provisions, as a direction that existing categories of municipal securities would not be affected by those requirements.

- The proposal would partially repeal the Tower Amendment.
- The proposed action is inconsistent with and in direct conflict with the Subtitle H requirement of the *Dodd-Frank Act* mandating a GAO study be completed on municipal securities disclosure, which was clearly intended to provide a factual basis for consideration of these matters.
- Municipal securities are very different financial products from ABS.
- None of the requirements of the proposed Rules may be meaningfully applied to the securities of municipal issuers.
- Unlike the special purpose entities that issue ABS, municipal housing, student loan and conduit issuers often supplement underlying asset cash flows with other sources of payment and typically retain substantial programmatic responsibilities.
- Market participants do not identify or consider municipal securities as substantially similar to ABS.
- There is no evidence that Congress intended to expand Section 7 of the 1933 Act and Section 15(d) of the 1934 Act.

Our organizations are vitally interested in the Rules proposed by the SEC on asset backed securities (ABS), and share a deep, common concern that the SEC is proposing to include municipal securities as part of the ABS definition and regulatory scheme. We strongly believe that the SEC should specifically exclude municipal securities in this definition for a host of reasons, including clear Congressional intent and other securities laws provisions, and the existence of a separate regulatory program for municipal securities. Municipal securities were not among the pooled securities identified as the cause of the financial problems that Subtitle D of the *Dodd-Frank Act* was designed to address. The Commission should focus on these problem areas and not overreach in this manner to sectors where separate reviews are already authorized in the *Dodd-Frank Act*.

Municipal securities are very different financial products from ABS. The majority of municipal securities are not dependent on, or are not solely dependent on, a pool of financial assets. Those municipal issuers who do issue pooled securities may include municipal bond banks and some health, education, infrastructure and environmental facilities issuers (including state revolving funds for water and sewer facilities, a program managed by the U.S. Environmental Protection Agency). None of the requirements of the proposed Rules may be meaningfully or usefully applied to the securities of such issuers. Even housing and student loan issuers are readily distinguishable from ABS issuers in that they typically exercise active managerial control over their portfolios in order to maintain their ability to realize the goals of their public purpose programs. Moreover, such management is based upon substantive federal and state programmatic requirements. Further, and fundamentally, efforts by the SEC to include municipal securities within the ABS definition clearly violate both the tenets of federalism and the Tower Amendment, which expressly prohibits the SEC from requiring municipal securities issuers to file with the SEC or MSRB documents prior to the sale of securities.

The overly-broad and open-ended definition of ABS that is presumed in the SEC's proposed regulations would appear to require a wide range of municipal securities to be inappropriately treated as ABS and thereby subjected to a number of new – and unnecessary - regulatory restrictions and burdens. In its Releases, the SEC assumes as settled the conclusion that an undefined number of existing categories of municipal securities may be ABS. We feel strongly that this is an unfounded and inappropriate interpretation of the law. Section 941 of the *Dodd-Frank Act* limits the universe of statutory "asset-backed securities" to securities collateralized by, and primarily dependent for payment on cash flow from self-liquidating financial assets to specified well-recognized types of ABS and to other such securities that the Commission "**by rule, determines to be an asset-backed security**." There is no evidence that Congress intended to authorize such a determination to be made unless a security was **not only** payable from self-liquidating financial assets, **but also** otherwise similar in material respects to the specified types of ABS. If the SEC believes that there is a class of municipal security that should appropriately be treated as an ABS, it must still make an **express** determination by Rule to that effect before general Rules applicable to ABS would apply. Of course, no such determination has been made with respect to any municipal securities. The SEC cannot simply assume that ABS must or may include some municipal securities and leave municipal issuers at risk if they fail to conform to ABS requirements. Indeed, the SEC recognizes that it is unclear exactly to what extent municipal securities may be implicated by the Rule.

Furthermore, no such determination should be made with respect to conventional municipal securities. Any such determination would have to take into account a number of facts that distinguish such securities from the ABS types specified in Section 941. Most municipal securities are not secured by pooled financial assets. In addition, unlike the special purpose entities that issue ABS, municipal housing, student loan and conduit issuers often supplement underlying asset cash flows with other sources of payment and typically retain substantial programmatic responsibilities. Moreover, municipal securities and ABS are sold in different markets. Market participants do not identify or consider municipal securities as substantially similar to ABS, and the distinction between these two classes of securities is amply validated by the divergent experiences of ABS and municipal securities holders during the financial crisis that gave rise to the *Dodd-Frank Act*.

We respectfully assert that there is no evidence that Congress intended to expand Section 7 of the 1933 Act and Section 15(d) of the 1934 Act, which currently apply only to securities issued by passive special purpose entities, to municipal securities. We are aware of no evidence to support, and there has been no determination by Congress or the SEC that municipal disclosure is currently deficient as to the limited incidence of noncomplying pooled municipal securities assets. The SEC's failure to consider these differences is reflected in the fact that its proposed Rules would require municipal issuers to make filings under the SEC's EDGAR System rather than the MSRB's EMMA System, which has been developed specifically for municipal securities filings and which is universally utilized by municipal securities issuers and investors.

The SEC's assumption that existing forms of municipal securities are ABS appears to rest heavily upon a single citation **[**October 4, Release, at ft nt 17**].** We believe this citation is misapplied since it relates to a discussion of the appropriateness of characterizing some municipal securities as "structured" securities. Structured securities, and ABS are overlapping, but not identical, classes.

Congress intended the language added in conference to Section 941(b), (as noted on page 872 of the *Dodd-Frank Wall Street Reform And Consumer Protection Act Conference Report* and page 9 of the *Joint Explanatory Statement Of The Committee Of Conference*), to direct the SEC to provide municipal securities a "total or partial exemption" from the ABS risk retention and disclosure provisions of Subtitle D, as a direction that existing categories of municipal securities would not be affected by those requirements. Unfortunately, the SEC's proposed regulations do not recognize this important matter of congressional intent with regard to municipal securities. Furthermore, there is no public interest to apply new ABS risk retention and disclosure rules to municipal securities. It seems far more likely that the opposite may occur – such action could significantly disrupt the municipal securities market, and place new and costly mandates on state and local governments and authorities, with no benefit to investors or the market.

This proposal, in effect, attempts to partially repeal the Tower Amendment by requiring municipal securities issuers to file specific information in a specific document format through the SEC's EDGAR system prior to accessing the municipal market. The law of federal statutory construction disfavors such repeal by implication, and clear Congressional intent to repeal is required. The proposed action is also inconsistent with and in direct conflict with the Subtitle H requirement of the *Dodd-Frank Act* mandating a GAO study be completed on municipal securities disclosure, which was clearly intended to provide a factual basis for consideration of these matters. Indeed, the SEC itself is currently engaged in a hearing process on municipal securities disclosure. Even proponents of more extensive SEC regulation recognize that ABS regulation is the wrong forum and approach to municipal securities disclosure issues (please see the comments submitted by the Investment Company Institute). Any SEC action to apply regulations through the authority presented in Section 941 on municipal securities conflicts with that found in Subtitle H. Therefore, <u>any</u> SEC action on municipal securities should be delayed until after the GAO study is completed and Congressional action, if any, is taken under the appropriate subtitle of the law.

Any actions by the SEC to include municipal securities within the ABS definition would mark a significant departure from **all** prior regulatory initiatives on ABS, where municipal securities were not included. We believe that Congress did not intend, without hearings or testimony, through an ambiguous provision added in Conference, to overturn the Tower Amendment and allow the SEC to have such authority over state and local government issuers of municipal securities. **Such an effort would be an unprecedented breach of the basic principles of federalism.** But, in this rulemaking, without prior notice or known consultation, the SEC asserts significant authority over municipal securities, with filing and perhaps other requirements (although the notice indicates that the SEC itself is unclear about the scope of its proposal regarding municipal securities).

Such a significant regulatory departure should not be undertaken without **clear and explicit** Congressional direction, which does not currently exist.

We would appreciate the opportunity to discuss this matter in greater detail with the Commission as it reviews these and other Rules that affect municipal securities.

Sincerely,

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