

COMMENT LETTER

November 15, 2010

ICI Comment Letter on SEC Proposals to Enhance Disclosure for Asset-Backed Securities (pdf)

November 15, 2010 Ms. Elizabeth M. Murphy Secretary Securities and Exchange Commission 100 F Street, N.E. Washington, D.C. 20549 Re: Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (File No. S7-24-10) and Issuer Review of Assets in Offerings of Asset-Backed Securities (File No. S7-26-10) Dear Ms. Murphy: The Investment Company Institute¹ supports the Securities and Exchange Commission's proposals to improve disclosure for asset-backed securities ("ABS").² The proposals, required under Sections 932, 943, and 945 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), would generally require an ABS issuer to perform a review of the assets underlying the ABS, disclose the nature, findings, and conclusions of its review, and disclose the findings and conclusions of any third-party review. The proposals also would require securitizers to disclose fulfilled and unfulfilled repurchase requests and nationally recognized statistical rating organizations ("NRSROs") to disclose information regarding representations, warranties, and enforcement mechanisms available to investors in ABS. As purchasers of ABS, funds devote substantial time and resources to analyzing offerings of these securities. The proposed disclosure provisions should enable funds to more accurately assess the risks of an ABS. We are concerned, however, about the inclusion of certain municipal securities within 1 The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.05 trillion and serve over 90 million shareholders. 2 See SEC Release No. 33-9150 (October 13, 2010), 75 FR 64182 (October 19, 2010), available at <http://www.sec.gov/rules/proposed/2010/33-9150.pdf> and SEC Release No. 33-9148 (October 4, 2010), 75 FR 62718 (October 13, 2010), available at <http://www.sec.gov/rules/proposed/2010/33-9148.pdf>. Ms. Elizabeth M. Murphy November 15, 2010 Page 2 of 4 the scope of the proposals, and recommend that they be excluded until completion of other studies on municipal securities disclosure. I. Improvements to ABS Disclosure The Institute believes the Commission's proposals would help address the inadequacy of the current disclosure regime for ABS, particularly in light of the increasing complexity and innovation in the ABS market.³ The proposals would provide investors with critical information regarding an ABS issuer's review and a third-party review of the assets underlying an ABS and should provide investors with a greater understanding of the quality

and extent of the issuer's review of the assets, and inclusions of assets, in an underlying pool. Disclosure of the findings and conclusions of both the issuer and a third-party reviewer would be necessary to ensure that investors are privy to this information regardless of who performs the review. In addition, monthly disclosure regarding fulfilled and unfulfilled repurchase requests should assist investors in timely identifying asset originators with clear underwriting deficiencies. Together, these proposed disclosures would improve an investor's ability to thoroughly analyze and compare the quality and risks of an ABS offering at inception and over the life of the transaction.

II. Improvements to NRSRO Disclosure

The Institute supports the proposed disclosure enhancements to NRSROs' credit ratings reports. Ratings reports are one of the tools used by funds to assess the quality and risks of ABS. The proposed disclosure would require identification of certain contractual provisions provided in an ABS offering that aid investor protection (i.e., representations, warranties, and enforcement mechanisms) and should facilitate an investor's understanding of available remedies for a breach. The additional requirement for NRSROs to produce information regarding issuances of similar securities would further enhance the value of this information for investors by allowing them to readily compare various transactions involving the same asset class or similar asset class. Having the contractual information and the information regarding similar securities available at a single source – the NRSRO report – would better protect investors by facilitating their ability to analyze an ABS offering.⁴ Finally, including pre-sale reports within the scope of the proposal would ensure that investors are provided with this important information prior to making an investment decision.

3 See, e.g., Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated August 2, 2010 ("August ABS Letter"). 4 We do not believe that NRSROs should be permitted to satisfy the proposed disclosure requirement by referring to disclosure in a prospectus prepared by an issuer. We believe the utility of the contractual information to investors is enhanced by its placement in a ratings report alongside information about similar securities. Ms. Elizabeth M. Murphy November 15, 2010 Page 3 of 4

III. Scope of Definition of ABS

As modified by the Dodd-Frank Act, the definition of ABS used in the Commission's proposals would impose ABS disclosure requirements on a small segment of the municipal securities market.⁵ The Institute has repeatedly sought improvements to municipal securities disclosure.⁶ We urge the Commission, however, to take a holistic approach to such disclosure. We are concerned that a piecemeal approach to municipal securities disclosure would have the unintended effect of creating confusion for investors and issuers alike because different classes of municipal securities would be subject to different disclosure requirements. Instead, we recommend that the Commission expressly exclude municipal securities from the scope of the proposals and wait for the results from its field hearings with municipal market participants,⁷ as well as the GAO studies on municipal securities mandated by the Dodd-Frank Act, before determining whether to apply the ABS disclosure requirements to a small piece of the municipal securities market.⁸ We believe this approach would be consistent with the guidance provided by the Dodd-Frank Act conference committee when it stated that, "Regulators also are required to issue total or partial exemptions from risk-retention and disclosure requirements for municipal securities and for securitizations of assets issued or guaranteed by federal agencies, as long as the exemption is in the public interest and for the protection of investors."⁹

5 The Dodd-Frank Act defines the term "asset-backed security" very broadly to mean "a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset." We believe this definition could include, among other securities, student housing and mortgage bonds, note pools, bond-bank issuances, and any revolving

loan fund. 6 See, e.g., Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated September 8, 2009. 7 See SEC Sets Field Hearings on State of Municipal Securities Market, SEC press release 2010-164, September 7, 2010, available at <http://www.sec.gov/news/press/2010/2010-164.htm>. 8 For the reasons stated in our August ABS Letter, we do not think municipal tender option bonds or asset-backed commercial paper should be subject to the proposed disclosure requirements. See August ABS Letter, *supra* note 3. See also, Letter from Council of Infrastructure Financing Authorities, Education Finance Council, Government Finance Officers Association, National Association of Bond Lawyers, National Association of Counties, National Association of Health and Educational Facilities Authorities, National Association of Local Housing Finance Agencies, National Association of State Treasurers, National Council of State Housing Agencies, National League of Cities, Regional Bond Dealers Association, Securities Industry and Financial Markets Association, and U.S. Conference of Mayors, to Senator Christopher Dodd (D- CT) and Congressman Barney Frank (D-MA), dated June 21, 2010 (stating that exempting municipal securities from the definition of ABS is sound public policy and consistent with current Commission definitions set forth under Regulation AB). 9 See Joint Explanatory Statement of The Committee of Conference, Dodd-Frank Act, available at http://docs.house.gov/rules/finserv/111_hr4173_finsrvcrjes.pdf. Ms. Elizabeth M. Murphy November 15, 2010 Page 4 of 4 * * * * * If you have any questions on our comment letter, please feel free to contact me directly at (202) 326-5815, Heather Traeger at (202) 326-5920, or Ari Burstein at (202) 371-5408. Sincerely, /s/ Karrie McMillan Karrie McMillan General Counsel cc: The Honorable Mary L. Schapiro The Honorable Kathleen L. Casey The Honorable Elisse B. Walter The Honorable Luis A. Aguilar The Honorable Troy A. Paredes Meredith Cross, Director Paula Dubberly, Deputy Director Division of Corporation Finance Robert W. Cook, Director Martha Mahan Haines, Chief, Office of Municipal Securities Division of Trading and Markets