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November 19, 2010

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Nos. S7-24-10 and S7-26-10

(NABL Comments on SEC Rel. Nos. 33-9148, 34-63029, 33-9150, and 34-63091)

Dear Ms. Murphy:

The National Association of Bond Lawyers ("NABL") respectfully submits the enclosed response to the Securities and Exchange Commission ("SEC") solicitation of comments related to the releases cited above regarding asset-backed securities. The comments were prepared by an ad hoc subcommittee of the NABL Securities Law and Disclosure Committee comprised of those individuals listed on Exhibit I and were approved by the NABL Board of Directors.

NABL exists to promote the integrity of the municipal securities market by advancing the understanding of and compliance with the law affecting public finance. A professional association incorporated in 1979, NABL has approximately 3,000 members and is headquartered in Washington, D.C.

If you have any questions concerning this submission, please feel free to contact me directly at (202) 682-1495 (jmcnally@hawkins.com) or Teri M. Guarnaccia at (410) 528-5526 (guarnacciat@ballardspahr.com).

We thank you in advance for your consideration of these comments.

Sincerely,

John M. McNally
President

National Association *of* Bond Lawyers

COMMENTS OF THE NATIONAL ASSOCIATION OF BOND LAWYERS

REGARDING

SECURITIES AND EXCHANGE COMMISSION
RELEASE NOS. 33-9148; 34-63029, FILE NO. S7-24-10
DISCLOSURE FOR ASSET-BACKED SECURITIES
REQUIRED BY SECTION 943 OF THE DODD-FRANK WALL STREET REFORM
AND CONSUMER PROTECTION ACT

AND

SECURITIES AND EXCHANGE COMMISSION
RELEASE NOS. 33-9150; 34-63091, FILE NO. S7-26-10
ISSUER REVIEW OF ASSETS IN OFFERINGS OF ASSET-BACKED SECURITIES

The following comments are submitted to the Securities and Exchange Commission ("SEC") by the National Association of Bond Lawyers ("NABL") relating to SEC Release Nos. 33-9148; 34-63029, dated October 4, 2010 (the "October 4th Release") and Release Nos. 33-9150; 34-63091, dated October 13, 2010 (the "October 13th Release" and, together with the October 4th Release, the "Releases"). The comments were prepared by an ad hoc subcommittee of the NABL Securities Law and Disclosure Committee comprised of those individuals listed on Exhibit I and were approved by the NABL Board of Directors.

The October 4th Release requests comments on proposed Rule 15Ga-1 [17 CFR § 240.15Ga-1] and proposed Rule 17g-7 [17 CFR § 240.17g-7] (collectively, the "October 4th Proposed Rules") by the SEC proposed to implement Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") relating to representations and warranties in asset-backed securities ("ABS") offerings.

The October 13th Release requests comments on, among other things, proposed Rule 15Ga-2 [17 CFR § 240.15Ga-2] by the SEC issued pursuant to Section 932 of the Act to implement Section 15E(s)(4)(A) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), requiring that issuers and underwriters of ABS file a disclosure form relating to the findings and conclusions of third-party due diligence providers (the "October 13th Proposed Rule" and together with the October 4th Proposed Rules, the "Proposed Rules").

NABL appreciates the opportunity to respond to the request for comment by the SEC. We have attached as Appendix A our responses to certain of the particular questions posed by the October 4th Release, and we have attached as Appendix B our responses to certain of the particular questions posed by the October 13th Release. We have fundamental concerns, however, with the Proposed Rules as they apply to the municipal securities market. Despite such concerns, we have responded to most of the questions raised in the Releases. These responses are best viewed as our attempt to educate and inform the SEC staff regarding the unique nature

of the municipal market and why the application of the Proposed Rules to municipal securities is unnecessary and inappropriate. The responses should in no sense be understood to minimize our fundamental concerns that the Proposed Rules are contrary to existing law and Congressional intent.

Violation of Existing Law

Section 15B(d)(1) of the Exchange Act (the "Tower Amendment") prohibits the SEC, by rule or regulation, to require any issuer of municipal securities, directly or indirectly, to file with the SEC prior to the sale of such securities any document in connection with the issuance, sale, or distribution of such securities. Proposed Rule 15Ga-1, by requiring a municipal issuer to file with the SEC the requested disclosures "at the time the securitizer, or an affiliate commences its first offering of the asset-backed securities,"[1] and proposed Rule 15Ga-2, by requiring a municipal issuer of any Exchange Act-ABS (as defined in Appendix A) to file the requested disclosures "five business days prior to the first sale in the offering,"[2] each violates the Tower Amendment. The Act does not purport to repeal or modify the Tower Amendment, and well established rules of federal statutory construction do not favor repeal by implication and provide that it is not to be inferred.[3]

Absence of Statutory Precondition

The municipal securities markets did not experience the failures or defaults and municipal investors have not experienced the losses that led to the remediation provisions of the Act pertaining to Exchange Act-ABS (defined in Appendix A). To the extent they arise at all, obligations to repurchase or replace an underlying asset for most municipal issuers stem from noncompliance with federal tax law, federal program requirements to secure federal insurance or guaranties or other federal requirements, rather than a failure to comply with underwriting standards, which is what the relevant provisions of the Act seek to address. Section 3(a)(77)(A)(vi) of the Exchange Act, as added by Section 941 of the Act, only permits the SEC to expand the statutory category of "asset-backed securities" by rule if the SEC determines that to do so will further the purposes of Section 941, namely to prevent a repetition of the deficient underlying asset underwriting abuses that contributed to the recent financial crises. Such a determination has not been made, and on the basis of historical performance cannot be made, with respect to municipal securities.

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1 Rule 15Ga-1(c)(1).

2 Rule 15Ga-2(a).

3 *See Morton v. Mancari*, 417 U.S. 535, 551 (1974). *See also Traynor v. Turnage*, 485 U.S. 535, 547-548 (1988), *Pittsburgh & Lake Erie R.R. v. Railway Labor Executives' Ass'n*, 491 U.S. 490, 509 (1989), *Branch et. al. v. Smith*, 538 U.S. 254, 273 (2003) and *Granholm v. Heald*, 544 U.S. 460 (2005) (a strong presumption against repeals by implication is well supported by United States Supreme Court precedent).

In addition, the Proposed Rules do not clearly exclude from their requirements numerous categories of municipal securities to which they clearly would have no application (e.g., municipal bond banks, health, education, infrastructure and environmental facilities issuers).

Further, the October 13th Proposed Rule should be limited to the subject matter of the Section in which the requirements for Section 15E(s)(4)(A) appear, namely the rating agency process. The October 13th Proposed Rule should make clear that the third-party reports to be made publicly available are limited to due diligence reports reviewed by a rating agency in connection with the assignment of a rating to Exchange Act-ABS.

Contrary to Congressional Intent

Section 976 of the Act directs the Comptroller General of the United States to make recommendations, not later than 24 months after the date of enactment of the Act, relating to disclosure requirements for municipal issuers, "including the advisability of the repeal or retention of section 15B(d) of the Securities Exchange Act of 1934." Unambiguously, Congress did not intend the Act to repeal the Tower Amendment. Rather, Congress wanted the benefit of a careful study as to the advisability of any such repeal. Any proposed rules that on their face are inconsistent with Section 15B(d)(1) are both in violation of the law and in flagrant disregard of the clear Congressional intent.

Premature Proposed Rules

We recognize that the SEC was operating pursuant to a statutory deadline of 180 days to propose rules under Sections 943 and 945 and a portion of Section 932 of the Act. Nevertheless, any such proposal that precedes whatever guidance the SEC provides subsequently under Section 941 of the Act is premature and we submit would be ill-advised. Section 941 does not require any municipal securities to be determined to be ABS, and, in our view, no municipal securities that are similar to those currently in the market were intended to be, or should be, so determined. Section 941 expressly provides that any regulations "shall . . . provide for . . . a total or partial exemption" for any ABS that is a municipal security. In addition, the market needs guidance as to what is intended by new Section 3(a)(77) of the Exchange Act. For example, what is the scope of "self-liquidating financial asset"? What is intended by "payments that depend primarily on cash flow"? What conclusions will the SEC reach regarding establishing a "total or partial exemption" for municipal securities? Until these fundamental issues are addressed, it is premature to propose regulations that would apply to municipal issuers.

EMMA and EDGAR

Municipal investors look to the Electronic Municipal Market Access ("EMMA") system for disclosure by municipal issuers, and the SEC has encouraged the development and expansion of EMMA. The requirement under the Proposed Rules for municipal issuers to file with the SEC on EDGAR is unnecessarily duplicative and complicated for issuers and confusing to municipal investors.

Appendix A

Certain questions posed by the October 4th Release and NABL's responses follows.

1. Is it clear what types of securities a securitizer would have to provide representation and warranty repurchase disclosure about under proposed Rule 15Ga-1? If not, please identify which securities are not clearly covered and the reasons why those securities are not clearly included or excluded by the proposal.

Municipal securities should not be covered under the Proposed Rules. Although the definition of an ABS[4] ("Exchange Act-ABS") in the Act is broad enough to arguably include

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[4] The Act amends Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) by adding the following at the end: "(77) Asset-Backed Security. The term 'asset-backed security' (A) means 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, including— (i) a collateralized mortgage obligation; (ii) a collateralized debt obligation; (iii) a collateralized bond obligation; (iv) a collateralized debt obligation of asset-backed securities; (v) a collateralized debt obligation of collateralized debt obligations; and (vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and (B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company."

Current federal regulation of ABS is only under Regulation AB, which applies only to registered transactions and, therefore, would not apply to municipal securities. Regulation AB is not appropriate for the regulation of municipal securities for many reasons.

The term asset-backed security was defined, generally, for purposes of Regulation AB as a:

> security "**primarily serviced** by **a discrete pool of receivables or other financial assets**…that by their terms convert into cash within a finite time period."

(17 C.F.R § 229.1101(c)(1)) (emphasis added).

This general definition is, however, subject to additional considerations that must apply for a security to be deemed an "asset-backed security" qualified to utilize the specialized Regulation AB regimen. Of particular note, the activities of the issuing entity must be:

> "limited to **passively** owning or holding the pool of assets, issuing the asset-backed securities supported…by those assets, and other activities reasonably incidental thereto."

(17 C.F.R. § 229.1101(c)(2))(ii)(emphasis added).

While the general Regulation AB definition might be said to include certain municipal bond issues (e.g., single family mortgage revenue bonds or student loan bonds) the special purpose entity requirement cannot be said to include any municipal bond issues (other than a very limited class of municipal revenue securitizations). This reflects differences between municipal finance and corporate issuers with respect to their propensity toward bankruptcy and its availability. Municipal issuers also may be distinguished by their active engagement in the managing and servicing or monitoring of trust assets. There are other limitations of the definition that also do not

(continued...)

certain municipal securities, NABL is concerned that inclusion of municipal securities in such definition and their regulation under the Proposed Rules is not needed to achieve the purposes of the Act, will not offer additional protection for investors in municipal securities, and will unduly burden municipal securities issuers. Regulation of municipal securities under the Proposed Rules without a prior determination by rule that such municipal securities are Exchange Act-ABS would also, under the proper reading of Section 941 of the Act that a security is not an ABS unless included in clauses (i) – (v) of Section 3(a)(77)(A) or unless so determined by the SEC pursuant to a rule-making proceeding under clause (vi), be contrary to the express requirements of such Section. In addition, there have been no Congressional hearings or testimony on this point. To the contrary, Congress directed the Government Accountability Office ("GAO") to study the issue. For these reasons, NABL requests the SEC exempt municipal securities from the Proposed Rules at least and until some municipal securities are specifically determined, by rule pursuant to new 3(a)(77)(A)(vi), to be Exchange Act-ABS. Such a determination should not be made with respect to municipal securities of the types currently present in the market or to substantially similar municipal securities that may in the future be issued to fund other public purposes. The municipal securities markets did not experience the failures or defaults and municipal investors have not experienced the losses that prompted the remediation provisions of the Act as to Exchange Act-ABS. Congress clearly recognized this in mandating the GAO study of municipal market disclosure under Section 976 of the Act. In no event should municipal securities of the types currently present in the market be determined to be Exchange Act-ABS prior to further direction from Congress after the availability to Congress of the completed study.[5]

While the definition of Exchange Act-ABS is certainly broader than ABS as defined under Regulation AB, the Act also provides a direction to the SEC to include, within the regulations implementing the underlying loan credit risk retention requirement:

> a total or partial exemption for **any** asset-backed security that is…issued or guaranteed by any State…or by any political subdivision [or] any public instrumentality of a State or territory that is exempt from the registration requirements of the Securities Act of 1933[6] by reason of section 3(a)(2) of that Act…, or a security defined as a qualified scholarship funding bond in [S]ection 150(d)(2) of the Internal Revenue Code of 1986, as may

(...continued)
comply with typical municipal securities practice. Because Regulation AB only applies to registered deals, however, this has not previously caused confusion.

[5] Even those investors who support the Proposed Rules recommend that the SEC "expressly exclude municipal securities from the scope of the proposals and wait for the results from its field hearings with municipal securities participants, as well as the GAO studies on municipal securities mandated by the Dodd-Frank Act." (Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated November 15, 2010).

[6] The Securities Act of 1933, as amended, is referred to herein as the Securities Act.

> be appropriate in the public interest and for the protection of investors.

(15 U.S.C. § 78(a)(15G), as added by Section 941(b) of the Act; emphasis added). This provision is described in the Joint Explanatory Statement of the Committee of Conference as follows:

> "Regulators also are required to issue total or partial exemptions from **risk retention and disclosure requirements** for municipal securities … as long as the exemption is in the public interest and for the protection of investors."

(H.R. Rep. No 111-517, at 872 (2010)) (emphasis added).

The language in Section 941(b) of the Act requires the SEC to provide for a total or partial exemption of municipal securities in prescribing regulations related to risk retention. Because the determination that a security that is not expressly listed in Section 941(a) is to be nonetheless treated as one is predicate both to the contemplated risk retention requirements and to the disclosure requirements of Sections 943 and 945, it would appear that the intent of this direction was that the resulting exemption would apply to the disclosure as well as to the risk retention requirements. This reading is supported both by the history of regulation of municipal ABS and the Joint Explanatory Statement of the Committee of Conference set forth above. Accordingly, the SEC may exempt municipal securities from the Proposed Rules and should do so.

The inclusion of municipal securities in such definition and their regulation under the Proposed Rules would be in breach of the provisions of the Tower Amendment.[7] The Tower Amendment provides in part that the SEC is not authorized to require any issuer of municipal securities to file with the SEC prior to the sale of the securities by the issuer any application, report or document in connection with the issuance, sale or distribution of the securities. In the Proposed Rules the SEC does precisely that by requiring a municipal issuer to file form ABS-15G with the SEC at the time the issuer first offers an ABS or organizes and initiates an offering of an ABS after the effective date of the October 4th Proposed Rules.

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[7] Section 15B(d) of the Exchange Act, also known as the Tower Amendment, provides the following:

1. Neither the Commission nor the Board is authorized under this title, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities.

2. The Board is not authorized under this title to require any issuer of municipal securities, directly or indirectly through a municipal securities broker or municipal securities dealer or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer: Provided, however, That the Board may require municipal securities brokers and municipal securities dealers to furnish to the Board or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to the issuer thereof which is generally available from a source other than such issuer. Nothing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this title.

The October 4th Release indicates that the basis for the SEC's interpretation that the October 4th Proposed Rules might apply to municipal securities is the expansive definition of the term "asset-backed security" in Section 941(a) of the Act and the absence, in Section 943 of the Act, of language expressly limiting its scope to registered securities. (SEC Release Nos. 33-9148; 34-63029 at pages 8-9; see also SEC Release Nos. 33-9150, 34-63091 at pages 23 to 24). This delegation of the task of delineating the precise jurisdictional scope of "asset-backed securities," consistent with the statutory description and examples, should not be interpreted, however, as a repeal or amendment of a significant separate jurisdictional limitation such as the Tower Amendment.

There exists a "cardinal rule" of federal statutory construction that "repeals by implication are not favored."[8] The Supreme Court has asserted that "[i]t is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum," unless the later statute "'expressly contradict[s] the original act'" or unless such a construction "'is absolutely necessary... in order that [the] words [of the later statute] shall have any meaning at all."'[9] The Court also has stated that it is "… not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective."[10] While the Court has asserted that where there is a "plain repugnancy" between a more recent statutory scheme and an earlier one, partial repeal will be inferred,[11] the Court maintains a presumption of continuity that favors giving effect to each conflicting statute such that courts are to avoid interpreting one statute or provision in a way that is inconsistent with a prior statute or provision and to "fit, if possible…all parts into a harmonious whole."[12] Moreover, "Congress does not create discontinuities in legal rights or obligations absent some clear statement."[13]

2. Should we provide further guidance regarding the application of proposed Rule 15Ga-1 to securities issued by municipal entities that would fall within the definition of Exchange Act-ABS? Is it clear what types of municipal securities a municipal securitizer would have to provide representation and warranty repurchase disclosure about under proposed Rule 15Ga-1? If not, please identify those types of municipal securities that are not clearly covered and explain why they are not clearly included or excluded by the proposal.

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8 *Morton v. Mancari*, 417 U.S. 535, 549-551 (1974).

9 *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976) (quoting T. SEDGWICK, THE INTERPRETATION AND CONSTRUCTION OF STATUTORY AND CONSTITUTIONAL LAW 98 (2d ed. 1874)).

10 *Traynor v. Turnage*, 485 U.S. 535, 547-548 (1988).

11 *Credit Suisse Sec. (USA. LLC v. Billing*, 551 U.S. 264, 272 (2007).

12 *FDA v. Brown & Williamson Tobacco Corp*., 529 U.S. 120, 132-133 (2000).

13 *Green v. Bock Laundry Mach. Co*., 490 U.S. 504, 521-522 (1989).

Further guidance regarding the application of proposed Rule 15Ga-1 to securities issued by municipal entities that would fall within the definition of Exchange Act-ABS is required. We recognize that the October 4th Proposed Rules would not likely apply to most municipal securities that might conceivably be determined to be Exchange Act-ABS because the underlying transaction documents for such securities typically would not contain a covenant to repurchase or replace an asset if it does not comply with the representation and warranty provisions also contained in the transaction documents. The required disclosure is designed to provide investors with potentially material information about the sponsor or securitizer of an asset pool related to fulfilled or unfulfilled repurchase obligations for nonconforming assets. Unfortunately, neither the statute nor the October 4th Release makes it sufficiently clear that the October 4th Proposed Rules may affect only Exchange Act-ABS secured by a pool of more than one asset. While the October 4th Release and the October 4th Proposed Rules refer to the pool assets, the citation relied upon at footnote 17 of the October 4th Release to support the proposition that a municipal security may be characterized as an Exchange Act-ABS is excerpted from a discussion concerning structured finance that specifically notes that a structured security might be collateralized by a single asset. (Robert A. Fippinger, THE SECURITIES LAW OF PUBLIC FINANCE vol. 1, Section 1:62[B], 1-70 to 1-71 (2d ed. Practicing Law Institute 2010)).

Two types of municipal securities that do often include replacement or repurchase obligations in the underlying agreements, and therefore would appear to become subject to the representation and warranty repurchase disclosure and diligence disclosure requirements under the October 4th Proposed Rules, if they were determined to be Exchange Act-ABS, are single family mortgage revenue bonds and student loan bonds. However, because of the differences in structure between these municipal securities and other ABS, NABL requests they be specifically exempted under the October 4th Proposed Rules.

Single family mortgage revenue bonds ("MRBs") are highly regulated and subject to various requirements of the federal tax laws to achieve and maintain tax exemption, including the requirements of Section 143 of the Internal Revenue Code of 1986, as amended (the "Code"). In general, MRBs are secured by mortgage loans made to first-time homebuyers. Although some MRB issuers originate their own loans, MRB issuers often rely on third-party lenders to originate these loans on their behalf for their MRB program. The loans, once originated, are acquired by the MRB program trust. Among other things, these third-party lenders are responsible for securing necessary documentation regarding tax law compliance. Tax law compliance requires review and documentation of various attributes of the household, such as affidavits of first-time homebuyer eligibility and household income and purchase price within the specific parameters of the MRB program. In participation agreements with an MRB issuer relating to its MRB lending program, and not specific bond issues, the private lenders originating the mortgage loans make general representations and warranties regarding compliance with industry underwriting standards and legal and program requirements (including Code Section 143 requirements), and agree to repurchase loans if such representations or warranties prove false. Because these participation agreements may be considered underlying transaction agreements with a repurchase covenant, without clarification, an MRB issuer may be regarded as a "securitizer" in respect of its mortgage revenue bonds and subject to the October 4th Proposed Rules.

The repurchase and replacement covenant description provided by the October 4th Proposed Rules is overly broad and appears to require disclosure as to compliance with these

types of federally mandated representations and warranties made by MRB issuers to ensure the tax-exempt status of their MRBs. Section 943 of the Act was enacted to address the situation where "[p]oor underwriting standards coupled with unenforceable representations and warranties by securitizers exacerbated investors' losses in ABS." (SEC Release Nos. 33-9148; 34-63029 at page 30). Because MRB issuers are already subject to a full regime of federal tax law regarding loan attributes and eligibility, we suggest it is justifiable to exclude them, in their entirety, from the October 4th Proposed Rules. MRBs have high underwriting standards, and MRB issuers have a vested interest in enforcing repurchase obligations to ensure the continual tax-exempt status of their MRBs. The many federal tax law requirements are technical and do not relate to the security afforded by the loan. In the experience of many MRB issuers, most of the repurchase obligations that have been triggered in their single family mortgage portfolio relate to violation of those tax law requirements, and not general underwriting criteria. Consequently, the incidence of repurchase obligations in the MRB context is not directly relevant to the objectives of the October 4th Proposed Rules, and may be misleading to investors in ABS in the taxable market.

Ostensibly, commercial and traditional market securitizers simply can remove or avoid any requirement for repurchase and replacement from the underlying transaction documents in order to fall outside the scope of the October 4th Proposed Rules. MRB issuers cannot, and it is not in their interest to do so, given their obligation to maintain the tax exemption of their MRB programs. This seems to be an unintended result given that there has not been any criticism that MRB issuers have ever met the cited rationale for the new disclosure requirement rule. Specifically, MRB issuers have not had "…[t]he effectiveness of the contractual provisions related to representations and warranties" questioned …[further,]…lack of responsiveness by sponsors to potential breaches of the representations and warranties relating to pool assets…[has not] been the subject of investor complaints" in the MRB world. (SEC Release Nos. 33-9148; 34-63029 at page 7).

A similar problem may be encountered by MRB issuers that purchase mortgage loans that have federal insurance. Some of the federal regulations of the FHA program may trigger mandatory repurchase obligations for nonconforming mortgage loans in the pool. MRB issuers cannot easily avoid these requirements. Many federal guaranty and insurance programs require that MRB issuers repurchase a mortgage loan if it fails to continue to meet the representations and warranties of such federal program on an ongoing basis. NABL proposes these types of "repurchase and/or replacement" warranties should not be caught by the October 4th Proposed Rules, even if MRB issuers impose them on their third-party originators in the underlying transaction documents.

In general then, to the extent municipal securities are not exempted in whole by the SEC from the Proposed Rules, NABL recommends that the October 4th Proposed Rules not apply to municipal issuers when the repurchase and replacement requirements related to the assets are driven by the requirements of the federal tax laws in order to maintain tax exemption or by federal program requirements in order to secure federal insurance or guaranties. If a municipal issuer relies on third-party originators for its program, the issuer will generally have a repurchase or replacement requirement in its transaction documents. If a municipal issuer uses federal program guaranties or insurance, it is also likely to have these types of requirements embedded in the transaction documents. Other market securitizers not constrained by the requirements of

the federal tax laws or federal programs may evade the new disclosure rules by restructuring the nature of their asset purchase agreements to require indemnification for covenant breaches or longer monetary holdbacks to ensure compliance.

Because the program structures of, and certain federal tax requirements applicable to, MRBs and municipal securities issued for student loan purposes ("SLBs") are generally similar, the above discussion relating to MRBs is also materially applicable to SLBs issued by state entities, including certain nonprofit corporations whose activities are limited pursuant to Section 150(d) of the Internal Revenue Code to financing certain federally guaranteed student loans. The Higher Education Act (Higher Education Act of 1965 20 U.S.C. § 1001 *et seq*. (2010), as amended) provides for several different educational loan programs (collectively, "FFELP Loans" and, the program with respect thereto, the "FFEL Program"). Under these programs, borrower payments of FFELP Loans are fully or substantially guaranteed to SLBs issuers and other holders by state agency or nonprofit corporation guarantee agencies, who are in turn reimbursed by the federal government for portions of losses sustained in connection with such FFELP Loans. In addition holders of certain FFELP Loans are paid subsidies by the federal government for owning such loans. FFELP Loan marketing, origination, servicing and collection (including the recognition of FFELP Loans as defaulted and post default administration) are subject to extensive regulation under the Higher Education Act and the Department of Education has substantial enforcement powers to assure compliance with such programmatic requirements. Defaulted FFELP Loans may be subject to rehabilitation procedures and to resubmission of documentation under the Higher Education Act. SLB issuers generally issue SLBs on a tax-exempt basis to the extent feasible in order to finance the FFELP Loans, as well as other student loans, and must comply with related programmatic federal tax law requirements that are generally similar to those applicable to MRB.

The indentures under which SLBs are issued traditionally provide only limited circumstances under which either the SLB issuer or the student loan originator may be required to purchase FFELP Loans from the trust estate as contemplated by the October 4th Proposed Rules. Generally, a purchase or replacement of a FFELP Loan on the basis of noncompliance with criteria occurs only if there is found to be a due diligence failure at the time the loan became a part of the trust estate or if the loan ceases to be guaranteed or insured, and as a result, a guarantee or insurance claim is rejected with respect to such loan. A SLB issuer or loan originator might also have to repurchase or replace a loan that is determined to be encumbered by a lien other than the lien of the particular indenture. These are very narrow exceptions, and SLB issuers are generally very careful to ensure that there are not any due diligence failures with the FFELP Loans in their portfolios. Moreover SLBs are not typically secured by defined pools of loans and issuers may, and in some instances must, remove loans from trust estates for financing reasons and, with respect to FFELP Loans, loan consolidation and other administrative reasons in compliance with Higher Education Act requirements. FFELP Loans are typically removed from the trust estate and submitted to the applicable guarantee agency for payment upon default in accordance with the Higher Education Act, and certain supplemental student loans may also be similarly subject to removal and submission to various parties for contractual payment upon default, but such removal is based upon nonperformance rather than noncompliance with underwriting standards.

Like MRB issuers, SLB issuers have a vested interest in the performance of their portfolios and, more generally, in their ability to continue to finance their lending programs. In recent years SLB issuers have often put equity into transactions, or retained equity in trust estates, in order to make SLB issuances feasible. Some SLBs are also secured from other sources, such as separately funded reserves. This is very different from the typical special purpose vehicle which issues ABS, the sponsors have no ongoing interest in the performance of the assets in the portfolio. In light of these considerations, it is highly questionable whether any additional material information would be available to MRB or SLB investors if these municipal securities were determined to be Exchange Act-ABS and their issuers required to comply with the October 4th Proposed Rule requirements.

A related point of clarification requested by NABL is whether or not assets that are originated by a third party or are pledged (rather than sold) to a trust are excluded from the October 4th Proposed Rules. The text of the proposed Rule 15Ga-1 requires disclosure of information "concerning all assets originated or sold by the sponsor." It is not clear if this language excludes at least certain municipal securities from its application that do not originate or sell the assets. Many MRB and some SLB issuers neither originate loans, since they purchase them from originating lenders, nor do they sell loans, since they own them (or, in some instances, mortgage-backed securities ("MBS") backed by such loans) subject to a pledge in favor of the bondholders. In a non-municipal asset-backed transaction, the assets are generally irrevocably transferred or sold to a trust. In a municipal asset-backed transaction, the assets are generally pledged or assigned to the trust. The October 4th Proposed Rules should recognize the distinction between a pledge and a true sale by clarifying that assets that are originated by a third party or are pledged (rather than sold) to a trust are excluded from the October 4th Proposed Rules.

3. Is it clear which entities or persons would have disclosure responsibilities under proposed Rule *15Ga-1? If not, please identify those possible entities or persons, describe their role in the transaction, and explain why they are not clearly included or excluded by the definition of a securitizer.*

It is not clear to NABL how the disclosure requirement would be shared for a particular transaction involving federal securitization through one of the federal mortgage backed security (MBS) programs. For example, would an MRB issuer using an MBS program be able to rely on GNMA or Fannie Mae for the necessary filings under the October 4th Proposed Rules? Since the securitization protocols and the covenants relating to buyback or replacement are set forth in standard documents required by GNMA or Fannie Mae to complete the securitization, filing by the MRB issuer would likely be duplicative and confusing. In addition, the payments by GNMA or Fannie Mae are made to the MRB issuer without regard to the performance record of the asset pool. GNMA and Fannie Mae bear the risk if a mortgage does not comply with the representations and warranties provisions of the transaction agreement, not the investors of the bonds. Similar concerns may arise with respect to FFELP Loans and, potentially, student loans originated under some other state-sponsored programs.

4. Should we provide further guidance regarding the application of proposed Rule 15Ga-1 to municipal issuers that are within the definition of securitizers? Is it clear which municipal entities would have disclosure responsibilities under proposed Rule 15Ga-1? If not, please

identify those municipal entities that are not clearly covered and explain why they are not clearly included or excluded by the proposal.

The statutory term "securitizer" includes a person who issues or who "organizes and initiates" Exchange Act-ABS. It should be clearly stated that issuers of municipal securities that are not determined to be Exchange Act-ABS should in no event be deemed securitizers for purposes of the October 4th Proposed Rules as a result of their sale or transfer of underlying assets securing such municipal securities to a third party pursuant to a federally sponsored conduit financing or through an arm's length transaction, even if the recipient uses such assets to collateralize Exchange Act-ABS. In addition to the concern expressed in the response to question 3 above, footnote 22 of the October 4th Release suggests that affiliate securitizers may split disclosure obligations. Does this mean that securitizers may rely on others? Is this a good faith reliance standard? Does any one securitizer have an independent obligation to ensure compliance?

5. Is the proposed requirement to require that any securitizer of an Exchange Act-ABS transaction disclose fulfilled and unfulfilled repurchase requests in a table appropriate? Would another format be more appropriate or useful to investors?

Due to staffing limitations, many smaller municipal issuers would be required to rely on third parties to prepare and present the proposed disclosure items. The October 4th Proposed Rules would be costly to implement and the costs will be borne by these issuers.

More importantly, provision of the suggested table would not provide any helpful information to the municipal marketplace. Investors in the municipal market already have information regarding the nature of the MRB and SLB calls to date based on repayments (including third-party guarantee payments) and prepayments. The investors rely on this historic data to determine average life, expected maturity and performance of specific bonds. The tabulated detail about individual loans is not relevant in an MRB or SLB investor both because material noncompliance with origination criteria has not been a substantial problem in this market and because the bonds typically have highly structured amortization schedules and contractual provisions that may prioritize how payments are applied to redeem bonds. Even more fundamentally, federal tax law mandates the timing and frequency of certain redemptions from unexpended proceeds or from loan prepayments.

There is also a real danger that this type of table and limited information will be misleading in the municipal market. As discussed earlier, there are numerous reasons other than noncompliance with origination criteria that may result in removal of a loan from the trust estate, and municipal issuers have no control over certain of such removals, including purchases they may be required to make due to lack of compliance with a particular tax-required covenant during the origination process. When noncompliance is discovered, the issuer typically requires the original lender to repurchase the loan. The issuer, under tax law, may have the ability to recycle the funds into another qualified loan. Setting forth information on a monthly (or even quarterly or semiannual) basis would be misleading and unhelpful to MRB investors since they are not necessarily at risk of early redemption or lacking in security given the nature of the pooled assets. As stated above, there is little or no history of material MRB or SLB noncompliance with underwriting criteria. However, if a particular municipal issuer had had

material underwriting problems in the past, it would be disclosed in the offering document for the new security, and thus investors would be aware of them.

6. Should we require, as proposed, that securitizers list all previous issuing entities with currently outstanding ABS where the underlying transaction agreements include a repurchase covenant, even if there were no demands to repurchase or replace assets in that particular pool? Should we require, as proposed, that securitizers with currently outstanding Exchange Act-ABS held by non-affiliates list all originators related to every issuing entity even if there were no demands to repurchase or replace assets related to that originator for that particular pool? Put another way, would it be useful for investors to compare all the issuing entities and originators, related to one securitizer, listed in the table, so that investors may identify asset originators with clear underwriting deficiencies, as provided in the Act?

As described in response to question 4, issuers of municipal securities that are not determined to be Exchange Act-ABS should in no event be deemed securitizers for purposes of the October 4th Proposed Rules. As described in response to question 5, NABL maintains that the table does not contain useful information for investors in municipal securities and that filing of such table is unnecessary and potentially misleading to investors. Further, although, as discussed above in response to question 2, MRBs and SLBs are often collateralized with underlying assets that are originated by unrelated entities, it is highly questionable that the underwriting experience of such originating entities outside of the program would be material information to municipal securities investors. Moreover it would be very difficult, if not impracticable, for municipal issuers to supply information that relates to originator lending practices outside of their own portfolios. Accordingly, these questions have little applicability with respect to municipal securities issuers, even if determined to be issuers of Exchange Act-ABS, and any resulting requirements should clearly exclude any municipal securities issuer securitizers to avoid subjecting such municipal securities issuers to onerous disclosure requirements because of the behavior of a few bad actors in the entirely separate asset-backed market. There is nothing in the Act that requires this to be the case, as applied to municipal securities.

7. Would it be appropriate for securitizers to omit the table if a securitizer had no prior demands for repurchases or replacements? If so, how would an investor be able to know why the securitizer omitted the disclosure? In lieu of a table that displayed no demands for repurchases or replacements, would it be appropriate for a securitizer to provide narrative or check box disclosure stating that no demands were made for any asset securitized by the securitizer?

As applied to securitizers generally, NABL favors requiring the securitizer to provide narrative or check-the-box disclosure stating that no demands were made for any asset securitized by the securitizer. The antifraud disclosure standard in the market remains, and if something is material, it of course should be disclosed.

9. Should the disclosure requirement only be applied prospectively, i.e., disclosure would be required only with respect to repurchase demands and repurchases and replacements beginning with Exchange Act-ABS issued after the effective date of the rule? Should disclosure only be required with respect to repurchase activity after the effective date? If so, please explain why

limiting disclosure to activity regarding Exchange Act-ABS issued after the effective date would be consistent with the Act, as it specifies that the disclosure be provided by any securitizer across all trusts.

As applied to securitizers generally, the disclosure requirement should be required only prospectively and only after the effective date of the October 4th Proposed Rules. First, information may not be available, especially to the broad category of issuers never before covered by these types of requirements. Second, even if the information is available, it may be prohibitively expensive, especially for municipal issuers, to compile the level of detail sought in the October 4th Proposed Rules. Third, if disclosure is sought it should be clearly defined in a standard that will be achievable by all the required participants. Otherwise the information will flood the market and will not be helpful. Fourth, any application of the disclosure requirement to municipal issuers securitizers should only be prospective if and when abuses arise, but to date there is no evidence of prior nonconforming loan underwriting that subjected municipal securities to the specific ABS problems that have plagued the corporate securities market. Additionally, it should be emphasized in this connection that MRBs and SLBs are generally issued through open indentures of trust or analogous documents that may not provide the fiduciaries of existing trust estates or the issuers the ability to capture the information that the October 4th Proposed Rules require. Once again, none of these Proposed Rules should be applicable prior to Congressional consideration of the GAO study.

10. In implementing the requirements of Section 943, should the disclosure requirement initially be limited to the last five years, as proposed? Would a different time frame be more appropriate, e.g., the last three, seven or ten years of activity? Underwriting standards of originators may change over time. While information regarding repurchases within a recent time period may assist investors in identifying originators with current underwriting deficiencies, is older information, such as information about repurchases within a time period of ten years, less useful in identifying current underwriting deficiencies? Would information that covers the last three, five, seven or ten years of repurchase activity provide investors with the information they need so that they "may identify asset originators with clear underwriting deficiencies"? To what extent would disclosure older than such a period add significant burdens and costs and produce information that would be of marginal utility to investors?

As applied to securitizers generally, requiring past information will be burdensome and costly and will not offer important information to the market. Assuming that the requirements are introduced prospectively, it would generally still be expected that the information will become less relevant as portfolios age.

11. Is our proposed instruction to permit securitizers to omit disclosure of investor demands made upon the trustee prior to the effective date of the proposed rules if the information is unavailable and provide footnote disclosure, if true, that the table omits such demands and that the securitizer requested and was unable to obtain the information appropriate? If not, how would securitizers obtain the information about investor demands upon a trustee prior to the effective date of the proposed rules, as adopted?

As applied to securitizers generally, the October 4th Proposed Rules should be prospective only, but in the event the SEC determines to apply the rule retroactively, NABL believes the footnote disclosure as suggested is appropriate.

12. Should the requirement only cover the last three, five, seven or ten years of repurchase requests on an ongoing basis? Would this format on an ongoing basis provide information in a more easily understandable manner? Would it still allow an investor to "identify asset originators with clear underwriting deficiencies"?

Please refer to the response to question 10.

13. Are there any other agreements, outside of the related transaction agreements for an asset-backed security, that provide for repurchase demands and repurchases and replacements? If so, please tell us what those agreements are and why securitizers should be required to report the information, including why that information would be material to an investor in a particular asset-backed security.

As discussed in response to question 2 above, the federal tax laws may require issuers of MRB and SLBs to replace loans that do not meet the respectively applicable programmatic requirements and issuers of SLBs may remove FFELP loans as a result of FFEL Program requirements or to administer their programs consistent with such requirements. State statutes authorizing non-federal student loan programs may impose similar requirements. In addition, certain federal insurance and guaranty programs require that mortgage loans be "repurchased" in the event of noncompliance with the representations and warranties associated with those federal programs. Examples of this may include Rural Development, Federal Housing Administration, and Veteran Administration insurance programs. GNMA, Fannie Mae and Freddie Mac all include standard buyback requirements for nonconforming or noncompliant loans. These should all be outside the application of the October 4th Proposed Rules.

14. Is the information proposed to be required in the table appropriate? Is there any other information that should be presented in the table that would be useful to investors? Is the proposed disclosure regarding pending repurchase requests appropriate? Should we specify that securitizers provide more detail about the reasons why the assets were not repurchased or why the assets are pending repurchase or replacement? For example, should we require more detail such as the date of claim, the date of repurchase, whether claims have been referred to arbitration, whether the claims are in a cure period, and the costs associated and expenses born by each issuing entity? Should we require securitizers to provide narrative disclosure of the reasons why repurchase or replacement is pending, as proposed? If so, should we specify the level of detail to be provided regarding pending asset repurchase or replacement requests? For instance, should we specify categories for the reasons why the request is pending, e.g., cure period, arbitration, etc.

As discussed herein, NABL contends that current municipal securities disclosure practices with respect to underlying asset underwriting are adequate, especially in the absence of any demonstrated material substantive underwriting concerns with respect to municipal securities or portfolios collateralizing municipal securities, and NABL also contends that the proposed table does not contain any information relevant to municipal securities investors.

15. Section 943 of the Act requires that "all fulfilled and unfulfilled repurchase requests across all trusts" be disclosed. Should we require, as proposed, that all demands for repurchase be disclosed in the table? Some commentators on the 2010 ABS Proposing Release expressed concerns about disclosing demands for repurchase that ultimately did not result in a repurchase or replacement pursuant to the terms of the transaction agreement, either because of withdrawn demands or incomplete demands that did not meet the requirements of the transaction agreements. In order to address commentators' concerns, should we also require, by footnote to the table, disclosure of whether the repurchase or replacement was required by the transaction agreements or whether it occurred for some other reason? Should the disclosure indicate the type of representation or warranty that led to the repurchase or replacement?

As applied to securitizers generally, the October 4th Proposed Rules intend to ensure that investors are provided with information concerning unfulfilled repurchase obligations. Adding information about all demands would appear to go beyond the scope of the provisions in the Act. Additional information related to all demands may overly complicate the chart and frustrate its intended purpose and would be confusing to its readers. There seems little merit in requiring continued disclosure of nonconforming demands for repurchase of purportedly nonconforming underwritten loans, once identified. Perhaps it would be better to only require initial disclosure once the claim of nonconforming underwriting is finally determined for purposes of the specific program. As noted in response to question 2 above, certain programs may provide for cure or rehabilitation of nonconforming loans.

17. Is our proposal to require the disclosure on a monthly basis appropriate? If not, what would be the appropriate interval for the disclosures, e.g., quarterly or annually?

For municipal issuers, monthly disclosure would be much too onerous and costly. The reporting periods should be no shorter than annual, which would permit utilization of the existing secondary market disclosure procedures. The intended result of the disclosure expressed is to show trends and identify performance issues and an annual check should satisfy that stated objective.

18. Is our proposal to require that Form ABS-15G be filed within 15 calendar days after the end of each calendar month appropriate? If not, would a shorter or longer timeframe be more appropriate, e.g., four days or twenty days? Please tell us why.

As applied to securitizers generally, reports from servicers, fiduciaries, and potentially originating lenders and guarantors will need to be received, reviewed and reconciled to produce accurate filings. These may not be received in the first instance until 10-15 days after the close out of the applicable reporting period. With respect to any municipal securities that may be determined to be Exchange Act-ABS subject to the October 4th Proposed Rules, 45 days after the end of the applicable reporting period would seem to be appropriate and feasible if permitted to be based upon the best information available to the issuer at that time. It should be noted that the use of annual periods should make less meaningful any subsequent corrections, as should the low overall incidence of nonconforming underwriting assuming continuation of historical results.

19. We note that the transaction agreements for certain types of ABS, such as CDOs, may not typically contain a covenant to repurchase or replace an underlying asset. Is it appropriate to

exclude, as proposed, those Exchange Act-ABS with transaction agreements that do not contain a covenant to repurchase or replace the underlying assets?

It is very unusual for municipal securities, even conduit bonds, to have repurchase or replacement requirements. Transactions should be excluded if they do not have covenants to repurchase or replace underlying assets. Further, repurchase or replacement obligations governed by federal tax law requirements or other federal or state programmatic requirements or by federally required covenants for insurance or guaranty such as FHA, RD, VA, GNMA or Fannie Mae should be specifically exempted by the October 4th Proposed Rules.

20. Should the data in the table be tagged? If so, should the tagging be in XML or is a different tagging scheme appropriate? If tagging is appropriate, would a phase-in period in which the disclosure would be provided without tagging pending completion of necessary technical specifications be appropriate? In order to tag the data, we would need to develop definitions that would result in consistent and comparable data across all issuing entities of all securitizers. For instance, how should we specify that securitizers tag the identity of an originator to provide consistency across disclosures provided by all securitizers? Should we assign codes that would specifically identify each originator? Or would text entry of the name of the originator be sufficient? Similarly, should we specify a unique code for all the issuing entities? For example, registered transactions would have a CIK number assigned for the issuing entity; however, unregistered transactions may not have a unique method of identification. What other definitions or responses would we need to specify in order to make the disclosure comparable across originators and securitizers?

With respect to any municipal securities that may be determined to be Exchange Act-ABS subject to the October 4th Proposed Rules, if tagging becomes prevalent in all means of reporting such as reports filed under SEC Rule 15c2-12 and financial statements filed thereunder it would make sense to require tagging. To require tagging for this very limited report, however, will be rather burdensome and costly for issuers that must comply with the October 4th Proposed Rules.

21. Is our proposal to require proposed Rule 15Ga-1 disclosures on new Form ABS-15G appropriate?

With respect to any municipal securities that may be determined to be Exchange Act-ABS subject to the October 4th Proposed Rules, inclusion of such information in annual filing pursuant to Rule 15c2-12 is more appropriate, and would better serve the intent of the provisions in the Act and the October 4th Proposed Rules of ensuring that information as to noncompliant underwriting is accessible to investors without conflicting with the Tower Amendment. To the extent the October 4th Proposed Rules are applied to municipal securities, it seems unnecessary and cumbersome to require municipal issuers to file a new form on EDGAR before selling. This is not the standard place where investors in the municipal market would look, the information (as discussed previously) is not relevant to municipal investors and it will add additional complexity and expense to a group of issuers already subject to substantial scrutiny and federal regulation.

22. Securitizers would be required, as proposed, to file Form ABS-15G on EDGAR. If a securitizer has already been issued a CIK number, we would expect Form ABS-15G to be filed

under that number. However, a securitizer may already be a registrant that has other reporting requirements under the Securities Act or the Exchange Act. Should we assign a different file number to Form ABS-15G filings in order to differentiate Form ABS-15G filings made by a registrant in its capacity as a securitizer, from other filings made pursuant to its own reporting requirements under the Securities Act and the Exchange Act? Should we also provide on the SEC website the ability to exclude, include or show only Form ABS-15G for a particular CIK number in order make it easier to locate these filings on EDGAR?

Under the October 4th Proposed Rules the disclosures are to be made on EDGAR, noted to be a central repository for such information. (SEC Release Nos. 33-9148; 34-63029 at page 52). However, with respect to any municipal securities that may be determined to be Exchange Act-ABS subject to the October 4th Proposed Rules, inclusion of such information in annual filings pursuant to Rule 15c2-12 is more appropriate, and would better serve the intent of the provisions in the Act and the October 4th Proposed Rules of ensuring that information as to noncompliant underwriting is accessible to investors without conflicting with the Tower Amendment. The central information repository for municipal securities is EMMA, operated by the MSRB, pursuant to SEC Rule 15c2-12. If investors in municipal ABS are intended to be beneficiaries of the rule, it makes little sense for the disclosure information to be filed with EDGAR rather than EMMA.

23. Instead of requiring, as proposed, that securitizers provide the Rule 15Ga-1 disclosures on Form ABS-15G, should we instead require that securitizers provide all the disclosures required by Section 943 of the Act in a manner consistent with disclosures in prospectuses and ongoing reports in a registered transaction? For instance, for registered offerings, would it be appropriate to permit issuers to satisfy their disclosure obligation by including all of the information required by proposed Rule 15Ga-1 in prospectuses and periodic reports on behalf of the securitizer for all of the affiliated trusts of a securitizer? Assuming that some securitizers offer several ABS across many asset classes, would taking this approach result in a prospectus that would be unwieldy considering the volume of information that would be required? If we took this approach, then how would that information be conveyed to investors in unregistered offerings, both initially and on an ongoing basis? Would securitizers be able to identify all of the investors that would be entitled to receive the information pursuant to Section 943 of the Act? How often should the information be conveyed to investors? What method would be used to convey the information to investors? Would securitizers post the disclosures on a website?

NABL has no comment regarding registered ABS securitizers, but as to any municipal securities that may be determined to be Exchange Act-ABS subject to the October 4th Proposed Rules, inclusion of such information in annual filings pursuant to Rule 15c2-12 is more appropriate, and would better serve the intent of the provisions in the Act and the October 4th Proposed Rules of ensuring that information as to noncompliant underwriting is accessible to investors without conflicting with the Tower Amendment. The proposal to simply require municipal issuers to "provide all disclosures required by Section 943 of the Act in a manner consistent with disclosures in prospectuses and ongoing reports in a registered transaction" is too vague. For instance, many disclosure standards include voluntary compliance reporting on a monthly or quarterly basis and most municipal issuers are not likely to file monthly or quarterly reports. Would that mean that municipal issuers would not then be consistent with the ongoing reports in a registered transactions and therefore not in compliance with the October 4th Proposed

Rules? A clearly and appropriately articulated materiality standard with respect to evidenced incidence within a trust estate of nonconforming underwriting loans that are not repurchased, based on the assumed absence of other factors such as other sources of debt service coverage, would supply municipal issuers with a baseline against which to make judgments as to the materiality for primary disclosure purposes with respect to their own portfolio experience. Together with secondary market disclosure as described above, this should be sufficient.

The existing municipal securities market has not been plagued with incidents of nonconforming underwriting at all comparable to the ABS market irregularities. Investors in the municipal market do not rely on EDGAR and similar filing sites for information and it would likely be cumbersome to add an extra step to their diligence reviews. The municipal market relies on the prospectus for the appropriate level of disclosure regarding tax covenants, redemption and call exposures, repayment priority, etc. affecting municipal ABS. This disclosure is posted on EMMA, and often on websites.

27. Is our re-proposal to require disclosure pursuant to the format prescribed in Rule 15Ga-1(a) for the same asset class in prospectuses and for pool assets in periodic reports appropriate? Is it appropriate to limit the disclosure in prospectuses to the last three years of activity, as proposed? Would a different period (e.g., one or five years) be more appropriate?

Municipal securities issuers should not be mandated to provide disclosure in the prescribed format for all the reasons previously stated.

28. Is it appropriate to omit a materiality requirement for disclosures in prospectuses, as proposed? What issues would arise by creating two different disclosure standards between what would be required to be disclosed in prospectuses and what would be disclosed by securitizers on Form ABS-15G? Are there any ways to address those issues?

There should continue to be a materiality standard for all disclosure.

29. Should we permit issuers to incorporate the repurchase demand and repurchase and replacement disclosure by reference from Form ABS-15G, instead of requiring that it be provided in the body of the prospectus or Form 10-D? Would it be burdensome for investors to search elsewhere to locate disclosure that would otherwise be included in a prospectus?

If applicable, issuers should be permitted to incorporate by reference.

37. Should implementation of any proposals be phased-in? If so, explain why and describe the timeframe needed for a phase-in (e.g., six months, one or two years) and basis for such period?

To the extent any municipal securities may be determined to be Exchange Act-ABS and subject to the October 4th Proposed Rules, the October 4th Proposed Rules should be phased in over a time frame sufficient to permit operating budgets of municipal issuers to be adjusted. Note that the cost estimation section of the October 4th Release expects many hours for a securitizer to set up the mechanisms for filing the initial Rule 15Ga-1 forms. (SEC Release Nos. 33-9148; 34-63029 at page 44). If municipal issuers are required to file these forms, it will take many hours and resources and many municipal issuers will not have budgeted sufficient funds

necessary for such a project. Certain state agencies determine their yearly budget on a biannual cycle.

Appendix B

Certain questions posed by the October 13th Release and NABL's responses follows.

15. Should we consider Securities Act Section 7(d) and Exchange Act 15E(s)(4)(A) together and require disclosure of the findings and conclusions of the issuer's or third party's review of the assets, as proposed? Should we, instead, implement Section 15E(s)(4)(A) as part of the later rulemaking under Section 15E?

In the October 13th Release, the SEC states that unlike Securities Act Section 7(d) which is expressly limited to registered ABS offerings, they believe that the requirements of Exchange Act Section 15E(s)(4)(A) were intended to apply to issuers and underwriters of both registered and unregistered offerings of Exchange Act-ABS including unregistered securities and notes that, Section 932 does not refer to Section 7 of the Securities Act or registration statements filed under the Securities Act. (SEC Release Nos. 33-9150, 34-63091 at pages 23 to 24). We strongly believe, however, that the applicability of the requirements of Section 15E(s)(4)(A) must be limited, not only to properly determined Exchange Act-ABS, but also by the subject matter of the Section of the Act in which they appear, which is the rating agency process (indeed the balance of Section 15E(s)(4) addresses certifications ***to the rating agencies*** with respect to such third-party due diligence reports. The October 13th Proposed Rules should make clear that the third-party reports to be made publicly available are limited to due diligence reports supporting factual assumptions concerning underlying assets that are reviewed by a rating agency in connection with the assignment of a rating to Exchange Act-ABS, and do not include other materials, such as cash flow projections or legal opinions that are reviewed by rating agencies. Indeed, it would seem that a rule requiring only that an issuer or underwriter of Exchange Act-ABS make the required information publicly available by authorizing each applicable rating agency to post the applicable diligence reports upon which it relied would be sufficient to meet the statutory requirement.

Section 15E(s)(4)(A) is inextricably related to the rest of Section 15E(s)(4) and cannot be properly addressed outside of this context. Accordingly, NABL strongly urges implementation of Section 15E(s)(4)(A) as part of such later rulemaking.

21. Is there any reason Exchange Act Section 15E(s)(4)(A) should not apply to both registered and unregistered ABS transactions? If the requirement applies to both registered and unregistered transactions, should the universe of ABS offerings that are subject to the requirement be defined, as proposed, as an offering of asset-backed securities, as that term is defined in Section 3(a)(77) of the Exchange Act? Should the requirement be instead applicable to some other subcategory of asset-backed securities? For example, existing Exchange Act Section 15E(i) refers to a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. Should our rule refer to this description of an asset-backed security instead of the proposed reference to Exchange Act Section 3(a)(77)?

and

22. Should we exempt any issuers, underwriters or other parties from [Proposed Rule 15Ga-2]? Should we exempt issuers and underwriters of ABS that are not rated by an NRSRO from

having to make publicly available the findings and conclusions of third-party due diligence reports? As proposed, Rule 15Ga-2 would apply to issuers and underwriters of ABS that are exempted securities as defined in Section 3(a)(12) of the Exchange Act, including government securities and municipal securities. Should such exempted securities be exempt from this provision?

As noted in our general comments and in Appendix A there is a serious incongruence between the purposes and objectives of the Act and the Proposed Rules under the Releases, and any attempt to apply them to the municipal securities market.

In particular, we reiterate that the inclusion of government and municipal securities in the definition of Exchange Act-ABS violates the Tower Amendment, and more specifically, the proposed requirement for issuers of municipal securities to make publicly available the findings and conclusions of third-party due diligence reports prior to the first sale of the securities would be in direct contradiction of the Tower Amendment. At the very least, and again as noted in our general comments and in Appendix A, we respectfully suggest that the October 13th Proposed Rule exempt municipal all securities at least until the study mandated under Section 976 of the Act concerning municipal securities disclosure is performed and there is an opportunity for the SEC to review such study and for Congressional response thereto. This would further give municipal issuers time to phase in procedures to comply with such rules and attain required budgetary authorizations to implement such procedures, if necessary.

We also refer you to NABL's discussion set forth in the response to question 1 of the October 4th Release in Appendix A relating to the exemption of municipal securities from consideration under the rules promulgated for Exchange Act-ABS based on the nature of those securities. In considering whether to expressly exempt municipal securities as a whole from the October 13th Proposed Rule, we ask the SEC to consider NABL's comments made generally to the Releases with respect to the scope of the Act and the type of protections intended to be offered to investors and their applicability to municipal securities, as well as the burdens that will be imposed on municipal issuers (particularly in light of little added benefit to investors).

To the extent municipal securities are not exempted in whole by the SEC from the October 13th Proposed Rule, NABL recommends that the October 13th Proposed Rule apply only to a narrow band of municipal securities, as further elaborated in NABL's response to question 2 of the October 4th Release set forth in Appendix A.

NABL is also concerned that the definition of "third-party due diligence," particularly in light of the type of securities described in the response to question 2 of the October 4th Release, would need to be set forth in a very specific manner for applicable municipal securities. A broad reading of the October 13th Proposed Rule would suggest postings which may include, for example, accountants' agreed upon procedures letters, attorneys' opinions on the perfection of lien/security interests, the reports of appraisers or engineers, feasibility studies, inspection reports of homes secured by mortgage revenue bonds or single family bonds, and financial structuring reports from agents who scrutinize loan pools for interest rate/prepayment expectations to identify bond candidates for refunding and compliance. Without a specified and defined scope to the definition of third-party due diligence, investors may be left with information that lacks context and may be misleading.

Further, the SEC concedes that the requirement of disclosure of these third-party reviews in unregistered offerings may discourage such issuers from engaging in third-party reviews and that the requirements may affect the costs associated with third-party reviews. (SEC Release Nos. 33-9150; 34-63091 at page 45). If an issuer of governmental or municipal securities has no additional way to bear the cost of such new requirement (as will likely be the case for most municipal issuers), the likely result is that such additional burdens and costs will, in fact, result in less third-party reviews and be counterproductive to the protection of investors.

18. Is requiring the filing of information regarding the findings and conclusions of the third-party due diligence provider's report on proposed Form ABS-15G on EDGAR an appropriate way for issuers in unregistered offerings and for underwriters in registered and unregistered offerings to make this information publicly available? Should we allow website posting of the information instead? If so, how can we ensure the materials remain public? What advantages does website posting have over requiring that the information be filed on EDGAR? How do we ensure that investors and market participants have access to such information? What would be the liability implications of allowing the information to be posted on a website as an alternative to filing on EDGAR? Are there other appropriate means of making the findings and conclusions "publicly available?

Should filings be required with respect to municipal securities, such filings should be made with EMMA. EMMA is the current central repository for disclosure information where municipal investors look for information and disclosures by municipal issuers. Requiring Proposed Form ABS-15G to be filed with EMMA, rather than EDGAR, would create a consistent disclosure framework with respect to the municipal market. Maintaining this consistency would ultimately reduce confusion and compliance costs.

23. Would the proposed requirement that Form ABS-15G be filed five business days prior to first sale provide investors with sufficient time to review the findings and conclusions contained therein? Would it provide NRSROs with sufficient time to take the included information into account in determining a rating? If not, what would be a more appropriate filing deadline and why? Are five business days also appropriate in unregistered offerings? Is there reason to require a different number of days in unregistered offerings?

If not exempted entirely or narrowed significantly in accordance with the NABL's comments above, the five day filing timeline is not workable with respect to many types of municipal securities. The most likely type of issues to be affected, MRBs (as defined in Appendix A) often involve a structure where the loans are made from bond proceeds after the issuance of the debt, and as such many of the third-party reviews, including opinions, would not even exist at such time.

EXHIBIT I

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