

NEW YORK  
CITY BAR

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MANAGEMENT REGULATION**

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November 7, 2011

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1080

Re: File No. S7-35-11  
Treatment of Asset-Backed Issuers under the Investment Company Act

Dear Ms. Murphy:

The Committee on Investment Management Regulation of the Association of the Bar of the City of New York (the "Committee") is composed of lawyers with diverse perspectives on investment management issues, including members of law firms, and counsel to financial services firms, investment company complexes and investment advisers. A list of our current members is attached as Annex A.

This letter responds to the request of the Securities and Exchange Commission (the “Commission”) on the Commission’s Release IC-29779 (August 31, 2011) (the “Release”) seeking comments on the possible amendment to Rule 3a-7 under the Investment Company Act of 1940 (the “Investment Company Act”).

The Commission is considering proposing amendments to Rule 3a-7 and is soliciting comment on a number of questions arising out of its apparent concerns that companies investing in securities, particularly equity securities, of issuers relying on Rule 3a-7 (“Rule 3a-7 Issuers”) might themselves more appropriately be regarded as being in the business of investing in “securities”. The Release suggests alternatively that (i) Rule 3a-7 Issuers should be considered investment companies for the limited purpose of the definition of “investment securities” in Section 3(a)(2)(C)(i) of the Investment Company Act or (ii) Rule 3a-7 be recast to provide that a Rule 3a-7 Issuer would be an investment company but would be exempted from the requirements of the Investment Company Act.

Although the Committee expresses no views on the concerns discussed in the Release that holders of securities issued by Rule 3a-7 issuers pose serious status questions under the Investment Company Act or that those questions could not be dealt with otherwise than by amendments to Rule 3a-7, the Committee is concerned that including Rule 3a-7 Issuers within the definition of “investment company” under the Investment Company Act, particularly by means of alternative (ii) above, would pose significant and unwarranted problems for *registered* investment companies under Section 12(d) of the Investment Company Act.

As the Commission and the staff are aware, Section 12(d) imposes individual issuer and aggregate percentage limitations on investments by registered investment companies in securities issued by other investment companies. The legislative concerns underlying the limitations of

Section 12(d) are twofold: (1) the ability of an investment company to exercise undue control and influence over a registered investment company and (2) the pyramiding of management fees and other expenses to the detriment of shareholders of registered investment companies. The Committee submits that neither of these concerns is present in respect of registered investment company investments in Rule 3a-7 Issuers. Thus, the Commission should not treat Rule 3a-7 Issuers as investment companies for purposes of Section 12(d)(1). This would be consistent with the treatment under Sections 12(d)(1)(A) and (B) of issuers excepted from the definition of investment company by virtue of Sections 3(c)(1) and (7).

The Committee therefore suggests that the Commission not inadvertently create a problem for registered investment companies that can be avoided and, with respect to any approach taken to address the status issue, not impose, by virtue of Section 12(d), any constraints on the acquisition by a registered investment company of securities issued by Rule 3a-7 Issuers.

The Committee stands ready to discuss this comment with the Commission staff at its convenience. If we can be of any further assistance in this regard, please do not hesitate to contact the undersigned at (202) 383-8050 or [kjberman@debevoise.com](mailto:kjberman@debevoise.com).

Very truly yours,

Kenneth J. Berman  
Chair,  
Committee on Investment  
Management Regulation

cc: The Honorable Mary Schapiro, Chairman  
The Honorable Elisse B. Walter  
The Honorable Luis A. Aguilar  
The Honorable Troy A. Paredes  
  
Eileen Rominger, Director  
Division of Investment Management

**Annex A**

**The Committee on Investment Management Regulation**

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