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2 August 2010

BY EMAIL: rule-comments@sec.gov

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

Re: File Number S7–08–10
17 CFR Parts 200, 229, 230 et al. Asset-Backed Securities; Proposed Rule
Release Nos. 33–9117; 34–61858; File No. S7–08–10 - RIN 3235–AK37

Dear Ms. Murphy,

Prudential Investment Management, Inc. (PIM) sincerely thanks the U.S. Securities and Exchange Commission (SEC) for addressing the practices of the structured products marketplace through its proposed revisions to Regulation AB. Your request for comment has initiated an important debate among a wide range of market participants on many significant issues that affect the future of the asset-backed securities (ABS) market.

PIM, the largest investment advisory business within Prudential Financial, Inc. (Prudential) with $472 billion (as of 31 March 2010) in assets under management, was among the earliest institutional investors to embrace structured products in the late 1980s. Our primary public fixed income asset management business, Prudential Fixed Income, is one of the largest fixed income managers in the United States[1] with $225 billion (as of 31 March 2010) of assets under management. In 1991, Prudential Fixed Income formed a dedicated group of analysts to focus solely on the structured products market, and we continue to maintain this specialized approach today. We have been a lead investor in many structured transactions, with approximately $57 billion (as of 31 March 2010) under management in mortgage–backed and

[1] *Source: Institutional Investor, July/August 2010, based on domestic fixed income securities held as of 12/31/09.*

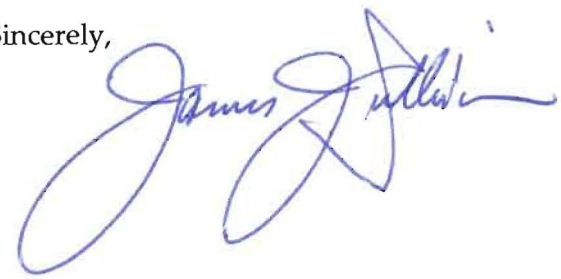
structured products securities for both affiliated and third party institutional clients as well as for retail investors. Our structured product holdings contain public and private investments across the capital structure of ABS transactions, including commercial mortgage-backed securities (CMBS), residential mortgage-backed securities (RMBS), commodity consumer sectors (e.g. autos, credit cards, student loans) and smaller "esoteric" ABS sectors (e.g. containers, franchise, timeshare).

PIM also maintains a dedicated collateralized debt obligation (CDO) asset management platform, and a PIM affiliate was involved in the issuance of CMBS for many years. We believe our decades of active involvement with structured securities, as both investor and issuer, results in a seasoned and unique perspective that could be valuable to the SEC. We have worked closely with the American Securitization Forum (ASF) and the Commercial Real-Estate Finance Council (CREFC) to have our views heard and expressed in broader market responses. While we support aspects of each organization's response, we are submitting this letter to offer our specific commentary on ways to strengthen the disclosure, reporting and offering process for ABS.

Our document is divided into two parts. In Part I, we provide commentary on topics we believe will produce significant improvements to the asset-backed securities market by expanding disclosure, better aligning the incentives of sponsors and originators through risk retention and strengthening investor protections. In Part II, we provide our thoughts on the requests for comment that meaningfully affect an investment advisor's ability to invest on behalf of clients.

PIM's continued interest in the structured finance market as an investor and potential issuer will be directly affected by the reforms ultimately adopted by the SEC and the resulting best practices adopted by all market participants. We thank the SEC for giving consideration to our comments. Please contact us for any follow-up.

Sincerely,



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PART I

In reviewing the Regulation AB proposal, the following topics are of greatest importance to PIM:

I. Risk Retention
II. Repurchase Obligations – Representations & Warranties
III. Transaction Documents & Reporting
IV. Pool-Level Information (Risk Layering & Materiality)
V. Privately-Issued Structured Finance Products
VI. Waterfall Computer Program

While we recognize that your request for comment preceded the recently enacted "Dodd-Frank Wall Street Reform and Consumer Protection Act" (Dodd-Frank), it seems likely that the securitization reform provisions and the related joint rulemaking requirements included in Dodd-Frank will influence any final decisions on Regulation AB. As such, we have sought to address certain pertinent aspects of Dodd-Frank in this document.

I. RISK RETENTION

Proposal:

We support the SEC's proposal for vertical risk retention to properly align the interests of market participants, and believe that systemic risks similar to those that arose in the past decade are likely to repeat themselves if market forces are left to self regulate alignment of interests.

In order to quickly return confidence to structured products markets, we support (i) a 5% risk retention calculation based on the total proceeds from the sale of each tranche; (ii) retention being retained for the life of the securitization; (iii) risk retention requirements applying to all structured asset classes and types of structured securities; and (iv) requiring the sponsor and its affiliates to regularly report their current net risk retention related holdings.

While the Regulation AB proposal contemplates a minimum 5% risk retention for all asset classes, Dodd-Frank mandates that a group of certain regulators, including the SEC, review and consider whether the amount of risk retention and the party or parties required to retain such risk should be different for certain asset classes. We believe that the risk retention should be tailored to the unique characteristics of each asset class, such that certain asset classes should require higher risk retention, while others may require lower risk retention.

Any risk retention requirement should consider existing accounting rules to determine that upon the transfer of assets to a structured products trust, the sponsors and loan originators are generally able to realize sales treatment and avoid consolidation of the collateral onto their balance sheets.

PART I

Rationale:

Long-term "skin in the game" is the best approach to align a sponsor's economic interests with the performance of its asset originations. Retention of risk by a sponsor (i) fundamentally addresses the "originate to distribute" model where an asset may be underwritten or aggregated with a focus on whether or not the asset can be sold into a securitization, rather than on its likely long-term performance; and (ii) motivates the sponsor to thoughtfully originate assets and ensure proper servicing of the collateral for the benefit of all investors in a securitization.

Vertical risk retention better aligns the sponsor's interests with each investor in the capital structure than horizontal risk retention. We agree with the SEC's comment that "'horizontal risk retention' in the form of retention of the equity or residual interest could lead to skewed incentive structures."[1] A horizontal slice may engender class warfare within a securitization. Sponsors can influence the servicing of the collateral to maximize their overall cash proceeds and mitigate their exposure to the retained subordinated horizontal slice.

When evaluating a transaction for appropriate sponsor risk retention, particular attention should be given to the amount of capital the sponsor has committed to the transaction and the amount of funds (servicing fees, principal and interest from retained holdings and residual interests at the bottom of the waterfall) that flow back to the sponsor from the securitization. The effectiveness of risk retention and the intended alignment of interests between sponsors and investors is substantially diminished if the combined payments received by the sponsor from all sources significantly repays the capital the sponsor contributed to a transaction prior to investors being repaid. In order to maintain a sponsor's "skin in the game", risk retention should consider the size and timing of a sponsor's total proceeds from a transaction.

We offer the following thoughts to specific questions you raise on risk retention and economic interests:

- *We support the SEC's position that in retaining risk through the retention of randomly selected exposures, "it would be both difficult and potentially costly for investors and regulators to verify that exposures were indeed selected randomly, rather than in a manner that favored the sponsor."[2]*

- *While we acknowledge that Dodd-Frank requires certain regulators to develop a definition of "qualified mortgage", the "qualified mortgage" definition should be very narrow in scope, and we are opposed to the concept of designating a "qualified" asset within any other structured asset class. Once criteria for "qualified" assets are established, and securitization of these assets are granted preferential capital treatment, loan originators could be incented to originate the "cheapest to deliver" collateral for distribution to a securitization.*

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[1] **Federal Register** / Vol. 75, No. 84 / Monday, May 3, 2010 / Proposed Rules – Page 23339

[2] Ibid

- *Third party purchasers, like the "B-piece buyer" in CMBS, should not be allowed to retain a portion of the securitization to fulfill the sponsor's shelf eligibility condition. Recent history has shown that this practice did not insulate the CMBS market from underwriting excesses.*

- *To provide the greatest transparency to the market, the sponsor and its affiliates should regularly report their current risk retention related holdings by tranche of a securitization, as we believe that any change in risk retention holdings is material and should be disclosed. Furthermore, the sponsor should also disclose any hedge (security specific or portfolio) that was entered into by the sponsor or, to the extent it has actual knowledge of such a hedge, an affiliate in an effort to offset any risk retention position held by the sponsor or an affiliate.*

II. REPURCHASE OBLIGATIONS – REPRESENTATIONS & WARRANTIES

Proposal:

The SEC correctly articulates in its commentary in Section II.B.3(b) the difficulties trustees face in attempting to make bona fide representation and warranty claims, which we have recently found to be the case in RMBS. We are unaware of such a broad representation and warranty issue in other asset classes, whether this is because of the relatively infrequent claims of breach that arise, the lack of an effective mechanism for trustees to initiate claims, or because the structures were sufficiently enhanced to absorb the then realized losses. In any event, it is important to provide a mechanism to timely identify breaches of representations and warranties with respect to underlying collateral. PIM proposes the following mechanism.

1. An independent collateral agent, or similar independent entity, should be required to review and certify the asset-level tape for accuracy and certify that all required asset related documents have been provided.

   For structured transactions involving homogenous collateral pools of more than 1,000 assets, we propose that a non-affiliated and independent third party, hired by the trustee and compensated by the sponsor or transaction, should perform a detailed review of a statistically significant random sampling of each collateral agent's asset files, prior to pricing, to determine adherence with the transaction documents and the representations and warranties of the seller. If the results fail the sampling test:

   a) the sponsor should be required to disclose it failed a random sampling test;
   b) all assets will be reviewed, at the seller's expense, and all ineligible assets should be removed; and
   c) any asset that was previously identified as breaching a representation and warranty should be required to be disclosed and cannot be added to any subsequent collateral

pool unless it has been cured and certified as meeting all the representations and warranties of the transaction.

For structured transactions involving smaller and lumpier asset pools, such sampling techniques may not be appropriate, and other means of assessing the collateral quality should be adopted.

Rationale:

In an effort to identify potential data errors and to assure necessary documentation is received, a collateral agent or similar party can review the asset-level tape for accuracy, verify that all asset documents required to be delivered at closing have been received, and assure that a workable process is in place to obtain all post-closing documentation. This review is reasonable and beneficial to a transaction.

The results of a collateral assessment completed prior to deal closing can provide further comfort to investors that the assets are underwritten and documented in an appropriate manner and comply with representations and warranties.

The impact on a sponsor which fails a random sampling needs to be material enough to ensure the sponsor sufficiently reviews the collateral prior to its inclusion in a transaction. The cost and effort necessary to conduct a full pool review and the subsequent disclosures should be a sufficient incentive to a sponsor.

2. Each ABS asset class should apply an objective and consistent standard for identifying breaches of representations and warranties, and triggering a post-closing asset document review. The use of such a carefully tailored objective standard, coupled with a clear process for pursuing any resulting claims, should help ensure the effectiveness of the investors' contractual remedies, while satisfying all parties' desire for fairness.

   As an example, in transactions that have employed upfront statistical sampling, the appropriate time to review a defaulted asset may be when a transaction's required credit enhancement (e.g. overcollateralization, reserve account) is below the target level as defined by the transaction. When enhancement is below required levels, any defaulted asset would be reviewed by a non-affiliated third party, hired by the trustee, for compliance with representations and warranties. The trustee and servicer should have a specified amount of time after an asset becomes defaulted to provide all asset documents to the third party to facilitate its review.

   Rationale:

   Only assets that meet the specified standards for the relevant asset class should be included in an ABS collateral pool. Investors want to know that a rigorous asset review or another acceptable process

has established such compliance prior to closing, and that a reliable mechanism has been provided to address material asset deficiencies that are identified post-closing.

3. The sponsor should have a specified amount of time to challenge any third party claim, and if such time passes without a challenge, the sponsor should be required to repurchase the asset at the contractually established repurchase price (typically par plus accrued interest to the date of repurchase).

   Any sponsor-challenged claims should be settled by an independent third party arbitrator, selected by the trustee, whose decision is binding.

   Rationale:

   Investors and issuers should both benefit from a process that facilitates the timely resolution of claims while also providing a reasonable level of "due process".

   This process also addresses an issue in the current SEC proposal regarding what should occur in the case where a sponsor rejects a claim and the third party opinion does not support the sponsor.

4. Claims made against a sponsor by the third party should be regularly reported, together with detail that clarifies the number of such claims that were accepted by the sponsor and the number of claims that were and were not approved by the arbitrator. This information should be provided as part of the offering material for all issuances of the sponsor.

   Rationale:

   This information is important in evaluating the effectiveness of the process and the sponsor's prior diligence in confirming that its collateral meets the eligibility requirements.

III. TRANSACTION DOCUMENTS & REPORTING

Proposal:

We are very supportive of the SEC's decision and approach to address the issue of registration materials and ongoing reporting. We would like to suggest adding further detail to the points already in the SEC's proposal:

1. Final operative documents (particularly the Indenture and Pooling and/or Servicing Agreement) should be made available to investors, by providing access to them on a specified website, at least three (3) business days prior to closing for any public or private

transaction. Any changes after the availability three (3) business days prior to closing should be handled by the amendment provisions described in the operative documents.

Rationale:

We are in conceptual agreement with the SEC's proposal that a minimum period of time be established to review ABS prospectuses. We recommend broadening the proposal to include private ABS offering documents. Many private transactions were announced and priced with public level alacrity. A speed bump needs to be incorporated into the issuance process to allow investors to complete their diligence in a commercially reasonable period of time.

Given the importance of the final operative documents in structured transactions (e.g. Indenture/Pooling & Serving Agreement, swap confirmations, administrative agreements) to an investor's understanding of the actual contractual provisions, the final documents should be delivered to prospective purchasers three (3) business days prior to closing.

Any changes to the operative documents after the availability three (3) business days prior to closing should be handled by the amendment provisions described in the operative documents. Last minute financial engineering in structured transactions contributes to poor understanding, and in some instances misunderstanding, of the transaction.

This standard affords investors the opportunity to diligence execution copies of all contracts prior to closing, especially information that may not be set until pricing.

2. All SEC filings for a transaction should be identified in the ongoing servicer reports, along with the proper Electronic Data Gathering, Analysis and Retrieval system (EDGAR) link to filings for the specific securitization.

Rationale:

Given the proposed expanded reporting for issuers, a standard mechanism needs to be developed to inform investors that a filing has been added to EDGAR. With a large number of structured product CUSIPs to monitor, it is not practical for any investor to routinely monitor EDGAR for new structured filings. Investors need a standard mechanism to be informed of public filings.

3. For public and private securities, the trustee, upon request from a current holder, should be required to make available, on a secure website, all operative documents, including any amendments to the original operative documents, servicing reports (other than special servicing reports that may be material and confidential) and SEC filings. In order to facilitate market-making activities in Rule 144A securities, broker dealers should also be able to obtain the same information from the trustee's website.

Rationale:

A current holder of a security should always be able to obtain copies of the full operative documents and the prescribed periodic servicer reports from the trustee upon request, regardless of whether the operative documents explicitly provide for its release.

4. An investor or group of investors who represent a 10% holding in a securitization should be able to direct the trustee to pass along communications to other holders in the security or trust.

Rationale:

Given the complexity of securitization structures, including collateral considerations, it is important for investors who have identified concerns with the collateral or any structural issue to be able to effectively communicate with other investors in the transaction, to either prompt the trustee to take action or solicit further direction from investors. A 10% threshold is a significant level of investor interest to initiate communication through the trustee.

IV. POOL-LEVEL INFORMATION (RISK LAYERING & MATERIALITY)

Proposal:

We are very supportive of the SEC's decision and approach to address the quality of collateral data provided to investors at issuance and during the life of a structured security. In credit cards master trust structures, we support a monthly grouped account data approach. For other asset classes, we would like to suggest adding further detail to the points already in the SEC's proposal:

1. In any transaction, an asset-level tape, as contemplated by Schedule L, should be filed with each Rule 424(h), "the red herring", and Rule 424(b), "the black", filing and a monthly asset-level tape, as contemplated by Schedule L-D, should be required.

2. In static pool transactions, there should be no additions to the collateral pool after the filing of "the black". An asset-level tape with the complete Schedule L disclosure should be filed with "the black", explicitly noting the assets that were added or eliminated from the collateral pool after the 424(h) filing. Substitutions for defaulted assets, after closing, are acceptable.

3. In securities with prefunding periods or revolving transactions, monthly disclosures should include commentary on any material changes to underwriting criteria or the

collateral composition during the period when new assets are added or removed. A new Schedule L should be filed monthly when new collateral is added.

Rationale:

We strongly support the SEC's comments in Section III of its proposal concerning investor's needs for asset-level data that provides a comprehensive picture of the obligor, the collateral, and the contractual collateral terms, while always protecting the identification of an obligor. Given the complexities of risk layering, investors need to be provided with detailed ongoing asset-level data, such as described in Schedule L and Schedule L-D, to evaluate in their collateral models, provided that such data is reasonably available to an issuer. The standardization of the data fields and their definitions within an asset class will provide greater effectiveness and transparency for investors.

One-dimensional statistical disclosures in the offering circular, such as range of FICO score bands or grouping the assets into representative homogenous collateral pools are not sufficient to appreciate the linkages between collateral characteristics. When investors have access to asset-level data, they can evaluate multiple collateral variables like FICO, Loan-To-Value, Debt-To-Income and location of the collateral (State) along with broad economic variables like unemployment, current property capitalization rates and asset correlations.

Given the systems and computing power available today, issuers have the means to provide the data and investors have the ability to process large asset-level files on a monthly basis. Analytics based on asset-level analysis produces more insightful results than models based on the limited information typically summarized in the offering circular or servicer report.

In a number of areas, the proposal requests comments on materiality thresholds, such as what level of change in collateral composition constitutes materiality and should initiate a reporting event. Materiality in a structured collateral pool context, given the effects of the risk layering, cannot be addressed by just evaluating weighted averages of any individual characteristic of the pool without consideration of a transaction's structure or a securities' credit enhancement. Regular disclosures of collateral information like the Schedule L and monthly Schedule L-D asset-level files allow investors to perform their own collateral and structural analysis, to determine the impact on their investment of any collateral change.

V. PRIVATELY-ISSUED STRUCTURED FINANCE PRODUCTS

Proposal:

Since its inception, the Rule 144A market for structured securities has developed into a public-style execution market for many sponsors, accordingly we support the SEC's proposal to require issuers to provide, upon investor request, the same disclosure as is required for a registered ABS transactions for any Rule 144A structured security.

PART I

The traditional private ABS market, one where the disclosure requirements are actively negotiated by the participating parties rather than prescribed by regulation, should be preserved. A pure private market is helpful for certain issuers, encourages financial innovation, and permits capital to flow to emerging asset classes and businesses. We propose the non-Rule 144A private exemptions (i.e. Reg. D), would be a reasonable area to exempt the "upon request" public-style disclosure.

In addition, we agree that the qualified institutional buyer (QIB) definition should be revised to require a higher suitability threshold for investment in private structured products. We encourage the SEC to develop a more workable mechanism to allow an investor to qualify for investment in private structured products either on its own or by attribution of an investment advisor's qualifications as a QIB.

Rationale:

1. *The suitability to invest in private ABS should primarily be established by the sophistication of the party making the investment decision. Individuals and institutions routinely hire investment advisors for investment mandates in specialized asset classes, such as ABS. These entities evaluate and engage investment advisors based upon their capability in managing the specific asset strategy. It is the experience and asset management infrastructure of the investment advisor that is the vital measure in determining suitability of ABS securities, including specific ABS asset classes.*

2. *The evolution of the Rule 144A market has substantially reduced investors' ability to privately negotiate issuance terms. As a result, Rule 144A transactions have taken on a more public-style process and execution than the traditional private placement.*

3. *Given the breadth of the proposed public shelf eligibility requirements, many current public issuers, who have the resources and ability to meet the proposed public shelf registration requirements, would be incented to migrate to the Rule 144A market if public-style disclosure is not available in Rule 144A transactions. We are strongly supportive of an investor's right to request, in a Rule 144A issuance, the information that would be available if the transaction were done in the public market.*

4. *Private placements, other than Rule 144A issuances, should not require public-style disclosure "upon request" as recommended for Rule 144A placements. The traditional private market allows for a vibrant private ABS market open to issuers of all sizes.*

5. *There may be a subset of sponsors that warrant consideration for an exemption from public-style disclosure in connection with a Rule 144A transaction. We support preventing the creation of a loophole for issuers who have the resources and ability to meet the proposed public disclosure requirements, thereby enabling them to exploit any exception that is created. A potential solution is to place limitations on Rule 144A placements based on certain criteria (e.g. that limit the size of an issuance, the number of issuances a sponsor could do per year, the amount of outstanding securities issued by a sponsor, the number of investors, and the size of the asset class). Smaller sponsors might*

not have the resources to meet the public disclosure standards, but after an issuance volume threshold has been reached, the ability to meet public-style disclosure should be expected and achievable.

6. *In our experience, we have been able to obtain better disclosure in the private market than in the public market. It has been our more recent experience that the Rule 144A marketplace has become so public-like that we no longer have the ability to meaningfully negotiate terms or receive information greater than what would be available in a public transaction. We are concerned that the private market will adopt the proposed public disclosure requirements as the maximum amount of information needed to provide as part of a private issuance.*

In the introduction to Section VI, Privately-Issued Structured Finance Products, we note the comments the SEC made with respect to CDOs and their sale through private placements. There are important distinctions among the various types of CDOs that the SEC may wish to consider. On the one hand are ABS CDOs and CDO-Squareds backed by subprime mortgage-backed securities that may have been created under the failed "originate to distribute" model to facilitate the issuance of RMBS and which significantly contributed to the recent market crisis. On the other hand, there are asset management vehicles like Collateralized Loan Obligations (CLO), which hold corporate loans that generally are purchased in an "arm's length" transaction and whose performance through this economic cycle has been materially better. CLO investors have greater transparency to the underlying corporations within a CLO than ABS CDO investors had to the individual underlying borrowers. The distinctions between these asset classes may warrant a closer examination, and we would be happy to discuss our views on this topic.

VI. WATERFALL COMPUTER PROGRAM

Proposal:

To the extent that the proposed waterfall computer program is adopted, there should be clear language in the offering circular that the Indenture/Pooling & Serving Agreement is the controlling contract, and the remedies for inaccuracies in the waterfall computer program should also be clearly elaborated.

Rationale:

Given that there may be heavy reliance on the waterfall computer program by investors, and to avoid confusion among investors as to the adjudication of conflicts between the waterfall computer program and the Indenture/Pooling & Serving Agreement, the risk section of the offering circular should include a description of the legal rights and obligations created under the Indenture/Pooling & Serving Agreement and how they are affected by reliance on the waterfall computer program.

PART II

In Part II we provide our thoughts on those requests for comment that meaningfully affect an investment advisor's ability to invest on behalf of clients, including cross referencing Part I responses. We would be happy to further discuss any request for comment with the SEC staff.

In order to facilitate identifying and locating responses, the following Table of Contents is provided. The five digit page numbers refer to the page the request for comment begins in the Monday, May 3, 2010 Federal Register.

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PART II

II. SECURITIES ACT REGISTRATION

B. NEW REGISTRATION PROCEDURES AND FORMS FOR ASSET-BACKED SECURITIES

1. NEW SHELF REGISTRATION PROCEDURES – PAGE 23336

Included below is our Topic III, Transaction Documentation & Reporting, response from Part I:

Proposal:

We are very supportive of the SEC's decision and approach to address the issue of registration materials and ongoing reporting. We would like to suggest adding further detail to the points already in the SEC's proposal:

1. Final operative documents (particularly the Indenture and Pooling and/or Servicing Agreement) should be made available to investors, by providing access to them on a specified website, at least three (3) business days prior to closing for any public or private transaction. Any changes after the availability three (3) business days prior to closing should be handled by the amendment provisions described in the operative documents.

Rationale:

We are in conceptual agreement with the SEC's proposal that a minimum period of time be established to review ABS prospectuses. We recommend broadening the proposal to include private ABS offering documents. Many private transactions were announced and priced with public level alacrity. A speed bump needs to be incorporated into the issuance process to allow investors to complete their diligence in a commercially reasonable period of time.

Given the importance of the final operative documents in structured transactions (e.g. Indenture/Pooling & Serving Agreement, swap confirmations, administrative agreements) to an investor's understanding of the actual contractual provisions, the final documents should be delivered to prospective purchasers three (3) business days prior to closing.

Any changes to the operative documents after the availability three (3) business days prior to closing should be handled by the amendment provisions described in the operative documents. Last minute financial engineering in structured transactions contributes to poor understanding, and in some instances misunderstanding, of the transaction.

This standard affords investors the opportunity to diligence execution copies of all contracts prior to closing, especially information that may not be set until pricing.

2. All SEC filings for a transaction should be identified in the ongoing servicer reports, along with the proper Electronic Data Gathering, Analysis and Retrieval system (EDGAR) link to filings for the specific securitization.

   Rationale:

   Given the proposed expanded reporting for issuers, a standard mechanism needs to be developed to inform investors that a filing has been added to EDGAR. With a large number of structured product CUSIPs to monitor, it is not practical for any investor to routinely monitor EDGAR for new structured filings. Investors need a standard mechanism to be informed of public filings.

3. For public and private securities, the trustee, upon request from a current holder, should be required to make available, on a secure website, all operative documents, including any amendments to the original operative documents, servicing reports (other than special servicing reports that may be material and confidential) and SEC filings. In order to facilitate market-making activities in Rule 144A securities, broker dealers should also be able to obtain the same information from the trustee's website.

   Rationale:

   A current holder of a security should always be able to obtain copies of the full operative documents and the prescribed periodic servicer reports from the trustee upon request, regardless of whether the operative documents explicitly provide for its release.

4. An investor or group of investors who represent a 10% holding in a securitization should be able to direct the trustee to pass along communications to other holders in the security or trust.

   Rationale:

   Given the complexity of securitization structures, including collateral considerations, it is important for investors who have identified concerns with the collateral or any structural issue to be able to effectively communicate with other investors in the transaction, to either prompt the trustee to take action or solicit further direction from investors. A 10% threshold is a significant level of investor interest to initiate communication through the trustee.

PART II

Included below are responses to specific request for comment:

Q: Under our proposal, the Rule 424(h) filing would not be required to include information dependent on pricing. Is that appropriate? If not, what information should be required to be included and how would an issuer have access to the information in the timeframe that we are proposing?

- The Rule 424(h) filing should have a section that specifically discusses any aspect of the transaction that is "to-be-determined" at the time of the Rule 424(h) filing. The "to-be-determined" information should be finalized by the Rule 424(b), "the black", filing.

Q: Under our proposal, if a material change to the disclosure other than to pricing information occurs, the issuer would be required to file a new Rule 424(h) prospectus with updated information. Is this requirement specific enough? Should we, instead or in addition, specify particular changes that would trigger a filing, or conversely, that would not trigger a filing? Should we, for example, provide that a new Rule 424(h) filing would be required if the asset pool has changed by a certain amount? If so, what should that amount be (e.g., 1%, 5%, or 10% of the final asset pool)? How would other changes be described, such as changes to the waterfall? Would it be appropriate to allow a material change without requiring a new Rule 424(h) filing and a new five-day waiting period? Should the new Rule 424(h) filing be required as proposed to reflect the change and contain substantially all the information required to be in the prospectus, except for pricing information? Should we only require that the change be reflected in a supplement?

- We support the proposed rule requiring a new Rule 424(h) filing for any material change, other than information that is finalized at pricing. Given the potential negative impact of risk layering in transactions, changes to the asset pool should require a new Schedule L at the Rule 424(b) "the black" filing and a file that highlights the assets added and redacted.

- Investors would benefit if the EDGAR system was enhanced to accept "red lined" filings. It would be efficient for investors to see any subsequent Rule 424(h) filing "red lined" against the original and/or immediately prior filing. This would allow investors to efficiently and accurately determine what information has been updated in the Rule 424(h) filing. For the same reason, sponsors should also provide a "red lined" Rule 424(b) "the black" filing against the last Rule 424(h) filing. In current practice, the underwriter verbally summarizes the changes.

Q: The requirement to file a new Rule 424(h) filing would trigger another five-day waiting period before the first sale. Is this approach appropriate and workable? If the issuer is required to re-file the preliminary prospectus, as proposed, should the issuer be

required to wait another five business days before the first sale, as proposed? If not, how long should the issuer be required to wait?

- The process should be quicker than the initial Rule 424(h) review, as an investor should have had the opportunity to become familiar with the transaction documents during the initial marketing period. Any refiling waiting period should be incremental time.

Q: Are there any aspects of the Rule 424(h) filing that we should specify must be substantially set at the time it is required to be filed?

- For static pool transactions, the collateral pool should be substantially set with the Rule 424(h) filing. As an offering book builds, the transaction size and the collateral pool may increase to reflect the increased interest in the transaction. The Rule 424(b) filing should include a new Schedule L.

Q: We have designed the proposed process for ABS shelf registration to strike a balance between facilitating registered ABS offerings and providing investors a meaningful opportunity to analyze the securities. Would our proposal to require that the Rule 424(h) prospectus be filed at least five business days before the first sale make shelf registration sufficiently less attractive to issuers that they would avoid the registered market? If so, are there ways to address this concern? Below, we are proposing to require more disclosure for private offerings of asset-backed securities that rely on the Commission's safe harbors that allow issuers to rely on an exemption from registration. Should we impose even more restrictions on private offerings of asset-backed securities than what is proposed below? For example, should we condition reliance on Rule 506 of Regulation D on a limitation of the total number of purchasers in an ABS offering, even for offerings to accredited investors or qualified institutional buyers? Alternatively, should we impose fewer restrictions on private offerings of asset-backed securities?

- Please refer to our response under Section VI, Privately-Issued Structured Finance Products, for comments related to private offerings of asset-backed securities.

Q: Should we also require, or require instead, that the initial purchaser or investor hold the securities for a period of time prior to re-sales in reliance on Rule 144A to better ensure that such re-sales of asset-backed securities are not a distribution? Could that better ensure that the public registered ABS market operates appropriately and that the existing safe harbors do not inappropriately erode the public markets? If we were to add these additional restrictions on private offerings, what would be the impact on the broader market for structured securities? Would requiring a holding period discourage investors from purchasing ABS in exempt private placements? Would these offerings all be done as public deals, or would these offerings cease to be conducted at all? Should we provide for fewer restrictions—for example, should we require a subset of loan-level disclosures in the context of an exempt private offering? Should issuers or sponsors have

the option of providing only certain information? Or would these rules reduce the aggregate amount of transactions? What would be the economic effect?

- The lower liquidity of a holding period rule would likely eliminate certain clients from investing in Rule 144A securities. Clients have specific investment mandates that may require a security be sold upon a downgrade or upon a request to liquidate the portfolio.

3. SHELF ELIGIBILITY FOR DELAYED OFFERINGS

(A) RISK RETENTION – PAGE 23341

Included below is our Topic I, Risk Retention, response from Part I:

Proposal:

We support the SEC's proposal for vertical risk retention to properly align the interests of market participants, and believe that systemic risks similar to those that arose in the past decade are likely to repeat themselves if market forces are left to self regulate alignment of interests.

In order to quickly return confidence to structured products markets, we support (i) a 5% risk retention calculation based on the total proceeds from the sale of each tranche; (ii) retention being retained for the life of the securitization; (iii) risk retention requirements applying to all structured asset classes and types of structured securities; and (iv) requiring the sponsor and its affiliates to regularly report their current net risk retention related holdings.

While the Regulation AB proposal contemplates a minimum 5% risk retention for all asset classes, Dodd-Frank mandates that a group of certain regulators, including the SEC, review and consider whether the amount of risk retention and the party or parties required to retain such risk should be different for certain asset classes. We believe that the risk retention should be tailored to the unique characteristics of each asset class, such that certain asset classes should require higher risk retention, while others may require lower risk retention.

Any risk retention requirement should consider existing accounting rules to determine that upon the transfer of assets to a structured products trust, the sponsors and loan originators are generally able to realize sales treatment and avoid consolidation of the collateral onto their balance sheets.

PART II

Rationale:

Long-term "skin in the game" is the best approach to align a sponsor's economic interests with the performance of its asset originations. Retention of risk by a sponsor (i) fundamentally addresses the "originate to distribute" model where an asset may be underwritten or aggregated with a focus on whether or not the asset can be sold into a securitization, rather than on its likely long-term performance; and (ii) motivates the sponsor to thoughtfully originate assets and ensure proper servicing of the collateral for the benefit of all investors in a securitization.

Vertical risk retention better aligns the sponsor's interests with each investor in the capital structure than horizontal risk retention. We agree with the SEC's comment that "''horizontal risk retention'' in the form of retention of the equity or residual interest could lead to skewed incentive structures."[3] *A horizontal slice may engender class warfare within a securitization. Sponsors can influence the servicing of the collateral to maximize their overall cash proceeds and mitigate their exposure to the retained subordinated horizontal slice.*

When evaluating a transaction for appropriate sponsor risk retention, particular attention should be given to the amount of capital the sponsor has committed to the transaction and the amount of funds (servicing fees, principal and interest from retained holdings and residual interests at the bottom of the waterfall) that flow back to the sponsor from the securitization. The effectiveness of risk retention and the intended alignment of interests between sponsors and investors is substantially diminished if the combined payments received by the sponsor from all sources significantly repays the capital the sponsor contributed to a transaction prior to investors being repaid. In order to maintain a sponsor's "skin in the game", risk retention should consider the size and timing of a sponsor's total proceeds from a transaction.

We offer the following thoughts to specific questions you raise on risk retention and economic interests:

- *We support the SEC's position that in retaining risk through the retention of randomly selected exposures, "it would be both difficult and potentially costly for investors and regulators to verify that exposures were indeed selected randomly, rather than in a manner that favored the sponsor."*[4]

- *While we acknowledge that Dodd-Frank requires certain regulators to develop a definition of "qualified mortgage", the "qualified mortgage" definition should be very*

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[3] **Federal Register** / Vol. 75, No. 84 / Monday, May 3, 2010 / Proposed Rules – Page 23339

[4] Ibid

narrow in scope, and we are opposed to the concept of designating a "qualified" asset within any other structured asset class. Once criteria for "qualified" assets are established, and securitization of these assets are granted preferential capital treatment, loan originators could be incented to originate the "cheapest to deliver" collateral for distribution to a securitization.

- *Third party purchasers, like the "B-piece buyer" in CMBS, should not be allowed to retain a portion of the securitization to fulfill the sponsor's shelf eligibility condition. Recent history has shown that this practice did not insulate the CMBS market from underwriting excesses.*

- *To provide the greatest transparency to the market, the sponsor and its affiliates should regularly report their current risk retention related holdings by tranche of a securitization, as we believe that any change in risk retention holdings is material and should be disclosed. Furthermore, the sponsor should also disclose any hedge (security specific or portfolio) that was entered into by the sponsor or, to the extent it has actual knowledge of such a hedge, an affiliate in an effort to offset any risk retention position held by the sponsor or an affiliate.*

(B) THIRD PARTY REVIEW OF REPURCHASE OBLIGATIONS – PAGE 23344

Included below is our Topic II, Repurchase Obligations – Representations & Warranties, response from Part I:

<u>Proposal:</u>

The SEC correctly articulates in its commentary in Section II.B.3(b) the difficulties trustees face in attempting to make bona fide representation and warranty claims, which we have recently found to be the case in RMBS. We are unaware of such a broad representation and warranty issue in other asset classes, whether this is because of the relatively infrequent claims of breach that arise, the lack of an effective mechanism for trustees to initiate claims, or because the structures were sufficiently enhanced to absorb the then realized losses. In any event, it is important to provide a mechanism to timely identify breaches of representations and warranties with respect to underlying collateral. PIM proposes the following mechanism.

1. An independent collateral agent, or similar independent entity, should be required to review and certify the asset-level tape for accuracy and certify that all required asset related documents have been provided.

For structured transactions involving homogenous collateral pools of more than 1,000 assets, we propose that a non-affiliated and independent third party, hired by the trustee and compensated by the sponsor or transaction, should perform a detailed review of a statistically significant random sampling of each collateral agent's asset files, prior to pricing, to determine adherence with the transaction documents and the representations and warranties of the seller. If the results fail the sampling test:

a) the sponsor should be required to disclose it failed a random sampling test;
b) all assets will be reviewed, at the seller's expense, and all ineligible assets should be removed; and
c) any asset that was previously identified as breaching a representation and warranty should be required to be disclosed and cannot be added to any subsequent collateral pool unless it has been cured and certified as meeting all the representations and warranties of the transaction.

For structured transactions involving smaller and lumpier asset pools, such sampling techniques may not be appropriate, and other means of assessing the collateral quality should be adopted.

Rationale:

In an effort to identify potential data errors and to assure necessary documentation is received, a collateral agent or similar party can review the asset-level tape for accuracy, verify that all asset documents required to be delivered at closing have been received, and assure that a workable process is in place to obtain all post-closing documentation. This review is reasonable and beneficial to a transaction.

The results of a collateral assessment completed prior to deal closing can provide further comfort to investors that the assets are underwritten and documented in an appropriate manner and comply with representations and warranties.

The impact on a sponsor which fails a random sampling needs to be material enough to ensure the sponsor sufficiently reviews the collateral prior to its inclusion in a transaction. The cost and effort necessary to conduct a full pool review and the subsequent disclosures should be a sufficient incentive to a sponsor.

2. Each ABS asset class should apply an objective and consistent standard for identifying breaches of representations and warranties, and triggering a post-closing asset document review. The use of such a carefully tailored objective standard, coupled with a clear process for pursuing any resulting claims, should help ensure the effectiveness of the investors' contractual remedies, while satisfying all parties' desire for fairness.

As an example, in transactions that have employed upfront statistical sampling, the appropriate time to review a defaulted asset may be when a transaction's required credit enhancement (e.g. overcollateralization, reserve account) is below the target level as defined by the transaction. When enhancement is below required levels, any defaulted asset would be reviewed by a non-affiliated third party, hired by the trustee, for compliance with representations and warranties. The trustee and servicer should have a specified amount of time after an asset becomes defaulted to provide all asset documents to the third party to facilitate its review.

Rationale:

Only assets that meet the specified standards for the relevant asset class should be included in an ABS collateral pool. Investors want to know that a rigorous asset review or another acceptable process has established such compliance prior to closing, and that a reliable mechanism has been provided to address material asset deficiencies that are identified post-closing.

3. The sponsor should have a specified amount of time to challenge any third party claim, and if such time passes without a challenge, the sponsor should be required to repurchase the asset at the contractually established repurchase price (typically par plus accrued interest to the date of repurchase).

   Any sponsor-challenged claims should be settled by an independent third party arbitrator, selected by the trustee, whose decision is binding.

   Rationale:

   Investors and issuers should both benefit from a process that facilitates the timely resolution of claims while also providing a reasonable level of "due process".

   This process also addresses an issue in the current SEC proposal regarding what should occur in the case where a sponsor rejects a claim and the third party opinion does not support the sponsor.

4. Claims made against a sponsor by the third party should be regularly reported, together with detail that clarifies the number of such claims that were accepted by the sponsor and the number of claims that were and were not approved by the arbitrator. This information should be provided as part of the offering material for all issuances of the sponsor.

Rationale:

This information is important in evaluating the effectiveness of the process and the sponsor's prior diligence in confirming that its collateral meets the eligibility requirements.

Included below are responses to specific request for comment:

Q: Would this proposed condition, which would only require an undertaking from the issuer, have a measurable benefit to investors? Should we require more assurance that third party opinions have been provided to investors as a condition to shelf eligibility? For example, should we instead condition eligibility on receipt of a certification from the trustee in offerings of the same asset class by the depositor or its affiliates to the effect that all required opinions have been obtained? Should we condition eligibility on a requirement that the trustee provide notice if required third party opinions are not obtained, along with an absence of a notice from the trustee to the effect that there was a failure to provide required opinions?

- Each ABS asset class should apply an objective and consistent standard for identifying breaches of representations and warranties, and triggering a post-closing asset document review, as we have proposed.

Q: Should we provide more guidelines in this shelf eligibility condition regarding the specifics of the provision that would be required to be included in the pooling and servicing or other agreement? If so, what should be detailed?

- The agreements should clearly specify the obligations of the issuer and servicer to facilitate the diligence of potential breaches of representations and warranties through the release of asset information, and it is the duty of the trustee to actively fulfill their obligation to review collateral for potential representation and warranty breaches.

Q: Should the proposed condition provide any further specification of the terms of the third party opinion provision?

- Investors need a remedy against the sponsor if the third party opinion is not supportive of the sponsor's rejection of the claim.

Q: Is it appropriate to require, as proposed, the third party to be nonaffiliated with the obligated party? Should we specify further any requirements relating to providers of the third party opinion? Should we specify that the third party opinion provider must be an independent expert, similar to what is required in Section 314(d)(1) of the Trust Indenture Act of 1939?

- We support the proposed rule requiring the third party to be nonaffiliated with the obligated party. The third party should be hired by the trustee, not the sponsor. The requirement will help ensure against conflicts of interest.

Q: Should we specify who should provide the third party opinion or who should not be permitted to provide the opinion? Should diligence firms that provide third party pre-securitization review of a random sample of assets be allowed to provide this opinion? Should we specify that it must be a legal opinion? Would attorneys or law firms be willing to provide this opinion? Why or why not? Would it be appropriate to allow a sponsor's in-house counsel to provide the opinion? If a law firm provides the opinion, should we prohibit the law firm that assisted in the offering from providing such an opinion?

- The third party should be hired by the trustee. To ensure no conflict of interest, any party or an affiliate involved in the transaction should be ineligible from providing the opinion. The third party should have to make a representation that no conflict of interest exists.

Q: We are aware of some insurance providers that have offered to insure in the context of mergers and acquisitions any breach of the representations and warranties in the transaction agreement. As an alternative to conditioning ABS shelf eligibility on an undertaking in the transaction agreement that the issuer furnish a third party opinion on assets not repurchased (or instead of the proposed condition), should we allow the issuer to purchase insurance to insure a minimum amount or percentage of the sponsor or originator's obligations under the transaction agreement? If so, what kind of disclosure should we require about the insurance provider? How can we ensure that this alternative method of meeting shelf eligibility adequately improves the incentive structure and therefore the quality of the securities?

- Insurance is a risk transfer mechanism, and the issuer should remain financially accountable for all breaches of representation and warranties, rather than a third party company. If insurance is deemed acceptable, any insurance payments should flow to the trust, and if the insurer is not able to make a claim payment to the trust, then the sponsor should still remain liable for the payment. Consequently, the sponsor should remain focused on ensuring all collateral contributed to a transaction meets the eligibility criteria.

(D) UNDERTAKING TO FILE ONGOING REPORTS – PAGE 23347

Q: What is the aggregate effect of the proposed revisions to shelf eligibility criteria and the shelf registration process for ABS offerings? If these revisions are adopted, would this make using non-shelf registration (Form SF–1) more attractive to an ABS issuer? How

would this change the costs and benefits analysis for using shelf registration for ABS issuers? Would this change cause shelf registration to be less attractive or become uneconomic?

- All public ABS offerings (Proposed Forms SF-1 and SF-3) should follow the same disclosure and eligibility standards.

(E) OTHER PROPOSED FORM SF–3 REQUIREMENTS – PAGE 23349

The proposed risk retention requirements and continued monitoring is appropriate and beneficial for investors. The requirement to maintain risk retention should be a continuous requirement. Please refer to our response under Section II.B.3.(a), Risk Retention, for more commentary.

D. INCLUDING INFORMATION IN THE FORM OF PROSPECTUS IN THE REGISTRATION STATEMENT

2. ADDING NEW STRUCTURAL FEATURES OR CREDIT ENHANCEMENTS – PAGE 23353

Q: Is our proposal to require issuers to file a post-effective amendment to reflect new structural features or credit enhancements and provide a related undertaking appropriate?

- Yes. All market participants would benefit from the enhanced understanding of a transaction that results from this proposal.

III. DISCLOSURE REQUIREMENTS

A. POOL ASSETS

We are very supportive of the SEC's approach to address the issue of asset-level disclosure requirements and exemptions at offering and ongoing through the life of a securitization. With the exception of sizeable master trust structures, like credit cards, we are a proponent of asset-level disclosure that is commercially reasonable for an issuer to provide and does not allow the identification of the obligor. The content of Section III and the Schedule L and Schedule L-D tables is thoughtful, and the proposed asset-level informational items are generally beneficial in understanding the risk profile of the obligors, the value of the collateral and the actual and

expected amortization of the collateral. We find the standardization of definitions associated with each informational item to be important in understanding the meaning of the data and ensuring consistency of reporting across issuers.

Some proposed items may not be required for an asset class or applicable for a subset of issuers within an asset class. If you consider eliminating any item requirement, we propose the item be moved to a "Supplemental Information Schedule", since the item may be (or become) relevant for an issuer. No issuer would be required to provide a response to any item on the "Supplemental Information Schedule". If an issuer believes a particular item is beneficial to provide to investors, the item would be defined and available in the general Schedule framework. For a private ABS transition, it is helpful to maintain a larger set of defined Schedule items.

When considering investor needs in the development of the asset-level files, asset-level information designed specifically for an investor in the senior time-tranched AAA class in a prime collateral pool with standard loan terms will not meet the needs of an investor in the same asset class but in a deeply subordinated or equity position of a securitization of subprime collateral with non-standard loan terms. As there currently is only one asset-level file per asset class, that asset-level file will need to meet the needs of all investors.

The following collateral issues should also be considered:

- The risk profile of the obligor (e.g. prime, near-prime and sub-prime obligors … AAA to CCC corporations)
- The collateral and its stated terms (e.g. detailed collateral description and value, scheduled principal and interest, defaults, extensions, modifications, repurchases)
- The monthly proceeds received by the trust (e.g. scheduled and prepaid principal, interest, recoveries, servicer advances)

The impact of the recent issues experienced by the securitization market has made all market participants review best practices for asset-level data. The value of the asset-level information is not only for investors to be able to perform more robust credit work at issuance and through the life of a transaction, but also to provide enhanced transparency for all interested parties into the mechanics of a securitized transaction.

1. ASSET-LEVEL INFORMATION IN PROSPECTUS – PAGE 23356

Q: Is a different approach to asset-level disclosure preferable, such as requiring it generally, but relying on industry to set standards or requirements? If so, how would data be disclosed for all the asset classes for which no industry standard exists or for which multiple standards may exist? To the extent multiple standards exist, how would investors be able to compare pools? Please be detailed in your response.

- Under the auspices of a SEC led process, it is beneficial for sponsors and investors to jointly develop standards or requirements for any asset class. To ensure standardization and utilization of the work product, any agreement must be incorporated into the SEC's disclosure requirements. If two sponsors within the same asset class can provide information on different standards, it will be impossible for investors to efficiently compare asset-level files.

Q: We note that there are several different standards under which asset-level data is already required. Would our requirements impose undue burdens on ABS issuers?

- One uniform standard per asset class would be beneficial for sponsors and investors.

(A) WHEN ASSET-LEVEL DATA WOULD BE REQUIRED IN THE PROSPECTUS – PAGE 23356

Q: Is the proposed requirement to provide Schedule L data with the proposed Rule 424(h) prospectus, the final prospectus under 424(b) and for changes under Item 6.05 of Form 8–K appropriate? Should Schedule L data be required at any other time? If so, please tell us when and why.

- Securitizations that add new assets after the final prospectus (e.g. revolving transactions and transactions with a prefunding period) and require a Schedule L filing at issuance, should file a complete Schedule L each month new assets are added to the collateral pool. This will allow investors to evaluate the risk layering introduced by any new collateral that is added to the transaction.

Q: Are the proposed measurement dates appropriate? Are there any data fields that would be inappropriate or too burdensome to supply as of two different measurement dates (i.e., the measurement date and the cut-off date)? If so, please specify the data field and provide a detailed explanation.

- The proposed measurement dates are appropriate. Investors should receive Schedule L data with the Rule 424(h) prospectus and the final prospectus under Rule 424(b).

4. ASSET DATA FILE AND XML – PAGE 23376

Q: Are the proposed blank data tags appropriate? Is ten blank data tags the appropriate number? Should the number be more or less? Would more blank data tags create undue complexity for investors? Are there other ways we could provide for additional disclosure and have that disclosure be standardized?

- As long as the information in the blank data tag is clearly described, neither the number of blank data tags nor the information would add complexity.

Q: Should we provide a transition period prior to the required compliance date that would allow filers to submit only test filings? Please be specific in your response.

- Regardless of the implementation period, given the breadth and depth of changes in the proposal, it would be helpful (especially with regards to asset-level files and waterfall computer programs) that sponsors proactively commence preparing beta versions of new informational releases so investors can begin retooling their systems in advance of the proposal becoming effective.

5. POOL-LEVEL INFORMATION – PAGE 23377

Q: Above we noted that disclosure regarding risk layering practices is required under existing Item 1111. Is the application of Item 1111 to risk-layering practices clear? Is there some way we can make Item 1111 clearer in that regard? Should we revise any other rule in that regard?

- Please refer to Section IV, Definition of an Asset-Backed Security, for general comments on risk layering.

Q: Should we require, as proposed, disclosure on assets that deviate from the disclosed origination underwriting standards that must be accompanied by disclosure of specific data about the amount and characteristics of those assets that did not meet the standards? Should we require, as proposed, that if disclosure is provided regarding compensating or other factors, if any, that were used to determine that the assets should be included in the pool, despite not having met the disclosed underwriting standards, disclosure is required that would describe those factors and provide data on the amount of assets in the pool that are represented as meeting those factors and the amount of assets that do not meet those factors? Should we require any other disclosure with respect to exceptions to or deviations from disclosed origination underwriting standards? Should issuers be required to identify each exception loan by a loan identifier that will be disclosed in the proposed Schedule L discussed above?

- Any asset that deviates from the disclosed origination underwriting standards should be deemed an exception. Exceptions are a normal part of the asset origination process. Although the exception process may be codified in an issuer's standard underwriting procedures, it is important to know how many assets were not approved through the disclosed origination underwriting standards. This information should be included in the general items on Schedule L.

Q: Are the proposed amendments relating to disclosure concerning representations and warranties and modification provisions in the transaction agreements appropriate?

- Please refer to Section II.B.3.(b), Third Party Review of Repurchase Obligations.

Q: Are there other kinds of disclosure relating to representations and warranties and enforcement mechanisms of those representations and warranties that should be required to be provided? If so, please describe in detail.

- Please refer to Section II.B.3.(b), Third Party Review of Repurchase Obligations.

Q: A repurchase obligation also may be imposed under other circumstances. Should the rules require prospectus disclosure of other types of repurchase obligations?

- The prospectus should disclose all types of repurchase obligations.

Q: We are proposing to require disclosure of whether the transaction agreements include a fraud representation. Is this appropriate? Are there other types of representations and warranties that the prospectus should highlight?

- We support the proposed rule to include a fraud representation. Fraud related disclosure is helpful to investors. The prospectus should highlight all representations and warranties made by all parties affiliated with the transaction.

B. FLOW OF FUNDS

1. WATERFALL COMPUTER PROGRAM – PAGE 23380

Included below is our Topic VI, Waterfall Computer Program, response from Part I:

Proposal:

To the extent that the proposed waterfall computer program is adopted, there should be clear language in the offering circular that the Indenture/Pooling & Serving Agreement is the controlling contract, and the remedies for inaccuracies in the waterfall computer program should also be clearly elaborated.

Rationale:

Given that there may be heavy reliance on the waterfall computer program by investors, and to avoid confusion among investors as to the adjudication of conflicts between the

waterfall computer program and the Indenture/Pooling & Serving Agreement, the risk section of the offering circular should include a description of the legal rights and obligations created under the Indenture/Pooling & Serving Agreement and how they are affected by reliance on the waterfall computer program.

C. TRANSACTION PARTIES

1. IDENTIFICATION OF ORIGINATOR – PAGE 23381

Q: Should we amend Item 1110 to require identification of originators even if no single originator comprises 10% or more of the pool? Is it appropriate to require identification of originators, as proposed, if the cumulative amount of originated assets by parties other than the sponsor (or its affiliates) comprises 10% or more of the total pool asset?

Q: Are the proposed revised thresholds for originator identification appropriate? Should they be different (e.g., 5%)?

- Schedule L should specify the originator of each asset. By including the originator on Schedule L, investors will have the ability to identify and differentiate originators that are providing riskier collateral to structured product transactions.

2. OBLIGATION TO REPURCHASE ASSETS – PAGE 23382

Please refer to Section II.B.3.(b), Third Party Review of Repurchase Obligations, for PIM's repurchase obligation proposal.

- The Schedule L-D file should indicate if an asset was repurchased by the sponsor.

3. ECONOMIC INTEREST IN THE TRANSACTION – PAGE 23383

Please refer to Section II.B.3.(a), Risk Retention, for general comments on the reporting of economic interests.

D. PROSPECTUS SUMMARY – PAGE 23384

Q: Is our proposed instruction to require summary statistical information regarding the types of underwriting or origination programs, exceptions to underwriting and

origination criteria and, if applicable, modifications made to the pool assets after origination appropriate?

- Yes, the disclosure required under the proposal would be helpful to investors.

E. STATIC POOL INFORMATION – PAGE 23386

Pool construction risk is a primary risk in investing in structured products. Loss and collateral amortization expectations are based on a review of historical static pool data. For historical performance to have any relevance to a new issue, the current collateral pool should have been originated in a similar manner as the historical pools. The prospectus should highlight the extent to which the current collateral pool was originated with the same or differing underwriting criteria, loan terms and/or risk tolerances than the static pool data.

Q: Should we adopt the changes to Item 1105 for all types of issuers (instead of only amortizing asset pools, as proposed) to require narrative disclosure of the static pool information presented, require the methodology used in determining or calculating the characteristics, and terms, and a description of how the assets in the static pool differ from the pool assets underlying the securities being offered? Would these changes help investors evaluate static pool data?

- We believe the narrative disclosure and methodology disclosure would be helpful in not only understanding an issuer's static pool information, but also comparing the information across issuers within the same asset class.

4. FILING STATIC POOL DATA – PAGE 23387

It would be helpful to investors if the static pool data is provided in a format that is readily importable into Excel or a database.

Q: We are proposing to allow, but not require, registrants to file static pool information on Form 8–K and incorporate it by reference into the prospectus, in lieu of filing it in the prospectus. Is this accommodation appropriate? Should we instead require that all static pool disclosure be filed in the prospectus?

- For any information that is incorporated by reference in the prospectus, it would be very helpful if there were a link to the relevant information.

F. EXHIBIT FILING REQUIREMENTS – PAGE 23388

Please refer to our response under Section II.B.1, New Shelf Registration Procedures, for general comments on transaction documents.

IV. DEFINITION OF AN ASSET-BACKED SECURITY – PAGE 23390

Included below is our Topic IV, Pool-Level Information (Risk Layering & Materiality), response from Part I:

Proposal:

We are very supportive of the SEC's decision and approach to address the quality of collateral data provided to investors at issuance and during the life of a structured security. In credit cards master trust structures, we support a monthly grouped account data approach. For other asset classes, we would like to suggest adding further detail to the points already in the SEC's proposal:

1. In any transaction, an asset-level tape, as contemplated by Schedule L, should be filed with each Rule 424(h), "the red herring", and Rule 424(b), "the black", filing and a monthly asset-level tape, as contemplated by Schedule L-D, should be required.

2. In static pool transactions, there should be no additions to the collateral pool after the filing of "the black". An asset-level tape with the complete Schedule L disclosure should be filed with "the black", explicitly noting the assets that were added or eliminated from the collateral pool after the 424(h) filing. Substitutions for defaulted assets, after closing, are acceptable.

3. In securities with prefunding periods or revolving transactions, monthly disclosures should include commentary on any material changes to underwriting criteria or the collateral composition during the period when new assets are added or removed. A new Schedule L should be filed monthly when new collateral is added.

Rationale:

We strongly support the SEC's comments in Section III of its proposal concerning investor's needs for asset-level data that provides a comprehensive picture of the obligor, the collateral, and the contractual collateral terms, while always protecting the identification of an obligor. Given the complexities of risk layering, investors need to be provided with detailed ongoing asset-level data, such as described in Schedule L and

Schedule L-D, to evaluate in their collateral models, provided that such data is reasonably available to an issuer. The standardization of the data fields and their definitions within an asset class will provide greater effectiveness and transparency for investors.

One-dimensional statistical disclosures in the offering circular, such as range of FICO score bands or grouping the assets into representative homogenous collateral pools are not sufficient to appreciate the linkages between collateral characteristics. When investors have access to asset-level data, they can evaluate multiple collateral variables like FICO, Loan-To-Value, Debt-To-Income and location of the collateral (State) along with broad economic variables like unemployment, current property capitalization rates and asset correlations.

Given the systems and computing power available today, issuers have the means to provide the data and investors have the ability to process large asset-level files on a monthly basis. Analytics based on asset-level analysis produces more insightful results than models based on the limited information typically summarized in the offering circular or servicer report.

In a number of areas, the proposal requests comments on materiality thresholds, such as what level of change in collateral composition constitutes materiality and should initiate a reporting event. Materiality in a structured collateral pool context, given the effects of the risk layering, cannot be addressed by just evaluating weighted averages of any individual characteristic of the pool without consideration of a transaction's structure or a securities' credit enhancement. Regular disclosures of collateral information like the Schedule L and monthly Schedule L-D asset-level files allow investors to perform their own collateral and structural analysis, to determine the impact on their investment of any collateral change.

Included below are responses to specific request for comment:

Q: Is the proposed revision relating to master trusts not backed by revolving account assets appropriate? Are there any asset classes or types of ABS issuers that would be excluded from the revised definition of an asset-backed security that should not be?

- Except as noted below, any asset type that follows a traditional amortization schedule or without the ability to redraw on the loan generally should not be included in a publicly issued master trust structure.

- Master trust structures are appropriate for sponsors with recurring variable collateral funding needs (e.g. credit cards, fleet lease, floor plan, rental car). The flexibility and efficiency a master trust structure provides is appropriate for these types of assets.

PART II

Q: Is it appropriate for ABS structured as master trusts that are backed by non-revolving accounts to register on S–1? How would existing and prospective investors be able to analyze the pool if it is constantly changing? Please be specific in your response.

- The SEC raises an important risk consideration for investors, the ability to monitor a collateral pool if it is constantly changing. The best monitoring mechanism for investors is monthly transparency into the current collateral pool.

Q: Is 10% the appropriate ceiling for the amount of permissible prefunding? Should that amount be higher (e.g., 20%, 30%, 40%), lower (e.g., five percent), or disallowed altogether under the definition of an asset-backed security? Under the existing definition, the duration of the prefunding period is limited to one year from the date of issuance of the asset-backed securities. Should the one-year limitation be shortened?

Q: Is the one-year permissible length of the revolving period for non-revolving assets, as proposed, the appropriate amount of time? Should the permissible length be a different amount of time (e.g., two years)? Should any other amendments be made to the allowance for revolving periods?

- Concern with the ceiling for permissible prefunding and the duration of the prefunding period or revolving period for non-revolving assets is mitigated if the issuer is required to file a Schedule L at issuance and each month new assets are added to the collateral pool. The transparency provided by the asset-level file will allow investors to evaluate the changing nature of the risk layering introduced by the new assets.

- While each structured transaction has a broad description of collateral eligibility, issuers generally communicate a targeted underwriting focus during a transaction's marketing period. Over a prefunding or revolving period, an issuer's underwriting criteria, loan terms and/or risk tolerances may change. The resulting collateral, while meeting the broad collateral eligibility requirements of the transaction, may be differently focused then what was communicated during the marketing period.

- To the extent the updated Schedule L and/or monthly Schedule L-D information is not required to be produced and investors cannot properly access the changes in risk layering, a low ceiling and a short prefunding or revolving period should be adopted.

- There should not be any blind collateral pools as part of any public ABS disclosure scheme. If the issuer desires the benefits of public issuance, one of the requirements should be transparency into the collateral pool at issuance and for the life of the transaction.

- We believe different requirements will be needed for actively managed (as opposed to pre-funded or revolving) securitizations. In the case of an actively managed

securitization, limitations on amounts of pre-funding, or a specified time limit for a revolving period, are not as relevant as asset-level and pool-level requirements for the securitization and good disclosure regarding the investment philosophy and practices of the investment manager. These inputs can allow investors to gauge their tolerance for uncertainty in the final composition of the asset pool.

V. EXCHANGE ACT REPORTING PROPOSALS

A. DISTRIBUTION REPORTS ON FORM 10–D – PAGE 23391

Q: Should we amend, as proposed, Item 1121 to require disclosure regarding the amount of repurchase demands made of the obligated party during the period covered by the report for the assets in the pool of securities covered by the report? Should we require, as proposed, disclosure regarding the percentage of those assets that were subject to a repurchase demand that were not repurchased? Should we also require, as proposed, disclosure whether an opinion of a third party not affiliated with the obligated party had been furnished to the trustee that confirms that the assets that were not repurchased or replaced did not violate a representation or warranty.

- Please refer to our response under Section II.B.3.(b), Third Party Review of Repurchase Obligations, for PIM's repurchase obligation proposal.

B. SERVICER'S ASSESSMENT OF COMPLIANCE WITH SERVICING CRITERIA – PAGE 23392

Q: Should we codify prior staff interpretations relating to the scope of Item 1122 by adding the proposed instruction? Does the proposed instruction to Item 1122 reflect current servicer's practices? Do servicers conduct servicing in any ways different from what is contemplated in the proposed instruction?

- Codifying staff interpretations is a benefit for all market participants.

C. FORM 8-K

1. ITEM 6.05 – PAGE 23393

Q: Should we revise Item 6.05 of Form 8–K as proposed? Is 1% an appropriate threshold to trigger disclosure on Form 8–K? Should it be higher or lower such as 0.5% or 2%?

- Please refer to our response under Section II.B.1, New Shelf Registration Procedures, for general comments on materiality.

Q: Should we also require, as proposed, a description of the changes to the asset pool?

- Yes, a description of changes would be helpful. Investors should also be provided a listing of the ineligible collateral and a reason as to why the collateral became ineligible.

2. CHANGE IN SPONSOR'S INTEREST IN THE SECURITIES – PAGE 23393

Please refer to our response under Section II.B.3.(a), Risk Retention, for general comments on risk retention and related reporting.

D. CENTRAL INDEX KEY NUMBERS FOR DEPOSITOR, SPONSOR AND ISSUING ENTITY – PAGE 23393

Q: Are there any other changes we should make to the forms to make it easier to locate materials related to an ABS offering or ABS issuer?

- Please refer to our response under Section II.B.1, New Shelf Registration Procedures, for general comments on assisting market participants locating SEC filings.

- The ability to perform a company search in EDGAR by CUSIP, or other standardized asset ID, would be helpful.

VI. PRIVATELY-ISSUED STRUCTURED FINANCE PRODUCTS – PAGE 23397

Included below is our Topic V, Private-Issued Structured Finance Products, response from Part I:

<u>Proposal:</u>

Since its inception, the Rule 144A market for structured securities has developed into a public-style execution market for many sponsors, accordingly we support the SEC's proposal to require issuers to provide, upon investor request, the same disclosure as is required for a registered ABS transactions for any Rule 144A structured security.

PART II

The traditional private ABS market, one where the disclosure requirements are actively negotiated by the participating parties rather than prescribed by regulation, should be preserved. A pure private market is helpful for certain issuers, encourages financial innovation, and permits capital to flow to emerging asset classes and businesses. We propose the non-Rule 144A private exemptions (i.e. Reg. D), would be a reasonable area to exempt the "upon request" public-style disclosure.

In addition, we agree that the qualified institutional buyer (QIB) definition should be revised to require a higher suitability threshold for investment in private structured products. We encourage the SEC to develop a more workable mechanism to allow an investor to qualify for investment in private structured products either on its own or by attribution of an investment advisor's qualifications as a QIB.

Rationale:

1. *The suitability to invest in private ABS should primarily be established by the sophistication of the party making the investment decision. Individuals and institutions routinely hire investment advisors for investment mandates in specialized asset classes, such as ABS. These entities evaluate and engage investment advisors based upon their capability in managing the specific asset strategy. It is the experience and asset management infrastructure of the investment advisor that is the vital measure in determining suitability of ABS securities, including specific ABS asset classes.*

2. *The evolution of the Rule 144A market has substantially reduced investors' ability to privately negotiate issuance terms. As a result, Rule 144A transactions have taken on a more public-style process and execution than the traditional private placement.*

3. *Given the breadth of the proposed public shelf eligibility requirements, many current public issuers, who have the resources and ability to meet the proposed public shelf registration requirements, would be incented to migrate to the Rule 144A market if public-style disclosure is not available in Rule 144A transactions. We are strongly supportive of an investor's right to request, in a Rule 144A issuance, the information that would be available if the transaction were done in the public market.*

4. *Private placements, other than Rule 144A issuances, should not require public-style disclosure "upon request" as recommended for Rule 144A placements. The traditional private market allows for a vibrant private ABS market open to issuers of all sizes.*

5. *There may be a subset of sponsors that warrant consideration for an exemption from public-style disclosure in connection with a Rule 144A transaction. We support preventing the creation of a loophole for issuers who have the resources and ability to*

meet the proposed public disclosure requirements, thereby enabling them to exploit any exception that is created. A potential solution is to place limitations on Rule 144A placements based on certain criteria (e.g. that limit the size of an issuance, the number of issuances a sponsor could do per year, the amount of outstanding securities issued by a sponsor, the number of investors, and the size of the asset class). Smaller sponsors might not have the resources to meet the public disclosure standards, but after an issuance volume threshold has been reached, the ability to meet public-style disclosure should be expected and achievable.

6. *In our experience, we have been able to obtain better disclosure in the private market than in the public market. It has been our more recent experience that the Rule 144A marketplace has become so public-like that we no longer have the ability to meaningfully negotiate terms or receive information greater than what would be available in a public transaction. We are concerned that the private market will adopt the proposed public disclosure requirements as the maximum amount of information needed to provide as part of a private issuance.*

   In the introduction to Section VI, Privately-Issued Structured Finance Products, we note the comments the SEC made with respect to CDOs and their sale through private placements. There are important distinctions among the various types of CDOs that the SEC may wish to consider. On the one hand are ABS CDOs and CDO-Squareds backed by subprime mortgage-backed securities that may have been created under the failed "originate to distribute" model to facilitate the issuance of RMBS and which significantly contributed to the recent market crisis. On the other hand, there are asset management vehicles like Collateralized Loan Obligations (CLO), which hold corporate loans that generally are purchased in an "arm's length" transaction and whose performance through this economic cycle has been materially better. CLO investors have greater transparency to the underlying corporations within a CLO than ABS CDO investors had to the individual underlying borrowers. The distinctions between these asset classes may warrant a closer examination, and we would be happy to discuss our views on this topic.

VII. CODIFICATION OF STAFF INTERPRETATIONS RELATING TO SECURITIES ACT REGISTRATION – PAGE 23400

Codifying staff interpretations is a benefit for all market participants.

VIII. TRANSITION PERIOD – PAGE 23400

Regardless of the implementation period, given the breadth and depth of changes in the proposal, it would be helpful (especially with regards to asset-level files and waterfall computer programs) that sponsors proactively commence preparing beta versions of new informational releases so investors can begin retooling their systems in advance of the proposal becoming effective.