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By E-mail: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attention: Elizabeth M. Murphy, Secretary

Re: Asset-Backed Securities Release Nos. 33-9117 and 34-61858
File No. S7-08-10

Ladies and Gentlemen:

We appreciate this opportunity to share with you our comments on several aspects of the above-referenced Securities and Exchange Commission's Asset-Backed Securities ("ABS") rules proposal that are of particular concern to us.[1] J.P. Morgan Chase & Co. ("JPMorgan Chase") is a leading global financial services firm actively involved in many aspects of the ABS market. Through several subsidiaries, JPMorgan Chase is an issuer and, in some cases, a servicer of many types of ABS, including residential and commercial mortgage-backed securities (respectively, "RMBS" and "CMBS") and ABS backed by credit card receivables, auto loans and student loans, among others. JPMorgan Chase Bank, N.A. is an administrator of three asset-back commercial paper ("ABCP") conduits, which as of June 30, 2010 had aggregate outstanding ABCP of approximately $23 billion. Our subsidiary, J.P. Morgan Securities Inc. ("J.P. Morgan"), is a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act") and is a leading underwriter/placement agent and dealer in the ABS markets. As part of our Asset and Wealth Management business, J.P. Morgan Investment Management Inc. ("J.P. Morgan Investment Management") is a significant investor in many sectors of the ABS markets on behalf of our clients. In addition, our Chief Investment Office and other areas of JPMorgan Chase invest in the ABS market as principal. We are also a servicer for third-party owned residential mortgage loans and auto loans and are active in providing derivatives to ABS issuers and investors. In addition to our activities in the ABS markets, we also act as sponsor, underwriter, placement agent and/or dealer with respect to other structured finance products, such as collateralized loan and debt obligations and synthetic ABS.

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[1] In this letter, we refer to the ABS release as the "Release" and the new rules, amendments and forms proposed in the Release as the "Proposals."

In each of these businesses and across securitization products, JPMorgan Chase has a leading market position. For example, as an issuer, in 2009 JPMorgan Chase was the largest bank originator of automobile loans and leases in the U.S and the second largest originator of credit card receivables. As an underwriter and dealer, J.P. Morgan ranked #2 in the ABS league tables and #1 in the CMBS league tables at the end of the first half of 2010. In addition, JPMorgan Chase is the third largest originator and servicer of residential mortgage loans in the U.S.

First and foremost, we would like to commend the Commission and its staff for seeking to address, through the Proposals, certain deficiencies in the disclosure and reporting regime for ABS that may have contributed to the collapse of this important market in the last several years. ABS provide an extremely important source of funding to our credit markets, increasing available credit to consumer and corporate borrowers alike. JPMorgan Chase strongly supports the public policy goals of improving disclosure and transparency in this market and agrees that such improvements are necessary in order to bring the securitization markets back to full health. However, we have issues with the breadth and details of some of the Proposals which we discuss more fully below. In addition, we note that the Proposals have been released at a time when the Dodd-Frank Act was signed into law on July 21, 2010. Subtitle D of Dodd-Frank, *Improvements to the Asset-Backed Securitization Process*, imposes requirements regarding risk retention, disclosure and reporting, representations and warranties and due diligence relating to ABS. While the areas of Dodd-Frank relating to disclosure and reporting, representations and warranties and due diligence are to be implemented through regulations issued solely by the Commission[2], the requirements regarding risk retention are to be implemented by the Commission on an interagency basis together with the banking regulators, and in the case of residential mortgages, together with the banking regulators and the Secretary of Housing and Urban Development and the Federal Housing Finance Agency. Risk retention will impose new, and potentially onerous, requirements on ABS sponsors and we are very concerned about the impact of multiple layers of potentially inconsistent and overlapping securitization legislation and regulation on the viability of an effective securitization market[3]. Therefore, we urge the Commission to show restraint in adopting the Proposals, and in particular the risk retention requirements, on a unilateral basis and to consider adopting certain of those requirements as part of the joint rule-making process implementing Dodd-Frank.

Although there are many aspects of the Proposals that we feel need to be modified, this letter is not intended to address all of the matters in the Proposals that are of concern to us. We actively participated in the preparation of the comment letters being submitted to you by the American Bar Association ("ABA"), the American Securitization Forum ("ASF"), the

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[2] We note that the Release likely already addresses the requirements in Dodd-Frank relating to both disclosure and reporting and representations and warranties.

[3] We note that the Federal Deposit Insurance Corporation (the "FDIC") has issued a Notice of Proposed Rulemaking, *Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation* (the "NPR"), which also has risk retention requirements that are different from both those in the Release and from Dodd-Frank.

Commercial Real Estate Finance Council ("CREFC"), the Loan Syndications and Trading Association ("LSTA"), the Mortgage Bankers Association ("MBA") and the Securities and Financial Markets Association ("SIFMA") (together, the "Industry Comment Letters"), and in general we concur with and support the analysis, commentary and recommendations expected to be contained in the Industry Comment Letters, particularly as to matters not covered in this letter. We note in this letter any significant positions from the Industry Comment Letters which we would like to stress.[4] You should not infer from our choice of discussion topics in this letter that we are any less concerned about the other issues in the Proposals which are being brought to the Commission's attention by these groups and other members of the financial and legal communities. However, there are certain items in the Proposals which are of particular concern to us and we also felt that we could provide the Commission with additional information on the applicability of the Proposals from our perspective.

We want to emphasize that our comments reflect the collective views of JPMorgan Chase in its capacity as sponsor and servicer, J.P. Morgan in its capacity as a broker-dealer and J.P. Morgan Investment Management in its capacity as investor, and are consensus positions intended to bridge the various viewpoints of all of the JPMorgan Chase lines of business that participate in this market. We would hope that this consensus approach to our comments more accurately reflects the views of all market sectors, and are our attempt to propose changes that are fair and balanced and will be easier to implement for all market participants.

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This comment letter is divided into three sections which focus on three major areas of the Release: (1) Securities Act Registration; (2) Disclosure Requirements and (3) Privately-Issued Structured Finance Products.

I. <u>Securities Act Registration</u>

1. <u>New Shelf Registration Procedures - Rule 424(h) Filing and Proposed Rule 430D</u>

The Release is proposing to require an asset-backed issuer using a shelf registration statement on proposed Form SF-3 to file a preliminary prospectus containing transaction-specific information at least five business days in advance of the first sale of securities in the offering. This requirement, if adopted, is meant to allow investors additional time to analyze the specific structure, assets, and contractual rights regarding each transaction. While we agree that additional time is necessary for investors to review a preliminary prospectus than what had become the practice in some asset classes (which in some cases amounted to no

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[4] We would like to note that we did not have an opportunity to review the final versions of all of the Industry Comment Letters before submitting this letter today. We understand that some of these letters, or portions thereof, will be filed after the date of this letter. Our statements herein referring to comments and recommendations made in the Industry Comment Letters are based on the close to final drafts which we reviewed. In the event any of such letters subsequently filed change in any material respect, we may submit a supplement to this letter to address any such changes.

more than a few hours), we believe that five business days is too long for some asset classes and some transactions. We would recommend avoiding a "one size fits all" approach in favor of one that requires different timeframes for different asset classes which may have different levels of complexity. For example, CMBS usually have longer marketing periods due to the complexity of the large, commercial real estate assets in the pools, so five business days would be more appropriate in those transactions. On the other hand, a credit card master trust offering of a frequent sponsor, where there is sufficient information in the market on the sponsor and its receivables (which are more generic and revolving) and changes in the structure of transactions are typically rare or minimal, may not need more than one or two business days for investors to review the disclosure.

Aside from differentiating between asset classes, we feel that less time may also be required for seasoned versus unseasoned sponsors. A more seasoned sponsor already has information in the market about their underwriting criteria and static pool information regarding their assets, and is regularly reporting on prior transactions[5]. We recommend that the Commission consider using the same criteria as used in Item 1105(a)(2) of Regulation AB for static pool information required for an unseasoned sponsor. In other words, a seasoned sponsor would be one that has at least three years of experience securitizing assets of the type to be included in the offered asset pool. However, we also recognize that the experience needs to be relatively recent, so we would propose that a seasoned sponsor would need to have at least three years of experience within the five years immediately prior to issuance. The five year period would be necessary to account for sponsors that have not come to market very frequently due to circumstances such as the market disruption of the last several years (even some very well known ABS sponsors would not be very "seasoned" today in some sectors of the market).

Using both asset class differentiation and the concept of seasoned versus unseasoned sponsors, we would propose that the Commission consider the following matrix for the number of business days required between the delivery of a preliminary prospectus and sale:

Asset Class	Seasoned Sponsor	Unseasoned Sponsor
Credit Card	1	2
Autos, Equipment, Student Loans, Floorplan and Resecuritizations of these asset classes	2	3
RMBS, and Resecuritizations of RMBS	3 to 4	5
Corporate Debt	4	5
CMBS	4	5

[5] This will be even more of a factor given that the Proposals require that ABS not suspend Exchange Act reporting.

We believe the above timing works for a reasonably sophisticated structured finance investor and we feel that even smaller, less sophisticated investors will be able to analyze transactions in these shorter timeframes given the additional loan level disclosure and the availability of the waterfall computer program that will be required under the Release (subject to our comments on those Proposals below). Furthermore, we would note that most ABS investors are reasonably sophisticated institutional investors[6] and are able to analyze transactions in the shorter timeframes we are proposing. Furthermore, it would be detrimental to the market to regulate to the lowest common denominator. In a fast moving market, pricing changes can negatively impact both issuers and investors and imposing "speed bumps" that are longer than necessary could unnecessarily constrain the efficiencies of the market. It is also not uncommon for investors to approach issuers they are very familiar with on a reverse inquiry basis and they are able to structure a deal to the specifications of the investors on a relatively short timeframe. To then have to wait five business days when the market could move against either the issuer or the investor would negatively impact the flexibility to structure such transactions in the best way for both sides.

Related to the proposed Rule 424(h) filing, proposed Rule 430D would provide that a material change in the information provided in the Rule 424(h) filing, other than offering price, would require a new Rule 424(h) filing and therefore, a new five business-day waiting period. In our view, a material change does not require another five day waiting period, or even in some cases the shorter period we propose in the matrix above. If the material change affects the cash flows or credit enhancement on the securities or the characteristics of the asset pool, then two business days would be sufficient; otherwise we feel that one business day is sufficient for investors to analyze any other material change. We would also recommend that if a material change requires a new Rule 424(h) filing and all investors that received the revised preliminary prospectus confirm that they have reviewed the material change and are ready to price, the one or two business day period can be further shortened. This would be useful in, for example, reverse inquiry situations where there are a smaller number of investors who can all confirm they are ready to proceed to pricing.

On the question of determining materiality for purposes of an additional waiting period, we are concerned with the proposal in the Release regarding Item 6.05 of Form 8-K that would require a filing if any material pool characteristic of the actual asset pool at the time of issuance differs by 1% or more from the description of the asset pool in the Rule 424 prospectus. We agree with the request in the ASF letter that the Commission should clarify that the filing of an Item 6.05 Form 8-K report should not, in and of itself, be construed as a presumption that such a change is material. We agree that the question of when a change in a pool characteristic would be material to investors should be assessed case by case, based on the surrounding facts and circumstances. Accordingly, we agree that the Commission should

[6] For example, to-date in 2010 for new issue auto, credit card and student loan ABS transactions in which J.P. Morgan played a role (either as lead or co-manager), the top 15 investors, who represented approximately 75%-98% of the investors in the transactions, were very large banks, insurance companies and money managers, most of whom are "household names" that have been participating in this market for many years.

take steps to counteract any presumption as to materiality that might otherwise arise by virtue of the filing of an Item 6.05 Form 8-K report. The requirement for filing under Item 6.05 should not become the *de facto* criteria for determining whether a change is material for purposes of the Rule 430D waiting period.

2. Shelf Eligibility for Delayed Offerings

The Release proposes to eliminate the ability of ABS issuers to establish shelf eligibility in part by means of an investment grade credit rating. This is part of the Commission's ongoing efforts to remove references to nationally recognized statistical ratings organizations' credit ratings from their rules in order to "reduce the risk of undue ratings reliance and eliminate the appearance of an imprimatur that such references may create." In place of credit ratings, the Release proposes to establish four shelf eligibility criteria that are intended to be a proxy for quality. While we do not necessarily agree that credit ratings should be removed entirely from the Commission's rules[7], we understand the Commission's need to move in that direction given the events of the last few years. However, we have some serious concerns with three of the proposed new criteria, which we set forth below[8].

a) Risk Retention:

One of the new criteria would require that the sponsor or an affiliate of the sponsor retain a net economic interest in each securitization in one of the two following manners:

- retention of a minimum of five percent of the nominal amount of each of the tranches sold or transferred to investors, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate; or
- in the case of revolving asset master trusts, retention of the originator's interest of a minimum of five percent of the nominal amount of the securitized exposures, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate, provided that the originator's interest and securities held by investors are collectively backed by the same pool of receivables, and payments of the originator's interest are not less than five percent of payments of the securities held by investors collectively.

As stated above, we would urge the Commission to defer implementation of any risk retention requirements so it is done as part of the inter-agency process implementing the requirements of Dodd-Frank. At a minimum, if it proceeds to implement risk

[7] Credit ratings can still serve an important function in our markets and particularly in light of the reforms already adopted by the Commission and those to be implemented under Dodd-Frank, it would be far better to reform the ratings process than to remove reliance on them altogether.
[8] We do not oppose the elimination of the suspension of reporting for ABS.

retention as part of shelf eligibility under the Proposals, the Commission should adopt those requirements under the same parameters and with the same flexibility as required by Dodd-Frank. For example, we note that Dodd-Frank permits a securitizer to retain less than 5 percent of the credit risk for an asset if the originator meets the required underwriting standards (to be established by the Federal banking agencies that specify the terms, conditions, and characteristics of a loan within the asset class that indicate a low credit risk with respect to the loan). Dodd-Frank also provides that a securitizer is not required to retain any part of the credit risk for "qualified residential mortgages" (to be defined by regulation taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default). In addition, assets issued or guaranteed by the United States or an agency would be exempt from risk retention under Dodd-Frank, which would apply, for example, to ABS backed by federally-guaranteed student loans. Dodd-Frank also permits risk retention for commercial mortgages to include (i) retention of a specified amount or percentage of the total credit risk of the asset; (ii) retention of the first-loss position by a third-party purchaser (a "CMBS B Piece Buyer") that specifically negotiates for the purchase of such first loss position, holds adequate financial resources to back losses, provides due diligence on all individual assets in the pool before the issuance of the asset-backed securities, and meets the same standards for risk retention as the Federal banking agencies and the Commission require of the securitizer; (iii) a determination by the Federal banking agencies and the Commission that the underwriting standards and controls for the asset are adequate; and (iv) provision of adequate representations and warranties and related enforcement mechanisms. And very importantly, Dodd-Frank requires that the implementing regulations establish separate rules for different classes of assets.

While we appreciate that the Commission recognized that revolving asset master trusts warrant a different form of retention than a "vertical slice," we agree with Dodd-Frank that CMBS and other asset classes may also warrant different forms of retention. For example, many automobile loan ABS issuers already retain certain portions of the capital structure due to widening credit spreads. In addition to this retained portion, auto issuers have always retained the residual income (excess spread) while maintaining significant overcollateralization in the respective auto loan pools. Often the retained subordinate tranches, reserve accounts and residual income total at least 5%, even exceeding 10% for certain issuers. Requiring an incremental 5% vertical slice of retention for non-investment grade issuers could cause an estimated increase in funding costs of 50 to 100 basis points per year, which would undoubtedly increase costs of consumer credit. Additionally, for example, in a transaction that is structured as a financing and is initiated on behalf of the residual holder of that transaction who retains a significant (i.e., at least 5%) first-loss interest, the purchase of such residual interest, which is viewed as true "equity" in the transaction, should satisfy any risk retention requirement.

In general, we support requirements that originators or securitizers maintain a measure of "skin in the game" and support the goals of more closely aligning incentives to make sure that securitized loans are of high quality. However, we believe that for some transactions there are better, alternative forms of risk retention than a simplistic 5% "vertical slice" which more directly address the quality of the securitized loans. For example, Comptroller of the Currency John C. Dugan has proposed the establishment by regulation of minimum underwriting standards for residential mortgage loans. These minimum standards, which would include meaningful and effective income verification, down payments, debt-to-income ratios and qualification based on fully indexed rates, would directly work to improve the quality of the assets underlying future securitizations, instead of attempting to indirectly improve loan quality through risk retention requirements which may have significant impacts on accounting and regulatory capital requirements, thereby constraining the resurgence of a healthy securitization market. As a result, we support the provisions in Dodd-Frank for the establishment of such minimum underwriting standards. In conjunction with minimum underwriting standards, we believe that strong representations and warranties, together with strong and standardized repurchase provisions, are an effective form of risk retention that more directly addresses the manner in which the loans were originated. In this regard, we note that representations and warranties are the primary method used by Government Sponsored Enterprises (GSEs) in enforcing strong underwriting standards with sellers. Strong and thoughtful representations and warranties and the use of early default remedies in our view provide a strong economic alignment of interests (with respect to the integrity of underwriting and documentation) between originators and investors. We would also argue that the retention by the sponsor of assets on its balance sheet, of similar quality to the securitized assets, should also be a permitted form of risk retention. In this regard, we note that the FDIC's NPR permits risk retention in the form of a representative sample of the financial assets.

In sum, we would urge the Commission to implement risk retention under the parameters of Dodd-Frank and re-propose risk retention requirements that will provide for the exemptions and flexibility required by Dodd-Frank.

To the extent that the Commission acts to impose a risk retention requirement as described in the Release, we request that, with respect to risk retention relating to revolving master trusts, the requirement that "payments of the originator's interest are not less than five percent of payment of the securities held by investors collectively" be eliminated. We believe that the requirement that originator's retain a minimum of five percent of the securitized exposures sets an appropriate standard for risk retention with respect to revolving master trusts, and that the additional requirement regarding payments is not necessary or appropriate. Under certain limited circumstances, a transaction structure may provide that all available funds would be distributed to the noteholders, in which case the originator would not receive a payment in respect of its retained interest. The requirement that originators receive a payment not less than five percent of payments to all investors could adversely affect payments to noteholders by reallocating to the originator funds that would have otherwise been distributed to the noteholders.

b) Third Party Review of Repurchase Obligations:

The second new criteria would require the party providing representations and warranties in the transaction to furnish, on a quarterly basis, a third party's opinion relating to any asset for which the trustee has asserted a breach of any representation or warranty and for which the asset was not repurchased or replaced by the obligated party on the basis of an assertion that the asset met the representations and warranties contained in the pooling and servicing or other agreement. The third party opinion would confirm that the asset did not violate a representation or warranty contained in the pooling and servicing agreement or other transaction agreement.

While we support the Commission's efforts to "enhance the protective nature of the representations and warranties" included in ABS transactions, we strongly believe that there are more effective and workable solutions than the third party opinion proposal.

Primarily, we feel that the proposal is of little practical value because it does not actually resolve the primary concern of investors, which the Commission described in the Release, regarding having specific mechanisms to identify breaches of representations and warranties or to resolve a question as to whether a breach has occurred. The resolution of bona fide disagreements among the parties regarding the scope of particular representations and warranties and the facts and circumstances of individual assets is a significant and legitimate part of the process. The representation and warranty review process can involve a forensic loan level review of the origination documentation of a particular loan in the context of the underwriting guidelines and the laws, rules and regulations under which the loan was originated.

It is also important to note that determining whether there is a breach is only the preliminary step in determining a repurchase obligation. Breaches of representations and warranties in most ABS transactions must also meet a specified threshold trigger prior to a repurchase requirement, such as the breach being material and adverse to the value of the loan or to the rights of a particular party in the ABS transactions (usually the investors). Threshold triggers, such as materiality, generally are both questions of fact and law and, when combined with the variations of ABS representations and warranties and the technical expertise required to determine a factual breach, often do not lend themselves to easily definitive determinations. As a result, we believe it would be difficult to find a party willing or able to render such opinion due to the subjective nature of such determinations. For the foregoing reasons, we believe that while "opinions" are usually the responsibility of accountants or attorneys, an opinion as to violations of representations and warranties is not an appropriate responsibility for either of such professionals to make.

As an alternative to the third party review of repurchase obligations, we recommend an approach that would ensure that representations and warranties provide meaningful protection to investors by creating an effective process to evaluate and resolve breach claims. With respect to RMBS transactions, we support the SIFMA proposal regarding the appointment of an independent credit risk manager for each transaction, as well as the detailed resolution process described in such proposal. For non-RMBS asset classes (other than credit card assets, addressed below), which have not been the subject of investor concern and which have very different characteristics and representations depending on the asset class, we support the ASF's alternative, and less prescriptive, approach to the appointment of an independent third party to review assets for compliance with representations and warranties and the related binding determination for disputes by a second independent third party.

For CMBS, the detailed SIFMA model would not be necessary given that CMBS has not seen the same issues with enforcement of representation and warranties that have been seen in RMBS. This is due to factors such as (i) the role of a special servicer in CMBS, (ii) the granularity of the loan level disclosure for all assets in the pool, (iii) very robust representations and warranties that are specifically negotiated by the parties to the transaction, in particular the CMBS B Piece Buyer, and (iv) the fact that the individual loans are reviewed in great detail by the parties to the transaction, in particular the CMBS B Piece Buyer, and mapped against each representation and warranty, with any exceptions noted in the transaction documents.

We agree with the issuer view in the ASF approach that any triggers for such third party review should be left to negotiation between the parties and reflected appropriately in the transaction documentation. Given the differences between asset classes (commercial mortgage loans, auto loans, leases, student loans, etc.) it would be difficult to propose general delinquency triggers requiring third party review through regulation and it would be best to leave the details to be specified in the transaction documents that would reflect the nature of the assets more specifically. We note that a common theme in both the SIFMA and ASF proposal is a process for actual resolution of breach allegations. We ask that the Commission condition shelf eligibility under Form S-3 on the transaction documents implementing the proposals referred to above.

Lastly, we believe that this entire shelf eligibility criteria relating to representations and warranties should not apply to credit card assets given that there are no detailed asset-level representations and warranties in those transactions and those transactions include a seller's interest. Credit card transactions instead use account eligibility criteria, which preclude the addition of receivables of any ineligible accounts as of the applicable cut-off dates into the master trust. Furthermore, any receivable generated as a result of fraudulent or counterfeit charges will be automatically removed from the trust as a reduction of the seller's interest.

c) Certification of the Depositor's Chief Executive Officer:

As the third criteria, the Release proposes to establish a requirement that the issuer provide a certification signed by the chief executive officer of the depositor certifying that to his or her knowledge, the assets have characteristics that provide a reasonable basis to believe they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus. The rationale for this, frankly, unprecedented requirement is that "the potential focus on the transaction and the disclosure that may result from an individual providing such a certification should lead to enhanced quality of the securitization."

We are extremely troubled by the precedent that such a certification would set. While it is based on the knowledge of the certifying officer, it is still a certification as to, essentially, the future performance of the securities being issued. No other securities offerings require such a certification and we strongly oppose the suggestion that reliance on credit ratings should be replaced by a certification of this nature, which would impose personal liability on the certifying officer, not for the accuracy of the disclosure (as he or she would have as a signatory of the registration statement) but for the future performance of the securities. We do not believe that any thoughtful officer would willingly sign such a certification, which would force issuers into the private market.

While we would prefer to see a certification removed entirely as a condition to shelf eligibility, we recognize and appreciate the Commission's intent to focus a senior officer of the depositor on the quality of the securitization as an alternative to the ratings criteria. We would, however, strongly urge the Commission to revise the certification to focus on the accuracy of the disclosure (which after all is the essence of the securities laws) and not on the performance of securities. As stated in the Release, this certification is somewhat similar to the certification of Exchange Act reports required by Exchange Act Rules 13a-14 and 15d-14. However, that certification focuses on the disclosure. We would propose to fashion the certification for shelf eligibility on the first three paragraphs of the Exchange Act certification and would propose the following wording:

> "I, [identify the certifying individual,] certify that:
>
> 1. I have reviewed the prospectus relating to [title of securities];
>
> 2. Based on my knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and
>
> 3. To my knowledge, the prospectus, and other information included in the registration statement, fairly present in all material respects the characteristics of the securitized assets backing the issue and the risks of ownership of the asset-backed securities, including all credit enhancements and all risk factors relating to the assets described therein that would affect the cash flows necessary to service payments on the securities as described in the prospectus.

Date:
[Signature]

[Title]"

Unlike the Commission's original version, the above version would speak to the accuracy of the disclosure, and specifically that the prospectus fairly presents the characteristics of the assets, all credit enhancement and risk factors, and the effects thereof on the cash flow of the securities. We believe this is not only consistent with the Exchange Act certification, but also with the overall intent and, ultimately, the spirit of the securities laws. In addition, it gives investors additional comfort to have a senior officer certify and thereby focus on making sure that the information affecting the cash flows necessary to service payments on the securities has been accurately described in the prospectus.

If a certification is required, we agree that it should be signed by an officer that is already a signatory of the registration statement since, as stated in the Release, that officer is already responsible for the issuer's disclosure in the prospectus and can be liable for material misstatements or omissions under the federal securities laws. However, we would propose to broaden it from just the chief executive officer of the depositor and permit it to be signed by any of the principal executive officer, principal financial officer and controller or principal accounting officer of the depositor.

II. Disclosure Requirements

1. Asset-Level and Grouped Account Data

a) General:

The Release proposes to require mandatory asset-level data reporting fields or grouped account data reporting fields based on asset class (the "Proposed Data Fields"), in connection with publicly registered offerings of asset-backed securities and in connection with the periodic reporting of those asset-backed securities. This requirement is intended to provide transparency and standardized and consistent reporting with regard to asset performance, and to aid in facilitating an informed investment decision. In general, we support the Commission's assessment that the provision of increased asset-level data, made in a comprehensible and clear fashion, will aid in this regard and believe it will restore investor confidence in the ABS markets. However, we would like to note that the proposed expansion of asset-level data requirements and the inclusion of grouped account data will impose significant costs on issuers and may, for most asset classes other than RMBS and CMBS, only provide incremental value to investors relative to the data that is currently disclosed. Moreover, disclosure of certain asset-level data and grouped account data, as proposed by the Commission, may also require the disclosure of highly proprietary and competitive information of the issuer.

Specifically, the proposal to require grouped account data for credit-card ABS illustrates these concerns. It is our understanding that there currently are no existing models for using expanded grouped asset data (similar to what has been proposed by the Commission) to evaluate credit card master trusts. The value of such grouped account data is limited in application, while the costs to issuers of producing it are substantial. We believe it is important to note that JPMorgan Chase's credit card issuer does not currently use the proposed form of presentation to value its own portfolio and has no future plans to use such data in JPMorgan Chase's valuation process, even if it were required to be produced, as it does not believe it is relevant to the valuation process. In addition, while "rep lines" or "representative lines" have often been used to evaluate RMBS and other asset classes, the presentation of credit card master trust data in this format, due to the diverse, revolving and actively managed pools backing such trusts, may not be an appropriate and often times could be an inaccurate presentation of the information relating to assets backing the securities.

We ask that the Commission give careful consideration to the proposals described in the section of the comment letter submitted by the ASF with respect to Credit and Charge Card ABS (the "ASF Credit Card Comment Letter"). We believe appropriate consensus among the market participants has been reflected in the ASF Credit Card Comment Letter and as a sponsor of, and investor in, credit card securitizations we fully support the proposals contained in the ASF Credit Card Comment Letter. We also ask that the Commission weigh the value of the proposed additional disclosures for all other asset classes against the cost of compliance with the Proposed Data Fields and the incremental value provided by that data for those asset classes.

b) <u>Application to 144A Transactions:</u>

As a condition to reliance on the Rule 144A safe harbor for resales of structured finance products, the Commission has proposed that the transaction documents grant to securityholders or prospective purchasers the right to obtain from the issuer the same information that would be required to be provided if the offering were registered on Form SF-1 or Form S-1, as well as the same ongoing information that would be required if the issuer were required to file periodic reports under the Exchange Act. As also discussed below in section *III. Privately-Issued Structured Finance Products,* an unintended consequence of this requirement may be the ultimate exclusion from the securitization markets of certain originators, servicers and securities administrators who may not be able to comply with the Proposals. As noted in this response, there will be significant investment, resources and effort needed to comply with the Proposed Data Fields. In this regard, originators and servicers of assets that are unable to update their processes and systems to comply with the Proposed Data Field reporting requirements will not only be shut out of the securitization markets directly, they will also most likely be shut out from participating in the whole loan trading markets due to the decreased availability of subsequent hypothecation of those assets by whole loan purchasers. By way of illustration, after the effective date of Regulation AB, due to the strictures of Item 1105, many of our issuer clients that could not compile the static pool data necessary to comply with the rule were forced to either access the private securities markets or sell their assets via whole loan transactions. Under the Proposals, market participants in a similar position of not being able to comply with the public disclosure requirements would also lose the alternative of the private securities markets and the whole loan trading markets, which are significant sources of funding for their origination platforms. These issuers may ultimately be forced to exit the markets completely. We do not believe that such a draconian, unintended consequence is necessary and ask that the Commission consider making compliance with the Proposed Data Fields non-mandatory for structured finance products issued in reliance on the Rule 144A safe harbors for resales, or alternatively to require that the sponsor or issuer either disclose the related Proposed Data Fields or provide an explanation in the offering documentation as to why such data is not available to be provided.

c) Transition Period:

The implementation of the Proposed Data Fields by market participants, including sponsors, originators, servicers, master servicers and securities administrators, will require considerable effort, cost, resources and time. A significant number of the Proposed Data Fields contain data that is currently not captured by originators or servicers. Material changes to market participants' processes and systems are required in order to capture this data, and many internal resources must be devoted to the gathering of asset information from new and different sources to effectuate the proposed changes. To the extent that market participants rely on vendors for information related to the Proposed Data Fields, the same demands of cost, resources and time will be required of them. In addition, all of the processes and systems related to capturing the Proposed Data Fields must be thoroughly tested to ensure proper compliance with the Proposals. Lastly, purchasers of whole loan assets must renegotiate their contractual arrangements to incorporate the Proposals. Therefore, we recommend that the Commission adopt a transition period of no less than eighteen months following the effective date of the Proposals to allow market participants, including sponsors, originators, servicers, master servicers and securities administrators, to appropriately prepare and make the material changes necessary to comply.

d) Scope/Grandfathering:

We request that the Commission make the Proposed Data Fields applicable only to assets originated after the expiration of the transition period of the Proposed Data Fields. As the credit markets heal, and the demand for asset-backed securities returns, there will be a desire for issuers to include in their securitizations certain assets held in portfolio that would have otherwise been securitized in a functioning market. The processes and systems used to collect the origination and performance data for such seasoned assets would not have been available for these assets to comply with the Proposals. As a result, if the Commission does not exclude these assets from the required compliance, these assets will effectively be rendered unsecuritizable and possibly unsaleable. We propose that the Commission approach this request in one of two different ways: (1) provide a bright line test for compliance based on the origination date of the related asset, or (2) allow as an acceptable response in the Proposed Data Fields an indication that certain data fields for such asset are unavailable, which is accompanied by an explanation of why the data is not available and whether it will be available in the future. This will allow issuers to include grandfathered assets originated prior to the expiration of the transition period in a securitization and will set expectations for originators, for purposes of clarity, that credit extended or assets originated prior to the implementation date will be securitizable assets in the form originated.

e) Resecuritizations:

The Commission is proposing to require issuers of resecuritizations of ABS to provide the same Proposed Data Fields for the assets underlying the resecuritized ABS. We believe that resecuritizations of ABS, particularly re-REMICS of RMBS and CMBS securities, are valuable products for market participants and play an important role in the securitization markets. Resecuritizations and re-REMICS allow investors to redirect or realign the cashflows of certain securities they own or would like to purchase. Resecuritizations and re-REMICS have also been used by certain market participants, with the approval of their regulators, to obtain favorable capital treatment for certain portions of their investment portfolio. The proposed obligation to deliver the Proposed Data Fields for resecuritizations of currently existing ABS would not be possible since the current reporting regime for those securities does not encompass the expanded reporting requirements of the Proposals. In addition, since typically only certain tranches of the underlying ABS transaction would be resecuritized, the presentation of data regarding the entire underlying ABS transaction would provide a volume of information that will be irrelevant to the current resecuritization. Presently, most resecuritizations of ABS are done via private offerings due to the stringent requirements of Rule 190. However, due to the application of the Proposed Data Fields to the private market via the changes in the Rule 144A safe harbor for resales of structured finance products, required compliance will extend to private resecuritizations of ABS as well. As a result, the ability to resecuritize securities for legitimate purposes will be severely limited by the Proposals. Ultimately, it will be extremely difficult and most likely impossible to create a resecuritization of ABS, whether in a public or private transaction. We request that the Commission exempt resecuritizations from the requirements of the Proposed Data Fields. At a minimum, we ask that the Commission exempt from application of the Proposals, resecuritizations of ABS where the underlying ABS were originated prior to the expiration of the transition period of the Proposed Data Fields. This will allow issuers to include grandfathered securities issued prior to the expiration of the transition period in a resecuritization.

2. Waterfall Program

The Release proposes to require ABS issuers (with certain exceptions) to file a computer program that gives effect to the flow of funds, or "waterfall," provisions of the transaction. The Commission's stated purpose is to "make it easier for investors to conduct a thorough investment analysis of the ABS offering at the time of the investor's initial investment decision and allow the investor to monitor the ongoing performance of the purchased ABS by updating its investment analysis from time to time to reflect updated asset performance."[9] The intention of the waterfall program is to provide investors with a tool to assist in their analysis of an ABS transaction rather than have investors be dependent upon the analysis of third parties such as credit rating agencies. We agree with the Commission that the waterfall is an important and core aspect of a securitization transaction, and we appreciate that analyzing the waterfall for any given ABS transaction may be a challenging task for certain investors due to the complexity of some ABS structures. We also agree that, as part of the disclosure requirements, investors should be able to have access to a clear and straightforward waterfall computer program, independent of the analyses provided by the rating agencies, as one of the tools available to them to assist in their review of an ABS transaction. However, we believe the Commission's proposal for a waterfall computer program overreaches the stated purpose and intent of the Commission, and is not the appropriate way to achieve these goals.

A waterfall computer program, in essence, is a cash flow model specifically limited to creating an output description of how projected cash flows are allocated through the payment waterfall to each tranche in the related ABS transaction. However, the Commission's proposed Item 1113(h) requires the creation of much more than a waterfall computer program. Item 1113(h) requires the creation of a predictive model based on the transaction waterfall, that also combines the functionality of a collateral engine and valuation model which will use investor assumed performance data, allocations and distributions in order to predict the cash flows for a transaction. We are concerned that the waterfall computer program, as proposed by the Commission, would require sponsors and issuers to provide a complex modeling tool to investors which (i) may lead to over reliance by investors on a predictive model into which an issuer may not be able to factor every scenario, and (ii) may ultimately be used as the sole investment decision-making tool, with little regard to other important information, including the offering documents for the transaction, pertinent economic information, etc.

A program that accomplishes what the Commission has proposed would be extremely complex, time consuming and expensive for sponsors and issuers to build. Each ABS transaction has its own distinct characteristics. As a result, pursuant to the proposed Item

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[9] 75 Fed. Reg. at 23378.

1113(h), a separate and distinct waterfall computer program (containing a cash flow engine and valuation model) would need to be designed, programmed and maintained for each ABS transaction with possibly little or no added benefit from prior produced waterfall computer programs. This, along with the fact that the Commission has required the waterfall computer program be written in Python, a programming language not currently used by the securitization industry, would significantly add to the time and cost for issuers and sponsors to complete each securitization transaction. For many types of ABS, investors have developed their own proprietary modeling programs that allow them to analyze the risk profile of ABS subject to the investor's predictive modeling requirements. In addition, for many asset classes, in particular RMBS and CMBS, commercially available modeling programs which have complex modeling methodologies have been developed over a long period of time and are currently used by a significant number of participants in those markets.

We believe that limiting the scope of Item 1113(h) to a cash flow model specifically limited to creating an output description of how projected cash flows are allocated through the payment waterfall to each tranche in the related ABS transaction is what the Commission intended to be produced. Investors would then have the ability to use the filed waterfall computer program with either their own proprietary modeling program or a commercially available modeling program in order to analyze the risk profile of a certain ABS transaction based on their own predictive model requirements[10]. The creation of a waterfall computer program for each separate asset class will most likely be addressed in a variety of different ways by each sponsor and issuer. Having separate and distinct waterfall computer programs for each transaction, created by a multitude of issuers and sponsors, across separate asset classes, may have the unintended effect of creating an inefficiency in the ability of investors to model ABS due to differing modeling assumptions used in the waterfall computer programs and possibly negate any benefits achieved from the standards proposed by the Commission for the asset level disclosure scheme.

Therefore, we request that the Commission clarify that the proposed Item 1113(h) requires issuers to only file a straightforward cash flow model that provides factual information regarding the issued securities. In addition, we also ask that the Commission give careful consideration to the proposals described in the comment letter submitted by SIFMA with respect to the Waterfall Computer Program (the "SIFMA Waterfall Letter"). As a sponsor of, and investor in, securitizations we believe that the most appropriate solution to the issues affecting the application of proposed Item 1113(h) would be to allow sponsors and issuers to file a straightforward cash flow model and make available to potential investors for the duration of the initial distribution of the ABS, at the cost of the ABS issuer, the opportunity to use a commercially available cash flow engine. We fully support the alternative in this regard as outlined in the SIFMA Waterfall Letter.

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[10] This appeared to be the Commission's goal with respect to proposed Item 1113(h). *See* 75 Fed. Reg. at 23379. "By running the waterfall program in combination with other internally-developed or commercially available vendor interest rate, prepayment, default and loss-given-default models, cash flow engines, or computational services, investors should be able to promptly run cash flow simulations and generate present value estimates for ABS tranches."

The Commission's Proposal to require sponsors and issuers to develop a computer program as part of the disclosure regime is unprecedented. This requirement substantially increases the risk that sponsors and issuers, acting in good faith and with reasonable diligence, will make mistakes. By expanding the waterfall computer program into a predictive model, we are concerned that the liability connected with the required disclosure may be incorrectly applied to the functionality of the analytical tool rather than the disclosure itself. In addition, due to the nature of a computer model, sponsors and issuers, as well as other parties to the ABS transaction, will be unable to have experts provide any comfort as to the integrity of the program and there can be no guaranty that the program will work for every investor.

We believe a lower standard of liability should apply to the waterfall computer program. Strict liability is an inappropriate standard for required disclosure that cannot be subject to adequate diligence. Specifically, we urge the Commission deem the waterfall computer program not to be "filed" or incorporated into the issuer or sponsor's registration statement, and thus not subject to liability under the Exchange Act or the Securities Act (other than anti-fraud liability) and that it clarify that liability should only apply to statements of fact made in the waterfall computer program cash flow model regarding the transaction mechanics and not apply to the functionality of a cash flow engine or calculation model.

If the Commission is unwilling to permanently exclude the waterfall computer program from Exchange Act or Securities Act liability (other than anti-fraud liability) as discussed above, we request that the Commission institute a "phase-out" period similar to what the Commission instituted for the rules requiring public companies to include XBRL in financial statement filings. There, the Commission allowed for the benefit of a limited liability regime for a two year period. In addition, with respect to the waterfall computer program, we request that the Commission institute a transition period of 18 months for purposes of compliance with Item 1113(h). This will afford sponsors and issuers the time to design, program, implement and test the program to ensure its compliance with the Proposal.

III. Privately-Issued Structured Finance Products

1. Summary

The Release is proposing to revise significantly the safe harbors relied upon by issuers of privately-offered structured finance products in an effort to address a perceived absence of information available to investors who had purchased these products. In particular, the safe harbors provided in Rules 144, 144A and 506 would be amended to compel an issuer relying on one of these safe harbors to provide, upon request from an investor, the same information that would be required as if the products were issued in a registered transaction. These new disclosure requirements would apply to information provided in connection with the initial sale of the related security as well as information provided on a periodic basis. However, we believe that, in most instances, investors in privately-issued structured finance products already have access to the necessary information in order to make a well-informed investment decision and may request any further information they believe is necessary.

We have serious concerns about the likely negative impact that the proposed rules would have on the 144A market as many structured finance products simply cannot satisfy public disclosure requirements or, at a minimum, would only be able to satisfy those requirements after undue burden and expense. In either case, these changes would restrict or severely limit a primary means of financing for certain types of assets and diminish liquidity. We are also concerned that, to the extent issuers' access to the capital markets is restricted, financial institutions will limit, or possibly refrain from, lending or providing credit to issuers as private market access may no longer be viewed as a viable refinancing strategy.

In addition, the proposed rules apply to "structured finance products" that is so broadly defined that it captures a wide variety of products – such as tender option bonds, enhanced equipment trust certificates and covered bonds – that, specifically, did not cause the recent market disruption. From a historical perspective, the private markets have facilitated the issuance of an array of products, some of which may share characteristics of asset-backed securities, but which are not generally considered structured finance products. These products have been issued in the 144A market as they cannot, for the most part, satisfy the public disclosure requirements or it is unnecessary to do so given the simplicity and nature of the structure. Unfortunately, a sweeping interpretation of "structured finance products" could be read to unintentionally include a number of these beneficial products. Worse yet, the extremely vague disclosure requirements applied to structured finance products that are not, by definition, an "asset-backed security" as defined in Item 1101(c) would, we fear, have a chilling effect on these products and, as a result, make it very difficult, impossible or too costly to issue these types of products. Therefore we strongly encourage the Commission to exempt these asset classes (and any other classes that it finds should be beyond the scope of the definition) either in the final rules or through the issuance of interpretive guidance or "no action" letters.

We believe that the proposed amendments to the private placement safe harbors are extreme and unnecessary because investors may request additional information prior to making an investment decision, have the ability to demand higher spreads to compensate for information deficiencies or increased risk, and the significant adverse consequences that will likely impact the structured finance product market.

2. <u>General Response to the Proposed Amendments</u>

We understand the concerns raised by the Commission with respect to the lack of information available to investors for some structured finance products that were sold in the private market. Moreover, we recognize that investors and deal sponsors suffered significant losses on some structured finance products, which, in hindsight, might have benefited from more disclosure. Notwithstanding this, we believe that private market participants – namely institutional investors, issuers and deal sponsors – should, in reliance on over 75 years of existing law and interpretations of the same, continue to be able to dictate the appropriate level of disclosure required with respect to privately-issued structured finance products.

The proposed amendments to the safe harbors would effectively eliminate the distinction between structured finance products that are publicly registered and those privately sold to sophisticated institutional and accredited investors. If adopted, issuers of privately-offered structured finance products must covenant to provide investors, upon request, with the same information – both on an initial and periodic basis – that would be required in a registered transaction. This represents a colossal shift with respect to the regulation of the private securities markets. Until now, the securities laws and related commentary have recognized the ability of a particular class of sophisticated investors to "fend for themselves." In effect, every issuer of a structured finance product would be required to provide the same, comprehensive disclosure set forth in the Proposals, notwithstanding that this class of sophisticated investors maintains the resources and requisite knowledge to both determine and request the amount and type of information that they need, are able to conduct a thorough risk analysis of the same and, ultimately, to make a well-informed investment decision based on that review. As a result, some reverse inquiry investors would view the time it takes to produce public disclosure as unnecessary delay and the associated costs an undue burden on their returns. Indeed, a qualified institutional buyer has the ability to influence or negotiate the terms of the privately-offered securities that it purchases subject to its investment preference and risk appetite. In our experience, investors interested in purchasing securities in the lower or subordinate portions of a capital structure quite often ask for, and receive, more detailed information that is relevant to the investors' credit risk analysis. Of particular importance to note is that, in the end, an investor can simply refuse to purchase a security if it fails to receive sufficient disclosure. Privately-offered structured finance products, the terms of which are negotiated and agreed to by issuers and sophisticated investors, have played a critical role in providing liquidity to debt issuers, which ultimately benefits the economy as a whole. We are deeply concerned that the proposed amendments will unnecessarily interfere with the functionality of the private markets.

Another important item to note is that a large number of registered transactions, subject to the public disclosure regime under Regulation AB, also suffered substantial losses. Anecdotally, this would seem to indicate that, in relation to the private markets, more mandated disclosure would not have necessarily prevented losses similar to those sustained by investors in some privately-issued structured finance products. Additionally, investors in the private market have responded to the financial crisis by either not purchasing troubled structured finance products or, for those investors willing to purchase them, demanding higher spreads in an effort to compensate for any increased risk and requiring more robust disclosure. Overall, the private market dynamic has raised the bar for disclosure and has increased the amount of due diligence being conducted by issuers and investors alike. As a result, we are of the opinion that the privately-offered structured finance market should be allowed to make adjustments and evolve accordingly, as it has historically done, without regulatory intervention.

The proposed safe harbor amendments seemingly fail to consider that a number of structured finance products have been offered in the private markets because they cannot satisfy the rigid disclosure requirements of a registered transaction. (See, for example, our discussion earlier at *II. Disclosure Requirements* - *Asset-Level and Grouped Account Data* and - *Resecuritizations*, and below under *4. Asset-Backed Commercial Paper*.) It is also clear that private markets have facilitated the financing of less frequently issued asset classes and have allowed for the introduction of new asset classes to the securitized marketplace. Based on the pre-defined disclosure requirements promulgated in the Release, it is difficult to envision how asset classes that do not meet these requirements can continue to be securitized. Consequently, the loss of securitization would remove a cost effective and efficient source of financing for companies originating these assets. The private markets have served as fertile ground for financing new assets and establishing the necessary level of disclosure. The vibrancy of this market would be substantially diminished by the "one size fits all" disclosure proposed by the current Release.

In addition, unless a particular structured finance product falls within the definition of "asset-backed security" under Item 1103(c), it is unclear what disclosure requirements would apply to those structured finance products that fall outside this definition. As a result, it would seem that only a subset of structured finance products – *i.e.*, "asset-backed securities" – currently able to satisfy the disclosure requirements set forth in Regulation AB would be able to meet the information requirements contemplated by the proposed rules to the extent that that product was privately offered in reliance on the safe harbors. Conversely, for a structured finance product that is not an asset-backed security, the proposed rules could require that the related product satisfy certain disclosure requirements from Regulation AB as well as information requirements applicable to corporate issuers. In light of the uncertainty regarding the requisite level of disclosure for structured finance products that are not "asset-backed securities," it would be extremely difficult or impossible to issue these products.

We believe that the proposed amendments to the safe harbors are not needed because investors in privately-offered structured finance products are receiving, or have or may request access to, additional information prior to making an investment decision. To the extent that sophisticated investors can "fend for themselves," we feel that the proposed rules unnecessarily interfere with the concept of maintaining a vital and vibrant private market for structured finance products.

3. Definition of "Structured Finance Product" Too Broad

As mentioned above, the proposed amendments to the safe harbors would apply to "structured finance products." This is broader than the definition of "asset-backed security" contained in Item 1103(c) of Regulation AB. While we understand the Commission's intent to capture certain structured finance products that suffered from material weaknesses that were not subject to any form of mandated disclosure, the proposed definition is too broad and includes on its face a number of products that, although they may share similar characteristics as traditional asset-backed securities, are not generally thought of as true asset-backed securities. Indeed, many of these products – including enhanced equipment trust certificates, tender option bonds and covered bonds – are not considered structured finance products by the market generally and, more specifically, are rated primarily on the strength of the corporate sponsor, municipality or other credit source. As a result, we support the concerns and views expressed in the Industry Comments Letters, which advocate for greater clarity with respect to the definition of "structured finance product" and the explicit exclusion of certain products, including, but not limited to, those mentioned above, and categories of investments – such as investments in hedge funds, real estate investment trusts and private equity funds – in an effort to avoid any confusion and the potential chilling effect that may occur with respect to these products and investments.

4. Asset-Backed Commercial Paper

In the event that the Commission decides to move forward with the proposed amendments to Regulation D and 144A, we ask that the Commission give careful consideration to the proposals described in the comment letter submitted by the ASF with respect to ABCP (the "ASF ABCP Comment Letter"). As a sponsor of ABCP programs, a dealer of the ABCP issued by those programs and an investor in ABCP, we fully support the proposals contained in the ASF ABCP Comment Letter.

JPMorgan Chase has acted as administrator to ABCP conduit programs since 1988. Our ABCP conduits provide an important source of financing for JPMorgan Chase customers, who utilize the financing they receive from the conduits for their working capital needs, including payroll, financing inventory and providing financing to consumers and small businesses. Since inception, the JPMorgan Chase ABCP conduits have provided approximately $312 billion in financing to JPMorgan Chase customers; as of June 30, 2010, the JPMorgan Chase ABCP conduits had approximately $23 billion ABCP outstanding and approximately $36 billion in outstanding commitments to its customers. Each ABCP conduit transaction benefits from transaction specific liquidity facilities covering 100% of the ABCP issued by the conduit and from program credit enhancement facilities, with almost all of such facilities provided by JPMorgan Chase.

During our 22 years as an ABCP program administrator, we have worked with ABCP investors to provide the information that they deem relevant in their analysis of their investment. ABCP investors (predominantly money market funds, but also other large institutional investors) have frequently exercised their rights to request more information. And, because ABCP is a short term obligation, we rely on ABCP investors' continued willingness to purchase our ABCP programs' commercial paper, so we take requests from our ABCP investors for increased information very seriously. Finally, we note that the ABCP investors that we have talked to as we have evaluated the Proposals have indicated their general satisfaction with the existing disclosures provided by ABCP conduits.

We note that contrary to footnote 455 in the Release, which indicates that ABCP is often issued solely in reliance on 4(2), our ABCP programs (like most ABCP programs) in fact rely on 144A for both the primary distribution of ABCP through ABCP dealers, and the secondary market that has developed for resales of ABCP by ABCP investors. Consequently, if the Proposals are adopted without changes to reflect the unique characteristics of ABCP, we would have two options: (1) attempt to obtain and disclose asset-level information with respect to each transaction funded by the ABCP program, or (2) modify our ABCP programs to eliminate reliance on 144A. The first option is unworkable, as we believe that the vast majority of our customers would be unable to provide the information required for us to comply with the disclosure requirements contemplated by the Proposals. The second option (i.e. modifying our ABCP programs to eliminate reliance on 144A) would result in a substantial decrease in the liquidity of ABCP programs and would also significantly and negatively impact the types of financing that we provide to customers, and would therefore materially decrease the availability of ABCP financing to our customers. We strongly believe that, if the Commission adopts the proposed amendments to the safe harbors, without making any changes in the disclosure requirements for ABCP issuers, the ABCP market will be forced to modify the offering procedures for ABCP programs in a way that will be significantly detrimental both to the many businesses that utilize ABCP conduit funding as an important source of financing for their working capital needs, and to ABCP investors.

For the reasons described above, if the Commission moves forward with amending the private placement safe harbors, we urge the Commission to adopt the ASF ABCP Comment Letter's proposals with respect to disclosure requirements for ABCP.

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We are pleased to have had this opportunity to provide you with our comments on the Proposals. If you have any questions concerning this comment letter, or would like to discuss further any of the matters that we have raised, please feel free to contact me.

Sincerely,

Bianca A. Russo
Managing Director and Associate General Counsel