# IPFS Corporation

July 30, 2010

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

**Re: File No. S7-08-10 (Release Nos. 33-9117; 34-61858)**
**Comment on the Proposed Rule for Asset-Backed Securities**

Dear Ms. Murphy:

IPFS Corporation ("IPFS"), an originator and servicer of insurance premium finance loans, respectfully submits these comments on the private offering aspects of the proposing releases referenced above (the "Proposals"). IPFS welcomes the opportunity to raise its concerns and views on the Proposals and thanks the Commission in advance for seriously considering these comments.

Based on reports filed with licensing authorities, we believe that IPFS (together with its subsidiaries) is the second largest insurance premium finance company in the United States in terms of the dollar amount of insurance premiums financed, and the largest in terms of the number of accounts financed. It is also the largest insurance premium finance company that is not owned by a bank. IPFS finances approximately $7.5 billion of insurance premiums for approximately 550,000 customers annually.

IPFS has been a regular issuer in the securitization market since the early 1990s, and continues to rely on commercial paper conduit and privately-placed medium-term note facilities for its financing needs. IPFS operates a revolving master trust that issues both variable funding notes ("VFNs", primarily issued to commercial paper conduits) and medium-term notes (in the Rule 144A market) that are all secured by a common pool of amortizing, non-revolving premium finance loans. Several other issuers in our industry have used comparable master trusts for their securitizations.[1] In the ordinary course of our business, new loans are added to the trust on a continuous basis as they are originated, not just to maintain minimum pool balances. The amount of debt outstanding can be adjusted through paydowns and new borrowings under the VFNs, with the assets of the trust that aren't required as collateral constituting our securitization subsidiary's retained interest. Our current master trust structure, which has been in place since 2001, has been used to issue multiple series of highly-rated senior and subordinate notes over the years.

[1] In footnote 418 of the Proposals, the Commission states that it is only aware of four master trusts backed by non-revolving assets. That may be true with respect to registered offerings, but there are many master trusts used for non-revolving assets in the private placement market.

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During the time that we have participated in the securitization market, no investor has suffered any loss in connection with any of our securitizations, and so far as we know that has been true of the other issuers of rated asset-backed securities in the premium finance industry. Furthermore, the normal, historical net loss experience on our underlying loan portfolio has been approximately 25 basis points per year, and even during the recent downturn our loan portfolio's net loss experience has never exceeded 50 basis points per year. During those same time periods, our required reserves (*i.e.*, our securitization subsidiary's retained interest) have always been at least 500 basis points, representing approximately ten times coverage of our highest net loss experience. Unlike some other asset classes, the inherent strength of the underlying collateral for premium finance loans, together with our credit and underwriting results, have produced consistently safe returns for investors.

Nevertheless, IPFS has been adversely affected by the turmoil in the securitization markets that arose out of the troubled asset classes. As a result, we welcome the Commission's attempt to improve the functioning of the securitization market. We also agree that robust disclosure to investors should be a cornerstone of the securitization market across all asset classes. Nevertheless, we believe that many aspects of the Proposals would adversely affect IPFS as an issuer without any corresponding benefit to investors, to the securitization market, or to the overall economy. We're also concerned that the scope of the Proposals may harm the fragile recovery in the ABS markets that has been championed by other Federal regulators, including the Federal Reserve Board. Hence, we believe that any regulatory changes occasioned by the recent adverse market developments should be tailored to address the things that actually went wrong.

Before summarizing our concerns, please permit us to supply some background about our company, our industry and our product—insurance premium finance loans.

## Background on IPFS's Business—What are Premium Finance Loans?

IPFS and its wholly-owned subsidiaries make loans primarily to small and medium-sized businesses to finance those businesses' property and casualty insurance premiums. Property and casualty insurance policies for businesses typically require a full, one-year premium to be paid at or near the beginning of the policy period. If the policy is later cancelled before the full coverage period has run, the insurance company issues a pro-rated refund (which we call the "return premium") of the "unused" up-front payment. IPFS uses those potential return premiums (typically payable by highly-rated insurance companies) as the key collateral for its loans. Paying for large, up-front insurance premiums can be a significant challenge, particularly for small and medium-sized businesses. By allowing the insurance policyholder to spread payments over the course of the policy rather than paying in full up front, premium finance lenders like IPFS enable their customers to meet that challenge.

Operating in a highly regulated environment, IPFS (as a licensed premium finance lender) markets its premium finance lending services to licensed, independent insurance agents who introduce premium loan programs to their customers. When an agent or broker contacts IPFS to initiate the premium loan process, IPFS analyzes the terms of the proposed loan, the customer and the insurance company, with particular attention to the insurance company (since the potential return premium forms the backbone of the loan's credit structure). In most cases, the customer is not rated and the loan amount is too small to warrant a Dun & Bradstreet or similar report on the customer. Thus, IPFS primarily relies on the return premium as collateral. Approved insurance agents prepare premium finance quotes for their customers utilizing an IPFS website, have the customer sign a premium finance agreement and submit it to IPFS. Subject to IPFS's credit approval, IPFS will accept the agreement, send the loan proceeds to the insurance company and notify the insurance company of its security interest in the unearned premiums. The premium finance agreement evidences a short-term installment loan (not a revolving loan) made to the customer, the proceeds of which are used to pay the relevant insurance premium. At the closing of the loan, the customer usually makes a down payment to the insurance company (typically 20% to 25% of the premium due) and IPFS pays the remaining portion of the premium due (typically 75% to 80% of the premium due). The customer then repays the premium finance loan over time according to the premium finance agreement. Typically, the customer will repay the premium finance loan in nine equal monthly payments to IPFS, although our loans may have terms that range from 6 to 34 months. The average term is 9 months.

Under its premium finance agreements, IPFS has two sources of recourse upon non-payment or other default: the insurance company and the customer. If a customer defaults on a loan, IPFS is entitled to cancel the underlying insurance policy, to receive and apply any unearned premium that secures the loan, and to seek any remaining unpaid amount directly from the customer. Premium finance loan customers are particularly reluctant to default in the first place, since almost all businesses require property and casualty insurance of some sort to be able to operate. Because a default can lead to the cancellation of the customer's coverage, a decision to default on a premium finance loan can be tantamount to a decision to liquidate the business.[2] Because there are two sources of recourse, and because the customers are very reluctant to default in the first place, premium finance loans are a particularly safe asset class. As noted above, the annual loss experience on our underlying loan portfolio is excellent by any measure and has always been well within the minimum reserves established for our securitization subsidiary's note offerings.

Most of IPFS's customers are the small businesses that the White House calls "the engines of private sector job growth."[3] Through IPFS and the rest of the premium finance industry, those

[2] The decision to cancel a customer's insurance coverage is a significant one, which is why IPFS and other premium finance lenders are regulated in most states.

[3] Press Release, Office of the Press Secretary, The White House, *FACT SHEET: President Obama to Meet with Small Business Owners, Urge Congress to Act to Support Small Businesses and Create Jobs* (July 27, 2010),

businesses can get convenient, competitively-priced loans at the same time that they're arranging their insurance coverage with their independent insurance brokers. The loans are disbursed quickly, without the need for SBA support and without requiring the customer to put up other business assets as collateral. Because of the small average loan size (approximately 83% of our customers finance premiums less than $5,000, and over 90% of our customers finance premiums less than $10,000), and the specialized nature of the return premiums as collateral, many commercial banks choose not to make premium finance loans. The premium finance industry, including IPFS, fills that gap by providing badly-needed financing for American businesses. The Federal Reserve Board recognized that critical role by including premium finance loans (along with a handful of other particularly safe and important asset classes) in its successful Term Asset-Backed Securities Loan Facility ("TALF") program, noting that:

> More than 1.5 million insurance premium finance loans are extended to small businesses each year so they can obtain property and casualty insurance. The loans are often funded through the asset-backed securities (ABS) market and have become more expensive and more difficult to obtain since the shutdown of that market last fall. The inclusion of insurance premium ABS as TALF-eligible collateral will facilitate the flow of credit to small businesses.[4]

The need for Federal government protection and encouragement of this type of financing can't be overstated. Just this week, President Obama said: "Everywhere I go, I hear from small business owners who simply cannot get the credit they need to hire and expand."[5] In the same speech, he also said that "government can't guarantee success, but it can knock down barriers that keep entrepreneurs from opening or expanding. For example, the lack of affordable credit—that's something the government can do something about."[6]

## Our Principal Concerns

**Extensive changes to the structure of private offerings are unwarranted, at least in our asset class.**

In keeping with the President's emphasis, our fundamental comment on the private offering components of the Proposals can be summarized by the old saying, "don't fix what ain't broke!" While there's no doubt that major components of the mortgage-backed securities and CDO markets caused significant damage over the recent past, it would not be correct to say that the Rule 144A market in general or the securitization market in particular is "broken" across all asset

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*available at* http://www.whitehouse.gov/the-press-office/fact-sheet-president-obama-meet-with-small-business-owners-urge-congress-act-suppor.

[4] Press Release, Board of Governors of the Federal Reserve System, *Federal Reserve Announces Expansion of Eligible Collateral Under Term Asset-Backed Securities Loan Facility* (May 1, 2009), *available at* http://www.federalreserve.gov/newsevents/press/monetary/20090501a.htm.

[5] Speeches & Remarks, Office of the Press Secretary, The White House, *Remarks by the President on Small Business Jobs Initiatives* (July 28, 2010).

[6] *Id.*

classes. Premium finance loan securitizations, in particular, have caused no investor losses so far as we know, and have maintained their originally-assigned ratings throughout the recent period of stress. Furthermore, investors haven't questioned rating agency methodology or made any generalized demands for additional disclosure or transparency relating to premium finance loans.[7] Indeed, in a world where many things have not gone according to plan, in our asset class the existing Rule 144A regime has worked as well as anyone could have asked for, and we credit the Commission for that. When we compare those favorable results with the uncertainties and competitive issues that would spring from the Proposals and the significant increased costs associated with a public offering disclosure regime, we wonder how any reasonable cost-benefit analysis could lead to a change in the existing Rule 144A regime for our asset class.

**We object to the burden of a public offering infrastructure when we have no interest in making public offerings.**

The decision whether to become a 1934 Act reporting company (or, in this case, to effectively become a 1934 Act reporting company to maintain our investors' access to the Rule 144A market) is a complex one that is driven by cost, privacy and competition concerns. We realize that the Proposals don't force us to make public offerings. However, the requirement that we stand ready to supply security holders and prospective purchasers with the information that would be required if the offering were registered (both initially and on an ongoing basis, as if we were a 1934 Act reporting company) would force us to create and maintain the infrastructure required to administer a public offering. We believe that would be a costly and significant change to our business that would not, at least in our asset class, produce any corresponding material benefit to security holders or prospective purchasers.[8]

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[7] The President of the Federal Reserve Bank of New York commented in 2009 that "although some of the rating agency models have not held up well in the crisis, the consumer ABS models have proven to be reasonably robust. In other words, a AAA-rating still means quite a bit in this market. This is in contrast to the collateralized debt obligation or CDO market, where AAA-rated securities often used subprime and Alt-A mortgage loans as their raw ingredient." William C. Dudley, President and Chief Executive Officer, Fed. Reserve Bank of N.Y., Remarks at the Securities Industry and Financial Markets Association and Pension Real Estate Association's Public-Private Investment Program Summit: A Preliminary Assessment of TALF (June 4, 2009), *available at* http://www.newyorkfed.org/newsevents/speeches/2009/dud090604.html. Most of our securitization subsidiary's notes over the years have received AAA-ratings using criteria that have remained effective for two decades. (The other notes were "shadow-rated" for use with commercial paper conduits or were intentionally rated "A" as a subordinate class.) In March, 2010, our securitization subsidiary's term notes were rated by a rating agency new to our transactions, DBRS. They, too, issued AAA-ratings for our securitization subsidiary's senior notes and A-ratings for our securitization subsidiary's subordinate notes using criteria comparable to the criteria used effectively by Standard & Poor's and Moody's for many years.

[8] We note that we're already required under Rule 506 to be available to answer questions from prospective investors, and that system has worked well for us and for our investors. We understand that the Commission is concerned about effective access to information on the part of CDO investors in particular, and we can confirm that there has been a regular and active flow of information to investors in connection with each of our securitization subsidiary's note issuances.

**We object to potential disclosure of historically private information to competitors or to the public.**

As a privately-held company, we believe that it is perfectly appropriate for us to be concerned about disclosure of Form S-1-type information that has not previously been requested by investors and that has not previously been available to our competitors. In particular, the Form S-1 format (and comparable requirements for ongoing reporting) could require financial statements, MD&A analysis and other business information that we believe is at best immaterial from the standpoint of investor protection and at worst a treasure trove of information for our competitors. Our competitors (or their affiliates) could easily become secondary purchasers of our securitization subsidiary's notes, or present themselves as potential purchasers to gain access to previously undisclosed information.

Our concern about unnecessary access to our confidential information is heightened by the structure of our industry, in which many of our competitors are owned by banks. Since those competitors have access to funding from their owner banks, they might not need to incur the costs of maintaining access to the revised Rule 144A market. Further, the Form S-1-type information for those competitors probably wouldn't be separately disclosed in the banks' own securities filings because the banks' premium finance subsidiaries' performance won't be material to the banks' consolidated financial position. In that scenario, IPFS could easily be one of the few major players in the premium finance industry required to disclose the information, foiling any goal of increased industry transparency while exposing IPFS to unfair competition.

The Proposals' requirement to supply offering information to the Commission also raises these competitive concerns, so we would like to see a shorter list of information being supplied to the Commission in connection with private offerings. We view with special alarm the query in the Proposals about whether information filed with the Commission should be made publicly available. That would be wholly undesirable from our perspective, and we cannot think of a single advantage that would flow to our investors (all of whom are institutional accredited investors and qualified institutional buyers) from making our information public.

In summary, by making previously private information available, we believe that the Proposals could put us at a competitive disadvantage relative to our competitors, potentially straining our ability to be price competitive for our customers. As a result, we urge the Commission to refrain from requiring disclosure of Form S-1-type information in private offerings.

**Fundamental changes to the private offering market would expose our company, our industry and the market in general to substantially increased risk and uncertainty.**

IPFS is able to offer badly-needed, competitively-priced loans to its small and medium-sized business customers mainly because of its access to the current Rule 144A market, and we might be unable to do so if forced to bear the burden of the increased costs caused by the Proposals (which we can easily foresee running into the seven figures). Depending upon investors' willingness to return to the so-called "4(1-1/2)" resale regime of the past (about which we are not optimistic), lack of access to the existing Rule 144A market would probably require us to turn to the Regulation S market or, more realistically, to seek financing from large banks that, in many cases, either don't have sufficient capacity for our needs or own one of our direct competitors. We're uneasy about making any assumptions about access to alternative investors, lenders or markets just as the recent market freeze on financing is finally starting to thaw.

We also are very concerned that fundamental changes to the assumptions underlying Rule 506, Rule 144, and Rule 144A may suffocate the private debt markets that are in the midst of a tenuous recovery. Fundamentally changing those assumptions may also stifle critical innovation in the market and limit potential issuer and investor options for new methods and new asset classes. We believe that institutional accredited investors and qualified institutional buyers should not need the imposition of "one size fits all" public offering methodology across all types of "asset-backed securities" and "structured finance products" to be prudent investors. Indeed, we expect that investors and rating agencies have learned from their experiences in the mortgage-backed and CDO markets, and will continue to scrutinize collateral in ways that fit the relevant asset class without relying on methodology supplied by the Commission.

**The asset-level disclosures contemplated in the Proposals go substantially beyond what a reasonably prudent purchaser of notes collateralized by premium finance loans would typically request, and would be very costly to implement.**

We have engaged in negotiated transactions in the private placement markets for many years and believe, based on what they have asked us to provide, that investors in premium finance loan securitizations prefer to review pooled, portfolio-wide information.

We believe that the asset-level disclosure provisions of the Proposals, if required in private offerings, will be very costly to apply to insurance premium finance loans, and that additional disclosure relating to particular loan customers would not produce information that is useful to investors. Revolving pools of securitized premium finance loans typically include hundreds of thousands of very short-term loans, the average size of which is small relative to the size of the total collateral pool. We believe that premium finance loans are similar to credit card receivables in this respect. If the Commission intends to require disclosure of asset-level data in private offerings, we respectfully request an exclusion from this reporting requirement, like the one envisioned for credit card securitizations.

**The waterfall computer program provisions in the Proposals would not be useful to investors in our asset class, and would be difficult and costly for us to create.**

While it is true that the "waterfall" is a key component to any securitization, it does not follow that investors need a computer program (let alone a program as complex as the one envisioned in the Proposals) to determine their share of collections over time. The basics of our waterfall are easy to understand: in the absence of a trust-wide default, all classes of notes get paid interest (after taking into account any subordination arrangements among the notes in that series), with the remaining collections used to repay any series that is maturing or that has gone into a series-specific amortization. If there aren't any maturing or amortizing series, the remaining collections are used to buy newly-generated premium finance loans. If there were a trust-wide default, the various series would be repaid on a *pari passu* basis. The cash flow from the underlying pool of premium finance loans is also easy to understand and predict. That ease and predictability arises from the loans' nature: they are outstanding for months rather than years, have a stable and small default rate, and are unaffected by prepayment variations found in residential mortgages and other long-term asset classes.

In actual practice, however, any modeling of our waterfall would be difficult and costly since our securitization subsidiary has revolving and term series of notes (*i.e.*, VFNs and medium-term notes) outstanding at the same time. The principal balance of the VFNs changes regularly as our need for financing changes, and the VFN holders' share of collections correspondingly changes. Furthermore, we're permitted (subject to ongoing overcollateralization and other requirements) to issue additional notes from time to time. Those variables make it difficult to create models with which investors could usefully vary the assumptions and compare the results. We don't use such a model or corresponding computer program for our own analysis, and we don't know of any third-party vendor that offers anything like what would be necessary to meet the Proposals' requirements for our type of master trust. As a result, we would have to spend what could be an enormous amount of time and money trying to create a new model and a new computer program that would have minimal value, if any, to investors.

Our investors don't rely on (or ask for) waterfall modeling of the type envisioned by the Proposals. Rather, they focus on the collateral coverage for their notes and rely on various provisions that require the trust to maintain significant levels of overcollateralization. Furthermore, so far as we know, none of our investors know anything about the Python language, and we don't either. As a result, we expect that investors wouldn't use such a computer program for our asset class even if they had access to one.

We respectfully ask the Commission to reconsider the need for computer waterfall models and to exempt premium finance loan securitizations from those requirements in any event.

**The scope of "asset-backed security" relative to "structured finance product" is ambiguous, and fails to separate CDOs from other securitization structures.**

In many cases it is unclear which parts of the Proposals would apply to privately-offered "structured finance products" that aren't "asset-backed securities".[9] As a result, we can't tell

[9] For example, as an issuer of "structured finance products", we would be subject to Form S-1-type disclosure at the time of an offering. In the Proposals, the Commission stated that in making Form S-1-type disclosures, issuers of

which characterization would be best for our business. Nevertheless, we'd like to address the issue on a general level since it appears that the Commission may be using the two definitions as a way to distinguish CDOs from the rest of the securitization market. If that is correct, the Commission should understand that premium finance loan securitizations are broadly comparable to securitizations involving the asset classes that fall squarely into the proposed definition of "asset-backed securities", such as credit card receivables and auto loans. Premium finance securitizations are not comparable to CDOs in any material respect. For example, CDOs often are "re-securitizations" that reference "synthetic" underlying assets, which have no place in premium finance loan securitizations. Furthermore, CDOs typically invest in a range of different permissible underlying assets, sometimes with highly concentrated exposures to particular securities or derivatives (or the corresponding issuers or counterparties), producing many of the investor information challenges that the Commission cites in the Proposals. In securitizations involving our asset class, by contrast, there is only one type of investment (insurance premium finance loans) and there are set concentration limits relating to the underlying insurance companies.

IPFS's current securitization structure appears to be excluded from the proposed definition of "asset-backed security". Our master trust would not fit under the proposed, revised definition of "discrete pool of receivables" in Regulation AB, and may not even fit the definition of "discrete" as currently interpreted by the Commission. Our master trust is, by definition, not limited to revolving accounts since premium finance loans are term loans.[10] Also, new loans are added to the trust on a continuous basis as they are originated, not just to maintain minimum pool balances. Though we don't intend to take a definitive position in this letter on whether our securitization subsidiary's notes should be considered "asset-backed securities" for purposes of the Proposals, we don't understand why the long-term, revolving nature of our trust, using non-revolving underlying loans, should cause our trust to be viewed differently from other master trusts. We wonder whether the Commission just needs more information about what master trusts are being used in the market. We don't believe that there is any credit, disclosure or other investor protection reason that should make our master trust subject to drastically different disclosure and reporting requirements than those applicable to other ABS master trusts.

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"structured finance products" that are privately sold also will have to make the disclosures required under Regulation AB. Although the form retains instructions that incorporate into Form S-1 provisions of Regulation AB applicable to "asset-backed securities" as defined in Regulation AB, the Proposals undertake to amend Form S-1 so that it won't apply to "asset-backed securities", as defined in Regulation AB. Also, certain of the Regulation AB provisions, as proposed to be amended, that are incorporated into Form S-1 would mandate the asset-level disclosure and waterfall programs previously referenced in this letter, yet the delivery mechanism for meeting those requirements is only available to 1934 Act reporting companies.

[10] Most of our customers borrow from us regularly as they arrange new insurance coverage, so our customer relationships bear some resemblance to revolving credit card accounts that produce multiple credit card receivables over time.

The Commission's concern that "pools that are not sufficiently developed at the time of an offering to fit within the ABS disclosure regime may, nonetheless, qualify for ABS treatment"[11] is sensible in the context of CDOs, but is not relevant to premium finance loan securitizations. Furthermore, concerns that performance statistics of old loans could be diluted by the addition of new loans[12] is not relevant to premium finance loan securitizations. In both cases, the uniformity of the assets going into the trust differentiates premium finance loan securitizations from CDOs. There is no need to "develop a portfolio" or "actively manage a portfolio" in a premium finance loan securitization the way that a CDO manager "ramps-up" over time by acquiring different kinds of assets from a long menu of approved possibilities. Similarly, restrictions on the length of revolving periods, on the reasons for adding assets to the trust, and on prefunding simply aren't relevant to the safety of premium finance loan master trusts or to the adequacy of the investor information that flows from them.[13]

Premium finance loans are narrowly defined in our transaction documents, and are not subject to large swings in performance. To the extent that there are changes in the overall portfolio's results, our structure compensates through adjustments in the required amount of overcollateralization or other portfolio criteria. Those mechanisms have kept our investors and the rating agencies comfortable about the use of our master trust, which is more flexible and efficient than what the Proposals seem to envision for master trusts going forward. From our perspective, our pool of term premium finance loans is just as "discrete" from a credit and disclosure standpoint as it would be if it contained revolving loans.

We respectfully request that the Commission refrain from using structural differences between master trusts, or the definitions of "asset-backed security" and "structured finance product" set forth in the Proposals, to make significant distinctions between the regulatory regimes applicable to different asset classes. We also urge the Commission to consider definitions that would include all of the variations of master trust that are being successfully used in the private placement markets.

**The Commission should limit the scope of the Proposals to the asset classes that caused the recent problems.**

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[11] Asset-Backed Securities, 75 Fed. Reg. 23328, 23389 (proposed May 3, 2010).

[12] See footnote 418 of the Proposals.

[13] We are particularly concerned about any restrictions on prefunding periods. While we haven't used prefunding periods as tools to "ramp up" portfolios over several months in the way that CDO managers might, we have found short prefunding periods useful in the context of refinancing transactions and acquiring other premium finance companies. There is often a "chicken vs. egg" aspect to the timing of concurrent major closings that can be smoothed over through short-term use of prefunding periods. The investors and rating agencies are happy with such prefunding periods because the trustee is holding cash collateral pending the larger closings. We don't think that the delayed acquisition of the underlying loans during a prefunding period produces any troublesome disclosure issues in this asset class.

If the Commission decides to proceed with the Proposals, we suggest that the Commission limit the private offering aspects of the Proposals (and the staff time needed to implement the Proposals) to those asset classes that caused the recent losses in the market, *e.g.*, residential mortgage-backed securities and CDOs. Even if the Commission wants to include all asset classes, at least a staggered implementation of the ideas underlying the Proposals (beginning with the troubled asset classes) would be an excellent way to use the SEC staff's available time and would also produce better informed rulemaking when the Commission turns to strong asset classes like premium finance loans.

One compelling way for the Commission to distinguish between asset classes for that purpose would be to retain the existing private offering regime for asset classes that were included in the TALF program.[14] The TALF program included particularly strong asset classes that are important to the economy (*i.e.*, credit card receivables, auto loans and leases, SBA-guaranteed loans, dealer floorplan loans, business equipment loans, mortgage servicing advances, commercial mortgages and insurance premium finance loans), while excluding CDOs, other asset classes that included "synthetic" exposures, and residential mortgage-backed securities.[15] In selecting TALF-eligible asset categories, the Federal Reserve Board focused on only those "securities that will have the greatest macroeconomic impact and can most efficiently be added to the TALF at a low and manageable risk to the government."[16] The Board used "specific collateral eligibility requirements in order to ensure that taxpayer funds are used to finance targeted asset classes whose probability of loss has been assessed by credit rating agencies," after having their economists conduct "due diligence on rating agency methodologies for eligible ABS sectors."[17]

The Federal Reserve described its risk assessment process as follows:

[14] There were aspects of the TALF program that may not be useful in making risk assessments in connection with the Proposals. For example, the TALF requirements that underlying receivables be owed by U.S. obligors were probably designed to maximize the impact of the Federal Reserve's funds on the U.S. economy rather than to be risk criteria. Nevertheless, we believe that most aspects of the TALF program should be useful in helping the Commission determine what rulemaking is necessary.

[15] As the Federal Reserve Board and the Federal Reserve Bank of New York told the Congressional Oversight Board in 2009, "[t]he term "collateralized debt obligation is not precisely defined, but the TALF does not accept ABS collateral that might be regarded as complex CDOs—that is, where the underlying credit exposures are themselves cash ABS or synthetic ABS. These types of cash and synthetic collateralized debt obligations, known as structured-finance CDOs, contributed to the current financial crisis by obscuring the risk of the underlying ABS collateral to the investor and are not eligible." Letter from Ben S. Bernanke, Chairman, Board of Governors of the Federal Reserve System, and William C. Dudley, President, Federal Reserve Bank of New York, to Elizabeth Warren, Chair, Congressional Oversight Panel (April 1, 2009), *available at* http://www.newyorkfed.org/markets/response_040109.pdf.

[16] Press Release, Board of Governors of the Federal Reserve System (March 3, 2009), *available at* http://www.federalreserve.gov/newsevents/press/monetary/20090303a.htm.

[17] *Supra* note 14.

> The purpose of the Federal Reserve Bank of New York's risk assessment process is to ensure that bonds pledged to TALF meet three general standards.
>
> 1. Credit quality: The bond is of the highest credit quality with de minimis risk of default and a low probability of a material deterioration in credit quality.
>
> 2. Transparency: Sufficient information is available to allow investors to make informed judgments about the credit risk of the collateral underlying the bond as well as the level of due diligence on the collateral performed by the issuer.
>
> 3. Simplicity of structure: The relationship between the performance of the underlying collateral and bond payments is clear and uncomplicated.
>
> In determining whether a proposed transaction satisfies each of the principles above, the Federal Reserve Bank of New York recognizes that appropriate structural and transactional features may differ significantly across asset categories. Within an asset category, however, bonds will be reviewed relative to generally accepted prudent market practices in the areas of: credit support; issuer and servicer strength; underwriting; diversification (geographic, borrower, or other); and simplicity of structure.[18]

We urge the Commission to note the significant overlap between the Federal Reserve's criteria and the Commission's goals for the Proposals. We think it would be an excellent use of the time and money that the government has already spent if the Commission uses the Federal Reserve's TALF research and experience to determine which asset classes truly need additional attention.

**Conclusion.**

Thank you again for the opportunity to provide our comments, which we hope you will find useful. We've also attached an annex to this letter addressing many of the questions that the Commission posed in the Proposals. We realize that Commission's task is difficult. As the Commission attempts to address the causes of the market freeze and related investor losses through regulatory changes, we urge the Commission to be mindful of the enormous potential costs of those changes and to retain the successful aspects of the existing regulatory regime. If our fundamental comments aren't accepted, we would be grateful for the chance to comment on a further developed set of proposals. We otherwise foresee a great deal of time spent with the Commission staff clarifying how several of the Proposals would apply to premium finance loans and to our specific transaction structure.

Please contact us with any questions that you might have, or if you wish to discuss this matter further.

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[18] Federal Reserve Bank of New York, *Risk Assessment Principles for Non-Mortgage-Backed ABS*, *available at* http://www.newyorkfed.org/markets/talf/risk_asses_091005.pdf.

Sincerely,

IPFS CORPORATION

By: ______________________________

Bryan J. Andres
Executive Vice President and Chief
Financial Officer

## Annex to IPFS Corporation's 30 July 2010 letter to the Commission's File No. S7-08-10 (Release Nos. 33-9117; 34-61858)

Please refer to our letter for our principal comments to the Proposals.

**<u>II. Securities Act Registration</u>**

1. <u>II.B.1. New shelf registration procedures, bullet points 9 and 10</u>

a. *Should we impose even more restrictions on private offerings of asset-backed securities than what is proposed below?*

   i. No. Private offerings, such as IPFS's, take place among issuers and investors who understand the underlying assets and the underlying business. Financing efficiency in the premium finance loan market helps smaller businesses stay in business by easing their insurance funding burden. Adding costs to private offerings harms specialized issuers and the companies whose finance needs those issuers serve.

*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?*

   ii. No. Accredited investors and qualified institutional buyers are sophisticated enough to assess payment streams and to demand the information that they need to do so.

*Alternatively, should we impose fewer restrictions on private offerings of asset-backed securities?*

   iii. Yes. Private offerings occur between issuers and investors who understand the underlying assets, or who are sophisticated enough to learn about the underlying assets. If the Commission no longer considers that framework adequate, the Commission should focus its attention on asset classes that produced the recent problems in the market, like CDOs and residential mortgage-backed securities.

b. *Should we also require, or require instead, that the initial purchaser or investor hold the securities for a period of time prior to resales in reliance on Rule 144A to better ensure that such resales of asset-backed securities are not a distribution?*

   i. No. Liquid markets encourage market health and permit investors to better manage their portfolios. Furthermore, no "seasoning period" is useful in the context of insurance premium finance loans, which have an average tenor of approximately 9 months, extremely low default rates, and predictable cash flows that don't tend to be materially affected by the early payment defaults seen in other asset classes.

*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?*

   ii. No. Imposing mandatory holding requirements on sophisticated investors who purchase privately issued securities probably won't prompt more issuers to enter the public, registered ABS market. Once purchased by sophisticated investors, notes and bonds should be freely saleable amongst sophisticated investors to promote market health. Hampering debt markets by imposing additional burdens on the Rule 144A safe harbor would strain companies' financing ability and harm small and mid-sized American businesses.

*If we were to add these additional restrictions on private offerings, what would be the impact on the broader market for structured securities?*

iii. These restrictions would choke funding for smaller issuers and private businesses by narrowing their potential financing options and discouraging investors from purchasing ABS in exempt private placements. Costs comparable to those associated with public deals could chase issuers like IPFS from the securitization market, harming IPFS and its customers, and decreasing investors' investment options.

*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?*

iv. IPFS suspects that requiring a holding period would discourage new investors from purchasing its securities in exempt private issuances. Under the current exemptions, investors demand the information that they need, and issuers, sponsors, and servicers provide the information because they need the funding. IPFS's urges the Commission not to restrict sophisticated investors' ability to manage their investments. If a mandatory holding period dampens investor enthusiasm for IPFS's securitizations, it will certainly seek alternate financing avenues.

*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*

v. Yes. Requiring issuers, sponsors, and servicers to compile information that sophisticated investors neither want nor use would reduce the amount of these transactions and increase their costs substantially for all parties. In most asset classes, the market dictates disclosure: investors won't purchase notes backed by insurance premium loans unless investors see the data that interests them. At the least, securitizations involving asset classes approved by the Federal Reserve Bank of New York in connection with TALF, or other similar governmental reviews, should remain covered by the traditional private offering disclosure regime, dictated by sophisticated investors, while the Commission focuses its additional disclosure requirements on asset classes that have been problematic, like residential mortgage-backed securities and CDOs.

**2.** <u>II.B.2. Proposed Forms SF-1 and SF-3, bullet points 1 and 2</u>

*a. Would the proposed new forms create any difficulties? If so, please specify.*

i. Yes, if Form S-1 or the proposed new Form SF-1 were to apply to IPFS it would create difficulties. Please consider that in the privately-placed, premium finance loan-backed market the investors ask for the information that they need to assess servicer, sponsor, and issuer credit quality; if a proposed issuance doesn't provide investors with the information requested, the notes aren't sold or pricing suffers. That market, unlike the disclosure scenarios that the Commission is concerned about for other asset classes, already forces disclosure of information that truly affects note performance. Further, Form SF-1 isn't tailored for specialized, unique underlying assets like premium finance loans. For a privately held company with no other registration requirements, the costs of setting up an internal financial reporting system to prepare and provide public-company-like disclosures to investors are huge barriers to entering the ABS market. Forcing private companies to incur public companies' costs is the effect of some items in the Proposals and seems unnecessary to achieve what should be the Commission's goal: protecting investors in particular troubled asset classes.

b. *Do the proposed forms [SF-1 and SF-3] omit any requirement for asset-backed issuers that should be included? Do any of the requirements need further revisions?*

i. Yes, the requirements need further revisions. Particularly, the Proposals' amendments to:

1. §229.1101 excludes master trusts that use term assets, like premium finance loans, from the "master trust" definition without regard for the asset's performance or market-based origination criteria. Please see the body of our letter for explanation on this point.
2. Making §229.1111's disclosure requirements apply to privately issuing, privately owned entities could harm IPFS's business by requiring disclosure of competitive information. Investors (or prospective investors) in our securitization subsidiary's notes could include owners (or affiliates of owners) of our competitors, and requiring disclosure of asset data could harm the IPFS entities' ability to compete with other premium finance lenders. Please see the body of our letter for explanation on this point.
3. §229.1111(h) requires assets other than credit card receivables to disclose asset-level information rather than limiting asset-level disclosure to securities underlying CDOs and MBS, the two asset types that appear to have caused the recent problems in the securitization market. For premium finance loans, asset-level data like that required by §229.1111A isn't as helpful to investors as it would be for assets with longer tenors (the average premium finance loan's tenor is nine months).

4. §229.1112's disclosure requirement lacks a carve-out for significant obligors that are unrelated, private entities. Some obligors in IPFS's securitization subsidiary's premium finance loan pool might be significant but are privately held and do not publicize financial data of the type required under 1112(b).
5. §229.1113's waterfall computer program requirements should be amended to exempt premium finance loan master trusts. Any modeling of our waterfall would be difficult and costly since our securitization subsidiary has revolving and term series of notes (i.e., VFNs and medium-term notes) outstanding at the same time. The principal balance of the VFNs changes regularly as our need for financing changes, and the VFN holders' share of collections correspondingly changes. Furthermore, we're permitted (subject to ongoing overcollateralization and other requirements) to issue additional notes from time to time. Those variables make it difficult to create models with which investors could usefully vary the assumptions and compare the results. We don't use such a model or corresponding computer program for our own analysis, and we don't know of any third-party vendor that offers anything like what would be necessary to meet the Proposals' requirements for our type of master trust. As a result, we would have to spend what could be an enormous amount of time and money trying to create a new model and a new computer program that would have minimal value, if any, to investors.
6. §229.1121(d) exempts ABS-backed primarily by receivables due on credit cards, charge cards or stranded costs and should similarly exempt ABS backed primarily by premium finance loans from the asset-level disclosure requirements of 1121A.

## <u>III. Disclosure Requirements</u>

**1.** <u>III.A.1. Pool assets - Asset-level information in prospectus, bullet points 1, 2, 3, and 4</u>

*a. Is our proposal to require asset-level disclosure with data points identified in our rules appropriate?*

i. Not in the private placement market where it isn't requested by investors, not for specialized issuers who serve thousands of smaller companies, and not for assets like premium finance loans, where asset-level data not only reveals confidential information that could be used by a competitor, but also changes almost daily. IPFS finances approximately 550,000 companies during a year. As the Commission notes for credit cards and charge cards, the volume of accounts makes granular asset-level information about the premium finance loans very costly for issuers like IPFS and not useful to investors.

b. *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.*
    i. Premium finances assets, like credit card or charge card receivables, are most helpfully viewed on a pool-wide basis. In the private placement market, the Commission should rely on investors to request the data that they want: noteholders supported by premium finance loans have used pool data to purchase many series of notes from IPFS's master trust, all of which have performed.

c. *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?*
    i. Yes. Specialized issuers that look to the private investor market already respond to investor requests for data. The proposed asset-level disclosures would freeze specialized issuers out by imposing costs but not opening any new investor markets.

d. *Should we instead amend our current requirements regarding pool- level disclosure by requiring issuers to present certain pool-level tables in a standardized manner? For instance, should we specify how statistical data should be presented by defining the groups or incremental ranges that must be presented? What would those appropriate groups or incremental ranges be for an individual table? For instance, what would be the appropriate range for obligor income and why? Please be specific in your response.*
    i. A Commission standard like the one proposed for ranges and groups seems to ignore differences inherent between assets like premium finance loans, credit card receivables, and charge card receivables. Shoehorning IPFS's premium finance loans, or other specialty lending areas, into ranges meant for other types of loans doesn't display the asset pool in a meaningful way. Particularly in private placements, the Commission should continue permitting sophisticated investors to request the information that they need to understand underlying assets.

**2.** <u>III.A.1.b.i Proposed disclosure requirements and exemptions, bullet points 2 and 4</u>

a. *The combination of certain asset-level data disclosures may raise privacy concerns. Are there particular asset-level data points that give rise to privacy concerns, in addition to the ones noted above and why? Are there other ways we could provide investors with similar information and lessen privacy concerns? Which information raises the most significant privacy concerns?*
    i. Like credit card or charge card securitizations, asset-level data about premium finance loans would be very costly for IPFS to provide and maintain to, and unhelpful for, investors. If the Commission insists on asset-level disclosure for premium finance loans, splitting the information into geography, amount, and repayment schedules, without matching each to a particular loan identifier, could better protect IPFS's customers from identification. For example, IPFS would disclose the number of

customers it had in a certain state, the amount of each loan, and repayment schedules ranked within each category without providing a premium finance loan identification number or linking the information across categories. That would make it more difficult to identify the underlying customer, and is more like the pool-level data that sophisticated investors have traditionally requested.

b. *Is our approach to geographic location appropriate? Does the use of the Metropolitan or Micropolitan Statistical Area, or Metropolitan Division provide investors with meaningful disclosure? Should we require only Metropolitan and Micropolitan Statistical Area which would be a broader description?*

    i. Not for assets like premium finance loans, where the use of Metropolitan or Micropolitan Statistical Area or Metropolitan Division seem less useful to investors than providing the state-level information. In IPFS's experience, sophisticated investors request the highest state concentrations of the asset pool rather than metro area concentrations.

*Are there other ways to designate geographic location that would provide investors meaningful disclosure while also addressing privacy concerns?*

    ii. A pool-level table that presents the geographic concentration of the pool subdivided by state and number of loans would be less costly for a specialized premium finance issuer like IPFS to create and more useful for investors.

*For instance, instead of requiring geographic location at the asset-level, should we proscribe requirements for a pool-level table that presents the geographic concentration of the pool subdivided by state, size of loan and number of loans?*

    iii. Geographic location by state could be an appropriate disclosure for a collateral pool of premium finance loans. The Commission should not require disclosure from private market issuers. If the Commission does require disclosures from private market issuers, a pool-level table of loans subdivided by state, size of loan, and number of loans could put IPFS at a competitive disadvantage. Disclosing the number of loans per state, however, could provide investors with useful collateral information without imposing significant costs on issuers, and is already something that IPFS provides to its investors for the states with the highest concentrations of customers' addresses.

*In using such a pool-level disclosure approach would it also be necessary to subdivide by income, credit score and sales price?*

    iv. With such a pool-level disclosure approach for premium finance loans, income, credit score, and sales price would remain costly to present and wouldn't be necessary for (or very helpful to) investors. Obligors' income and sales price are inapplicable, and "credit scores" for companies seem to be the NRSRO credit ratings that the Commission would like to move away from. In general, that information either isn't available to us at all or is not cost-effective to obtain given our low average loan size.

**3.** III.A.1.b.ii Proposed general disclosure requirements, bullet points 1 and 4

a. *Are the general data points that would apply to all securitizations (other than credit cards, charge cards and stranded costs) appropriate? Should any be deleted or made applicable only to certain asset classes? If so, what data points? Are there any other data points that should apply to all asset classes? Please provide a detailed explanation of the reasons why or why not.*
    i. No, the general data points aren't appropriate for premium finance loans. Like securitizations of credit cards, securitizations of premium finance loans must gather hundreds of thousands of loans to create a pool. Not only would presenting the general data points proposed be costly and onerous for a specialized issuer like IPFS's securitization subsidiary, the resulting data would be unhelpful for investors — other than IPFS's competitors.

b. *Should we define delinquency in order to provide comparable delinquency disclosure across issuers and asset classes? If so, how should it be defined and why? Would market participants be able to make changes to their current systems to capture information to satisfy a standardized delinquency disclosure requirement? Would such a requirement be burdensome? Is there another way to provide comparable delinquency disclosure across issuers and asset classes? Please be detailed in your response.*
    i. No, because different assets have different regulatory and market requirements. Particularly in private issuances, investors can learn more about the underlying assets when they learn about the industry. Premium finance loans differ on almost every metric from other asset classes more commonly part of private or public offerings (i.e. size of underlying loans, loan repayment terms, procedures to exercise on collateral, and regulatory servicing requirements).

**4.** <u>III.A.1.b.iv Proposed exemptions, bullet points 1,3,4,5, and 7</u>

a. *Should asset-level data be provided by credit card, charge card or stranded cost issuers? If so, please explain why and what asset-level data should be provided.*
    i. No. Asset-level data shouldn't be provided by credit card, charge card, stranded cost, or premium finance issuers because of the high volume of assets in these types of securitizations and the short-term nature of these assets.

b. *Are there any other asset classes that should be exempt from the requirement to provide asset-level data and why?*
    i. Yes, premium finance loan securitizations should be exempt from the requirement to provide asset-level data. Like credit and charge card securitizations, collateral for premium finance securitizations is comprised of many relatively small accounts. For example, every year, IPFS's pool contains loans to approximately 550,000 customers, 83% of which finance insurance premiums of $5,000 or less, and most of which have terms of less than a year.

c. *In light of the proposal not to set forth asset-level data for these assets, is there any pool-level data that should be provided by credit card, charge card, or stranded cost issuers? If so, please identify the pool-level data that we should require and explain why.*

i. If the Commission requires premium finance issuers in the private issuing market to disclose pool-level data, IPFS notes that some pool-level disclosures that may be helpful for investors in credit card securitizations would be irrelevant or useless metrics for assessing a premium finance pool (*i.e.*, obligors credit limits, APR, available credit, types of products in the asset pool, account closures, obligors' payment habits, whether obligors own or rent premises, obligors' type of business, obligors' debt-to-income ratios, or weighted averages for any of these categories). Over the ten years that IPFS's securitization subsidiary has issued privately placed series, we have responded to investors' requests for different pool-level metrics by providing them in private offering documents and monthly and annual investor reports. The Commission should – particularly for issuers like IPFS, that are highly specialized and privately issuing – permit investors to continue to demand the data that is useful to their investment decision.

d. *Should we specify standardized definitions for pool-level data? For instance, for credit cards or charge cards, should we define terms such as modification, excess spread and charge-off? How are issuers currently defining these various terms?*

i. No. If the Commission decides to treat premium finance loan securitizations like credit card or charge card securitizations, it still shouldn't standardize terms like modification. Premium finance loans differ from other asset classes, and it is difficult to fit premium finance loans into standardized definitions for other asset classes. A definition of "charge-off" useful to investors with underlying credit card collateral might be out-of-the-market for premium finance loans, and thus unhelpful to investors with underlying premium finance loan collateral. At least in our asset class, we think that investors read the definitions carefully and are not put off by minor differences requisite to best describe the underlying asset in definitions used in different asset classes.

e. *Should we revise Item 1111 to require pool-level disclosure in a standardized format for ABS backed by credit cards or charge cards? Current Item 1111 requires issuers to present pool-level statistical information in appropriate distributional groups or incremental ranges in addition to presenting appropriate overall pool totals, averages and weighted averages, if such presentation will aid in the understanding of the data. In the case of credit cards and charge cards, should we proscribe the distributional groups or incremental ranges for material pool characteristics such as credit scores, credit limit, account balance, account age, geographic location or annual percentage rate (APR)?*

i. If the Commission requires premium finance issuers in the private issuing market to disclose pool-level data, the Commission shouldn't require a standardized format for the disclosure. Assets vary widely, as do markets, and setting standard ranges now could result in the Commission's annual review and adjustment to keep ranges useful, causing concurrent uncertainty amongst servicers, issuers, and investors about how existing disclosures and investments would be affected. Particularly in the private market, the Commission should continue to rely on investors' ability to ask for the information about the assets and asset pools that investors need to make their investment decisions.

**5.** III.A.2.b. Proposed exemptions from ongoing asset-level reporting, bullet point 3

a. *Are there any other asset classes that should be exempt from the asset-level disclosure requirement in periodic reports and why?*

i. Yes, premium finance loans should be exempt from the asset-level disclosure requirement in periodic reports. Like credit card and charge card securitizations, premium finance securitizations require many accounts, most of which are relatively small in amount. IPFS finances approximately 550,000 companies during a year, 83% of which are financing insurance premiums of $5,000 or less.

**6.** III.A.3 Ongoing reporting for grouped account data, bullet points 1 and 3

a. *Is our proposal to require grouped account data disclosure with standardized groupings appropriate?*

i. If the Commission requires periodic reporting from issuers whose underlying assets are best reflected through pool-level data like credit card and premium finance, it should at most require updates to the initially disclosed data, and would preferably only require disclosure of material changes (i.e. greater than 20%) to any initially disclosed metric. IPFS would urge the Commission to refrain from imposing any disclosure requirement on specialized, private market issuers relying instead on sophisticated investors' ability to request the information that they need.

b. *Is our proposal to require grouped account data in XML appropriate? Why or why not?*

i. No, because it will be costly for specialized issuers in the private market, like IPFS, to prepare and maintain XML grouped account data on the chance that a prospective or current investor will request it. Even if IPFS hires a third-party, it would impose additional costs on the financing structure without necessarily aiding investors' analysis. Please note that IPFS's securitization subsidiary has privately issued many series to sophisticated investors and this type of data hasn't been requested.

**7.** III.A.3.a. When ongoing pool information would be required, bullet points 1-3

a. *Is the proposed requirement to provide Schedule CC 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?*

i. No. Gathering and presenting pool information to investors that many times during a potentially short period of time would cost specialized issuers like IPFS many hours and much money. When a collateral pool changes as rapidly as a credit card, charge card, or premium finance loan asset pool does it could capture changes that are immaterial (particularly if required between the Rule 424(h) prospectus and the final prospectus).

b. *Is the proposed measurement date appropriate? Should we provide further guidance about what would be a recent practicable date for purposes of determining the measurement* *date? For example, should we specify that it be prepared as of a date that is five business days prior to filing?*

i. No. The Commission should continue to allow private issuers with specialized underlying assets to present the data at the most recent time they can, and trust that sophisticated investors will continue to request any updates or changes necessary to assess the investment. Pools of premium finance loans like ours lack the volatility that would make mandated measurement dates useful to investors.

c. *Would the proposed Schedule CC contained in the most recent Form 10– D provide investors with sufficiently current information at the time of making an investment decision? In this regard, we note the result could be that the most recent Schedule CC data could be as old as 45 days.*

i. 45-day old information would be sufficient for investors in this asset class, which isn't volatile and has regular and predictable performance. In any event, rather than mandating information expiration dates, IPFS urges the Commission to continue to permit private market issuers to work directly with investors on disclosures, and to continue to let a working market do its work.

**8.** <u>III.A.3.b. Proposed ongoing pool disclosure required, bullet points 1, 2, 4,6, and 7</u>

a. *Are the proposed standardized distributional groups appropriate? Are there any other distributional groups that we should specify? Are there any that should not be required?*

i. Although pool-level disclosure would be more appropriate than asset-level disclosure for premium finance issuers, the Commission's proposed standardized distributional groups would need to be tailored. Credit scores and adjustable rate index don't apply to premium finance loan obligors or loans, and only the "12 to 24" and "less than 12 month" account age categories would be used. In any event, the Commission should continue to allow private issuers to provide the disclosures that investors require to invest, rather than putting itself in the position of negotiating specialized reporting regimes with IPFS and every other specialized issuer.

b. *Would credit card ABS issuers be able to provide this information in this format on a cost-effective basis? Would it raise competitive concerns?*

i. If the Commission decides to treat premium finance ABS issuers like credit card issuers, providing this information in this format would be very costly for IPFS, and would raise competitive concerns. Many of IPFS's competitors are banks or owned by banks. If the Commission forces IPFS to incur the costs of implementing these disclosures and then forces IPFS to share these disclosures with prospective sophisticated investors, the Commission puts IPFS at a disadvantage in the premium finance lending market in relation to bank-owned premium finance lenders. Please see our letter for further explanation of this point.

c. *Should we provide a definition for delinquency? If so, how should it be defined?*

i. No. Repayment terms differ greatly between assets, and what is considered "delinquent" differs between asset classes. Sophisticated investors can understand these differences.

d. *Would issuers already have information about all of the states in order to prepare the groupings for the top 10 states by aggregate account balance and other? If so, should we require that issuers provide groupings by every state? Please tell us why or why not.*

   i. If the Commission decides to treat premium finance ABS issuers like credit card issuers, IPFS has this data and already provides this data to its investors. IPFS would urge the Commission to refrain from requiring specific disclosures from private issuers.

e. *Are the proposed informational requirements appropriate for the grouped account data (i.e., aggregate credit limit, aggregate account balance, number of accounts, weighted average APR and weighted average net APR)? What other types of information should issuers provide about their accounts in the grouped account data format?*

   i. No. Aggregate credit limit, credit scores, and adjustable rate index don't apply to premium finance loan obligors or loans, and only the "12 to 24" and "less than 12 month" account age categories would be used. The Commission should continue to allow private issuers to provide the disclosures that investors require to invest, rather than putting itself in the position of negotiating specialized reporting regimes with IPFS and every other specialized issuer.

**9.** III.A.4. Asset Data File and XML, bullet points 1-9

Although the Commission's requests for comments here focus on asset-level data, IPFS would comment that providing XML files for pool-level data would cost it – and other specialized issuers who aren't public filers or making public issuances – significant time and money to implement.

**10.** III.A.4. Pool-level information, bullet points 2,3, and 5

a. *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?*

   i. No. If a premium finance loan ceases to meet our master trust's eligibility requirements, it no longer counts as eligible collateral but isn't necessarily removed from the master trust's ownership, so this information isn't helpful to investors. Our master trust is required to maintain a substantial amount of overcollateralization in any event. Further, requiring privately owned servicers, sponsors, and originators like IPFS to disclose their business methods for soliciting, underwriting, and verifying premium finance loans could give competitors an unfair advantage.

*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?*

ii. No. IPFS urges the Commission to focus on the asset classes (CDOs and RMBS) that troubled the market when it requires disclosure about standardized permissible deviations; the majority of assets and the majority of issuers adhere to the standards that they set for their securitizations' collateral pools in response to sophisticated investors' requirements.

*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?*

iii. No, at least not in securitizations like IPFS's, where premium finance loans counted as collateral must meet standards for origination and underwriting set through negotiations with sophisticated investors. If the loans don't meet those standards, they aren't counted as collateral. In IPFS's master trust's experience, investors glean the information that they need from pool-level reports periodically issued in an agreed-upon format.

b. *Are the proposed amendments relating to disclosure concerning representations and warranties and modification provisions in the transaction agreements appropriate?*

i. No. In private issuances, sophisticated investors negotiate transaction documents' terms with issuers for the representations, warranties, and modification provisions that they want. These investors receive the information that they need and the protections and level of detail that they want, and the Commission should not introduce inefficiency for issuers and investors by instituting disclosures that don't necessarily help investors evaluate the collateral.

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

i. IPFS encourages the Commission to continue permitting sophisticated investors to dictate disclosures of repurchase obligations as well as any other disclosures that those investors deem necessary. For specialized assets like premium finance loans, any requirement that the Commission sets will inevitably need to be individually negotiated, issuer by issuer, to meet the specialized asset class's requirements. In any event, repurchase obligations aren't a material driver of results in this asset class.

**11.** <u>III.B.1. Waterfall computer program, bullet points 1, 4, 5,6,7,9, and 14</u>

a. *Is it appropriate for us to require most ABS issuers to file the waterfall computer program? Is there an alternative form of required information filing that would be more useful to investors, subject to the limitation that executable code may not be filed on EDGAR?*

i. No, particularly for issuers in the private market. Sophisticated investors can and do request the information that they need to make informed investment decisions. Imposing the costs of creating a waterfall computer program for export to potential investors on specialized, private issuers like IPFS could effectively close the private issuance market for those issuers. The Commission should continue permitting sophisticated investors to require that issuers provide the information that the sophisticated investors need to make their investment decisions. Please see our letter for further explanation of this point.

b. *Is it appropriate to require issuers to submit the waterfall computer program in a single programming language, such as Python, to give investors the benefit of a standardized process?*
    i. No. The Commission shouldn't require a waterfall computer program from private issuers. If the Commission requires private issuers to provide waterfall computer programs to sophisticated investors or prospective sophisticated investors, it shouldn't require that the issuer use any particular programming language or format.

*If so, is Python the best choice or are there other open source programming language alternatives (such as PERL) that would be better suited for these purposes?*
    ii. IPFS is unfamiliar with Python, and hasn't received any requests from sophisticated investors in existing series for any waterfall information in any programming language or separate program. Specialized issuers like IPFS lack the IT expertise necessary to create these kinds of programs. This type of requirement would force issuers who are smaller than most of their investors to incur substantial costs on creating, updating, and sharing a computer program.

c. *Should more than one programming language be allowed? If so, which ones and why?*
    i. Yes. If the Commission requires issuers to provide waterfall data electronically, it should permit issuers to do so in whatever format works for the issuer's assets and investors.

d. *Should we restrict ourselves to only open source programming languages or allow fully commercial or partly-commercial languages (such as C-Sharp or Java) to be used? If so, what factors should be considered?*
    i. No, the Commission should permit issuers to present any data required to be disclosed electronically in whatever format works for the issuer's assets and business.

e. *Are there other requirements we should impose on the possible computer programming languages that are used to satisfy this requirement, other than that such languages be open source and interpreted?*
    i. No, the Commission should permit issuers to present any data required to be disclosed electronically in whatever format works for the issuer's assets and business and the issuer's investors. Indeed, even the requirement that languages be open source and interpreted could be too expensive for issuers to implement.

f. *Are the proposed input and output requirements for the waterfall computer program appropriate? If not, what type of output and tests should be required for the waterfall* *computer program? Should the outputs of the waterfall computer program be specified in detail by rule, or broadly defined to afford flexibility to ABS issuers?*

i. If the Commission requires issuers (including private issuers) to provide waterfall computer programs, it should still permit issuers to provide the input and output tests required by sophisticated investors. The Commission should give ABS issuers as much flexibility as possible, so that ABS issuers can provide the information most helpful for their asset type and to their investors. Please note that the Commission should not require issuers in the private market to provide waterfall computer programs.

g. *Should we adopt the proposed changes to Item 601 of Regulation S–K and to Regulation S–T?*

i. No. Creating a waterfall program in Python will be very costly for specialized issuers like IPFS, who rely on the private market to finance unique assets like premium finance loans for small American companies. It would be very costly to create this program for and provide this program to any sophisticated investor or prospective sophisticated investor who requests it.

**12.** III.C.2.b. Transaction parties- obligation to repurchase, bullet points 1-9

a. *Is the proposed amendment requiring disclosure regarding amount of assets that were not repurchased appropriate?*

i. No. Investors in private issuances have negotiated the disclosures that they need with issuers. Adding this type of disclosure requirement on top of private issuance transaction documents' existing reporting requirements will complicate existing documents and issuers' reporting procedures. In some securitization structures repurchase is less important than is maintaining required collateralization (or, as is the case for IPFS's master trust, maintaining overcollateralization).

*Should we also require, as proposed, disclosure of the percentage of that amount that was not then repurchased or replaced by the sponsor or 20% originator?*

ii. No. In many private issuances, failure to remove assets that should be removed by repurchase causes amortization or default. To the extent that private issuances' governing documents permit assets to not be repurchased or replaced under certain circumstances (e.g., sufficient collateral coverage without doing so), investors have benefitted from commensurate pricing. The Commission should not replace market risk assessments and commensurate pricing with a "one-risk fits all" model.

*Should we also, as proposed, require 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?*

iii. No. If sophisticated investors want a third-party opinion from private issuers about a collateral pool's compliance with representations and warranties, including those about repurchases and replacements, those sophisticated investors already demand and receive such opinions. The

Commission should not mandate disclosures from private issuers that sophisticated investors don't request or, based on the experiences of sophisticated investors in our issuances, need. Such repurchases aren't a major driver of results in our asset class.

b. *Would requiring this disclosure, as proposed, have the unintended consequence of incentivizing sponsors (who may want to put an asset back to an originator) or trustees to demand that originators repurchase assets in situations where that might not be required under the transaction agreements? If so, how should we address this?*
   i. While not particularly relevant in our asset class, we expect that this could be problematic in other asset classes. Particularly for issuances to sophisticated investors, the Commission should continue permitting such sophisticated investors to dictate disclosures from issuers.
c. *Should we also require disclosure of the percentage of assets that have been repurchased by a 20% originator or the sponsor?*
   i. No. Investors in private transactions have negotiated the disclosures that they need with issuers. Adding this type of disclosure requirement on top of existing reporting requirements within private issuances' transaction documents will convolute issuers' existing compliance procedures and complicate reports.
d. *Should disclosure be required regarding demands to repurchase in the last three years, as proposed? Should the timeframe be different (e.g., one year, two years, four years, or five years)?*
   i. The Commission should not mandate this type of disclosure for issuers to sophisticated investors. To the extent that historical data is helpful to sophisticated investors, those investors demand it from issuers. If the Commission does require issuers in the private market to disclose repurchase demands, three years should be enough historical data for premium finance loans, whose average maturity is under twelve months.
e. *Are there parties other than 20% originators or sponsors that may have a repurchase obligation under the transaction agreements for breach of the representations and warranties? If so, should similar disclosure about these parties be required?*
   i. Perhaps, but no disclosure about these parties should be required for private issuances. Investors in private issuances have negotiated the disclosures that they need with issuers. If the Commission forces issuers using the private market to make these kinds of disclosures, they should not require disclosures that aren't material, as this proposal would.
f. *With regard to the requirement to disclose the financial condition of originators and sponsors, rather than add disclosure requirements to Item 1104 and Item 1110, should we expand the definition of significant obligor to incorporate the obligated party that is required to repurchase assets for breach of a representation or warranty? How should we revise Item 1112 for this purpose?*
   i. No. The Commission should not require issuers in the private market to disclose the financial condition of its originators and sponsors, or of other entities that may be required to repurchase assets for representation or

warranty breaches. Sophisticated investors can and do require the financial information that they need.

g. *Are the proposed amendments relating to disclosure of the financial condition of the obligated party appropriate?*
    i. No. Forcing an issuer to force an obligated party to disclose financial information, without regard to the safety of the asset class or the nature of the collateral, which may or may not help an investor or prospective investor assess the collateral, is a costly exercise that could freeze the securitization markets. The administrative costs to privately owned originators, sponsors, and issuers of gathering and presenting financial information in a public reporting format could be immense.

*Should we specify further when disclosure of the financial condition would be required such as a certain level of financial concentration? If so, what should that level be?*

    ii. No. The Commission should not require issuers in the private market to disclose obligors' financial condition. If the Commission were to require issuers in the private market to disclose obligors' financial condition, the Commission should use a materiality threshold. For example, if an obligor accounts for 33% or more of the assets in a collateral pool, disclosing some information about that obligor's finances may be appropriate.

*Should we require financial information about 20% originators and sponsors for other circumstances?*

    iii. No. The Commission should not require financial information about 20% originators and sponsors in circumstances where such originators and sponsors lack any repurchase or replacement responsibilities or there isn't a material risk that such originators' or sponsors' financial condition could materially impact origination or repurchase.

*Should we require financial information for 20% originators and sponsors for all securitizations?*

    iv. No. The Commission should not require financial information from 20% originators and sponsors in connection with private issuances. Further, if the Commission does require financial information from originators and sponsors in connection with private issuances, the Commission should exempt issuances with premium finance loan collateral. Premium finance securitizations are well-collateralized, have suffered few losses, and have such a diverse base of accounts that a 20% threshold isn't high enough to be material.

h. *Should our disclosure requirements be consistent with existing thresholds (i.e., when the originator has originated 20% or more of the assets) for when disclosure relating to an originator is required?*
    i. If the Commission requires issuers in the private market to disclose originator information, it should set the threshold no lower than that applicable to public issuances.

*Should we instead require disclosure of the proposed items for any originator required to be identified?*

ii. No, the Commission should at the very least retain a materiality threshold rather than drowning issuers in disclosure requirements and investors in data that doesn't help investors assess the collateral.

*Should we require disclosure of the proposed items for originators of more than ten percent of the assets?*

iii. No. The Commission should not require issuers in the private market to disclose originator information. If the Commission requires issuers in the private market to disclose originator information, it should use the traditional materiality threshold for public issuances or set a higher threshold, in keeping with the sophistication of private market investors.

i. *Are there other situations where we should require financial information?*

i. No. The Commission should not require financial information from entities other than the issuing entity. Despite the Commission's protestations to the contrary, giving even sophisticated investors information about originators, sponsors, and servicers that goes beyond their connection to the issuing entity could blur the conceptual divide that should exist in investors' minds between their collateral and separate, on-going businesses.

*For instance, should we always require disclosure of financial information of all servicers and all sponsors?*

ii. No. It could be very costly for privately owned servicers and sponsors to begin preparing financial disclosures that they don't already provide. Issuers using the private market should be exempt from preparing these one-size-fits-all disclosures, and so should those issuers' servicers and sponsors.

*If so, should we require audited financial statements?*

iii. No. If the Commission forces privately issuing issuers' privately owned servicers and sponsors to disclose financial information, they should not require audited financial statements. This requirement could be very costly for privately owned companies without providing access to any new investors, particularly for specialized asset classes like premium finance loans. The Commission should not impose the costs of being a public company, or making public issuances, on privately owned companies working with sophisticated investors through private issuances. Sophisticated investors have and will continue to demand the information that they need from issuers and other parties involved in financing structures.

**13.** <u>III.C.3. Economic interest in the transaction, bullet points 1-3</u>

a. *Is our proposed disclosure requirement relating to retained economic interest appropriate? Is there any additional information that would aid investors' analysis?*

i. The Commission should not require private market issuers to make any disclosures not requested by sophisticated investors. If the Commission does require private market issuers to make certain disclosures, disclosing a retained economic interest – or, in the case of issuers who must prepare Form SF-1, the lack of any requirement that a sponsor retain an economic interest and may sell any retained interest at any time – seems reasonable. In this asset class, sponsors don't sell, or aren't permitted by the transaction documents negotiated with investors to sell, their retained interests.

b. *Should we instead require disclosure of whether the sponsor has retained any interest in the securitization?*
    i. The Commission should not require private market issuers to make any disclosures of information that isn't material. Sophisticated investors demand the information that they need to evaluate securitizations, and the retained interest disclosures are typically clear in this asset class.

c. *Should we require, as proposed, disclosure that the sponsor is not required by law to retain any risk in the securities and may sell any interest initially retained at any time for any offering registered on Form SF–1?*
    i. The Commission should not require private market issuers to make any disclosures not requested by sophisticated investors. To the extent that the Commission requires private market issuers to disclose that it is not required to retain any risk in the securities and may sell any interest initially retained, it should add as part of its disclosure language a disclaimer that because sponsors aren't required to retain any risk in the securities, no investor decision should be based on a sponsor's retention of an interest in the securities or any subsequent sale of any retained interest.

**14.** <u>III.C.4. Servicer, bullet points 2, 3, and 4</u>

a. *Item 1108(b)(4) requires information regarding the servicers' financial condition to the extent there is a material risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the securities. Should we revise this requirement?*
    i. The Commission shouldn't require private market issuers to make disclosures. To the extent that sophisticated investors want assurances about servicers' financial health, they negotiate assurances tailored to the collateral assets' servicing needs directly with private market issuers and would continue to do so even if the Commission were to impose a disclosure requirement like this on private market issuers.

b. *For example, should we require financial statements or other financial information be provided with respect to the servicer in all asset-backed transactions, regardless of whether there is a material risk that servicing resulting from the financial condition could have a material impact on pool performance or performance of the securities?*
    i. No. If the information is not material, no issuer should have to disclose it. Further, the Commission should not require servicers of private market issuances to prepare financial statements or information. The Commission should continue permitting sophisticated investors to

demand the protections from the servicer that they determine necessary, based on the underlying collateral's servicing needs. Over the many years that IPFS's securitization subsidiary has issued privately-placed series, sophisticated investors have requested and received changes to servicer and servicing requirements based on changes in the market and changes in the premium finance loan market. The Commission should not force private market issuers and privately owned servicers to incur the costs of preparing information that isn't material.

*If the servicing function is divided among different unaffiliated parties, should disclosure of a servicer's financial statements depend on how much of the pool a servicer is servicing?*

ii. The Commission should not require disclosure of financial information by servicers of private market issuances. If the Commission does require disclosure of financial information by servicers of private market issuances, yes, it should set a materiality threshold tailored to the underlying collateral. Forcing small servicers to provide financial information would impose significant costs on them, the issuer, and ultimately on the companies who need the loans that these securitizations finance.

*What about a special servicer?*

iii. No, financial information shouldn't be required from a special servicer even if the Commission decides to require servicers of private market issuances to disclose financial information. Rather, there should be a materiality threshold for any disclosure requirement.

c. *If we revise our rules to specifically require servicer financial statements in all cases, how should the rules apply if the registration statement or offering prospectus contemplates a change in servicer soon after the offering is complete? In that situation, which servicer's financial statements should be required—the original servicer, the new servicer, or both?*

i. The Commission should not require servicer financial statements for any private market issuances. If the Commission requires servicers of private market issuances to disclose financial information, it should focus on the entities actually servicing the collateral assets rather than on any prospective servicers. Until there is an actual change in servicer, providing any prospective servicer's financial information to investors could prove more confusing than helpful, and wouldn't be pertinent to how the collateral is actually being serviced. The Commission should continue permitting sophisticated investors to set requirements for servicers tailored to the collateral's servicing needs.

**15.** <u>III.D., Prospectus summary, bullet points 1, 2, and 3</u>

a. *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?*

i. No. If the Commission does mandate disclosures from private market issuers, it should remember that to remain useful to investors, a summary shouldn't be too long, or oversimplify the collateral's origination, exceptions, or modifications made to the collateral assets.

b. *Should we specify line item disclosure requirements for the summary section? If so, are the pool characteristics identified in the proposed new instruction appropriate? Would those characteristics be common across all asset classes, or only apply to a specific asset class?*

    i. No. Unless the Commission varies its line item disclosure requirements for each asset class, it would probably force issuers of specialized asset classes, like IPFS, to clutter its prospectus summaries with statements about how some line items are "not applicable to this asset class". That could put premium finance loans at a disadvantage to other asset classes that are better described by the Commission's line-by-line guidance. Further, for asset classes where each account is of short duration (like credit cards, charge cards, and premium finance loans) modifications – or their absence - would mean much less than they would for asset classes where each underlying receivable is active for many years, like residential mortgages. If the Commission specifies line item disclosure requirements for the summary section, it should limit those specifications to asset classes that have been troubled lately (e.g., residential mortgages and CDOs).

c. *Are there other features of the transaction that we should specify must be disclosed in the summary?*

    i. No. The Commission should not require private market issuers working with specialized asset classes to make standardized disclosures when sophisticated investors have required and continue to require disclosures most helpful to them in assessing underlying assets.

**16.** III.E.3., Revolving asset master trusts, bullet points 1, 2, 6, and 8

a. *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?*

    i. No, the Commission should not change Item 1105 in a way that requires all types of issuers to describe static pool information, methodology used to calculate pool characteristics, or a description of how assets in a static pool differ from assets in the collateral pool, because the Commission should not require all issuers to provide any particular form of static pool data. The Commission should continue permitting private market issuers to provide information tailored to meet sophisticated investors needs. If sophisticated investors find historic data helpful when assessing an issuance, they will request the information helpful to them for that particular asset class. In any event, premium finance loans as an asset class don't have the material variations in type and performance patterns amongst loans that we have all seen in other asset classes (e.g., residential mortgage-backed securities).

b. *Should we require all issuers to provide static pool data, whether or not material?*
    i. No. The Commission should continue permitting private market issuers to provide information tailored to meet sophisticated investors needs, and should not force private market issuers to compile data that sophisticated investors don't need to make their investment decisions.

c. *Should static pool data be required in an offering if there is an ongoing reporting requirement of asset-level data applicable to other pools of the sponsor of the same asset class? Would static pool data be informative even if there is an ongoing duty to report? How would we address issuers registered on Form SF–1 that are not required to provide ongoing information?*
    i. No, no, and carefully. Although the Commission's desire to ease comparability between issuances and asset classes is admirable, the swath of issuers and asset classes affected by the Proposals is too broad to accomplish that goal. If a private market issuer must prepare Form SF-1, and present static pool data initially but never again, it seems that the Commission puts them at a disadvantage or an advantage (depending on the securitization structure, sophisticated investors' familiarity with the asset, and the initial and ongoing costs of compiling and presenting the static pool data). The Commission should not require private market issuers to present static pool data, and should not require issuers who would otherwise be using Form SF-1 to provide ongoing static pool data. Investors dictate what information issuers provide, and if static pool data is immaterial for an asset class, investors don't request it.

d. *Should we specify that issuers of ABS backed by credit cards and charge cards need to provide static pool disclosure of delinquencies, monthly payment rates and losses by both vintage origination year and by credit score? Would it be useful for investors? Why or why not?*
    i. IPFS has no comments to the Commission's proposed disclosure requirements for credit cards and charge cards. If the Commission notices the similarities that we've previously identified between premium finance loan securitizations and credit or charge card securitizations, IPFS would urge the Commission to then notice the different information helpful to investors in the different asset classes. The Commission shouldn't require issuers of ABS supported by premium finance loans to disclose static pool information about delinquencies, monthly payment rates, and losses by vintage origination year and credit score because it would create obligor privacy concerns and impose high costs on issuers and servicers. Because these types of securitizations are collateralized by many small accounts with relatively quick maturities, disclosure of historical origination years and credit scores would be burdensome on issuers collecting and presenting the data as well as investors wading through the data. Please consider premium finance loans specifically.

Each year, IPFS's securitization subsidiary holds loans to approximately 550,000 small companies. The average duration of those premium finance loans is nine months, and the obligors are typically such small companies that no "credit score" exists for them. Please do not impose cookie-cutter disclosure requirements on specialized issuers with high performing collateral, like premium finance loans.

**17.** <u>III.G., Other disclosure requirements that rely on credit ratings, bullet point 2</u>

*a. Would the proposed change impose undue burdens on issuers?*

i. Yes, requiring issuers to present significant obligors' financial information if the obligor wasn't backed by the full faith and credit of the U.S. would impose undue burdens on issuers. The Commission should exempt private market issuers from this type of data collection and disclosure requirement. IPFS urges the Commission to remember that most companies that borrow to pay their insurance premiums are small, mainly privately held, and unaccustomed to preparing or providing financial information as required by §229.301. As such, they may be concerned about privacy even if only providing net operating income for disclosure to sophisticated investors. Collecting, presenting, and maintaining this type of data is a separate business, and would be extremely costly for issuers and the underlying obligors. It could also harm specialized issuers like IPFS by forcing us to seek out-of-market terms from premium finance borrowers, as competitors owned by large banks (who can use the banks' funding sources rather than the private placement market) wouldn't need to ask customers for this type of information, or need to share it with any third-party investors.

## <u>IV . Definition of an Asset-Backed Security</u>

*a. Is the proposed revision relating to master trusts not backed by revolving account assets appropriate?*

i. No, the proposed revision isn't appropriate. Our master trust would not fit under the proposed, revised definition of "discrete pool of receivables" in Regulation AB, and may not even fit the definition of "discrete" as currently interpreted by the Commission. Our master trust is, by definition, not limited to revolving accounts since premium finance loans are term loans. (Please note, however, that most of our customers borrow from us regularly as they arrange new insurance coverage, so our customer relationships bear some resemblance to revolving credit card accounts that produce multiple credit card receivables over time.) Also, new loans are continuously added to the trust as they are originated, not just to maintain minimum pool balances. Though we don't intend to take a definitive position on whether our securitization subsidiary's notes should be considered "asset-backed securities" for purposes of the Proposals, we don't understand why the long-term, revolving nature of our trust, using non-revolving underlying loans, should cause our trust to be viewed differently from other master trusts. We don't believe that there is any credit, disclosure or other investor protection reason that should make our master trust subject to drastically different disclosure and reporting requirements than those applicable to other ABS master trusts. Further, it would impose a large administrative burden on IPFS to form a different entity for each security issuance since holders of insurance premium finance loans are required to be licensed by several states. It can take a long time for new entities to become appropriately licensed. Our current structure, a long-term master trust, solves that problem by using the same securitization subsidiary for multiple series of notes.

*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?*

ii. Premium finance loans in a master trust like ours would be excluded from the revised definition. We are not taking a position on whether our master trust securities should be asset-backed securities or structured finance products. However, we urge the Commission not to use the proposed definitions as written if the Commission intends the definitions to differentiate asset classes according to their perceived safety and disclosure status. Please note that where underlying assets mature quickly, as happens in charge card and premium finance loan securitizations, the Commission's Proposals would bar specialized issuers from the efficiencies of using a master trust if they wanted their issuances to meet the definition of asset-backed security.

b. *Is it appropriate for ABS structured as master trusts that are backed by non-revolving accounts to register on S–1?*

i. Private market issuers should not be required to register or prepare Form S-1, whether structured as master trusts or not. We urge the Commission not to make major distinctions between asset classes just because master trusts are used for different asset classes. Please refer to our letter.

*How would existing and prospective investors be able to analyze the pool if it is constantly changing? Please be specific in your response.*

ii. When a collateral pool changes constantly, as does IPFS's securitization subsidiary's, investors require assets added to the collateral pool to meet certain criteria that assure the collateral's on-going quality. For example, in IPFS's master trust there are requirements for each insurance premium finance loan that enters the collateral pool and aggregate concentration limits on how much of the pool can be comprised of loans sharing certain characteristics, e.g., financing insurance policies issued by the same insurance carrier.

c. *Is 10% the appropriate ceiling for the amount of permissible prefunding?*

i. No, 10% isn't the appropriate ceiling for 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?*

ii. While we haven't used prefunding periods as tools to "ramp up" portfolios over several months in the way that CDO managers might, we have found short prefunding periods useful in the context of refinancing transactions and acquiring other premium finance companies. There is often a "chicken vs. egg" aspect to the timing of concurrent major closings that can be smoothed over through short-term use of prefunding periods. The investors and rating agencies are happy with such prefunding periods because the trustee is holding cash collateral pending the larger closings. We don't think that the delayed acquisition of the underlying loans during a prefunding period produces any troublesome disclosure issues for premium finance loans. If the Commission wants to address prefunding issues in other asset classes, we urge the Commission to revise the Proposals to do just that, rather than inadvertently affecting asset classes that have continued to perform well for investors.

*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?*

iii. No, the one-year limitation shouldn't be shortened.

d. *Is the one-year permissible length of the revolving period for non-revolving assets, as proposed, the appropriate amount of time?*

i. No. Master trusts that are designed to operate over many years create efficiencies for specialized issuers, enabling them to reduce administrative and legal costs and permitting them to seek financing more quickly than would setting up separate securitization subsidiaries and negotiating separate trust, servicing, and custodial agreements. Limiting issued securities' maturity to one year would cost master trust issuers more money and would also expose them to vagaries in the financing market. For example, by eliminating master trust issuers' ability to stagger their financing demands, the Commission would expose those issuers to increased refinancing risks.

*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?*

ii. The Commission should remove the asset classes that concern it from the definition of master trust or from collateral for "asset-backed securities", and otherwise leave the revolving period length alone. At the least, the permissible revolving period should be four or five years, rather than one, two, or even the three years currently given by Item 1101(c)(iii). Securitizations like IPFS's are issued into the private market using master trusts and continue to perform for investors. If the Commission requires private market issuers to prepare disclosures that differ depending on whether issuances from their structures fit within the definition of "asset-backed security" or the definition of "structured-finance product", it should be very careful not to let its concerns about troubled asset classes inadvertently harm performing asset classes and the small businesses that those assets support.

## VI . Privately-issued Structured Finance Products

**1.** VI.B.5., New Rule 192 of the Securities Act, bullet points 1-9, 11, 12, and 14-21

a. *As a practical matter, how feasible will an exempt private offering be in light of the requirements? Is the rationale offered for distinguishing ABS from other securities for purposes of our proposal appropriate?*

   i. Exempt private offerings will be more costly and more risky if the Proposals become effective. With significant investments of time and money, specialized issuers like IPFS may be able to make exempt private offerings but they would not be "feasible" without those significant investments by sponsors, servicers, originators, and issuers. The Commission's rationale for distinguishing ABS from other securities for its Proposals' purposes doesn't seem appropriate in light of the breadth of securitization structures and collateral that the Proposals' revisions impact. Limiting any new private offering disclosure requirements to asset classes that caused significant losses (like the residential mortgages and CDOs that the Commission mentions) better fits the Commission's rationale than does abandoning the current system in which most sophisticated investors can and do demand the information that they need from private market issuers. Please see our letter for a more detailed discussion of this point.

b. *We request comment on the proposed definition of "structured finance products" for purposes of our proposed revisions to Rule 144A, Regulation D and other rules. Is the proposed definition appropriate? Should other types of securities be included that are not included? Should any types of included securities not be?*

   i. We urge the Commission to limit the Proposals' scope to troubled asset classes (e.g., CDOs and residential mortgage-backed securities). Please see our letter for a discussion of this point.

c. *Is it appropriate to require, as proposed, that as a condition of Rule 144A, the transaction agreements contain a provision that would require an issuer of structured finance products to provide to investors promptly, upon investors' request, such information that would be required if the offering were registered on Forms S–1 or SF–1 and any ongoing information regarding the securities as would be required by Section 15(d) of the Exchange Act if the issuer were required to file reports under that section?*

   i. No, it isn't appropriate to require that to be eligible for Rule 144A a securities' transaction documents require issuers to provide Form S-1 or SF-1 or ongoing Section 15(d) information. Notes such as those issued by IPFS's securitization subsidiary should remain eligible for resale under Rule 144A. Liquidity within a market keeps it healthy. If IPFS's notes are made ineligible for resale under Rule 144A or made subject to a holding period, it would be very difficult for issuers who have relied on private placements, such as IPFS, to continue lending to small and medium sized businesses. Recognizing that diversity in funding sources is important, IPFS believes that limiting the ability of an investor to reallocate its own portfolio by selling notes to secondary investors would reduce the breadth of investors willing to invest in specialized asset classes like insurance premium financing, despite its history of safe returns. If structured finance products were not eligible for resale under Rule 144A, IPFS would consider using less desirable alternatives, such as the "4-$1^{1}/_{2}$ exemption" to continue offering private transactions. We are not optimistic, however, about investors' willingness or ability to use the "4-$1^{1}/_{2}$ exemption. Because of the costs associated with registering, IPFS's master trust would be unlikely to register. If private market issuers must spend the money required to gather information for a public offering without any expectation of reaching a broader investor market, the Proposals' practical effect is to favor issuers in asset classes that already have large public investor markets, like mortgages or auto loans. IPFS urges the Commission to continue incenting private market issuers with specialized asset classes and financing needs to work with sophisticated investors, and to refrain from imposing such significant costs on private market issuers.

*Is it appropriate to require, as proposed, the same requirement as a condition of Rule 506 of Regulation D for sales to accredited investors?*

ii. No, it isn't appropriate to require the same requirement as a condition of Rule 506 of Regulation D for sales to accredited investors. Please see our letter and previous response for further discussion of this point.

d. *Should we require instead that, as a condition of Rule 144A, issuers make the required information (both offering and ongoing information) available at all times, rather than only upon investor's request? Could an issuer, for example, be required to post the information on a password-protected Web site?*

   i. No. Requiring private market issuers to incur the significant costs associated with preparing information meant to protect the public securities market erases the distinction between public and private issuances. If private market issuers must spend the money required to gather information for a public offering without any expectation of reaching a broader investor market, the Proposals' practical effect is to favor very large issuers in asset classes that already have large public investor markets, like mortgages or auto loans. We urge the Commission to recognize that at least in our asset class, sophisticated investors like those using Rule 144A already demand and receive the information that they need to assess private market issuances.

e. *Is new Rule 192 appropriate? Should we require, as a matter of federal securities law, that an issuer of structured finance products that has represented and covenanted to provide information pursuant to the safe harbors under Rule 144A, Regulation D, or Rule 144 provide such information?*

i. No, the proposed Rule 192 isn't appropriate, and the Commission should not require, as a matter of federal securities law, that an issuer of structured finance products that represents and covenants to provide information pursuant to the safe harbors of Rule 144A, Regulation D, or Rule 144 provide such information. IPFS objects to the Commission's proposed Rule 192 because the disclosure requirements presented in the Proposals shouldn't be adopted and because if the Commission were to adopt them they would not be practicable for specialized issuers or specialized asset classes.

f. *Should we provide more specificity in the rules covering what disclosure would be required to be provided? If so, what types of disclosure should we specifically require? Should the required disclosures differ by type of security? If so, in what way?*

i. If the Commission requires private market issuers to prepare Forms S-1 or SF-1 or any ongoing information that would be required by Section 15(d) of the Exchange Act, it should provide more specificity about what should be disclosed. The Commission should look at each asset class, if it decides to require disclosures in private market issuances, and work with investors and issuers in those asset classes to determine what information best describes the collateral in comparison to other collateral pools of the same asset. For example, in premium finance loan collateral pools, IPFS's investors are typically interested in pool-wide information about geographic concentrations, concentrations in the insurance companies issuing the policies being financed, and charged off and recovery rates.

g. *Are our proposals with respect to ongoing information regarding the securities appropriate? Is there any reason that we should not require structured finance product issuers that utilize the safe harbors to comply with the proposed requirements for ongoing information?*

i. No, the Commission's proposals with respect to ongoing information regarding the securities are inappropriate. The Commission shouldn't require structured finance product issuers that utilize the safe harbors to make disclosures standardized for other asset classes. Sophisticated investors within those safe harbors seek disclosures tailored to the specialized asset classes and unique financing needs that issuers bring to the private market. Please see our letter for more explanation of our position on this issue, including our concern about the costs of ongoing reporting beyond what we already provide.

h. *Is our proposed approach of requiring the transaction agreements to contain a provision requiring the issuer to provide information upon request appropriate?*

i. No. The Commission should continue permitting sophisticated investors to demand the provisions in the transaction documents that they deem necessary.

*Should we instead condition the availability of the safe harbors of Rule 144A and Regulation D on the actual provision of the information if the securities sold are structured finance products?*

ii. No, the Commission shouldn't require private market issuers to provide "one size fits all" information to sophisticated investors, even if the investors haven't requested it. IPFS appreciates the Commission's focus on preventing securitizations from failing, but urges the Commission to consider the swath of innocent assets affected by these rule changes. Investors in Rule 144A and Regulation D safe harbors are sophisticated, and require issuers to provide the information that they need.

*Would that approach have a chilling effect on the private markets if not providing some of the information required under our revised rule might raise the possibility of a Section 5 violation, with the resultant rescission right under Section 12(a)(1)?*

iii. IPFS suspects that this proposed approach would be a barrier to entry for sophisticated investors who haven't previously held IPFS's notes. IPFS urges the Commission to remember that lack of liquidity exacerbated the recent economic turmoil. IPFS encourages the Commission to refrain from effecting any Proposals that, like this one, hamper liquidity in the privately issued security market.

*If so, should we address that potential concern by providing that no failure to provide information as required solely under such a provision of Rule 144A would result in a loss of the safe harbor for purposes of Section 12(a)(1) liability as long as the other conditions of Rule 144A are satisfied and basic material information concerning the securities is provided, including information regarding the structure of the securities, distributions on the securities, nature, performance and servicing of the assets, and any credit enhancements? Such an approach would be designed to enable the Commission to bring an action, if appropriate, based on Section 5 if the required information were not provided while limiting litigation by a purchaser seeking to rescind the transaction to situations where there was a significant failure to provide basic information. By contrast, is it necessary or appropriate to rely on the possibility of a rescission right to foster compliance with the proposed information requirements?*

iv. These questions indicate how difficult it will be to enforce this type of issuer-disclosure requirement for Rule 144A transaction. IPFS encourages the Commission to continue permitting sophisticated investors to demand the disclosures that they need to make investment decisions. If the Commission chooses to require issuer disclosures as a condition to sophisticated investors in that issuer's securities using Rule 144A, the Commission may find itself making private issuances too risky and uncertain for investors or issuers.

i. *Are our proposed amendments to Rule 506 of Regulation D appropriate? Should we require, as proposed, that information regarding structured finance products be provided to any purchaser, regardless of whether the purchaser meets the definition of an accredited investor?*

    i. No, the Commission's proposed amendments to Rule 506 of Regulation D are not appropriate. The Commission should not require private market issuers to make standardized disclosures. Even if the specific format of the information isn't mandated by existing regulations, IPFS's experience is that accredited investors request the information that they need, and to sell its notes IPFS's securitization subsidiary must provide that information. The costs of the proposed amendments – in money, time, and vying for the Commission's staff's guidance – could harm specialized issuers like IPFS without helping investors assess their potential investment.

j. *Instead of amending Rule 506, should we adopt a new Regulation D safe harbor just for structured finance products? Since it appears that issuers of structured finance products have relied on the statutory private placement exemption rather than Regulation D, would such a safe harbor be used?*
    i. The Commission should reduce the breadth of asset classes and securitization structures affected by the Proposals. We believe that a new Regulation D safe harbor is unnecessary for our asset class, but would be interested in seeing any alternatives to the Proposals that the Commission considers.

k. *Even if there was not extensive use of Regulation D for private offerings of structured finance products, is it necessary or appropriate for us to amend Rule 506 of Regulation D, as proposed, in order to forestall potential future problems in the private markets for structured finance products?*
    i. No, it is neither necessary nor appropriate for the Commission to amend Rule 506 of Regulation D as proposed. The unintended consequences of this type of cure could be elimination of private issuances altogether, resulting in less credit for American businesses and slowing economic recovery.

l. *As proposed, the revisions to Rule 144A, Regulation D and Rule 144 require that the underlying transaction agreement include a provision that the issuer provide information to investors upon request. Should we revise the requirement to provide that the servicer, collateral administrator or some other party provides the information?*
    i. Neither the proposed revisions nor any other revisions should be made to Rule 144A, Regulation D, or Rule 144. The Commission should continue permitting sophisticated investors to demand the protections that such investors deem necessary. Disclosure driven by investor demands forces issuers to gather and present information that is useful to investors. If revised to require the servicer, collateral administrator, or some other party to provide the information the Commission could make it impossible for investors to obtain such information by requiring delivery from an entity that doesn't exist within a structure. Such detailed and rigid disclosure requirements would impose significant costs on issuers working with third-party servicers and collateral administrators without providing informational benefits to investors. Please see our letter for further discussion of this point.

m. *The proposed revisions to Rule 144A, Regulation D, and Rule 144 also require that the issuer represent that prescribed information would be provided to investors. Is the proposal appropriate?*

i. We believe that there is already sufficient transparency in premium finance asset loan-supported securitizations. Also, the information prescribed in the proposed revisions isn't available for some asset classes. The information prescribed isn't available for some privately owned obligors, originators, sponsors, and servicers. The information prescribed also, at least in IPFS's master trust's experience, wouldn't be useful to investors. The Commission should continue permitting sophisticated investors to demand the information that they need from private market issuers. Please see our letter for discussion of this point.

n. *Would the proposed rule revisions provide investors and market participants with sufficient transparency regarding private sales of structured finance products?*

i. No. The proposed rule revisions would increase costs to private market issuers and deluge sophisticated investors with information irrelevant to specialized asset classes. Sophisticated investors already demand disclosure of the information that they need to assess assets in a collateral pool.

*Would additional or other requirements promote greater transparency?*

ii. The information that investors need to know is dictated by the assets that comprise a securitization's collateral. Continuing to permit sophisticated investors to demand the information that they need for a particular asset class and securitization structure is the most efficient way to guarantee transparency in private market issuances.

*For example, should we make the safe harbors, such as Rule 144A, unavailable for offerings of structured finance products?*

iii. The Commission shouldn't make safe harbors like Rule 144A unavailable for structured finance product offerings unless it restricts the definition of structured finance products to the CDOs and other asset classes that the Commission seems concerned about capturing in that definition. As currently proposed, the structured finance product definition captures securities (such as notes backed by premium finance loans) that the overall market would typically describe as asset-backed securities. Further, asset-backed securities as used in Item 1101(c) of Regulation AB should not be included in the definition of "structured finance product" to the extent that the Commission intends "structured finance products" to differentiate between synthetic securities or CDOs and other securitization structures. Please see our letter for discussion of this point.

*Would this result in structured finance products being offered and sold in registered transactions, or in private transactions without the benefit of the safe harbor?*

iv. If the Proposals are adopted, IPFS would certainly consider pursuing less costly financing avenues. Please see our letter for discussion of this point.

*Would a new safe harbor for private ABS offerings designed to make information available to investors and the market (e.g., a limited public offering exemption) be a more appropriate approach?*

v. Without more information about a new safe harbor, IPFS is unable to assess whether it would be more or less appropriate. IPFS encourages the Commission to consider proposing a new safe harbor instead of adopting the Proposals in File No. S7-08-10. Please note that many private ABS offerings from asset classes other than CDOs and RMBS continue to perform well for investors and provide the information that investors need to continue making prudent investment decisions. Requiring private market issuers bear the burdens of making a public offering would discourage specialized issuers that are privately owned from issuing securities and could result in less credit for small businesses.

o. *The proposed amendments would have the effect of treating offers and sales in reliance on safe harbors substantially similar to public ones in terms of the relevant disclosure requirements. Is this appropriate? Why or why not?*

i. It is inappropriate for the Commission to erase the distinction between securities offered to sophisticated investors and securities offered to most investors. Private market issuers choose the private market, with its sophisticated investors, because they have specialized assets and unique financing needs. For many privately owned private market issuers like IPFS, the costs of creating an infrastructure for a public issuance would be very costly. In addition to the damage to its business by incurring the infrastructure costs of complying with a public disclosure regime, specialized companies forced to disclose previously undisclosed information about their underlying customers would be disadvantaged. In the premium finance lending industry, many lenders are owned by large financial institutions with financing options unavailable to specialized lenders like IPFS. Those lenders would likely avoid the Proposals' requirements by using those other financing sources, and may avoid any disclosures because, once consolidated with the rest of their parents' business, their contributions to earnings aren't material. Please see our letter for further discussion of this point.

*To what extent and in what way should our regulatory regime account for the nature of the investors (e.g., accredited investors and QIBs) who participate in private offerings?*

ii. The Commission's regulatory regime should continue to permit accredited investors and QIBs to demand the disclosures that they need to make prudent investment decisions. Sophisticated investors require issuers to disclose information that is tailored to the underlying collateral. No standardized disclosure requirement can elicit the types of information required to assess specialized asset classes as well as market demands can. And, no standardized disclosure requirement can respond to any changes in an asset class with revised disclosure requests as quickly as investors and prospective investors can.

*What would the impact be on the securitization market if offerings of ABS in reliance on the safe harbors were subject to the disclosure requirements that we propose?*

iii. IPFS believes that the securitization market would suffer if offerings of ABS in reliance on the safe harbors are subject to the disclosure requirements that the Commission proposes.

p. *Should we address private resales of ABS outside of our safe harbors by interpreting the definition of "underwriter" for purposes of the statutory exemptions to include any sales of asset-backed securities where information that would be required in the registered context is not provided? Why or why not?*

i. No, the Commission shouldn't interpret "underwriter" to include any sales of ABS where information required for registered securities isn't provided. As in other areas of the Proposals, blurring the line between public and private issuances serves neither issuers nor investors, who seek the public and private issuance markets for different types of financing and investment needs.

*Would doing so prevent issuers from engaging in transactions that are not subject to the proposed requirements by using a statutory exemption (and not the safe harbors) for the unregistered sale of asset-backed securities?*

ii. If the Commission imposes additional costs on private market issuances, specialized issuers like IPFS's master trust will be forced to consider other, less costly alternatives.

q. *To the extent we adopt the proposed changes to Rule 144A or Regulation D, we request comment on whether issuers of structured finance products would be more likely to sell such products outside the United States in reliance on the safe harbor provided by Regulation S under the Securities Act. Should we adopt similar changes under Regulation S as we are proposing for Rule 144A and Regulation D to cover sales of structured finance products outside the United States? Are there any extra or special considerations relating to offshore sales of structured finance products that are different from considerations under Rule 144A and Regulation D that we should take into account in considering adopting similar changes under Regulation S?*

i. If the Commission makes the proposed changes to Rule 144A or Regulation D, and introduces the blurry definition of structured finance products as proposed, IPFS will join other issuers in seeking other financing alternatives. IPFS could be forced to venture into foreign markets through Regulation S if no longer able to finance the premium finance loans that it is accustomed to providing to small American businesses. Even if the Commission makes the proposed changes to Rule 144A or Regulation D, the Commission shouldn't adopt similar changes to Regulation S.

r. *In order to facilitate unsolicited ratings in unregistered transactions, should we require that the issuer also provide information to an NRSRO if the rating agency intends to rate the security?*

i. No, the Commission shouldn't require private market issuers to give NRSROs information for unsolicited ratings. If a sophisticated investor wants a security issued by a private market issuer rated, the investor demands a rating from the issuer and the issuer provides NRSROs with the information and sometimes changes to the proposed structure that the issuer must make to obtain the requested rating. This already seems to protect investors in the way that investors want to be protected. Further, some of the Commission's Proposals are premised on departing from reliance on NRSROs' ratings. This particular requirement is directly opposed to those departures from reliance on NRSROs' ratings and should not be adopted.

s. *Are there other disclosure approaches that would better satisfy the objectives we have identified? For example, should we require more targeted disclosures in private placements? Should we give issuers or investors other options for addressing issues in the ABS private market? If so, how? Should all asset classes be treated the same?*

    i. IPFS believes that the current private market issuance regime better satisfies the Commission's identified objectives. Disclosures requested and demanded by sophisticated investors as is currently permitted is a better disclosure approach. The Commission should not require any disclosures in private issuances, but should rather continue permitting investors to request disclosures best suited to the underlying asset type. Market forces, in the form of unsold securities or unfavorable pricing, discipline private market issuers' disclosures more efficiently than any regulation. If there is to be a new regulatory regime, not all asset classes should be treated the same. The Commission's objectives seem directed towards CDOs and residential mortgage-backed securities, and IPFS encourages the Commission to treat those asset classes differently than asset classes, like premium finance loans, that continue to perform well for investors.

**2.** <u>VI.C., Notice of initial placement of 144A-eligible securities, bullet points 1-6, and 8</u>

a. *Is our proposal to require a notice of the initial placement of structured finance products that may be resold in reliance on Rule 144A appropriate?*

    i. No. The Commission should continue to permit the private issuance market to operate privately. When issuers turn to sophisticated investors in the private market, the Commission shouldn't require those issuers to give it notice before permitting use of the Rule 144A safe harbor for subsequent resales. Requiring issuers to notify the Commission that they've privately issued securities to sophisticated investors imposes burdens on issuers without corresponding benefits in information for investors. If the Commission's aim with this notice filing is to learn more about the private issuance market, perhaps it should instead request information from private issuers with an assurance that disclosures made to the Commission will remain confidential.

b. *Instead of, or in addition to, a notice, should we require that the offering circular be filed? If we require that the offering circular be filed, should the filing be with the Commission on a non-public basis? Should it be made available to the public? If so, when should it be made public (e.g., immediately or after some period of time)? If it were made public, would there be any general solicitation concerns? If so, how should we address them?*

i. No, the Commission shouldn't require that offering circulars in Rule 144A offerings be filed. If the Commission does require filing of offering circulars created for private issuances, the filing should definitely be on a non-public basis, and shouldn't be made available to the public. Please see our letter for discussion of this point.

c. *Should proposed Form 144A–SF be required to be filed, as proposed, in XML tagged format? Similar to Form D, should we provide a Web site page where issuers can submit directly to EDGAR the information required by Form 144A–SF, which would automatically tag the information that is delivered? Would issuers of structured finance products benefit from such a webpage?*

i. No. If the Commission forces issuers who need their securities to be eligible for Rule 144A's safe harbor to keep a broad investor base to file Form 144A-SF, the Commission should permit its filing through a simple webpage form, or other format that doesn't impose technological costs on issuers otherwise unfamiliar with formatting submissions to the Commission through EDGAR or otherwise. If the Commission ultimately requires private market issuers to file Form 144A-SF notices, the Commission should do everything it can to reduce the administrative costs and burdens of filing those notices.

d. *Are the items of information that are proposed to be required in proposed Form 144A–SF appropriate?*

i. No. If the Commission requires private market issuers to file proposed Form 144A-SF, it shouldn't require Item 3. Requiring privately owned companies like IPFS to disclose, potentially to competitors, the amount of financing obtained at any point is potentially harmful to IPFS's business. Further, private market issuers like IPFS frequently lack knowledge of when or whether its securities will be resold by the sophisticated investors who initially purchase the securities.

*Are there other items that are useful and should be required to be provided on proposed Form 144A–SF?*

ii. If the Commission requires private market issuers to file a Form 144A-SF, it should demand as little information and few details as possible.

*Are there particular ways that these items should be required to be tagged?*

iii. No. If the Commission requires privately owned issuers to notify it of private market issuances, it shouldn't impose the additional costs of special formatting and coding on those issuers.

e. *Should the Rule 144A safe harbor be conditioned on the filing of this notice, or is it better to require the notice separate from the conditions of the Rule 144A safe harbor, as proposed? Is our proposal relating to the consequences for failure to file the notice appropriate?*

i. The Rule 144A safe harbor shouldn't be conditioned on an issuer's filing of a Form 144A-SF notice. It is better for the Commission not to require notice of the securities' initial issuance at all. The Commission's proposed penalty for failing to file a Form 144A-SF notice seems unnecessarily punitive. If an issuer privately issues securities meant to be eligible for Rule 144A resales without filing a Form 144A-SF, and months or years later realizes that it would like to issue other securities eligible for Rule 144A's safe harbor, the issuer would be unable to file Form 144A-SF for the original securities issued. This seems at cross purposes to the Commission's desire for a "notice" filing, and we urge the Commission to provide some type of cure for what may have been an administrative oversight.

f. *Should we require the filing of proposed Form 144A–SF sooner than proposed (e.g., three or four business days from the date of first sale) or should we provide issuers with more time for filing the notice (e.g., 20 calendar days from the date of first sale)? Should we provide a hardship exemption for filing proposed Form 144A–SF, or is our proposal to make the hardship exemptions unavailable appropriate?*
    i. If the Commission requires issuers of securities meant to be eligible for Rule 144A's safe harbor to file a Form 144A-SF notice, it shouldn't set a time frame within which the notice must be filed, or should permit filing of the notice at the time that the issuer issues a subsequent series meant to be eligible for Rule 144A's safe harbor.

g. *Should we also adopt changes under Regulation S to require a notice of sales of ABS that are to be sold in reliance on that safe harbor, similar to the proposed requirement under Rule 144A? Are there any extra or special considerations relating to offshore sales of structured finance products that are different from considerations under Rule 144A that we should take into account in considering adopting a similar filing requirement under Regulation S?*
    i. No, the Commission shouldn't require notice of ABS sales meant to be eligible for the Regulation S safe harbor. If the Commission desires information about issuances intended to be eligible for Regulation S because it wants to learn more about that securities market, it should instead publish a request for information with assurances that informational disclosures made to the Commission will remain confidential.

## XII. General request for comments

*We request comment on our proposed amendments. We request comment on whether our proposals would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible. We also request comment on whether our proposed changes to Exchange Act Rule 15c2–8(b), the disclosure requirements and Exchange Act forms would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.*

IPFS believes that the Proposals will not promote efficiency, competition, or capital formation in either the private issuance market or the premium finance lending industry. The costs to privately owned companies of instituting and maintaining public offering-type disclosure systems could drive those companies from the private issuance market, and even if companies like IPFS are able to find other sources of funding, doing so would probably subject premium finance loan borowers to increased financing costs. IPFS annually finances insurance premiums for approximately 550,000 small and medium-sized companies. Eighty-three percent of IPFS's loans are made for insurance premiums of $5,000 or less. If adopted by the Commission, IPFS believes that the collective impact of the Proposals on IPFS's financing costs will be to reduce its ability to provide loans to those customers and reduce IPFS's ability to compete with its competitors. Many of IPFS's competitors are owned by large banks and have access to funding sources aside from securities issuances through those banks and other sister subsidiaries of those banks. Because those same competitors' financial condition may not be material to the banks that own them, those competitors would never be subject to disclosure requirements comparable to what the Proposals envision.

IPFS urges the Commission to limit the Proposals' scope to assets, like CDOs and residential mortgage-backed securities, which caused recent market troubles and would appreciate the opportunity to comment further on any other potential changes to the current private issuance regulatory regime that the Commission considers.

Please see our letter for our principal explanation of why the Proposals will not promote efficiency, competition, or capital formation in either the private issuance market or the premium finance lending industry.