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Via Email: rule-comments@sec.gov

August 2, 2010

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

Re: File Number S7-08-10

Dear Ms. Murphy:

The Business Software Alliance* ("BSA") appreciates the opportunity to submit comments on the proposed rule issued on April 7, 2010 concerning revisions to Regulation AB and other rules regarding the offering process, disclosure and reporting for asset-backed securities. BSA supports the SEC's effort to make complex transactions more transparent and usable by the broad investor community through the use of technology.

These comments are focused on the proposed requirement that entities filing a prospectus utilize a specific mandated computer programming language, Python, as the only means of making a contractual cash flow provision available to prospective investors. As an initial comment, BSA recommends that rather than mandating the use of a single software solution, the regulations should require only that the investor-useful data be made available in a raw, machine readable format and uniformly tagged with sufficient metadata such that the data could be readily imported by investors into the broadest range of existing financial analysis tools—chosen by the investor rather than the government. This change would allow the widest possible use of the data for its intended purpose, would allow for innovation in a variety of existing and new programs

**The Business Software Alliance (www.bsa.org) is the world's foremost advocate for the software industry, working in 80 countries to expand software markets and create conditions for innovation and growth. Governments and industry partners look to BSA for thoughtful approaches to key policy and legal issues, recognizing that software plays a critical role in driving economic and social progress in all nations. BSA's member companies invest billions of dollars a year in local economies, good jobs, and next-generation solutions that will help people around the world be more productive, connected, and secure. BSA members include Adobe, Altium, Apple, Autodesk, AVEVA, AVG, Bentley Systems, CA Technologies, Cadence, Cisco Systems, CNC/Mastercam, Corel, Dassault Systèmes SolidWorks Corporation, Dell, HP, IBM, Intel, Intuit, Kaspersky Lab, McAfee, Microsoft, Minitab, PTC, Progress Software, Quark, Quest Software, Rosetta Stone, Siemens, Sybase, Symantec, Synopsys, and The MathWorks.*

(rather than a single programming language), would be consistent with the technology-neutral procurement policy established by the Office of Management and Budget, and would comply with existing regulations regarding federal standards of impartiality.

Background

The Business Software Alliance (BSA) is the voice of the world's software industry and its hardware partners on a wide range of business and policy affairs. BSA's mission is to promote conditions in which the information technology (IT) industry can thrive and contribute to the prosperity, security, and quality of life of all people.

BSA is the largest and most international IT industry group, with policy, legal and/or educational programs in 80 countries. While several of BSA's initiatives are global in scope, most of its policy, legal, and educational efforts are led and conducted at the national level, with a growing emphasis on emerging economies. BSA's member companies are some of the most innovative companies in the world, investing billions of dollars a year in local economies and delivering software solutions trusted by billions of people to help them be more productive, connected, and secure.

Competitive Marketplace – Financial Software

An endorsement of a particular software program by the SEC would not be in the best interests of the government nor its citizens when there is an active and competitive commercial marketplace for financial software programs that can meet the objective requirements of the SEC and the needs of investors—both large and small. Indeed, the SEC should not be in the business of dictating the winners and losers in the commercial marketplace, but rather should allow the commercial marketplace to select the software programs that best meet user needs.

The software language Python competes with a large number of other financial software programs including but not limited to programs developed and offered by: (1) Fincad (www.fincad.com) ; (2) MATLAB® (www.mathworks.com); (3) Numerix (www.numerix.com); (4) SAS (www.sas.com); (5) Tibco (www.tibco.com) ; (6) Wolfram (www.wolfram.com) and (7) r-project (www.r-project.org). Competition occurs based on a wide variety of factors including ease of use, maintenance, overall cost, and security.

The proposed rule, by mandating a particular software language, would give an unfair advantage to a particular brand regardless of whether the actual users determined that it was in their best interest and most efficient to use.

Proposed Rule Is Contrary to OMB Procurement Policy

By a memorandum of July 1, 2004, the Office of Federal Procurement Policy within the Office of Management and Budget, clearly stated that the regulations regarding agency investments in information technology "are intentionally technology and vendor neutral, and to the maximum extent practicable, agency implementation should be similarly neutral." M-04-16. This sound direction from OMB should be followed by the SEC in this instance rather than pre-selecting a technology and brand that is neither the government's nor the industry's standard in this instance. The OMB policy has the added benefit of ensuring that innovation is encouraged among the widest possible marketplace participants rather than limiting innovation to a single technology because of a federal regulation.

Prohibition on Preferential Treatment and Product Endorsement

As sound government policy, all government employees are governed by the "Standards of Ethical Conduct for Employees of the Executive Branch. 5 C.F.R. § 2635. Those standards, while not directly applicable to official agency action, nevertheless articulate principles that should be followed in this instance. As stated in those regulations, a "basic obligation of public service" is for each and every employee to "act impartially and not give preferential treatment to any private organization or individual." 5 C.F.R. § 2635.101(b)(8). This obligation properly ensures that personal preferences and biases of federal employees are to have no place in public decision making—including which technology solution will best serve public purposes. Similarly, those same regulations prohibit a federal employer from endorsing "any product, service or enterprise." 5 C.F.R. § 2635.702. The proposed regulations would accomplish for the agency what the regulations prohibit for any government employee—the endorsement and preferential selection of a particular product.

Prohibition on Executable Code

As a general matter, it appears that the SEC has identified the use of

an open source programming language based on the assumption that it is the only solution in this instance to avoid having executable code placed on the EDGAR site. There are, however, other solutions that will avoid the need to place executable code on the EDGAR site. For example, the issuer could host, on its server, the necessary software that would allow an investor to manipulate the waterfall information posted on EDGAR as desired. Another alternative would be to make available from a commercial website the software required to perform the data manipulation. In this alternative, the investor would be directed to a web site to download the necessary software onto the user's computer. The user would then be able to download the waterfall data and manipulate it as desired. Both of these widely used commercial models avoid placing executable code on the EDGAR site and are in fact, similar to what would be required if Python were mandated, i.e., the investor would have to go to a non-SEC website to download software that would allow the investor to manipulate the waterfall data in the desired manner.

Specific Comments in Response to Proposed Rule

BSA offers the following comments in response to the issues raised in the proposed regulations regarding the use of a single computer programming language or application:

1. 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? 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?

Response

First, the SEC, consistent with OMB policy, should not mandate a particular technology, i.e. open source software v. proprietary software. The regulations should be technology neutral and rather focus on meeting the specific functional and performance requirements that are stated in the proposed regulations at § 229.1113 rather than mandating a specific technology. Second, the SEC should not be selecting and mandating a particular computer program. As currently proposed, the regulations would require each and every investor interested in utilizing the proposed waterfall to select, install, maintain, and train on Python. As BSA understands the

general purpose of the proposed regulations, the intent of the regulations is to make it easier, particularly for small investors, to make better and more informed investment decisions. The SEC should require that the information be made available in one or more commercially available formats that can be utilized and manipulated by investors at no additional cost to the investor. This can easily be accomplished by requiring that the required data be made available by the issuers in a raw, machine readable format and tagged with sufficient metadata so that it can be imported into the financial analysis tool selected by the investor. Issuers who are seeking investors have the economic incentive to make the mandated information available in a variety of formats so that their prospective investors can select the format that best meets their needs at the most efficient cost. Because Python is highly technical in nature, small investors would need to expend resources to acquire technical expertise to both learn it and maintain it which would duplicate, in many instances, an already existing investment in other formats. If the SEC goal is to make the mandated information available to as many investors as possible, the requirement should not limit the mandated information to a single, non-market dominant programming language but rather should require that the mandated information be made available so that it meets the functional and performance requirements established by the SEC as necessary to allow investors to make better informed judgments.

2. Should more than one programming language be allowed? If so, which ones and why?

Response

The SEC should adopt regulations that establish functional and performance requirements that allow both the issuer of asset based securities and the investors in such instruments to make the most efficient decision. The regulations should not be based on any particular programming language. Indeed, the proposed regulations set up the SEC for lagging behind technological improvements in the computer software marketplace by writing into the regulations a particular solution that would necessitate formal rulemaking to change in the future thereby denying users the timely advantages of advancements. As stated above, issuers will have the incentive to make the mandated information available to prospective investors in the formats that can best be utilized by the investors.

3. 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?

Response

First, the proposed regulations indicate a misunderstanding with regard to "commercial" languages. The software language currently being proposed is "commercial" with a number of variations available in the commercial marketplace. As with many open source projects, it can be difficult to identify, install, and configure the appropriate combination of libraries to create a usable software package. Because of the need for easier installation, verified packages (with known versions of each library), and ongoing support, most investors (and certainly most small investors) are likely to choose to purchase access to a commercial distribution package of the Python programming language. Thus to the extent one goal of the proposed rule is to limit out-of-pocket costs to investors, it is unlikely to do so. Further, the proposed rule and its costs/benefits analysis makes no provision for the time that can be involved in installing a no-license-fee open source software program, nor the need to develop or hire new programming expertise to be able to understand, run, and manipulate the proposed Python based program when the investor has no such expertise. Second, as stated above, the proposed regulations already identify functional and performance requirements for the waterfall that are sufficient for use by the marketplace. Those functional and performance requirements are sufficient to allow issuers and investors the opportunity to select the software that best meets their needs and is the most efficient for them.

4. Are there other requirements we should impose on the possible computer programming languages that are used to satisfy this requirement, other than such languages be open source and interpreted?

Response

The SEC should not require that the computer programming languages be open source but rather should follow OMB guidance with regard to being technology neutral. The SEC has set forth basic functionality and performance requirements, and it should allow the

market and computer programmers determine the best way to satisfy those requirements. The requirements appear to be, (i) viewable source code for the waterfall computer program, submitted to EDGAR for public access, (ii) a mechanism whereby the investor is able, with no out of pocket license fees required, to run the waterfall program and experiment with how different assumptions might change the waterfall program outputs. These objectives can be met through means other than a single mandated open source and interpreted software language.

5. Under our proposal, issuers would be required to file the waterfall computer program in the form of downloadable source code on EDGAR. Prior to filing, the code would not be tested by the Commission. Would downloading the code onto a local computer give rise to any significant risks for investors? If so, please identify those risks and what steps or measures we should take to address the risks, if any?

Response

Whether the unreviewed source code holds risks depends on whether it has been in anyway corrupted, such to introduce bugs or viruses when installed on an investor's computer. Corrupted or risky code could be received from the issuer due to some failed testing by the issuer or if something is hidden in the underlying software code the issuer is using to create the waterfall program. Corrupted or risky code could also be created by someone hacking in to the code while posted on the EDGAR site, so risk will depend in part on the ability of SEC to ensure the source code is not tampered with on the EDGAR web site. An issue with open source code is that there is not a single source that controls the source code. Under the SEC proposed rules, the investor would download the source code and run it on their computer using a computer programming language the investor may have never used before and obtained from currently undetermined and unspecified locations.

One step that could be taken to reduce this risk would by allowing more flexibility in how the market/issuer meets the SEC policy objective of having waterfall program source code available and shareable. For instance, rather than downloading the waterfall program and the necessary code to build and run the waterfall program, some issuers might make the waterfall program available to an investor to run in a browser, hosted by the issuer. This would

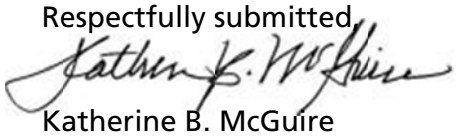
not require the investor to download the waterfall program or whatever software program is needed to run the program.

6. 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?

Response

The commercial marketplace for financial management software is constantly producing new and innovative means and processes for the analysis of financial information. A minimum requirement should be established by rule, but the marketplace should be allowed to be innovative and competitive with regard to the information available.

Respectfully submitted,



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