



August 2, 2010

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

Re: Asset-Backed Securities Proposed Rule (File Number S7-08-10)

Dear Ms. Murphy:

This comment letter is submitted by the American Financial Services Association (“AFSA”) in response to the Proposed Rule (“Proposal”) published on May 3, 2010, by the Securities and Exchange Commission (“SEC”) in the *Federal Register*. The Proposal would significantly revise Regulation AB and other rules regarding the offering process, disclosure and reporting for asset-backed securities. AFSA appreciates the opportunity to provide its comments on the Proposal.

AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers. Many of AFSA’s members use securitization transactions as a primary source of funding. Securitizations have provided billions of dollars of revenue used to provide credit for consumers in the last two decades.

We firmly believe that oversight is essential to protect consumers, investors, and overall market integrity, and support developing strong and consistent consumer protections while consolidating oversight and authority. We support a "systemic risk oversight authority" that has the capacity and expertise to monitor risk and collaborate with regulators to manage and tighten controls on companies that are potentially risky to the U.S. financial system. In addition, we support a level playing field, globally, where consistent and coordinated capital requirements across all markets prevent entities from going where regulations are the weakest.

The securitization market plays the critical role of allowing investors to fund consumer lending through asset-backed securities (“ABS”) and mortgage-based securities (“MBS”). However, if the final regulations require lenders and securitizers to retain excessive amounts of each issued ABS or MBS as proposed by the “vertical slice” method, securitization markets may be seriously damaged. These markets redistribute and recycle credit risk so lenders may extend additional credit at lower costs for consumers. AFSA members provide much needed credit for consumers with less-than-perfect credit, consumers who generally are underserved by the banking community. Without these loans from AFSA members, these consumers may not obtain the financing they need. Many lenders would be forced to respond to the 5% securitization hold by

significantly reducing or eliminating their securitization activity, which in turn could lead to increasing the interest rates they charge consumers for loans and significantly decreasing consumer lending in general.

The importance of the ABS market for the vehicle finance industry cannot be emphasized enough. Since 2000, auto securitization issuance is approximately \$750 billion. When the ABS market seized up in late 2008, the effects were felt by corporations, dealers, and customers. The inability of domestic auto finance companies to get funding for floorplanning created systemic risk for the entire auto finance market, given that most dealerships sell a variety of car brands. When a dealer was unable to obtain credit to buy needed inventory, it affected the overall health of the dealership and its ability to sell all of its brands, both domestic and non-domestic. The resulting domino effect ultimately impacted all creditors and dealers, as well as their customers.

In November 2008, the Federal Reserve announced the Term Asset-Backed Securities Loan Facility (TALF) program to revive this market. Launched in March 2009, TALF's objective was to increase credit availability for consumers and small businesses by facilitating the issuance of ABS backed by retail auto loans and leases, student loans, credit cards and small business loans guaranteed by the Small Business Administration. As evidence by the creation of TALF and its subsequent success, the Federal Reserve recognized the importance of ABS to the vehicle finance industry.

The availability of affordable consumer credit depends upon access to a liquid, affordable secondary market – in the case of vehicle financing, the ABS market. Outside of mortgage, ABS securitizations of every tier and vintage have always performed as predicted, and investors have never lost money on an auto ABS issuance. According to Standard & Poor's, the sector has experienced predominantly positive trends. From 2001 through March 31, 2008, U.S. auto ABS received 461 upgrades and only 25 downgrades (22 in 2003). All of these transactions have since paid off, and did not pass on any losses to investors.

Auto ABS issuers originate, sponsor, service and hold equity in all of their transactions. These issuers use securitization to provide affordable funding for their customers, not to transfer risk or achieve off-balance sheet accounting treatment. Auto ABS issuers hold significant amounts of secured retail loans on their balance sheets and have incentives for long-term relationships with investors, rating agencies, customers and underwriters. Vehicle finance companies use prudent underwriting and a clean and transparent offering process. Additionally, it is important to note that auto loans are not exotic products, but "plain vanilla" loans with simple interest rates. All disclosures, excluding pricing, are contained in a preliminary prospectus and no changes are made between offering and settlement.

Auto ABS differs from MBS in large part because vehicle loan underwriting assumes the collateral will depreciate and speculation on autos simply does not exist. Cars and light trucks are reliable collateral, and efficient used car and auction markets make them extremely liquid assets. Furthermore, auto ABS originators oftentimes perform as servicers, so their interests are aligned. , while the excess spread, over collateralization, and seller-retained subordinated tranches ensure vigilant oversight of credit and collection policies when the ABS originators do not perform as servicers. .

Historically, auto ABS have performed extremely well, even during the recent economic crisis. Despite high unemployment, the worst auto industry sales in recent history, bankruptcy of major auto manufacturers and record high gasoline prices that led to the decline of used car prices, auto ABS were still sustainable.

Proposed Risk Retention Requirements

The proposed risk retention condition would not address concerns relating to the misalignment of incentives and would not lead to higher quality securities in registered ABS shelf offerings. We believe the Proposal will have a material adverse impact on consumer credit, employment, and our economy.

Although entities initiating an ABS transaction already hold significant “skin in the game” in typical securitization transactions, the issuers will be required to retain a significant risk position. If the type, level, or duration of risk retention is too onerous for market participants, then recovery of the securitization markets could be impeded. AFSA members underwrite and service a large portion of the auto loans that they securitize, and so retain a significant ongoing economic risk in their securitization transactions.

Risk retention is not an appropriate condition for shelf eligibility. AFSA believes that there are better ways to address alignment of incentives and thus quality of the securities, in the aggregator situation. For instance, sponsors should be permitted to satisfy the risk retention condition through retaining significant first-loss “horizontal” risk

First-loss horizontal risk is the best way to provide incentives to sponsors and align the interests of sponsors and investors. Asset quality is the primary focus of investors. While a sponsor with significant first-loss horizontal risk is fully exposed to the weakest assets within a securitized pool, a sponsor with vertical risk may only be exposed to five percent of losses associated with the weakest assets included in a securitized pool. With a horizontal slice, issues would still have skin in the game. In addition, captive auto finance companies have historically retained the first-loss position – they always had skin in the game. Current securitization structures providing for a horizontal slice have protected investors and aligned the interests of investors and issuers for many years. Strong underwriting standards, which auto issuers have always had, should preempt the need for risk retention requirements.

While AFSA supports significant risk retention by sponsors, we encourage the SEC to more thoroughly analyze whether a flat five percent requirement imposed on all types ABS sacrifices the effectiveness of risk retention for simplicity. This proposed approach could result in securitization becoming a means of inappropriately distributing credit. For example, a fixed percentage for risk retention could limit access to credit for prime borrowers by making securitization uneconomic for this asset class while failing to impact market practice for riskier classes of assets, such as subprime borrowers. While securitization is only one of multiple ways to finance borrowers’ credit needs, it is used across a wide spectrum of asset qualities. Risk retention requirements must take the variation in underlying credit quality into account to be effective.

Tying risk retention requirements to rating agency subordination levels is a possible alternative. The rating agencies consider the quality of the collateral, structure of the securitization and other factors when establishing subordination levels in their rating process for securitized debt. These subordination levels, in turn, dictate the relative sizes of the tranches of securities within the securitization.

AFSA believes that variability in the risk retention requirements would align the interests of sponsors and investors across a wide range of types of securitized assets, and be more effective than a one-size-fits-all approach.

Asset-Level Disclosure

The proposal to require asset-level disclosure with data points identified in the rules is not appropriate. To AFSA's knowledge, investors have not requested the level of data that the SEC is proposing. On the contrary, investors seem to prefer aggregated data. Increased reporting requirements create undue hardship on ABS issuers by imposing significant and disproportionate compliance costs, both at the outset and over time.

The increase in disclosures also raises privacy concerns for consumers and proprietary information concerns for businesses. Some consumers have voiced these concerns in responding to the Proposal. On May 12, 2010, Anita B. Carr submitted comments opposing the publication of borrower data within the SEC and in prospectuses. On the same date, Daniel Edstrom submitted comments expressing his concern with the use of "my personally identifiable information and the personally identifiable information for millions of others."

A different approach to asset-level data, such as requiring it generally, but relying on industry to set standards or requirements, is preferable. For example, many investors have already requested that issuers provide the loan-to-value ratio, a request with which many issuers have complied. Issuers also often disclose FICO and custom scores. The requirements in the Proposal would impose undue burdens on ABS issuers. The SEC should amend their current requirements regarding pool-level disclosures by requiring issuers to present certain pool-level tables in a standardized manner.

The Proposal also requires additional auto data points which are not appropriate. Auto loans are very homogeneous. The level of data that the SEC has proposed that issuers provide is unnecessary to evaluate these very similar loans. Auto lenders already disclose whether loans are for new or used vehicles, the vehicle manufacture, the vehicle type, and the stratification. Adding the geographic location, the model, or the model year will not help the investor. One alternative would be for the SEC to require a separate set of data for each tranche. For example, triple-A loans would require less data. If the SEC mandates that issuers disclose so much asset-level data, companies' underwriting modeling could be reverse engineered by competitors. Many AFSA members have spent a significant amount of time and money building complex proprietary models. Mandating that issuers disclose this amount of asset-level data will allow competitors to relatively easily replicate these proprietary models.

AFSA believes that the SEC should define delinquency as when the servicer would take action. Each lender defines delinquency differently, so including a specific number of days past due in the definition of delinquency would be misleading. Servicers would disclose on the offering document how they define delinquency.

Lastly, the SEC's proposed requirement for issuers to provide asset-level performance information in monthly reports is unnecessary and will be extremely cumbersome as data does not change that often. AFSA believes that the SEC should consider requiring issuers to provide less asset-level data monthly or allow issuers to provide the data annually, or possibly even quarterly.

Five-Business Day Waiting Period

AFSA does not believe that the SEC should establish a minimum period of time available to investors to review registered ABS offering prospectuses. The proposed Rule 424(h) requires five days, but since only business days count in that calculation, the required time period is actually much longer. The proposed mandatory waiting period will unnecessarily expose auto securitizers to market and execution risk for securitization transactions, without providing a meaningful benefit to investors. AFSA understands that investors may want more time to review prospectuses, but a one-size-fits-all approach is not the answer. A minimum waiting period could be appropriate for unsecured debt, but not for debt secured by collateral.

AFSA also believes that a mandatory five-business day waiting period after material changes to the preliminary prospectus is too long. No waiting period should be required when "upsizing" a transaction due to investor demand. However, material changes that significantly affect the asset pool, the cashflows, or the transaction structure could be subject to a one-business day waiting period.

Asset Data File and XML

The proposed waterfall computer program will be extremely difficult and very costly to implement. The program will be difficult for issues to implement because of the level of complexity required. Although vendors have rudimentary models, issuers will still basically have to build this program from scratch.

Since the majority of issuers do not do predictive modeling themselves, they will need to pay to acquire the programming. The cost of that programming, with the additional cost of the strict liability standard, will be substantial. AFSA believes that the SEC's estimate for the cost is significantly low.

Additionally, the proposed program would impose a strict liability standard. Imposing strict liability for errors and omissions that could be caused by a computer glitch is overly broad.

Conclusion

AFSA asks the SEC to be cognizant of the differences between types of issuers. The auto sector and its securitizations, specifically, did not play a role in causing the current economic crisis our nation faces. On the contrary, auto securitizations have a long history of successful performance. Risk retention should allow for a horizontal method whereby companies retain the first loss position. Collection of asset-level data should be predicated on it providing meaningful information to investors while not being unduly burdensome on issuers. The SEC should also pay particular attention to protecting the privacy information of consumers. AFSA believes that ongoing reporting requirements should be kept to a minimum. The proposed utilization of a waterfall computer program is overly complex with minimal benefit to investors who can already obtain information from prospectuses. We thank the SEC for the opportunity to comment on the Proposal.

Please feel free to contact me with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.

Respectfully submitted,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive, flowing style.

Bill Himpler
Executive Vice President
American Financial Services Association