ALLY FINANCIAL INC.
AMERICAN HONDA FINANCE CORPORATION
BMW US CAPITAL, LLC
CARMAX, INC.
CHRYSLER FINANCIAL SERVICES AMERICAS LLC
DCFS USA LLC (D/B/A MERCEDES BENZ FINANCIAL)
FORD MOTOR CREDIT COMPANY LLC
GENERAL MOTORS FINANCIAL COMPANY, INC. (F/K/A AMERICREDIT CORP.)
HARLEY-DAVIDSON FINANCIAL SERVICES, INC.
HYUNDAI CAPITAL AMERICA
NAVISTAR FINANCIAL CORPORATION
NISSAN MOTOR ACCEPTANCE CORPORATION
SANTANDER CONSUMER USA INC.
TOYOTA MOTOR CREDIT CORPORATION
VW CREDIT, INC.
WORLD OMNI FINANCIAL CORP.

November 8, 2010

By Email: rule-comments@sec.gov

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

Re: Proposed Rules for Asset-Backed Securities
(Release Nos. 33-9117; 34-61858; File No. S7-08-10)
Supplemental Comment Letter – Required Disclosure for Auto ABS

Dear Ms. Murphy:

On August 2, 2010, the sixteen finance companies listed above ("we" or the "Vehicle ABS Sponsors") submitted a letter (the "Initial Sponsor Letter") in response to the request of the Securities and Exchange Commission (the "Commission") for comments regarding Release Nos. 33-9117; 34-61858; File No. S7-08-10, dated April 7, 2010 (the "Commission Proposal"), relating to offering, disclosure and reporting requirements for asset-backed securities ("ABS") under the Securities Act of 1933 and the Securities Exchange Act of 1934.

The purpose of this letter is to provide the Commission with the views of the Vehicle ABS Sponsors on the disclosure of data regarding the underlying assets for ABS backed by auto loans or auto leases ("Auto ABS")[1] and by floorplan loans ("Floorplan ABS").[2] In large part, we

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[1] When we discuss Auto ABS in this letter, we are limiting the discussion to loans backed by, and leases of, automobiles, light trucks and motorcycles, all of which are conventionally considered to be part of the auto asset classes. We are not covering the considerations relevant to loans backed by, or leases of, medium- and heavy-duty trucks, which are conventionally considered to be equipment loans or equipment leases, and which are covered by a

are writing to endorse and elaborate upon the issuer views expressed in the letter submitted to the Commission on August 31, 2010 by the American Securitization Forum (the "ASF"), on behalf of the ASF Reg AB II Auto Subcommittee (the "ASF Auto Sector Letter"). Not all signatories to this letter are members of the ASF, so we are submitting this letter to permit all signatories to endorse the views expressed in this letter.

I. OVERVIEW OF DISCUSSIONS WITH INVESTORS

As indicated in the Initial Sponsor Letter, we have devoted substantial time, effort, and resources to the issue of data disclosure. Many of us participated in the extensive discussions with investors as part of the ASF Reg AB II Subcommittee ("ASF Subcommittee"). Since we submitted the Initial Sponsor Letter, we have participated in the ASF Subcommittee's discussions regarding a disclosure proposal for Floorplan ABS and reached consensus with all of the investors who participated in the ASF Subcommittee and invest in vehicle floorplan ABS. We support the proposal for Floorplan ABS described in the ASF Auto Sector Letter and we withdraw the floorplan proposal set forth in the Initial Sponsor Letter.

In addition, we have reached consensus with a significant number of investors who invest in Auto ABS and who participated in the discussions hosted by the ASF regarding data disclosure for the auto loan and auto lease asset classes. We support the grouped data proposals for Auto ABS in the ASF Auto Sector Letter,[3] and we withdraw the proposals set forth in the Initial Sponsor Letter.

However, a group of investors proposed a loan-level disclosure approach for the auto loan and auto lease asset classes in the ASF Auto Sector Letter.[4] It is our position that a loan-level disclosure approach is problematic for several reasons and that the reasons put forth by the loan-level investors for loan-level disclosure are unpersuasive.

This letter reiterates the logic for a grouped data approach for all three Auto ABS asset classes. It is meant to be read in conjunction with the ASF Auto Sector Letter. This letter does not restate the positions set forth in either the Initial Sponsor Letter or the ASF Auto Sector Letter, although it occasionally references relevant portions of those letters to provide context.

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different set of proposed asset disclosures. We understand that Navistar Financial Corporation, a Vehicle ABS Sponsor that finances medium- and heavy-duty trucks, is submitting a separate comment letter on the topic of disclosures related to equipment loans and equipment leases.

[2] When we discuss Floorplan ABS in this letter, we mean to include both auto floorplan and equipment floorplan ABS.

[3] Throughout this letter, we will use "grouped data proposals" to refer to the grouped data proposals discussed in the ASF Auto Sector Letter. We will use "grouped data investors" to refer to the investors who support the grouped data proposals in the ASF Auto Sector Letter.

[4] Throughout this letter, we will use the term "loan-level investors" to refer to the investors who support loan-level, rather than grouped data, disclosure in the ASF Auto Sector Letter. In addition, we will use the term "loan-level" to encompass leases as well loans.

II. ADDRESSING LOAN-LEVEL INVESTORS' POSITIONS

A. General

Loan-level investors state in the ASF Auto Sector Letter that loan-level data disclosure will strengthen the Auto ABS market and make it more resilient over time. We believe that, instead, a loan-level disclosure regime will weaken the Auto ABS market because it will make the market smaller and less liquid. The market will be smaller because loan-level disclosure causes reductions in both the supply side and the demand side of the Auto ABS market. For the reasons discussed on pages 21-23 of the Initial Sponsor Letter and page 13 of the ASF Auto Sector Letter, the supply of Auto ABS will decline as fewer issuers will come to market due to competitive concerns and the increased costs and burdens of the incremental disclosure requirements.

We believe that loan-level data disclosure will reduce the demand side of the Auto ABS market because it will increase the barriers to investing in Auto ABS by favoring larger investors with sophisticated in-house analytics capability. Smaller investors lacking in-house analytics capabilities will be at a disadvantage in trying to analyze the data. The costs related to developing the necessary in-house capabilities would be more onerous for smaller investors than for larger investors. In addition, investors who purchase Auto ABS on behalf of their own investors may feel that they have a fiduciary obligation to analyze all available data or risk potential liability to such investors. Those investors who perceive a distinct informational and analytic disadvantage as well as a potential risk of liability to their own investors for not utilizing all available data in their analyses may choose not to invest in Auto ABS.

If fewer offerings are made due to concerns about disclosure of proprietary information and fewer investors participate in the market due to the analytical challenges and perceived risk of liability in not analyzing all available data, the Auto ABS market will be less liquid. The recent financial crisis has powerfully illustrated the importance of liquid financial markets and the negative economic effects of the absence of liquidity.

B. Differing Investment Principles

Loan-level investors state that investors in Auto ABS "may view risk and valuation in different ways when making an investment decision, leading them to focus on different information about the assets." In particular, they suggest that investors in subordinate bonds and first-loss positions would benefit from being able to make a more complete analysis with more granular data.

The categories of information necessary to analyze losses in Auto ABS are limited. On page 13 of the ASF Auto Sector Letter, the grouped data investors state their view that the two primary drivers of losses in auto loan ABS are unemployment and used car prices. They believe that the grouped data approach provides sufficient information for investors' analyses. The grouped data investors note that, as a result of the common practice of Auto ABS sponsors of retaining servicing and holding a meaningful first loss position, issuers' and investors' incentives are aligned regarding loan origination and underwriting practices.

In addition, the Board of Governors of the Federal Reserve System, in its Report to Congress on Risk Retention dated October 2010 (the "Fed Report"), noted that "auto ABS contain several features that may serve to protect investors. Excess spread is a common feature and is eventually paid to the [Auto ABS sponsor] if the deal performs well."[5] Auto ABS sponsors want the loans to perform, both to earn returns on their continuing investment in the underlying assets and to earn servicing income on the securitized pool. This alignment of incentives between investors and Auto ABS sponsors significantly reduces the universe of information relevant to risk and valuation analyses. Investors do not need to "re-underwrite" each loan or lease through an analysis of loan-level data; rather, they need to be able to understand the relevant characteristics of similar groups of loans or leases – something that grouped data will facilitate.

Loan-level investors suggest that they might need the granularity of loan-level data to invest in "first loss" pieces of Auto ABS transactions. However, first loss pieces are rarely sold in the Auto ABS market. If a first-loss piece were to be sold, it likely would be through a negotiated transaction rather than an offering subject to Regulation AB. An investor in a first-loss piece may receive more granular data, but it would only be provided under confidentiality arrangements that would protect a sponsor's proprietary information. The disclosure requirements for Auto ABS should not be dictated by the needs of a purchaser in a very rare and privately negotiated transaction for which disclosed data would be protected by confidentiality arrangements.

C. Risk Layering

Loan-level investors state that a set of grouped data may not yield critical risk-layering information and may unintentionally disguise which loans in the pool are risky. We disagree that risk layering cannot be analyzed with grouped data. Indeed, we believe that grouped data facilitates the analysis of risk layering because a separate data line is created for each unique combination of risk related characteristics: FICO score, LTV ratio, PTI, New/Used and Original Term.

The loan-level investors' own example of how grouped data disguises risk-layering compares two loans with equivalent 680 FICO scores. The example suggests that grouped data would fail to reflect differences in these loans based on each loan's LTV ratio, original term, geographic location and rate subvention, if any. In fact, our grouped data proposal includes eight distributional groups based on FICO scores, five distributional groups based on LTV ratio, and two distributional groups based on original term. Further, each representative data line would include the percentage of subvened loans in that data line.

In addition, through the state stratification table, investors will receive significant information based on geographic location that will help them understand risk layering. At deal offering, investors will receive a stratification table that has a data field for weighted average FICO for each state that represents 2% or more of the pool. Each month, investors will receive

[5] Board of Governors of the Federal Reserve System, REPORT TO THE CONGRESS ON RISK RETENTION (October 2010) 1, 46 .

delinquency information for these states. Combining the information in the initial stratification table with the monthly stratification tables will provide investors a great deal of information to analyze risk-layering. Because of this "sorting" of loans or leases by risk characteristics, grouped data actually highlights those loans or leases in a pool that are risky, rather than disguising them. Indeed, our discussions with investors lead us to believe that an investor receiving loan-level data would immediately aggregate it into bands like those in the grouped data proposals in order to analyze it. Loan-by-loan modeling is not warranted for pools of 50,000 or more assets.

D. Need for Flexibility

Loan-level investors suggest that loan-level data is ideal for disclosure regulation because the proposed preset groupings of data may become less relevant if the market changes over time. In addition, their position is that loan-level information can benefit all investors because it can be grouped by individual investors or third parties to meet an investor's own specifications for data modeling in order to develop better risk-based pricing for auto loans, such as a better understanding of prepayment speeds.

Unlike mortgages, auto loans' primary features have remained consistent over time, across borrowers (i.e., prime vs. subprime) and across various loan originators (such as captive auto finance companies, banks, and specialized independent auto finance companies). This suggests an inherent uniformity in the nature of auto loans.

Auto loan originators do not have incentives to originate "exotic" auto loans such as interest-only loans or hybrid loans involving an initial interest-only period followed by an amortization period. Such loans would have to be based on an assumption that the underlying collateral's value would not decrease over the life of the loan, which is not a rational assumption in this sector. In addition, for mortgages, one of the reasons that obligors obtain adjustable rate mortgage loans is the perceived ability to refinance upon rate increase. This reason does not exist for auto loans.

Indeed, a significant portion of auto loans to purchase new vehicles have below-market, or subvented, interest rates as a result of promotions offered by manufacturers. Also, refinancing is uncommon because, even in a macroeconomic environment of declining interest rates, the loan interest rates for used cars are generally higher than for new cars due to the depreciating nature of the collateral. Even if an obligor could refinance an auto loan at a lower rate, the obligor has little incentive to refinance because changes in interest rates have little impact on monthly payments. This is due to the short tenor and small balance of auto loans as well as the additional refinancing costs such as loan re-underwriting costs, vehicle valuation/appraisal costs, and lien re-filing costs. Thus, future changes in the auto lending business resulting in substantially different terms for auto loans are unlikely to occur.

Similarly, for auto leases, future changes in the auto leasing business resulting in substantially different terms for auto leases are unlikely to occur. Auto leases' primary features have remained consistent across time and across lease originators. Leasing terms are predicated on consistent factors such as the depreciating nature of the collateral, the need to sell or re-lease the vehicle at the end of the lease term, and the residual value of the vehicle. The concerns related to the possibility of changes in auto lease characteristics (such as the creation of "exotic" auto leases) do not apply because auto leases cannot be "refinanced." Given the inherent characteristics of auto leases, the salient factors in analyzing auto lease performance are unlikely to change over time.

As noted by the grouped data investors on page 13 of the ASF Auto Sector Letter, frequency of loss and loss severity can be properly analyzed by investors with the information provided in the grouped data proposals. Prepayment rates are not particularly sensitive to changes in market interest rates which reduces the benefit of the ability to model auto loan prepayment speeds in various interest rate environments.

When balanced against the potential damage to the Auto ABS market discussed in the ASF Auto Sector Letter and the societal risks of loan-level disclosure discussed below, the potential "aggregate cost" to the market outweighs any additional benefit to be gained from the modeling of every individual auto loan or lease.

E. Past Performance of the Auto ABS Market

In the ASF Auto Sector Letter, loan-level investors assert that the prices at which Auto ABS traded during the financial crisis demonstrate that the potential for default risk existed in certain Auto ABS. Loan-level investors question what would have happened if TALF, TARP, "cash for clunkers" and other governmental programs had not been enacted.

The Vehicle ABS Sponsors strongly object to this assertion. All asset classes experienced dramatically wider spreads in late 2008 and early 2009, following the collapse of Lehman Brothers. We believe the increased spreads in Auto ABS did not reflect default risk to any significant degree; rather, they reflected the lack of liquidity and confidence in the credit markets. As noted in the Fed Report, "all structured products were affected by the sudden drop in liquidity in late 2008."[6] However, as emphasized by the grouped data investors on page 13 of the ASF Auto Sector Letter, Auto ABS remained one of the most liquid asset classes in the fixed income markets during this time of financial difficulty. Furthermore, the Fed Report notes, "in line with strong performance, spreads on prime auto ABS rose in line with other structured products during the financial crisis but have since returned to pre-crisis levels."[7]

Actual losses on underlying loans and leases did not come anywhere near the levels needed to create payment failures on Auto ABS. According to the Fed Report, from 2006-2010 none of the outstanding Auto ABS was rated likely to default.[8] The Fed Report states:

> Delinquency rates on auto loans increased considerably during the financial crisis but remained near the high end of their historical range. Auto loan and lease ABS structures are designed to withstand this level of stress, and almost all performed well during the financial crisis. In fact, few, if any, triple-A

[6] *Id.* at 49.
[7] *Id.* at 57.
[8] *Id.* at 50.

> tranches of auto ABS have experienced a principal write-down in the nearly 25 years of issuance. This strong performance is partly a function of auto ABS structure. Because the underlying loans pay down fairly quickly, the level of credit enhancement increases over the life of the deal as the senior tranches pay down much quicker than the subordinate tranches.[9]

Furthermore, TALF and TARP, directly or indirectly, benefited many asset classes far more than they benefited Auto ABS. TALF was particularly helpful to the ABS markets: it brought in new investors who were attracted to the levered yields, restored liquidity, and initially reduced funding costs for Auto ABS sponsors.[10] However, after the first six months of TALF, spreads on Auto ABS tightened so significantly that many Auto ABS sponsors thereafter decided to issue without using TALF. Now that TALF has ended, Auto ABS continues to be issued at pre-crisis levels while most of the other asset classes that benefited from TALF have returned to dramatically lower issuance levels.

In addition, regarding the "cash for clunkers" program, which ended in August 2009, recent economic research suggests that it has had no long run effect on auto purchases.[11] Thus, the robust design and performance of Auto ABS, rather than the governmental programs, is really what sustained the Auto ABS market. In contrast, many governmental programs to assist the residential real estate and mortgage markets are still in place, and yet the private label residential mortgage-backed securities ("RMBS") market is still essentially dormant.

F. Transition Issues

Loan-level investors suggest that privacy concerns can be addressed by (a) the exclusion of "concerning loans" (or leases) from a securitization; (b) the use of range-based reporting for credit sensitive data; and (c) SEC consultation with other regulators as to whether the loan-level disclosure scheme would be consistent with applicable federal privacy laws.

As discussed on pages 15-16 of the ASF Auto Sector Letter, excluding specific loans or leases is not a viable solution. Similarly, the use of range-based reporting for credit sensitive data does not substantially reduce the risk of obligor identification because other disclosed characteristics of the loans or leases could lead to the identification of obligors.

As discussed in Part IV of this letter, the privacy concerns are far more extensive than the loan-level investors acknowledge or than the Vehicle ABS Sponsors initially realized. The primary privacy issue is not the potential violation of the Fair Credit Reporting Act, Gramm-Leach Bliley or any other applicable privacy law. The Vehicle ABS Sponsors' primary concern is that loan-level disclosure would publicly release very substantial amounts of sensitive data that

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[9] *Id.* at 57.
[10] Sumit Agarwal, Jacqueline Barrett, Crystal Cun, and Mariacristina De Nardi, *The Asset-Backed Securities Markets, the Crisis and TALF*, FEDERAL RESERVE BANK OF CHICAGO ECONOMIC PROSPECTIVE, 2010, forthcoming available at http://ushakrisna.com/ABS.pdf.
[11] Atif Mian and Amir Sufi, *The Effects of Fiscal Stimulus: Evidence from the 2009 'Cash for Clunkers' Program*, NBER WORKING PAPER (September 2010) 1, 25.

could be combined with other data sources and then used by third parties for harmful purposes, such as targeted marketing, or illegal purposes, such as identity theft.

G. Loan-Level Investor Proposal

The loan-level investors assert in the ASF Auto Sector Letter that their proposed lists of loan-level disclosure items are "mindful of issuer concerns regarding cost and the disclosure of proprietary information." The Vehicle ABS Sponsors strongly disagree with that assertion. The loan-level investors have provided a wish list that is filled with items that are irrelevant, duplicative and expensive.

We observe that issuers and investors in the private label RMBS market jointly agreed, of their own initiative, that loan-level data should be provided, as a means of restarting what is still a largely closed market. In sharp contrast, the Auto ABS market is functioning quite well at present, without the level of detail provided in the grouped data proposal we are endorsing. The loan-level paradigm is not necessary to the Auto ABS markets.

III. ISSUES WITH SPECIFIC LOAN-LEVEL DATA FIELDS

The Vehicle ABS Sponsors and grouped data investors have articulated in this letter, the Initial Sponsor Letter and the ASF Auto Sector Letter their strongly held views that loan-level disclosure is inappropriate. If the Commission nonetheless requires loan-level disclosure, the Vehicle ABS Sponsors wish to point out issues with some of the proposed items. We reiterate that the discussion below in no way implies that we support loan-level disclosure.

A. The Commission Proposal Raises Many Issues

In sections B through E of this Part III, we point out the concerns we have with specific loan-level disclosure items proposed by the loan-level investors. The Commission Proposal for loan-level disclosures applicable to Auto ABS raises even more issues. Although the discussions with loan-level investors did not result in a consensus, even the loan-level investors recognized that the Commission Proposal included a number of proposed items that were inapposite to Auto ABS.

We address a few large points about the Commission Proposal in this Part III.A of this letter. However, we have made the judgment that the Commission would not adopt a rule that includes additional loan-level disclosure beyond the items requested by the loan-level investors, so we have not provided exhaustive commentary on all the items in the Commission Proposal. We have limited our commentary just to items we deem material. If the Commission in fact is considering adoption of even more disclosure than is requested by the loan-level investors, the Vehicle ABS Sponsors respectfully request the opportunity to provide further commentary to the Commission on those fields.

The Commission Proposal included a "General" category of loan-level disclosures that were to apply to each and every asset class, as well as nine categories of asset class-specific disclosure. The Vehicle ABS Sponsors believe that the concept of a "General" category that fits all asset classes is particularly problematic. The array of assets being securitized is simply too large, and the characteristics of those assets are too diverse, to try to establish a meaningful list of characteristics that fit every single asset type.

One particular concern we have with the items in the General category is that many of them call for disclosure of information that is going to be the same for every single asset in the pool. That would create enormous files filled with repetitive information. Instead, we recommend that the relevant information be disclosed in the prospectus and that asset-by-asset disclosure would be required only if this information did vary by asset. We call this type of item a "Repetitive Information Item."

Here are a few examples of problems with the General category:

Item 1(a)(3), Asset group number. There is no practice in Auto ABS of having different assets within an issuing entity support separate obligations. As a result, this is a Repetitive Information Item.

Item 1(a)(4), Originator. Virtually all Auto ABS have a single originator for each pool. As noted in the Fed Report, "in both auto loan and auto lease ABS, the participants in the securitization chain – the originator, securitizer, and servicer – are usually affiliated with the same parent entity. On occasion, securitizers have purchased whole loans from unrelated originators, structured them, and sold them, although this practice has become less common in the wake of the financial crisis."[12] This item, too, is a Repetitive Information Item, so the fact of multiple originators would be disclosed on the few occasions when it is relevant.

Item 1(a)(9), Original amortization term. This item is not relevant to an auto lease, which amortizes only to the date by which the lessee must either purchase the vehicle or turn it back to the originator or servicer.

Item 1(a)(10), Asset interest rate. This item, too, is inapplicable to an auto lease, as leases do not bear interest. The lessee's sole payment obligation is a fixed monthly payment of rent, not of principal and interest.

Item 1(a)(13), Original interest only term. This item is not relevant to auto finance. For auto loans, there are no interest only periods, which would make this a Repetitive Information Item for that asset class. For auto leases, interest is not a relevant concept.

Item 1(a)(16), Servicing fee–percentage and Item 1(a)(17), Servicing fee–flat dollar. Neither of these concepts fits any of the auto asset classes. In Auto ABS, the servicing fee is assessed at the pool level, not at the level of the individual asset. Further, it may be assessed against the "securitized value" of the assets or some other measure that is different from the principal amount owing on the asset (and, for an auto lease, there is no concept of a principal value).

[12] Fed Report at 20.

Based on the foregoing points and on other inapposite provisions in the "General" category, we believe that all loan-level disclosure requirements would need to be asset class-specific; we do not think a General category can be reliably fashioned in a way that will fit all asset classes. We also reiterate that there are many items within the three auto-related asset classes that do not fit and that have even been omitted by the loan-level investors. As those items are not part of the loan-level investor proposal, we will not discuss those here.

Following are our objections to specific items within the fields suggested by the loan-level investors.

B. Retail Loan - Offering Data

Item 1(a)(1), Asset number type. The Vehicle ABS Sponsors believe that there is no value to a field that identifies the source of the asset numbers utilized in loan-level reporting. Reporting practices in Auto ABS differ significantly from RMBS. For Auto ABS, only the originator and its affiliated servicer are tracking and reporting on the auto loans. This practice contrasts with the multi-entity situation for RMBS, where unrelated parties such as an originator, a primary servicer, a master servicer, and a trustee are all reporting on a given loan, using different numbers for such reporting, and in which a securitized pool may consist of mortgage loans originated by many different entities.

The asset number that originators and servicers currently use for their internal purposes is the account number that they have assigned. Auto ABS sponsors may choose to generate different numbers for the purpose of reporting on these loans in auto loan ABS (in order to further protect obligor privacy), but the source of the number is very likely to be internally generated. For sponsors who are securitizing auto loans they have originated, the source of the number will be the same for the entire pool.

Even in the case in which an Auto ABS sponsor is an "aggregator" that has combined two or more purchased pools of auto loans, there is going to be a readily identifiable source of the asset number. Aggregator transactions have always been effectuated utilizing auto loans from very few originators. The prospectus can readily describe the source of the asset number for each originator's receivables.

As a result, the requirement to disclose the source of the asset number would not yield any meaningful information for investors. Accordingly, the recommendation of the Vehicle ABS Sponsors is that this information be conveyed by means of a requirement for narrative disclosure in the prospectus indicating the source of the asset numbers in the securitized pool.

Item 1(a)(19), Defined underwriting indicator. Originators do not underwrite loans in a fashion that would provide meaningful data in terms of whether the loan made "was an exception to the underwriting guidelines described in the prospectus." Such an approach, which may be useful in an asset class such as RMBS where originators purport to employ uniform underwriting guidelines, is not compatible with the approach to underwriting used for auto loan originations. In the auto sector, underwriting is a judgmental process.

Originators do not have hard and fast guidelines by which most loan applications can be evaluated. Originators use electronic decisioning systems as a first filter for applications. Some applications are approved (for a prime originator, typically between 10% and 40% of total applications) or rejected by this automated process. However, originators make decisions on most loan applications through "judgmental underwriting." In this process, all loan applications, other than those definitively accepted or rejected in the initial automated process, are individually reviewed by credit analysts.

A credit analyst will review the information utilized in the electronic decisioning process as well as additional information. The analyst then makes a decision based on his or her assessment of the strengths and weaknesses of the applicant and the terms of the proposed loan. The analyst might condition approval of a loan on the addition of a co-obligor or on a change that would reduce the monthly payment, such as the making of a larger down payment or the substitution of a less expensive vehicle.

The typical originator has a variety of levels at which loan applications can be approved in the judgmental underwriting process. The fact that a given loan required a higher level of approval does not mean that the loan should be considered an exception to the underwriting guidelines. There are many reasons why a loan might require a higher level of approval and still fit within the "standard process" of the originator.

Different credit analysts have different levels of authority to approve loan applications. The level of authority given to an analyst depends on such factors as the size of the requested loan, the analyst's experience and the analyst's underwriting track record. Accordingly, a given loan could be approved by one analyst and not another for reasons that have little or nothing to do with the conformity of the loan or the obligor to a set of underwriting standards. For example, on days in which there is a particularly heavy flow of applications, more senior loan officers might supplement the first level analysts and perform these initial reviews. In that situation, it would not be possible to ascertain, after the fact, which of the loans initially approved by a senior loan officer could also have been approved by a more junior analyst and which could not have been approved by a junior analyst.

In addition, auto loan originators do not systematically capture loan approval related information in their origination files in a manner that could be reliably reported. Originators do not have "fields" in their data processing systems that are dedicated to this purpose. As a result, any effort to obtain this data for existing loans would, at minimum, require intensive manual efforts to review files. Even more problematically, many originators treat information such as the reviewer's approval authority and the loan underwriting criteria used as transient data that is routinely deleted 60 to 90 days after the loan is approved. In that case, the information could not be retrieved at all, even with a manual search.

Further, an effort to capture this information systematically going forward would also be difficult. For all Auto ABS sponsors, it would involve reprogramming their systems and retraining their personnel to enter this information. For some Auto ABS sponsors, it would also involve the retraining of auto dealership employees, who are the principal sources of this type of information. Each of these reprogramming and retraining efforts would be costly and administratively burdensome. This requirement would force Auto ABS sponsors to compile data that they do not use in their own businesses as an evaluative tool.

The Vehicle ABS Sponsors emphasize that most of them do not, in the conduct of their own businesses, use historical information regarding loan approval level as an evaluative tool. It seems inappropriate to require an originator to expend time, money and resources to capture information that is not deemed relevant by the originator itself for the operation of its business.

We disagree with the view of loan-level investors that this information is material to pool analysis. The alignment of incentives, discussed in Part II.B. above, greatly mitigates the risk that an originator is going to cut corners on the quality of assets it originates, because it will continue to hold the first loss position in the securitized loan and it will continue to earn servicing income as long as the loan continues to perform. In light of the alignment of incentives, we do not believe the additional expense of modifying industry standards to standardize and track underwriting decisions is necessary.

Item 1(a)(20), Measurement date and Item 1(b)(1), Cutoff date. There is no distinction between Measurement date and Cutoff date for auto loan and lease ABS transactions, and every asset in the pool almost always uses the same date. This is another example of a Repetitive Information Item for virtually every transaction. Even in so-called “aggregator” transactions, which have historically been a very small percentage of Auto ABS (and which have not occurred at all for at least three years), there would be only two or three pools. Although the different pools might have different cutoff dates, within each separate pool the cutoff date would be the same for its assets. In each case, this information could be described in the prospectus.

Item 4(b)(6), Vehicle type. No universally accepted vehicle categorization scheme exists that can be used by all Auto ABS sponsors. Within a single sponsor, it is often difficult to decide how to categorize vehicles, even in a relatively simple system that just utilizes categories such as Car, Truck and Utility Vehicle. Over time, vehicle models may be revised in ways such that they no longer fit into a formerly appropriate category. Minivans and crossovers are examples of vehicles that might be classified into any of these categories. Another example would be a model that is made for a number of years on a truck platform, but then is shifted to a car platform. It is possible that the related captive auto finance company might use one designation, a second lender might use a second designation and a third lender might use a third designation. This problem could be particularly acute for Auto ABS sponsors with a high proportion of used vehicles in their pools or who finance multiple manufacturers’ brands.

In addition, the costs related to necessary systems changes for this proposal should not be underestimated. It would be quite expensive for each Auto ABS sponsor to develop the computer programming necessary to make these categorizations. Because ABS sponsors do not use this information in the operation of their own businesses, it again seems inappropriate to require the sponsor to collect it.

Furthermore, the loan-level investors’ proposal includes identification of the model of each vehicle. Should a loan-level disclosure regime be adopted, investors could use this model data to sort models into whatever categories they deem appropriate. No strong reason exists to require Auto ABS sponsors to incur the expense and burden of developing a system to categorize financed vehicles. To mitigate their concerns, the Vehicle ABS Sponsors propose that each sponsor be able to use its own set of fields rather than preset categories.

Although there is a place in the Grouped Data Proposal in which this classification system is employed, that is in an alternative table that must be provided only if the sponsor does not provide sufficient model-by-model information. Most of the Vehicle ABS Sponsors expect to provide sufficient model-by-model information so that they would not need to employ the vehicle type breakdown.

Item 4(b)(7), Vehicle value and Item 4(b)(8), Source of vehicle value. We believe that the disclosure of such values at the asset level is highly problematic for both competitive and privacy reasons. Loan-level investors have acknowledged in the ASF Auto Sector Letter that such concerns exist and have proposed that the Commission require a loan-to-value ratio instead.

New Item Loan-to-Value Ratio. In light of the concerns mentioned above, in the event that the Commission requires loan-level disclosure, we request that that a Loan-to-Value field be required instead. Further, we request that it be populated with the following responses: (1) 85% or lower, (2) 86-100%, (3) 101-115%, (4) 116-130%, or (5) greater than 130%.

Item 4(c)(1), Obligor credit score type. A field describing obligor credit score type is not useful because all originators use FICO scores. This is another Repetitive Information Item.

Item 4(c)(2), Obligor credit score and Item 4(c)(3), Obligor FICO score. As noted above, there is only one score that originators use, and two different fields should not be required. In addition rather than bands, loan-level investors propose the reporting of actual FICO scores. We believe that the disclosure of actual FICO scores creates an untenable problem from both a privacy perspective and a proprietary know-how perspective. Although we disagree with providing loan-level data at all, in the event it is required, we note that the grouped data investors agreed that 50 point bands are satisfactory for grouped data, and we think it is entirely inappropriate to provide data that is any more granular than that. We discuss privacy concerns in greater detail in Part IV of this letter.

Item 4(c)(7), Obligor income verification level and Item 4(c)(9), Obligor employment verification. Most originators only perform income or employment verification for their riskiest customers. They do not have bright line tests to identify which customers they consider the riskiest. On those occasions when originators do check income or employment, different issuers use different methods to do so, such as telephone calls to employers, electronic database checks and requests to obligors to produce substantiating documentation.

More critically, at least two significant systems issues exist with the capture and disclosure of information regarding income verification. First, Auto ABS sponsors do not systematically capture this information in their origination files in a manner that could be reliably reported. They do not have "fields" in their data processing systems that are dedicated to this purpose. As a result, any effort to obtain this data for existing loans would require intensive manual efforts to review files. In addition, as with the data on the approval levels discussed in

Item 1(a)(19) above, most Auto ABS sponsors do not retain this data for more than 90 days after origination.

Second, as discussed above under Item 1(a)(19), Defined underwriting indicator, capturing this information would be costly and administratively burdensome, and it would force Auto ABS sponsors to compile data that they do not use in their own business as an evaluative tool.

New, Scheduled monthly payment to scheduled monthly income. We believe that the response buckets proposed by loan-level investors are problematic for competitive and privacy reasons. For this reason, in the event that the Commission requires loan-level disclosure, we alternatively propose the following responses: 10% or lower, 11%-15%, 16%-20%, greater than 20% and unavailable.

C. Auto Lease - Offering Data

All of our objections to specific items for auto loans apply equally to the auto lease asset class. In addition, we have the following specific objections:

Item 1(b)(3), Current interest rate. This field should not be required for auto leases because auto leases do not have an interest rate.

Item 4(b)(4), New or used. Typically, only leases that have been written on new vehicles are securitized. This field should not be required unless the pool includes used leased vehicles.

Items 5(b)(9), Base residual value and 5(b)(10), Source of base residual value, and New, Contractual residual value. In a securitization of auto leases, just one residual value is used for each vehicle. That value is known by a term such as "securitization residual value," and it is typically the lower of the contract residual value and the residual value estimated by Automotive Lease Guide (ALG) at some point. In most cases, the ALG value is the operative value. Only the securitization residual value should be disclosed. There is little relevance to the higher residual value.

D. Retail Loan - Reporting Data

Item 1(a)(1), Asset number type. The Vehicle ABS Sponsors reiterate the objections noted above regarding a field reporting asset number type. Further, if this information were to be disclosed at the outset, it is certainly not relevant to disclose it again each month.

Item 1(g)(6), Servicing advance methodology. The Vehicle ABS Sponsors do not understand why the loan-level investors included this field in their proposed Reporting Data, because they did not include it in their Offering Data proposal, except to the extent that a servicer uses more than one methodology for a pool. Even if that exception is the only basis on which it would be included, we see no reason to continue to disclose this methodology on a monthly basis once it has been disclosed as part of the Offering Data.

Item 1(e), Reporting period end date. The reporting period end date would be the same for all auto loans in the pool, and would be reported in the monthly distribution report. This is another Repetitive Information Item.

Item 1(f)(17), Next interest rate. This item was included in the Commission Proposal to address assets that have "built-in" adjustments to their interest rates. Retail loans are fixed-rate loans in which the interest rate is designed to remain the same for the life of the loan. The only circumstances under which the interest rate will change are (a) when the servicer renegotiates a contract with an obligor (in which case, the servicer uniformly is required to purchase the renegotiated loan from the issuing entity) and (b) when the change is required by law or court order (in which case, the loan typically can remain in the pool, although some servicers even repurchase these loans).

For auto loan ABS, the only circumstances in which the interest rate changes as a result of a requirement of law or court order are (i) when the Servicemembers' Civil Relief Act becomes applicable to a loan, (ii) when a court determines that the interest rate on an existing loan does not comply with usury laws and reduces the interest rate, and (iii) when a bankruptcy court in a Chapter 13 proceeding reduces the interest rate. Each of these circumstances occurs infrequently. One reason for the low level of occurrences is the relatively large number of subvened loans in many prime portfolios. These loans already have extremely low interest rates, so there may be little or no benefit to a servicemember or a Chapter 13 debtor to be realized from potential interest rate reductions.

Several Vehicle ABS Sponsors analyzed their portfolios to calculate the number of their auto loans that were subject to these interest rate changes:

- World Omni Financial Corp. analyzed its entire owned portfolio and determined that just 0.11% of its owned retail loans are currently subject to the Servicemembers' Civil Relief Act.

- Ford Motor Credit Company analyzed its serviced portfolio and determined that less than 0.03% are currently subject to the Servicemembers' Civil Relief Act.

- Another Vehicle ABS Sponsor reviewed two well-seasoned securitized pools and determined that, out of about 50,000 retail loans in each pool, just two loans in one pool and four in the other, which is less than 0.01% of the pool in each case, had modified interest rates due to bankruptcy court orders.

- General Motors Financial Company, Inc. (f/k/a Americredit Corp.) analyzed its serviced portfolio and determined that the number of loans that are subject to the Servicemembers' Civil Relief represents less than 0.20% of its serviced portfolio.

It is also theoretically possible that a state could change its usury law in a way that would require the interest rate on existing auto loans to be reduced. However, such an occurrence is more theoretical than actual, and there is a good chance that any change in a state's usury rate would only be applied to new loans, and not to existing loans.

For all the foregoing reasons, the Vehicle ABS Sponsors believe that interest rate changes to auto loans that remain in a securitization affect a negligible amount of auto loans, would not provide useful information to investors and should not be required to be reported.

Item 1(g)(4), Servicer advance amount. Generally, for Auto ABS, servicer advances are not made, or else are made at the pool level, rather than at the level of the individual loan. This field should be required only if servicer advances are made by reference to a specific loan.

Item 1(i)(4), Repurchase reason. The Vehicle ABS Sponsors do not believe that a field specifying the repurchase reason would convey meaningful information to investors. First, the reason for the repurchase is almost invariably the same: a servicer modification of the auto loan. In most Auto ABS transactions, there is a covenant that prohibits the servicer from modifying the amount financed, the interest rate or the total number of scheduled due dates or from extending the last scheduled due date so that it is later than the final scheduled distribution date for the transaction. Any modification in violation of that covenant would require repurchase of the affected auto loan by the servicer. Although servicers have the flexibility to make such modifications so long as they repurchase the affected loans, most servicers in the auto industry have adopted a policy that they will not make such modifications.

As a result, such repurchases of auto loans are not material in auto loan ABS. For example, Ford Motor Credit Company (a servicer that will make a limited number of such modifications and then repurchase the affected loans) reviewed a sample of its Retail Auto ABS transactions effected since 2006 and determined that the repurchased loans typically represent approximately 1% of the original pool balance over the nearly four year life of each transaction.

In addition, auto loan ABS also contain provisions requiring the originator to repurchase any auto loan for which a representation or warranty regarding loan eligibility was breached. These repurchases are typically due to the discovery of an outside influence, such as obligor litigation, or a system discrepancy in the pool selection process. Occasionally, a vehicle lien will not be properly perfected, perhaps due to bureaucratic errors, resulting in a repurchase. However, this sort of repurchase does not occur on more than a very isolated and infrequent basis.

New Item, Modification Type. The only type of credit-related modification[13] that does occur with any frequency in auto loan ABS is a payment extension, in which an obligor is permitted not to make a payment for one or two months. In effect, each such payment is added to the “back end” of the auto loan. Other than payment extensions, there simply are not a material number of credit-related modifications to auto loans where the auto loan remains in an Auto ABS transaction. Therefore, the Vehicle ABS Sponsors believe that a field for modification type would not be valuable to investors. If loan-level disclosure is required, the Vehicle ABS Sponsors propose that Item 1(h) of the Commission’s proposed Schedule L-D disclosures be reformulated to provide an indication that a payment extension had been granted. The Vehicle ABS Sponsors propose this field in lieu of the “modification type” field.

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[13] Modifications to auto loans may occur for administrative reasons, such as changes of address, but these types of modifications would not be required to be reported.

E. Auto Lease - Reporting Data

Items 5(e), Excess wear and tear and 5(f), Excess mileage fees. This item is unnecessary because the incremental payments would be shown in the responses to Item 1(f)(1), Total Actual Amount Paid. In addition, some Vehicle ABS Sponsors do not track collections of excess fees separately from other end-of-term collections, so they could not provide this detail.

Items 5(g), Sales proceeds and 5(j), Amounts recovered. The Vehicle ABS Sponsors believe that this item also is unnecessary. Item 1(f)(1), Total Actual Amount Paid will provide the amount of collections for each asset in each month. As with Item 5(e), Excess wear and tear and 5(f), Excess mileage fees, some Vehicle ABS Sponsors cannot separate disposition proceeds from other end-of-term collections.

Item 5(h), Lease extension and New Item, Modification Type. Only two types of lease modifications occur which would permit the affected leases to remain in auto lease securitizations: payment extensions and term extensions. If a payment extension is granted, an obligor is permitted not to make a payment for one or two months. In effect, each such payment is added to the "back end" of the auto lease. When a term extension is granted, the obligor continues to make monthly payments on the lease for a period beyond the lease termination date in the original lease contract. We propose that Item 5(h), Lease extension and New Item, Modification Type be combined into one item and that the available responses be (1) Payment Extension, (2) Term Extension and (3) None.

F. Termination of Reporting on Retail Loans and Leases

In the event that loan-level disclosure is required, the Vehicle ABS Sponsors propose that ongoing reporting would be required only for those loans or leases that remain in the securitized pool. If an auto loan or lease has been paid in full, repurchased, or repossessed and entirely liquidated with no further possible recovery, then the Vehicle ABS Sponsors intend to stop including that loan or lease in the ongoing monthly reporting.

IV. PRIVACY AND RELATED COMPETITIVE CONCERNS

As noted in the Initial Sponsor Letter, we believe that loan-level data disclosure poses significant threats to consumer privacy. We vehemently disagree with loan-level investors that privacy concerns are minimal and can be easily addressed within the framework of loan-level disclosure.

A group of six organizations concerned about privacy rights (the "Privacy Groups")[14] submitted a comment letter to the Commission on August 2, 2010, discussing the privacy concerns related to loan-level disclosure. The Privacy Groups mentioned in passing that their concerns also applied to auto loans and leases, but the focus of their letter was on mortgage loans. The Vehicle ABS Sponsors agree that the privacy concerns expressed in that letter also apply to auto loans and leases, and this letter elaborates upon that point. While the grouped data

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[14] The signatories to this letter were World Privacy Forum, Center for Digital Democracy, Consumer Action, The Center for Financial Privacy and Human Rights and Privacy Activism.

proposals mitigate these privacy concerns, we will also show that even grouped data does not eliminate the concerns entirely.

A. Linkage of "Anonymous" Data to Individuals

Disclosed loan-level information can be easily linked to individuals with minimal effort. Especially for loans or leases that have unusual characteristics, such as those relating to vehicles that have a particularly low volume or a very high value, or loans or leases for obligors in sparsely populated areas, this information on its own might be sufficient to enable the identification of a particular obligor to a particular loan. However, the privacy concerns apply to all vehicles and obligors because of the ease with which one can join, using readily available software such as Microsoft Excel or Access, seemingly anonymous information from unrelated databases and existing public information and use these "junctions" to identify obligors. The loan-level investors' "solution" of simply "exclud[ing] concerning loans from the securitization" does not solve or even mitigate the privacy concerns.

For obligors, the adoption of loan-level disclosure would result in the disclosure of personally identifiable, individual-level information about each loan (or lease) and each obligor. The inherent privacy problem is two-fold. First, the level of detail of the disclosed data made public will lead to the possible identification of individual obligors connected to the disclosed data. Second, this disclosed information is extremely sensitive so much so that individuals may be harmed by its public availability.

The linkage of the loan or lease data to an identified obligor is remarkably easy. Although the identity of obligors would not be disclosed, the disclosed data would represent a "fingerprint" of each loan or lease. Computer scientists have shown that even a small amount of seemingly trivial data is specific enough to create a "fingerprint"[15] tracing back to an individual. For example, a statistical study of the 1990 census concluded that 87.1 percent of people in the United States can be uniquely identified by a combination of their five-digit ZIP code, birth date (including year), and sex.[16]

Computer scientists have also shown the relative ease that seemingly anonymous data can be linked to specific individuals. For example, following the release of "anonymized" health records of Massachusetts government employees to researchers, a computer science graduate student was able to identify the health records of William Weld, the Governor of Massachusetts at the time. The only exogenous information that she had about Governor Weld was that he lived in Cambridge, Massachusetts. The process she used is frighteningly simple and accessible. She knew that Governor Weld lived in Cambridge, Massachusetts – a fact that she could have easily learned from media reports. At the time of her research, Cambridge, Massachusetts was a city with 54,000 residents and seven ZIP codes. She purchased the complete voter rolls for the city of Cambridge for twenty dollars. The voter roll database contained, among other things, the

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[15] *See* Paul Ohm, *Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization*, 57 UCLA LAW REVIEW 1701, 1719 (2010).
[16] *See id.* In a 2006 study, Philippe Golle was unable to replicate the 87 percent statistic. He calculated 61 percent with 1990 census data and 63 percent with 2000 census data. Philippe Golle, *Revisiting the Uniqueness of Simple Demographics in the US Population*, 5 ACM WORKSHOP ON PRIVACY IN THE ELEC. SOC'Y 77,78 (2006).

name, address, ZIP code, birth date and sex of every voter. By combining the voter database with the health records database, the graduate student located Governor Weld's health records. From the voter database she learned that only six people in Cambridge shared his birth date; only three were men, of whom he was the only one living in his ZIP code. She was able to connect Governor Weld through his ZIP code to the "anonymous" health records, even though the health record database was scrubbed of certain identifying information such as name, address and social security number, because the health records contained "nearly one hundred attributes" per patient. The junction of the ZIP code, birth date, and sex "fingerprint" with the information from the voter rolls database resulted in a positive identification of Governor Weld's individual health records.[17]

The loan-level investors' proposal in the ASF Auto Sector Letter discloses a significant amount of information about each asset and the related obligor. For example, it includes as required disclosure the following actual amounts or dates: loan origination date, original asset amount, the original asset term, the asset maturity date, current asset balance, current interest rate, current payment amount due, remaining term to maturity and current delinquency status. These characteristics are coupled with a significant amount of information related to the underlying vehicle including whether the vehicle is new or used, vehicle manufacturer, vehicle model, model year, vehicle type, and vehicle value.

These descriptive characteristics are so extensive that the description they provide for each loan or lease will almost certainly be unique for each auto loan or lease. The disclosure of vehicle make and vehicle model would readily facilitate the linkage of the "anonymous" data to specific individuals. Such databases can be acquired easily and relatively inexpensively on the internet. It would only cost pennies per receivable to link each receivable in a pool to its respective obligor. For example, one can find a database of about 75 million car owners by vehicle make, model, year and more at <http://listfinder.directmag.com/market?page= research/datacard&id=218919>. This is not the only database of car owners. Others can be found at < http://www.alcmilestones.com/automobile-owner-list.php> and < http://www.mailinglistconnection.com/default.aspx>.

Furthermore, we discovered in the process of drafting this letter the relative ease by which amateurs could link "anonymized" pool data to individuals in just a few hours using the process outlined in this letter. A person dedicated to data linkage and aggregation could easily assemble from the legally mandated disclosed data a massive database of consumer data linked to millions of individuals. Thus, due to the unique "fingerprint" created by the data disclosure and the relative ease of linking databases, the privacy concerns cannot be solved by simply excluding certain loans.

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[17] Recommendations to Identify and Combat Privacy Problems in the Commonwealth: HEARING ON H.R. 351 BEFORE THE H. SELECT COMM. ON INFORMATION SECURITY, 189TH SESS. (PA. 2005) (statement of Latanya Sweeney, Associate Professor, Carnegie Mellon University), available at http://dataprivacylab.org/dataprivacy/talks/Flick-05-10.html. OHM, *supra* note 15, at 1719.

B. Grouped Data Privacy Concerns

A grouped data approach minimizes, but does not eliminate, the privacy concerns. One of the Vehicle ABS Sponsors populated with data the proposed grouped data reports and stratification tables using loan data typical of its Auto ABS pools. This sponsor observed that almost ten percent of the representative data lines in the resulting grouped data had a single account and approximately four per cent had just two accounts.

In those cases where the representative data line covered a single auto loan, one would know precisely the loan's original principal amount, current principal balance, annual percentage rate, monthly payment and remaining term. In our view, it is highly likely that this provides sufficient information to uniquely identify the loan. By using one of the publicly available databases of auto owners, one could quite likely discern the identity of the obligor.

Additionally, the same representative data line contains information that would permit further insight into highly personal information regarding that obligor. For example, one can approximate the obligor's income with the monthly payment (which will be disclosed in the ongoing reporting on that representative data line) and the payment-to-income band contained in the offering data. Similarly, one could determine a range for vehicle value with the original principal balance information and the LTV band. Finally, the representative data line provides a FICO score band for the obligor.

To give an example of these inferences and calculations, a representative data line is formed with the following attributes: less than 500 Obligor FICO Score, greater than 130 LTV, greater than 20% PTI, New, and 61-72 Original Term. This representative data line contains one loan. The information presented for this representative data line is as follows: the loan's "aggregate" original principal balance is $20,000, the "aggregate" current principal balance is $19,600. Based on this information alone, one can ascertain several things about the obligor. Because the loan is in the lowest FICO band, the highest PTI band and the 61-72 original term band, the obligor has a low FICO score, a low income and has an extended term loan. In addition, given the current principal balance of the loan, it was most likely recently originated. Using the information from the prospectus, the stratification tables and exogenous knowledge of car values, one could make an educated guess as to the car make/model and geographic location of the obligor. Linking this information with information in a second publicly available database containing vehicle types, addresses and vehicle owners' names would likely permit one to isolate one individual who matches all of these the criteria.

C. Grouped Data Privacy Concerns More Pronounced Over Time

Over time, the privacy problem becomes more pronounced. By tracking the monthly representative data line reports and monthly data stratification reports, all or at least a majority of the loans in a pool could be isolated. One could isolate such loans by comparing the representative data lines containing a small number of loans each month against prior monthly reports. Through this comparison, one could know that between two monthly reports, only one loan matured and the difference in the reported aggregate principal balance would provide insight into that loan's information. In addition, one could track representative data lines over time until they have no loans in them. The identification of loans is further facilitated by tracking the monthly stratification tables.

The combined analysis of the monthly representative data lines reports and the monthly data stratification reports greatly enhances the ability to isolate and extract information related to specific loans. For example, the monthly representative data line reports for two consecutive months show that a single loan has matured as of the last cutoff date. From the monthly representative data line report, one would know the original principal and the LTV range of the loan and could combine this information with exogenous information related to such sponsor's vehicle values to guess the possible make and model of the vehicle securing the loan. Comparing the make/model monthly data stratification report, one could determine the vehicle make and model of the loan that matured that month thus reducing and potentially isolating the make and model of the vehicle that secures the loan. A comparison of the state monthly data stratification report would likely show the state which had a loan that matured. This information combined with the loan's PTI and monthly payment and exogenous information related to states' average income level would provide enough information to make an educated guess as to vehicle make, model and location. The linking of the disclosed information with information found in a voter or automobile registration database would make the identification of the obligor on the matured loan easy. For these reasons, removing the loans in the "sparse" representative data lines at deal outset is not a viable solution to the privacy problem.

D. Unprecedented Amount of Consumer Data Placed into Public Domain

We are extremely concerned that, under the Commission Proposal, all of the information disclosed in connection with Auto ABS will become freely available to anyone in the world. All information in the Commission's EDGAR system is available to absolutely anyone at no charge. Thus, it will be freely available to any user around the world, whether that user is a potential purchaser of ABS, a "data aggregator" company that creates databases for sale[18] or a criminal seeking consumers' personal information for nefarious purposes. We believe that it is inevitable that information of this sort available on EDGAR will be used by some for purposes other than the evaluation of securities. We believe that "data aggregators" will use the information available on EDGAR to vastly expand the databases they sell.[19] In a sense, any sponsor participating in a public securitization will be subsidizing such "data aggregators" through the information that sponsors would be required by law to provide.

The Privacy Group Letter emphasizes that the Commission breaks new ground by proposing the publication of details about individuals (who can be easily re-identified) that have never been publicly available before. We have great concern about the prospect of this

[18] A list of "data aggregators" also known as "data brokers" is available at http://www.privacyrights.org/online-information-brokers-list.

[19] Scholars in the area of data aggregation and privacy note, "[o]ver the past twenty years, a new industry has emerged based on gathering, processing and selling personal information. Sellers in this market have assembled dossiers on virtually every adult in the United States, culling data from three major categories: public records, publicly available information, and non-public information." Paul N. Otto, Annie I. Anton, and David L. Baumer, *The Choicepoint Dilemma: How Data Brokers Should Handle the Privacy of Personal Information*, SECURITY PRIVACY MAGAZINE, IEEE 15,15 (2007).

information becoming public. The Commission Proposal includes a remarkable level of detail, including monthly debt, length of employment and several different measures of income. Even the more limited loan-level investors' disclosure proposal in the ASF Auto Sector Letter recommends requiring the publication of details about individuals that have never been available publicly before, such as obligor FICO score and geographic location. This is information that many individuals would prefer be disclosed only to a limited number of entities and in a limited number of circumstances. In addition, many individuals would want to limit and control who obtains such information about them.

In addition to the competitive concerns we described on pages 21-23 of the Initial Sponsor Letter, we believe that if a loan-level disclosure regime is adopted, the relative ease of linking data to individual obligors will create additional competitive concerns. We are gravely concerned that "data aggregators" will link the disclosed data to individuals. They could then sell this information to our competitors permitting them not only to "reverse-engineer" our scoring models and marketing strategies, but also to target directly our best customers with great specificity. For example, using the information in sparsely populated representative data lines combined with information in exogenous databases, a competitor could link loans that have short remaining term, such as six months or less, to specific obligors. A competitor could then market new cars to these individuals.

E. Individuals Could Suffer Harm from "Linked" Data including Increased Identity Theft Risk

We believe that loan-level disclosure, by making such sensitive information accessible, has the potential to impose substantial harm on individuals. These individuals will have no ability to limit the secondary uses of their personal information or to know who has obtained information linked to them. They could suffer intrusions such as targeted marketed campaigns or economic harm such as price discrimination. For example, a company could infer that a woman who owns a minivan is a mother and then could market products for mothers directly to her. Equally problematic is that individuals will have no opportunity to correct information that has become out of date, but continues to be used by third parties.[20] They may suffer harm as a result of the proliferation of such mistakes if such information is used without their knowledge as part of an extension of credit or employment process.

Furthermore, a loan-level disclosure regime would be an open invitation to identity thieves, providing additional information that would allow them to target the most credit-worthy borrowers with increased accuracy. Identity theft is already a major problem and would certainly grow worse with more information in the public domain because it will make it easier for identity thieves to pose as their victims. Once an identity thief has linked the loan-level disclosure data to a particular obligor he (or she) could answer such "private" questions as "What bank holds your car loan?" *or* "What is the make and model of your vehicle?" Such an ability would further facilitate an identity thief's impersonation of an obligor. We are gravely concerned

[20] It has been documented that certain data aggregators have taken the position that they cannot correct errors in their records, but that consumers must locate the original source from which the information is gathered and correct any mistakes there. *Id.* at 23.

that our efforts to comply with the Commission's disclosure requirements could facilitate someone else's violation of law.

V. POTENTIAL COMMISSION ACTIONS TO MITIGATE PRIVACY CONCERNS

A loan-level disclosure regime places in the public domain much personal, financial and other information about individuals. However, neither the Commission Proposal nor the loan-level investors' proposal has recommended how to place limits on usage or re-disclosure of the information. For the reasons described above, we believe that it would be simple for an interested party to re-identify over time virtually all of the personal information that a loan-level disclosure regime would make public.

We think that the Commission should give significant consideration to these privacy issues and competitive concerns. Although the proposed disclosures may not violate current law, they nonetheless raise significant public policy issues. We have not developed comprehensive proposals for these issues, but we think the Commission should consider the following as possible mechanisms to mitigate the privacy concerns and competitive issues:

- Not requiring loan-level data *or* grouped data.

- Requiring "bands" rather than actual values for data that facilitates establishing a "fingerprint." For example, instead of requiring the actual origination date, require that only the calendar quarter or half-year of origination be identified.

- For grouped data, allowing the combination of bands in instances of data sparsity.

- Establishing a central "registration system" managed by the Commission or a third party that would permit access to this sensitive data only to persons who had independently established their identity as investors, rating agencies, data providers, investment banks or other permitted categories of users.

- Forbidding the use of this data for any purpose other than evaluating the performance of ABS and establishing appropriate penalties for misuse, especially the inclusion of this data in commercially distributed databases.

As we noted in the Initial Sponsor Letter, we are willing to provide significant additional data. We will provide this data even though investors generally were not seeking incremental data for Auto ABS prior to the release of the Commission Proposal. However, we request that the Commission calibrate the type and amount of data to be provided to investors by taking into account public policy concerns, the consensus reached with grouped data investors and the proprietary and competitive concerns unique to our asset classes.

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We greatly appreciate the hard work that the Commission and its staff have put into the Commission Proposal. We also appreciate the opportunity to comment on the Commission Proposal. If the Commission or the staff desires, we would be happy to discuss further any of the points in this letter.

Sincerely,

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