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October 4, 2011

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

**Re: Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other
Additional Requests for Comment: File No. S7-08-10**

Dear Ms. Murphy:

Intex Solutions, Inc. ("Intex") appreciates the opportunity to submit comments to the Securities and Exchange Commission (the "SEC") with respect to the re-proposed rules to amend Regulation AB. We commend the SEC for its Regulation AB efforts to improve asset disclosure consistent with the Dodd-Frank Wall Street Reform. These efforts will facilitate investor analysis of ABS and address the underlying problems in the asset-backed industry that manifested themselves during the financial crisis. Similarly, we laud the Commission for removing the highly controversial waterfall computer program mandate from this re-proposal.

Within the re-proposal, however, the SEC indicates its intent to re-propose a waterfall computer program mandate at a later date. We strongly urge the SEC not to re-propose such a mandate as it is unnecessary and will harm investors, market participants, and securitization. Any waterfall computer program mandate, especially one where the program must be written in an open-source code such as Python, will prove injurious to capital formation, lower investor yield on securities, impose extensive and unnecessary costs, stifle improvement to waterfalls, restrict competition, and harm investors and market participants.

I. Waterfall Computer Programs Were Not the Problem

Since the collapse of 2007, there have been numerous studies performed by unbiased, independent entities such as the Federal Reserve Board, the Financial Crisis Inquiry Commission, the Federal Deposit Insurance Corporation and others to identify the causes of the securitization market failure. These reviews consistently identified the assets as the problem, including insufficient asset level disclosure and comprehension as contributing factors. None of these reviews cited a lack, or deficiency, of waterfall computer programs as a cause. The reason



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for this is simple; these programs were available, affordable, and they performed. While the current re-proposed rules strike at the heart of the asset disclosure issues, any waterfall computer program mandate is a solution in search of a non-existent problem.

Waterfall computer programs were widely accessible to all market participants who sought to use them – from the smallest community bank investing in ABS securities to the largest pension fund or investment bank. Intex is one of many firms in a highly competitive vendor market that vies for these very clients. Such competition drives innovation and cost efficiencies that allow for small investors, with limited budgets and programming resources, to obtain best-in-class waterfall models at an affordable price.

II. A Waterfall Computer Program Mandate Will Hurt, Not Help Investors

In testimony from Professor Stephen Schwarcz of Duke University in his June 6, 2011 response to the Senate Banking Committee, Professor Schwarcz stated:

I do not think this proposal is needed. The materiality requirement of existing disclosure law already requires an explanation of waterfalls. In my experience, these explanations are generally clear and (in so far as they can be) straightforward. I fear this proposal could even backfire. A mathematical program demonstrating the flow of funds could aggrandize the waterfall model, giving the model (as discussed in the next paragraph) greater credence than it deserves. Sophisticated investors do not, in my experience, have a problem understanding waterfalls and funds flows.

We agree with Professor Schwarcz's assertion. We make our living building waterfall computer programs and forecasting tools, so we obviously believe in the utility of our product. While we compete with many firms on our ability to efficiently and accurately model securitization waterfalls, we also compete on our ability to develop robust tools around these waterfalls. Such tools accept complex scenario forecasts, project accurate cash flows on nearly every type of debt, and provide comprehensive, transparent results back to investors.

In his testimony, Professor Schwarcz also explained that precise cash flow projections are the driver of informed investment decisions.¹ A sophisticated investor needs to recognize the sensitivities that even small changes in their predictive forecast will have on a given bond. Such

¹ <http://www.sec.gov/comments/s7-08-10/s70810-197.pdf>



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analysis is readily available in commercial products. This transparency protects investors in a way that stand-alone, open-source programming code cannot.

By mandating an open-source waterfall program, the SEC will likely introduce “model arbitrage” opportunities for sophisticated investors that employ commercial systems against small investors who do not. Any mandated program, particularly one that is open source, will be designed only to meet the minimum standards defined by the SEC. It will not have the benefit of the competitive pressure which drives the innovation of commercial systems, and will certainly fall short of the transparency and analytics provided by third party vendors. Under this scenario, smaller investors, as Professor Schwarcz articulated, may “aggrandize” value of the results from an inferior, SEC-endorsed, waterfall model. Ultimately this will lead to imprudent investments and injury as they embark in trades against counterparties that utilize commercial models to obtain better market information and understanding of the security.

III. The Costs Greatly Outweigh Any Purported Benefits

A fundamental first step in developing an accurate cost-benefit analysis for the waterfall mandate should have been to first assess existing market practices. As described above, waterfall computer programs were widely available and utilized prior to the crisis. They were available to all types of investors and market participants – we know this because we are proud to have as our clients small community banks, pension funds, government entities, hedge funds, and large investment banks. That programs were widely available and utilized prior to the crisis undercuts any notion that, by making available a free waterfall, investors will become less reliant on credit ratings to direct their investments.

This oversight alone is enough to raise doubts about the necessity of a waterfall mandate. These reservations are exacerbated greatly upon taking a look at the overall cost of the SEC’s original proposal. As we highlighted in our original comment letter on July 30, 2010, we believe the SEC grossly underestimated, by orders of magnitude, the substantial costs associated with developing, maintaining, and supporting the use of waterfall programs.²

Although the 2010 proposal states that the cost will be borne by the issuers tasked with obtaining and updating these models, this is not entirely accurate as the issuers will not internalize these costs. Rather, investors will suffer because issuers will either restrict credit by choosing not to participate in the market, or issuers will pass along this cost, which investors will experience in the form of reduced yield on their investment.

² <http://www.sec.gov/comments/s7-08-10/s70810-57.pdf>



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IV. A Waterfall Computer Program Mandate is Outside of the SEC's Mission

Mandating a specific waterfall computer program or open source code marks a major divergence from the SEC's mission of a disclosure agency with the explicit purpose of protecting investors; ensuring fair, orderly, and efficient markets; and facilitating capital formation. With that approach, the SEC would become a merit agency that passes judgment on the value of open source programs over proprietary programs, that impinges on the intellectual property rights of market participants by requiring certain models over the ones that private market participants have developed through decades of costly research and development, and that significantly alters the competitive landscape of the ABS market in a way that fosters inferior models and harms overall market competition. These actions run contrary to the mandate of the SEC and encroach on the jurisdictions of agencies such as the courts for intellectual property rights and Federal Trade Commission and the Department of Justice for antitrust and competition questions. We encourage the SEC to stick to its statutory mandate and jurisdiction.

* * * * *

For the reasons discussed above and in our prior comment letters, we urge the SEC not to re-propose the waterfall computer program.

Intex appreciates the opportunity to submit these comments and would be glad to address any other concerns or questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin F. McCarthy". The signature is fluid and cursive, with a large, stylized "K" and "M".

Kevin F. McCarthy
Managing Director
Intex Solutions, Inc.