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Submitted via E-mail to rule-comments@sec.gov

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

Re: Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities, File number S7-08-10

Dear Ms. Murphy,

The Association for Financial Markets in Europe ("**AFME**")[1] is pleased to respond to the request for comment by the Securities and Exchange Commission (the "**Commission**") on Release Nos. 33-9244, 34-64968, Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities (the "**Re-Proposal**").[2] The Re-Proposal revises and re-proposes certain rules originally proposed in April 2010 by Release Nos. 33-9117, 34-61858, Asset-Backed Securities; Proposed Rule (the "**2010 Proposal**" and, together with the Re-Proposal, the "**Proposals**"),[3] in light of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") and comments received in response to the 2010 Proposal. On August 2, 2010, AFME provided comments to the Commission on the 2010 Proposal (the "**Prior Comment Letter**").[4]

This response has been prepared by a working group of AFME members comprised primarily of issuers/originators, arrangers and legal advisers. In particular, representatives of the investors group of AFME members did not participate in the

[1] AFME represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME was formed on 1 November 2009 by the merger of the London Investment Banking Association and the European operations of the Securities Industry and Financial Markets Association ("**SIFMA**"). AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European, and UK capital markets. AFME is the European regional member of the Global Financial Markets Association (GFMA) and is an affiliate of the U.S. Securities Industry and Financial Markets Association (SIFMA) and the Asian Securities Industry and Financial Markets Association (ASIFMA). For more information, visit the AFME website, www.afme.eu.

[2] Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities, 76 Fed. Reg. 47948 (Aug. 5, 2011).

[3] Asset-Backed Securities; Proposed Rule, 75 Fed. Reg. 23328 (May 3, 2010).

[4] The Prior Comment Letter is available at http://www.sec.gov/comments/s7-08-10/s70810-80.pdf.

drafting of this letter. As such, this response may not reflect the views of all AFME members.

As noted in the Prior Comment Letter, AFME supports the Commission's efforts to restore confidence in asset-backed markets and to promote greater efficiency of those markets through appropriate disclosure and reporting standards. We therefore appreciate and support the Commission's reconsideration of certain proposals made in the 2010 Proposal in light of the Dodd-Frank Act and comments received in response to the 2010 Proposal.

Notwithstanding our general support of the Commission's efforts, our members continue to have significant concerns relating to the rules put forward by the Proposals and their impact on European (and other non-U.S.) originated transactions and market participants. In this regard, our working group members urge the Commission to further consider AFME's concerns raised in the Prior Comment Letter in addition to the comments we set out in this letter.

We broadly support the comments made by the dealer and sponsor members of our sister organization, the Securities Industry and Financial Markets Association ("**SIFMA**"), in its letter to the Commission in response to the Re-Proposal (the "**SIFMA Letter**"). Our response therefore focuses on considerations raised by the Re-Proposal from the perspective of European market participants that were not addressed in the SIFMA Letter.

Summary of Comments

A summary of AFME's views on the Re-Proposal are as follows:

- Our working group members broadly support the comments made by the dealer and sponsor members of SIFMA in the SIFMA Letter.
- The Certification Requirement should not extend beyond the disclosure in the prospectus, but if it does, the Commission should accept the changes proposed in Annex A of the SIFMA Letter as we believe this to be in line with European standards.
- The current proposal to file the transaction documents by the date of the preliminary prospectus is too restrictive and would prevent the issuers from modifying the transaction documents to meet investor requests.
- The Commission should implement an "equivalence" regime that would recognize the asset-level data requirements developed by appropriate authorities, for example the European Central Bank and the Bank of England, that are tailored to assets originated outside of the U.S.
- To avoid conflicts with privacy and data protection laws in some European jurisdictions, the Commission should permit non-U.S. issuers to rely on "equivalence" regimes that take these laws into account when requiring asset-level disclosure and/or employ a "provide-or-explain" regime to allow non-U.S. issuers to offer securities in the U.S. without violating their local privacy and data protection laws.
- The Commission should permit grouped account data for Auto ABS and other similar granular asset classes.

- The blanket requirement that private offerings under Rule 506 and Rule 144A contain the same level of disclosure as public offerings in the U.S. should not be adopted.
- The Commission should provide guidance on the definition of "structured finance product" to avoid capturing products within the scope of the Private Offering Proposals that are fundamentally different from standard ABS and, for the avoidance of doubt, should explicitly exempt covered bonds and asset-backed commercial paper from the definition of "structured finance product."
- In general, asset-level disclosure should not be required for private offerings, but in the event that it is required, such asset-level disclosure should be limited to the asset classes that are specifically prescribed for in Regulation AB.

Comments

We wish to stress the global nature of the asset-backed market and the corresponding issues which would arise if the Commission adopted changes which did not take account of the views of non-U.S. market participants and current and proposed regulation of asset-backed securities ("**ABS**") outside the U.S., in particular in the European Union. While the Re-Proposal focuses on U.S. originated transactions in a number of respects, the proposals are equally relevant in the context of European (and other non-U.S.) originated transactions to the extent that such transactions involve an offering of securities into the U.S. or otherwise fall within the Commission's jurisdiction.

Our detailed comments with respect to the Re-Proposal are set out below.

I. Securities Act Registration

The majority of the Re-Proposal introduces new requirements to the 2010 Proposals in relation to the eligibility criteria for ABS to be issued on a delayed basis pursuant to Rule 415 (shelf registration) of the Securities Act of 1933 (the "**Securities Act**"). Our responses to this part of the Re-Proposal largely follow the positions set forth in the SIFMA Letter, but we have set forth a few responses below where we have additional comments to those addressed by the SIFMA Letter.

a. Certification Requirement

We support SIFMA's position that the proposed Certification Requirement should only address the disclosure included in the prospectus and should not extend to the credit quality of the securities being offered. The chief executive officer and the executive officer in charge of securitization of the depositor's assets are not personally or individually trained to conduct a credit analysis on the pool assets.

If the Commission nonetheless decides to adopt a Certification Requirement that encompasses the credit quality of the securities being offered, we strongly encourage the Commission to adopt SIFMA's requested changes as set out in Annex A of the SIFMA Letter which we believe to be in line with market standards in the European Union.

Specifically, in the European Union, the Prospective Directive requires the issuer to make a confirmation in the prospectus, which the Commission referred to in proposing the Certification Requirement, that the pool assets have "characteristics that demonstrate capacity to produce funds to service any payments due and payable on the securities."[5] The European Securities and Market Authority, an EU Authority that provided technical advice on compliance with the European Union requirements, has advised that "[the] confirmation should be considered as some sort of general assurance given by the issuer to investors that it only intends to issue, under the relevant base prospectus, securities backed by underlying assets which fulfill the necessary conditions."[6] The Commission's proposed Certification Requirement, in contrast to the confirmation required by the Prospective Directive incorporates finer levels of detail (such as internal credit enhancements) and does not permit the flexibility to qualify such statements. On the other hand, it is common practice in Europe for issuers to qualify the confirmation in the prospectus by reference to the risk factors and other pertinent disclosures. Therefore, by incorporating SIFMA's suggested changes, the proposed Certification Requirement would be in line with existing practices relating to the confirmation requirement required under the Prospectus Directive.

II. Disclosure Requirements

While AFME members have an interest in the Commission's Proposals that affect shelf-registration, AFME members rely mainly on Rule 506 and Rule 144A when issuing securities in the U.S. As such, the Proposals related to disclosure requirements will have a significant impact on the European issuers that enter the U.S. market.

As was noted in the Prior Comment Letter, industry estimates (calculations by AFME and SIFMA, based on Dealogic data) suggest that prior to the financial crisis up to 25% of total issuance of European-originated securitizations were offered in reliance on Rule 506 and Rule 144A. This trend has increased in the years since then. To take a very recent example of the importance of the 144A market to EU issuers, in Santander's Holmes UK master trust transaction launched in September 2011, over 85% of the securities in the £2.4 billion offering were placed in the U.S. Given the significance of the potential impact of the Commission's Proposals on the European Market, and in light of the global nature of the asset-backed market, AFME members strongly urge the Commission to coordinate with the European Central Bank and the Bank of England on disclosure requirements in the various jurisdictions and to develop an "equivalence regime" that would standardize and facilitate offerings globally. Even on their own, the Commission's Proposals will be difficult for

[5] The European Union requires "confirmation that the securitised assets backing the issue have characteristics that demonstrate capacity to produce funds to service any payments due and payable on the securities." OJ L, 29.4.2004, Annex VIII, 2.1, Commission Regulation (EC) No 809/2004, http://ec.europa.eu/internal_market/securities/docs/prospectus/reg-2004-809/reg-2004-809_en.pdf.

[6] Consultation Paper: ESMA's technical advice on possible delegated acts concerning the Prospectus Directive as amended by the Directive 2010/73/EU (ESMA) No. 2011/141, para. 58, http://www.esma.europa.eu/data/document/11_141.pdf (June 15, 2011).

European issuers to comply with, but if the Commission does not adopt the "equivalence regime", European issuers that want to offer securities in both the U.S. and European markets will have an exponentially more difficult task of having to comply with regimes with significantly different requirements. Inconsistent disclosure requirements are a concern for European issuers that market in the U.S., but would also create a barrier to entry for U.S. issuers seeking to offer their securities in Europe. The Commission has the opportunity to help standardize global market practices for ABS and should make every effort at this juncture to reach out to European authorities to establish a coordinated approach to ensure a level playing field for global issuers of ABS.

a. Filing of Transaction Documents

We agree with the Commission's proposal to have the preliminary prospectus provided to investors in advance of the first sale of the offering. However, AFME's members wholeheartedly support SIFMA's argument that the requirement to file the transaction documents, in substantially final form, by the date of the preliminary prospectus would pose a severe restriction on the parties' ability to tailor the transaction to meet investor requests while providing minimal additional benefit to investors. Additionally, any filing requirements adopted by the Commission should be consistent with the requirements already in place in the European Union and its member states. For example, the Bank of England, as part of its eligibility criteria for its Discount Window Facility, only requires that the prospectus, together with the relevant closing transaction documents, be made available to investors, potential investors and certain other market professionals acting on their behalf via a website maintained by the transaction parties.[7] Such flexibility ensures that investors promptly receive all material transaction documents without restricting their ability to influence the characteristics of the ABS.

b. Asset-Level Data

1. General response to the asset-level provisions of the Re-Proposal

In the Europe Union, each of the European Central Bank and the Bank of England has implemented new collateral requirements in order for ABS to be eligible for financing under their existing monetary policy tools (e.g., repurchase ("repo") transactions and the Discount Window Facility).[8] A significant component of the new criteria for both institutions is asset-level and other data requirements for ABS. In both cases, detailed asset-level data proposals have been published for certain asset classes (for example, residential mortgages) and working groups are currently engaged in assessing

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[7] Market Notice – Detailed Eligibility Requirements for Residential Mortgage Backed Securities and Covered Bonds Backed by Residential Mortgages, para. 17, http://www.bankofengland.co.uk/markets/marketnotice101130abs.pdf (Nov. 30, 2010).

[8] *See* European Central Bank, Transmission of ABS loan-level data http://www.ecb.int/paym/coll/loanlevel/transmission/html/index.en.html; Market Notice – Detailed Eligibility Requirements for Residential Mortgage Backed Securities and Covered Bonds Backed by Residential Mortgages, http://www.bankofengland.co.uk/markets/marketnotice101130abs.pdf (Nov. 30, 2010).

the appropriate disclosure requirements for other more granular asset classes, such as autos, credit cards and consumer loans. Significant work has already been done to develop asset-level disclosure and reporting standards which reflect the reality of the European market. For example, considerable attention has been given to ensure that privacy laws are not violated and to allow for differences in laws and practices between the jurisdictions within each institution's authority.

In the European Union, Article 122a of the Capital Requirements Directive, which applies to new securitizations from the beginning of 2011, also requires the provision of loan-level data in some cases. Under Article 122a, credit institutions, in order to invest in or acquire exposure to an ABS or other securitization position, must be able to demonstrate to their regulators that they have a sufficient understanding of the particular ABS exposure, particularly the transaction structure and underlying assets. Under this requirement of Article 122a, credit institutions generally must perform due diligence that is based on the provision of asset-level data. However, the Committee of European Banking Supervisors' (now the European Banking Authority) guidelines to Article 122a indicate that the provision of loan-level data may not be appropriate in securitizations of a "large volume of exposures that are highly granular."[9] We fully expect that the criteria required by the European Central Bank and the Bank of England for asset-level data disclosure will in effect help determine the market standard for what investors expect to receive including for purposes of Article 122a (and other similar regulatory initiatives).

At the moment, there are important differences between the asset-level disclosure and reporting requirements contemplated by the Proposals and each of the European Central Bank's and Bank of England's proposals and the Article 122a standards mentioned above. Specifically, there are inconsistencies between the proposed reporting templates as each one reflects the data fields and terminology commonly used in the relevant jurisdiction of origin and the meanings of certain key terms are not harmonized. In addition, there are inconsistencies between the various requirements relating to when the relevant information should be provided and how such information should be presented.

Accordingly, we strongly request that the Commission consider (in cooperation with the appropriate European authorities) an "equivalence" regime whereby the asset-level data requirements put forth by the Proposals will be satisfied when asset-level data provided by a non-U.S. issuer complies with the asset-level data requirements of a relevant authority as deemed appropriate by the Commission. This would significantly reduce the duplication of compliance costs for European market participants that would arise from having to follow separate and distinct asset-level reporting standards.

To the extent the above approach is not adopted by the Commission or it is not applicable with respect to a specific asset class, we agree with SIFMA's

[9] Guidelines to Article 122a of the Capital Requirements Directive, para. 128, http://www.eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2010/Application%20of%20Art.%20122a%20of%20the%20CRD/Guidelines.pdf (December 31, 2010).

comments regarding the "provide-or-explain" regime. As suggested in the SIFMA Letter, issuers would be permitted to substitute an explanation for the exclusion of certain information from a particular asset-level data field instead of a rote requirement to complete all asset-level data fields. We believe such a regime provides a reasonably flexible approach to the prescriptive requirements currently contemplated under the Proposals and would be consistent with the "comply or explain" principles adopted by both the European Central Bank and the Bank of England for asset disclosure requirements.[10]

2. Privacy/DATA Protection concerns

We noted in our Prior Comment Letter that we had significant concerns that the asset-level data requirements proposed in the 2010 Proposals would conflict with bank secrecy and/or data protection laws in some European jurisdictions. We therefore appreciate the Commission's recognition of this concern in the Re-Proposal.

We believe that the "equivalence" regime as discussed above would provide the best solution to the tension between asset-level disclosure and the privacy concerns referred to in the Prior Comment Letter. The European Central Bank's templates for asset-level data disclosure were designed to "ensure compliance with the requirements of data protection, banking secrecy and confidentiality regulations, which notably require the anonymity of the individual borrowers."[11] The "equivalence" regime would automatically adopt the standards that are ultimately adopted after thorough consideration of the privacy laws in Europe. In the event that the Commission is not prepared to adopt the "equivalence" regime, the "provide-or-explain" regime would be a helpful alternate. The "provide-or-explain" regime would allow issuers to explain that certain data fields were not able to be displayed because such disclosure is prohibited by applicable privacy laws. Investors would then have the opportunity to decide whether such information was integral to their investment decision or not.

Additionally, as discussed in greater detail below, our members have noted that the privacy concerns existing in European ABS transactions could be further mitigated if the Commission were to expand the "grouped account" asset-level disclosure standards adopted for credit cards to the asset classes suggested below.

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[10] *See* European Central Bank, Transmission of ABS loan-level data http://www.ecb.int/paym/coll/loanlevel/transmission/html/index.en.html; Market Notice – Detailed Eligibility Requirements for Residential Mortgage Backed Securities and Covered Bonds Backed by Residential Mortgages, http://www.bankofengland.co.uk/markets/marketnotice101130abs.pdf (Nov. 30, 2010).

[11] Public Consultation on the Provision of the ABS Loan-Level Information in the Eurosystem Collateral Framework, European Central Bank. p. 2, http://www.ecb.int/paym/pdf/cons/abs/ecb_consultation_on_loan-by-loan_information_for_abs.pdf?5130c5045bbebac25e29b5d373e2e27b.

3. Grouped Account Data (Equipment ABS and Equipment Floorplan ABS)

In the Re-Proposal, the Commission has requested comment as to whether the "grouped account" approach for the disclosure of credit card ABS should also be applied in the context of equipment related ABS ("**Equipment ABS**").

The level of Equipment ABS issuance in Europe is not as substantial as it is in the U.S., however issuance of ABS related to auto loans, leases and floorplan financing ("**Auto ABS**"), which are similar to Equipment ABS in many respects, is substantial. There is also some, albeit more sporadic, issuance of consumer loan ABS. Therefore, our members wish to express their strong support for the notion that it is more appropriate for asset-based information for Auto ABS and other similar granular asset classes to be provided as grouped account data in lieu of asset-level disclosure. Our members' rationale for this position follows the reasoning put forward by the Auto Issuers[12] in their comments, dated August 2, 2010, to the Commission in relation to the 2010 Proposals (the "**Auto Issuer Letter**").[13]

For transactions where the pool assets are highly granular and highly diversified, such as for Auto ABS, consumer loan and credit card receivables transactions, asset-level data provide little benefit to investors as the substantial quantity of such information is difficult to digest and individually is statistically insignificant. The benefit of asset-level data is further diminished for transactions where such asset pools are revolving. The relevance of such detailed information in a "grouped account" format would provide significantly more data to investors in a manageable format.

We, therefore, encourage the Commission to consider a flexible, principles-based approach that would permit asset-based information in "grouped account" format based on levels of granularity and other relevant characteristics (consistent with credit cards, Auto ABS and other similar granular asset classes) prescribed by the Commission. This principles-based approach would allow the issuers and investors to more readily identify the appropriate level of data for any asset class. If the Commission does not adopt such a principles-based approach, we encourage the Commission to consult and coordinate with the European Central Bank and the Bank of England, to whom we have also provided comments in respect of the "grouped asset data" approach, and adopt a consistent approach. [14]

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[12] Ally Financial Inc., American Honda Finance Corporation, AmeriCredit Corp., 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, 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. and World Omni Financial Corp. (the "**Auto Issuers**").

[13] The Auto Issuer Letter is available at http://www.sec.gov/comments/s7-08-10/s70810-136.pdf (Aug. 2, 2010).

[14] European Central Bank, Results of the Public Consultation on the Provision of ABS Loan-Level Information in the Eurosystem Collateral Framework, p. 4, http://www.ecb.int/pub/pdf/other/consultationabsloanlevelinformationen.pdf (2010).

c. Privately Issued Structured Finance Products

The 2010 Proposal introduced significant requirements for issuers and resellers of "structured finance products" to make available to investors public-style disclosure in private offerings of ABS using the safe harbors from registration provided by Rule 506 (issuance) of Regulation D and by Rule 144A (resale) under the Securities Act (the "**Private Offering Proposals**"). In the Re-Proposal, the Commission, in recognition of several comments made to the 2010 Proposal, makes a number of requests for comment on the scope of asset-level disclosure that should be required as part of the Private Offering Proposals. However before responding to these specific requests of the Commission, the importance of the 144A market for non-U.S. issuers and potential impact of the Private Offering Proposals on the non-U.S. asset-backed market compel us to re-address these rules more generally.

1. Public-style disclosure should not be required for private offerings of ABS

As a starting point, we concur with SIFMA's strong overall objection to the Private Offering Proposals for the same reasons set forth in the SIFMA Letter.

Additionally, our members believe that the Commission should not proceed with the Private Offering Proposals because they would create an uneven playing field for European issuers and may result in significant disruption in the already fragile European ABS market. By requiring U.S. public-style disclosure, the Private Offering Proposals would require European market participants relying on Rule 506 or Rule 144A to comply with a prescriptive disclosure regime that does not take into account the differences between the legal and regulatory regimes of European Union member states and the U.S., or between different transaction structures and product types. European securities disclosure rules under the Prospectus Directive and the Transparency Directive, however, do allow for such differences. If the Private Offering Proposals are implemented without coordinating with European institutions and market participants, significant compliance challenges and increased costs will arise for European market participants.

Without the flexibility that they currently have under Rule 506 and Rule 144A, European issuers would not be able to efficiently adapt existing disclosure regulations in Europe that are tailored to the demands of those investors, existing regulatory and disclosure requirements, and market practices in Europe.

For the above reasons, the Commission should not go forward with the Private Offering Proposals. However, if the Commission does decide to implement the Private Offering Proposals broadly as contemplated by the Proposals, we strongly encourage the Commission to adopt (and implement with the cooperation of European authorities) a mutual recognition and acceptance process by which ABS transactions offered in compliance with the disclosure regulations of the European Union would be deemed by the Commission to be sufficient for purposes of private offerings under Rule 506 or Rule 144A. Such an approach would respond to the G20's call for coordination between different countries' authorities and would further the important goals of preserving a "level playing field" and facilitating liquidity across global markets. By removing the

difficulties of structuring transactions to comply with multiple and inconsistent regulations, a mutual recognition regime would help the revival of a healthy global securitization market while preserving the improved disclosure standards being implemented in the U.S., the European Union and other jurisdictions.

2. The definition of "structured finance product" is too broad

We also continue to believe that the definition of "structured finance product" used in the Private Offering Proposals is too broad. As currently defined, "structured finance product" includes any "security collateralized by any pool of self-liquidating financial assets...that entitles its holder to receive payments that depend on the cash flow from the assets."

Without further clarification, the scope of the Private Offering Proposals would be unclear and, therefore, could have a significant chilling effect with respect to markets in certain products, such as covered bonds, asset-backed commercial paper ("**ABCP**") and similar products (e.g., lending facilities secured by trade receivables), that are fundamentally different from standard ABS. Such products, unlike standard ABS, provide full recourse to the issuer, originator and/or sponsor (or in the case of ABCP, typically are supported by liquidity facilities from the bank program sponsor), and the credit quality is typically linked to the credit quality of such parties rather than the self-liquidating nature of the collateralized financial assets. These characteristics mean that the payments on the securities do not "depend" on the cash flows of the collateralized assets in the same way as for standard ABS and therefore should not fall within the scope of the Private Offering Proposals.

In this regard, should the Private Offering Proposals be implemented, we encourage the Commission to recognize the fundamentally different nature of covered bonds and ABCP from standard ABS and, therefore, explicitly exempt such securities from the scope of the Private Offering Proposals. Furthermore, in order to avoid any confusion in the market, we ask the Commission to amend and/or clarify the definition of "structured finance product" generally to not apply to products possessing characteristics similar to covered bonds and ABCP, as noted above.

3. Responses to the specific requests for comment in the Re-Proposal

With respect to the Commission's specific requests for comment to the Private Offering Proposal, our responses are as follows:

- Request for Comment No. 98: ***The Commission asks whether structured finance products sold in a private offering should only be required to provide asset-level disclosure to the extent that such structured finance products are also "asset-backed securities" where, following enactment of the Proposals, asset-level disclosures would be prescribed in Regulation AB (i.e., currently, residential mortgage backed securities; commercial mortgage backed securities; automobiles loans or leases; equipment loans or leases; student loans; floorplan financings; corporate debt; and resecuritizations).***

Subject to our response to "Request for Comment No. 99" below and our overall responses in this letter, our members are of the opinion that limiting the requirement for asset-level disclosure to those transactions that are "asset-backed securities" under Regulation AB provides a greater level of regulatory certainty than if the asset-level data requirements put forward under the Proposals were to be required for all offerings of "structured finance products" under Rule 506 or Rule 144A.

- Request for Comment No. 99: ***The Commission asks whether asset-level data should be required in private offerings.***

  As discussed above, we are of the view that the Private Offering Proposals, including any requirements to provide asset-level data, should not be adopted by the Commission. To the extent the Private Offering Proposals are implemented, we encourage the Commission to make the asset-level data requirements more flexible for European market participants by adopting the "equivalence" regime put forward in this letter and/or the "provide-or-explain" approach as set forth in the SIFMA Letter.

- Request for Comment No. 100: ***The Commission asks how it can address concerns that the disclosure requirements for private offerings of structured finance products that are not also "asset-backed securities" under Regulation AB would be subject to a hybrid of corporate and Regulation AB disclosure.***

  We believe the Commission should specify that the disclosure required for a structured finance product that is not also an "asset-backed security" under Regulation AB should begin with Regulation AB, but incorporate the flexibility of a principles-based approach to determine how the required disclosure could deviate therefrom. This regime would be particularly important to transactions such as mortgage master trusts that no longer fall within the proposed definition of "asset-backed securities" as set out in the 2010 Proposals. Without such a regime, the market would not have a clear indication of the disclosure requirements that would apply to such transactions, especially in light of the fact that a corporate disclosure regime would not be a suitable template for such disclosures.

- Request for Comment No. 101: ***The Commission asks whether a different type of disclosure is appropriate for structured finance products that do not also fit with the definition of "asset-backed security" under Regulation AB.***

  We do not have a suggestion for a different type of disclosure that should be applied for transactions in structured finance products that are also not asset-backed securities. As currently defined, "structured finance product" is too broad to develop a comprehensive "one-size-fits-all" approach for determining what level of asset disclosure is appropriate.

III. Waterfall Computer Program

We would like to take this opportunity to express our concerns with the Commission's Proposal that issuers disclose a computer program that models the flow of funds, or "waterfall", provisions of the transaction. The requirements for the waterfall computer program are extremely prescriptive and inflexible and would require the issuer to develop a program tailored specifically to satisfy the Commission's Proposals. The waterfall computer program, if required by the Commission, should instead be modeled on the Bank of England's cash flow model requirements. Our members believe this approach strikes a good balance by providing the investor with a workable model that captures pertinent information without requiring a highly specified program that may be inconsistent with programs currently in use by issuers and investors.[15] Specifically, the Bank of England permits the issuer to provide the cash flow model in whichever format the issuer chooses. The market has already adapted to the Bank of England's requirement and we encourage the Commission to investigate this alternative approach.

IV. Transition Period

The Commission should provide issuers with at least 24 months to comply with the Proposed Rules in light of the severe penalties for failing to comply with the requirements and the amount of time that will be required to coordinate and develop the computer and other operational systems necessary to obtain and disclose the asset-level data. The Commission should also appreciate the additional work that European issuers will need to undertake to issue in the U.S. if the "equivalence" regime is not adopted. European issuers will need to ensure that any asset-level disclosure required by the Commission will not violate privacy laws in the relevant European jurisdictions and will need to develop the capabilities to adapt their transactions to comply with different and conflicting regulatory regimes.

V. Conclusion

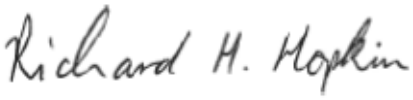
In light of the increasingly cross-border nature of ABS offerings, we urge the Commission to communicate and engage in detail with the European Central Bank and the Bank of England to engender a more transparent, asset-backed market both nationally and internationally. It is also important given current difficult economic and financial conditions for U.S. and European issuers to have access to each other's markets. We also stress that where possible the Commission should seek to adopt an "equivalence" regime to facilitate such offerings and prevent any commercial discrepancies. Additionally, we would like to highlight that while regulations to promote safer markets are of upmost importance, such regulations should be carefully prescribed so as to enable issuers, investors and the markets the freedom to adapt to changing economic conditions and to maximize global liquidity to fully ensure the financing of important "real-economy" assets.

Thank you for soliciting our comments as part of your Re-Proposal. We would be pleased to assist the Commission further if required. In particular, if you have any

[15] Market Notice – Detailed Eligibility Requirements for Residential Mortgage Backed Securities and Covered Bonds Backed by Residential Mortgages, Annex B – Cash Flow Model Requirements, http://www.bankofengland.co.uk/markets/marketnotice101130abs.pdf (Nov. 30, 2010).

questions or desire additional information regarding any of the comments set out above please do not hesitate to contact the undersigned on + 44 207 743 9375 or by email at richard.hopkin@afme.eu.

Yours sincerely,



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