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VIA ELECTRONIC MAIL (rule-comments@sec.gov)

Securities and Exchange Commission
http://www.regulations.gov
100 F Street, NE
Washington, DC 20549-1090
Attention: Elizabeth M. Murphy, Secretary
File Number S7-08-10

Re: Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment

Ladies and Gentlemen:

Wells Fargo & Company ("Wells Fargo") welcomes the opportunity to provide comments regarding the re-proposal of shelf eligibility conditions for asset backed securities and other additional requests for comment (the "Re-Proposal"). We submitted a detailed comment letter dated August 2, 2010 (the "Prior WF Comment Letter") on the SEC's 2010 proposed revisions to Regulation AB (the "2010 Proposal" and, together with the Re-Proposal, the "Proposed Rules") and commend the SEC for its efforts to coordinate its rule making activities on Regulation AB with those taking place pursuant to the various provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). We participate in the asset backed securities markets in many roles, including as an issuer, sponsor, underwriter, investor, trustee, master servicer, primary servicer and securities administrator.

We have divided our response into three sections. Section I sets forth our comments on the re-proposed shelf eligibility requirements. Section II sets forth our comments with respect to the re-proposed disclosure requirements as they relate to Item 1100(f) of Regulation AB and the asset-level data requirements of the Proposed Rules. Section III sets forth our responses on the additional requests for comment relating to the "privately issued structured finance products" provisions of the Proposed Rules. Where appropriate, we have included asset-class specific discussions and responses, such as discussions around residential mortgage-backed securities ("RMBS"), commercial mortgage-backed securities ("CMBS"), auto loan- and lease-backed ABS ("Auto ABS") and others.

Some of our primary concerns with the Re-Proposal are as follows:

- **<u>CEO Certification</u>**

  We continue to believe that this certification should be limited to the disclosure included in the prospectus and therefore believe that clause 2 should encompass the entire certification. However, to the extent that the SEC continues to believe that this certification should extend to matters beyond those covered in clause 2, we are extremely concerned that, without modification, the forward-looking nature of the re-proposed certification will make it difficult or impossible for an executive of the depositor to execute such a certificate. We have included as Exhibit A our suggested changes to the certificate which would address these concerns.

- **<u>Credit Risk Manager Provisions</u>**

  We believe that these types of contractual provisions will be much more effective than the SEC's previous proposal in ensuring that representations and warranties are properly monitored and enforced. However, although we support a requirement for transaction documents to include loan-level review triggers based upon specified objective criteria, the final rules should not mandate minimum trigger levels for credit risk manager reviews. Transaction parties should have the flexibility to tailor these triggers as appropriate for particular underlying asset types and particular transactions.

- **<u>Application of Credit Risk Manager Provisions to Other Asset Classes</u>**

  We appreciate the need to improve the enforcement mechanisms for breaches of representations and warranties in certain types of transactions. However, in asset classes such as Auto ABS and Credit Card ABS, there has been little or no historical repurchase request activity and these transactions have generally performed well, even throughout the financial crisis. In CMBS transactions, the special servicer and operating advisor already perform this role in a more effective and efficient manner. Given the costly, duplicative and counterproductive effect these requirements would have on Auto ABS, Credit Card ABS and CMBS, these types of transactions should be exempt from the credit risk manager requirements of the Proposed Rules.

- **<u>Investor Communications</u>**

  While facilitating communication between investors is a good idea; we do not believe that including such requests on Form 10-D is the most appropriate, timely or cost-effective manner in which to achieve that goal. Instead, investors and transaction parties should have the flexibility to set forth the specific terms that will facilitate communication among investors in the underlying transaction agreements.

- **<u>Filing of Transaction Documents</u>**

The preliminary prospectus is already required to contain all material information related to a particular transaction. Therefore, we do not believe any material benefit is achieved through requiring the filing of substantially final transaction documents at that same time as the filing of the preliminary prospectus. While we see no material benefit to such a requirement, we do believe it is likely to result in additional costs to consumers.

- **Privately Issued Structured Finance Products**

  We continue to believe that creation of the "SQIB" investor is the best way to address the SEC's concerns with respect to private issuers of "Structured Finance Products" ("SFPs"). Various constraints, such as privacy concerns, cost and timing concerns, have kept many issuers, including issuers of Regulation AB type asset classes, out of the public market. If the SEC insists on additional disclosures in the private markets, then those requirements should be principles-based and limited to Regulation AB type assets.

SECTION I: SHELF ELIGIBILITY REQUIREMENTS

Currently, under existing Regulation AB, issuers can conduct public offerings of asset backed securities ("ABS")[1] on a delayed basis subject to certain conditions so long as the securities are rated investment grade by a nationally recognized statistical rating organization ("NRSRO"). The 2010 Proposal would remove the investment grade requirement and instead require four new transaction criteria for shelf-eligibility: (i) a certification by the CEO of the depositor regarding the assets underlying the securities for each offering; (ii) risk retention by the sponsor of a specified amount of each tranche of the securitization; (iii) a periodic opinion requirement of an independent third party regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement with respect to any loans that the trustee demanded the obligated party repurchase for violation of representations and warranties and which were not repurchased; and (iv) an undertaking by the issuer to file Exchange Act reports so long as non-affiliates of the depositor hold any securities that were sold in registered transactions backed by the same pool of assets.

In the Prior WF Comment Letter we expressed concerns about various aspects of these new requirements for shelf-eligibility. In response to the many comments received, as well as the passage of Dodd-Frank, the SEC is proposing to modify these requirements. We appreciate the SEC's effort in this regard. However, we strongly believe that certain modifications are necessary in order to allow for a feasible replacement to the investment grade rating requirement. Otherwise, the Proposed Rules could prevent the return of private capital to the dormant sectors of the securitization market, such as private label RMBS, and could impair other sectors of the securitization market that are finally recovering, such as Auto ABS and CMBS, and thereby greatly reduce the availability of credit to consumers and small businesses. It is in accordance with these principles that

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[1] Unless otherwise noted herein, ABS refers to the more narrow definition of asset-backed security as currently defined in Item 1101(c) of Regulation AB.

we set forth the following suggestions regarding the re-proposed shelf-eligibility requirements.

1. CEO Certification

In the Prior WF Comment Letter we proposed, as an acceptable alternative to the certification language included in the 2010 Proposal, a certification based upon a review of the adequacy of the disclosure contained in the prospectus. We note that the SEC adopted our suggested language verbatim and included it as clause 2 of the revised certification included in the Re-Proposal, not in lieu as we suggested, but in addition to the SEC's original proposal. We continue to believe that the certification should be limited to the disclosure included in the prospectus and therefore believe that clause 2 should encompass the entire certification. In furtherance of this position, we note the explanatory text accompanying the Re-Proposal seems to suggest that the SEC does not believe that the certification expands beyond the disclosures already implicitly required by Rule 408 of the Securities Act and Rule 10b-5 of the Exchange Act, but rather only requires an explicit representation to that effect by the certifying officer:

> The proposed certification would be an explicit representation by the certifying person of what is implicit in what should already be disclosed in the registration statement. If the certifying person did not believe the securitization was designed to produce cash flows at times and in amounts sufficient to service expected payments on the asset-backed securities being registered, disclosure about such insufficiency would be required under Securities Act Rule 408 and Exchange Act Rule 10b–5. [2]

If this truly is the case, then a certification beyond what is already included in clause 2 is unnecessary, as it clearly certifies to those standards.[3] However, to the extent that the SEC continues to believe that the certification should extend to matters beyond those covered in clause 2, we have set forth some suggested modifications below and attached as Exhibit A suggested revisions to the certification which we believe implement these requests.

Certification Clause 1

Clause 1 of the newly proposed CEO certification requires that either the CEO or the executive officer in charge of securitization ("EOCS") of the depositor certify that "I

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[2] Re-Proposal, at 47953.

[3] Exchange Act Rule 10b-5 already makes it "unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, … [t]o make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading ... in connection with the purchase or sale of any security." Similarly, Securities Act Rule 408 requires that "[i]n addition to the information expressly required to be included in a registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading."

have reviewed the prospectus relating to [title of all securities, the offer and sale of which are registered] and am familiar with the structure of the securitization, including without limitation the characteristics of the securitized assets underlying the offering, the terms of any internal credit enhancements and the material terms of all contracts and other arrangements entered in to the [sic] effect the securitization".

We agree with the SEC that, while an executive officer of the depositor may rely on the work of other parties to assist him or her with the structuring of an ABS transaction, he or she must provide appropriate oversight so as to be able to make the certification. The transaction team of a depositor includes various members with differing responsibilities and expertise. In addition to external experts, such as lawyers, due diligence firms and accountants, an executive officer of a depositor will need to confer internally with numerous parties, such as structuring and asset-level professionals. Therefore, we believe it is important to clarify in the text of the certification that while an executive officer will have personally reviewed the actual prospectus, that person's familiarity with the transaction's structure and the underlying assets is also a product of supervisory activities and the work product of other members of the depositor's transaction team. Of course, the ability to reasonably rely on the work of subordinates should not be meant to relieve the certifying officer of his or her oversight responsibility, but rather allow for properly delegated and supervised activities in any particular transaction.

Additionally, we believe that a materiality qualification must be included in certain other sections of this clause. The contracts for the transaction and the documents for each underlying asset are voluminous, especially since often there can be thousands of assets included in any particular asset pool. The responsible executive should not be expected to be familiar with the terms of all these documents, particularly where the terms or even the documents themselves are immaterial to the investor. We believe that being clear on this point in the certification is important to make sure the reader has an accurate understanding of what is actually being certified. We believe our proposed language in Exhibit A accomplishes the goals of this clause of the certification within the boundaries of what is possible.

Certification Clause 2

We agree with clause 2 of the certification and have no comments on its form. As noted above, we continue to believe that the certification should be limited to the disclosure included in the prospectus and therefore believe that clause 2 should encompass the entire certification.

Certification Clause 3

Clause 3 of the revised certification reads as follows:

> [b]ased on my knowledge, the prospectus and other information included in the registration statement of which it is a part, fairly present in all material respects the characteristics of the securitized assets underlying the offering described therein and the risks of ownership of the asset-backed securities

> described therein, including all credit enhancements and all risk factors relating to the securitized assets underlying the offering that would affect the cash flows sufficient to service payments on the asset-backed securities as described in the prospectus;

Given the addition of clause 2 discussed above, it is unclear what is intended by this separate disclosure-based certification. Furthermore, we are particularly concerned with the standard "fairly presents" within this clause, since such language has generally been applicable to the presentation of financial statements under GAAP and the certification of financial information as required by the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"). This is a new standard as it relates to ABS transactions. ABS issuers do not prepare audited financial statements and the Sarbanes-Oxley certifications that they file do not utilize a "fairly presents" standard. In a statement issued on February 21, 2003, the staff of the SEC directly acknowledged the distinction between ABS issuers from other issuers as it relates to the requirements of Sarbanes-Oxley when it noted that Sarbanes-Oxley certifications for ABS issuers needed to be "tailored specifically for asset-backed issuers".[4] Clause 3 of the proposed certification addresses disclosures around the "characteristics of the securitized assets" and the "risks of ownership" of the ABS. These are not financial statements and the information normally certified by auditors or non-ABS issuers for purposes of Sarbanes-Oxley. As such, we do not believe this standard is appropriate for the certification.

Additionally, as noted above, if the SEC does not intend for the certification to expand beyond the disclosures already implicitly required by Rule 408 of the Securities Act and Rule 10b-5 of the Exchange Act, but rather only require an explicit representation to that effect by the certifying officer, than introducing a wholly new and undefined (in this context) standard will confuse the scope of the certification.

Separately, it is not clear exactly how the language after the third comma modifies the prior portion of the sentence, and whether this language is meant to extend this certification beyond the disclosure to the performance of the transaction. Given the duplicative nature of this clause in relation to clause 2, as well as the uncertainty as to its application and interpretation, we would alternatively suggest it be modified as set forth in Exhibit A.

Certification Clause 4

Clause 4 of the revised certification reads as follows:

> Based on my knowledge, taking into account the characteristics of the securitized assets underlying the offering, the structure of the securitization, including internal credit enhancements, and any other material features of the transaction, in each instance, as described in the prospectus, the securitization is designed to produce, but is not guaranteed

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4 Staff of the Division of Corporate Finance, Revised Statement: Compliance by Asset-Backed Issuers with Exchange Act Rules 13a-14 and 15d-14 (Feb. 21, 2003).

> by this certification to produce, cash flows at times and in amounts sufficient to service expected payments on the asset-backed securities offered and sold pursuant to the registration statement.

While we appreciate the addition of the clarifying language in clause 4 of the certification which states that it is not a guaranty, we remain extremely concerned that, without qualifying the language to account for the possibility of the risks associated with investing as described in the risk factors occurring (and the understanding that subordinate securities in a senior/subordinate structure or securities that in rating agency parlance may be low investment grade (i.e. BBB) because they have less enhancement and over-collateralization have greater sensitivities to these risks than senior securities), the certification will be impossible to make. Further, in fact, without consideration of the risk factors, we disagree with the SEC's statement cited above that the certification does not go further and is subsumed in the Rule 408 and 10b-5 standards. For this reason, we believe that Clause 4 does have the potential to increase the signatory's liability.

The primary component of our concern with the language above is that it could be interpreted as a statement that a CEO or EOCS has taken into account all of the material information included in the prospectus, and ***notwithstanding*** the risks and uncertainties described therein, that person would have certified that the securitization is designed to produce cash flows sufficient to service the ABS. In view of the impossibility to foresee all of the possible events and economic scenarios that might impact the future cash flows of virtually any class of ABS, including even the most senior class in a senior/subordinate securitization, we believe that at the very least the certifying officer must be able to specifically include as part of this statement that the cash flows may be adversely affected by the risks and uncertainties described in the prospectus. As noted above, the Rule 408 and Section 10b-5 standards do account for the disclosure of the risk of loss on the securities associated with the risk factors as described. The certificate as written goes further and if delivered, for this reason, we do believe (even with the inclusion of the statement that the certification is not a guaranty) that the signatory will be subject to the potential of liability or that the certificate will be used to create an additional or heightened standard for issuer liability in a litigation context.

Historically, shelf-eligible ABS could have been rated anywhere from the very highest investment grade rating category—AAA—to the lowest investment grade rating category—BBB-. As is evident in the market for these types of securities based upon their pricing rates and credit enhancement requirements, BBB- securities, while still "investment grade," are much riskier investments than AAA securities. To the extent the associated risks occur, a BBB- security is significantly more likely to incur a loss than a AAA security. That said, even a security structured with sufficient enhancement and over-collateralization to obtain a AAA rating is still subject to the identified risks and has some potential for loss (as has been clearly demonstrated in the recent economic crisis). Accordingly, even if only the very highest quality ABS are to be permitted to be sold in a registered transaction, there has to be some ability of the certifying officer to subject his or her certification to those risks described in the prospectus. Without permitting the qualification, it seems doubtful that a CEO or EOCS could give this certification and thus whether any ABS, even ABS that would be rated AAA, could be sold in a registered transaction. Furthermore, we believe that clause 4 of the certification constitutes a "forward-looking statement" as defined in Section 27A of the Securities Act and therefore should be entitled to the safe-harbor contained therein. We also believe that the certification itself should be particularly specific about this point. For all of these reasons, we strongly suggest modifying clause 4 of the certification and including a separate statement regarding the certificate's forward-looking nature. Exhibit A sets forth our suggested revisions which address these concerns.

2. Credit Risk Manager and Repurchase Request Dispute Resolution Provisions

In response to the issues raised by the periodic third-party opinion requirement included in the 2010 Proposal, Wells Fargo, along with others, suggested as an alternative an independent review mechanism be included in transaction documents whereby a third party would be retained to review assets for potential breaches of representations and warranties upon the occurrence of pre-defined trigger events[5]. We believe these types of contractual provisions will be much more effective in ensuring that representations and warranties are properly monitored and enforced. We appreciate the SEC's responsiveness to these comments. We would, however, suggest certain modifications to these proposed provisions which we believe will improve their effectiveness and efficiency.

As a threshold matter, we do not believe that the term "credit risk manager" is an appropriate title for the person performing the review of the assets and could be misleading to investors. One of the primary purposes of securitization is to transfer credit risk (i.e., the risk that an underlying obligor will continue to make payments on its loan) to the capital markets. Representations and warranties generally address the representing party's compliance with certain operational requirements associated with the origination and servicing of pooled assets, but do not purport to guaranty the credit of an underlying borrower. For these reasons, we think it is more appropriate to refer to this role as an "independent reviewer", a "representation and warranty monitor", or some similar title.

The Re-Proposal requires that, at a minimum, the credit risk manager be required to conduct a review of the underlying assets upon the occurrence of either of two trigger events: (i) when "the credit enhancement requirements, as specified in the underlying transaction agreements, are not met; or (ii) [a]t the direction of investors, pursuant to the processes provided in the transaction agreement and disclosed in the prospectus." The SEC requests comments on whether these triggers should be supplemented or replaced.

[5] Additionally, Wells Fargo had a leading role in working with the American Securitization Forum ("ASF") in the development of their Model RMBS Repurchase Principles which were published in August. The ASF principles were the result of numerous discussions among ABS issuers, investors, underwriters, trustees, outside counsel and other industry participants.

Clause (i) Trigger

In the context of RMBS, where credit enhancements levels, such as reserve account targets and overcollateralization targets are utilized, they often are not achieved on the closing date of a transaction, but rather build up over time from the allocation of excess cash flow. Additionally, even where credit enhancement levels are at target, a draw from a reserve account to fund a shortfall would automatically trigger a review by the credit risk manager, even if these shortfalls were replenished on the next payment date. CMBS transactions on the other hand generally do not rely on credit enhancement triggers like those utilized in RMBS transactions. In CMBS transactions a special servicer review is triggered by an individual underlying loan default and is conducted on an individual loan basis, as opposed to a multiple asset or pool-level review in an RMBS transaction. Therefore, our recommendation would be to replace the proposed trigger in clause (i) with a requirement that issuers establish objective criteria in their transaction documents that would trigger a review at a more appropriate time. This approach would be consistent with the ASF Model RMBS Repurchase Principles that were recently released, which state that a review event trigger "should be based upon objective factors, which may, as appropriate to the transaction, take into consideration collateral attributes, collateral performance, transaction features and the level of pre-issuance due diligence performed on the mortgage loans."[6] In the context of RMBS these objective triggers might be based upon cumulative losses, delinquency levels, specified loss severities or other appropriate triggers. In the context of CMBS these triggers might include specific loan defaults (as discussed below) or other appropriate triggers. Rather than attempt to mandate a "one-size-fits-all" trigger event, we believe that transaction parties should have the ability to tailor these triggers as appropriate for particular underlying asset types and particular transactions and therefore suggest that this requirement be replaced with a flexible standard that requires clearly defined objective triggers and processes be set forth in the transaction documents and be disclosed to investors in the prospectus.

Clause (ii) Trigger

We believe that a separate trigger by which investors could independently trigger a review should not be mandated by rule. Assuming the clause (i) trigger requirement is revised as we have recommended, investors will have the opportunity to assess the review triggers of any particular transaction and make an informed decision at the time of investment. Investors that take a more active approach in ongoing management of their investments may require that the transactions in which they invest contain more liberal investor review provisions. Investors that take a more buy-and-hold-type approach may look to invest in transactions that have more objective "hair-triggers". Mandating these provisions by rule will remove the flexibility of issuers to tailor their transactions to investor needs. Therefore, we suggest that the clause (ii) trigger be removed altogether. We do believe that investors should have an ability to remove the credit risk manger, but we think those provisions and mechanics are better left to the transaction parties to be determined at the time of the transaction.

[6] ASF Model RMBS Repurchase Principles, paragraph 6.

If the SEC insists upon an independent investor trigger being mandated by rule, we agree with the SEC that transaction parties should be allowed the flexibility to specify the procedural requirements by which investors may make this request and we do not believe that the rule should mandate the percentage of investors required to trigger such a review. As stated above, transaction parties should have the ability to tailor these triggers as appropriate for particular underlying asset types and particular transactions. If the SEC chooses to mandate the percentage of investors required to trigger such a review, we believe a supermajority (e.g., 66 2/3% or some higher percentage) would be an appropriate threshold. Investor-triggered reviews will result in the incurrence of additional expenses. It would not be appropriate for a small percentage of investors to cause the incurrence of these expenses that would be allocated from cash flows that are otherwise available to all investors. Investors of course could demand the threshold be set lower for a particular transaction.

Additional Triggers

The SEC also requests comment as to whether a review should be required for all loans in which the servicer or the trustee suspects a breach. As stated above, we believe that transaction parties should have the ability to tailor review triggers as appropriate for particular underlying asset types and particular transactions. Consistent with the ASF Model RMBS Repurchase Principles which state that a review event trigger "should be based upon objective factors," we do not think that trustee- or servicer-triggered reviews should be mandated by rule. These review triggers would be inherently subjective, and it would be difficult if not impossible for a trustee or servicer to determine what constitutes sufficient "suspicion" so as to require the ordering of a particular review.

Credit Risk Manager Access to Documents and Reporting

In the context of RMBS and consistent with the ASF Model RMBS Repurchase Principles[7], we believe that credit risk managers should have access to copies of underlying documents related to pool assets, as well as the underwriting guidelines utilized in the origination of the assets. Without these documents credit risk managers would not be able to complete their assigned responsibilities.

Upon a review of underlying assets, we believe that the credit risk manager should include in its report to the trustee a specific determination as to whether a breach of a representation or warranty has occurred that meets the threshold for remedial action under the transaction documents with respect to each asset reviewed. Additionally, given the privacy concerns that may be implicated by filing credit risk manager reports, we do not believe that the report should be required to be publicly filed. If the SEC continues to believe that filing of a credit risk manager report is necessary, we would suggest that, in the alternative, transaction parties should be allowed to file only a summary of this report, which indicates which assets were reviewed (i.e., by reference to an identification number) and whether in the determination of the credit risk manager a breach of a representation or warranty has occurred that meets the threshold for remedial action

[7] ASF Model RMBS Repurchase Principles, paragraph 5.

under the transaction documents. We would expect that the summary report would also be prepared by the credit risk manager and provided to the trustee in a format suitable for filing on EDGAR.

The SEC also requests comment as to whether each party with a repurchase obligation should be required to provide an annual certificate to the trustee and noteholders certifying that all loans required to be repurchased under the transaction documents have been repurchased or detail why any loans identified as breaching a representation or warranty were not removed. We believe that this requirement would be duplicative to the detailed reporting that is already required pursuant to new Rule 15Ga-1 and could be confusing to investors. Therefore, we would suggest that such a requirement not be imposed.

Repurchase Request Dispute Resolution

The Re-Proposal provides that "[i]f an asset subject to a repurchase request . . . is not repurchased by the end of the 180-day period beginning when notice is received, then the party submitting such request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected method." We believe that this provision should be clarified to be triggered only when a *resolution* is not reached within 180 days, not simply if the asset is not repurchased within 180 days. Simply because a repurchase is not effected does not mean that a dispute is still occurring. Repurchase requests may be withdrawn, breaches may be cured, indemnity payments may be made by an obligated party in accordance with the transaction documents in lieu of repurchase or disputes may be otherwise resolved. The dispute resolution mechanism should not be automatically available if a dispute has already been resolved by some allowable means other than repurchase. The SEC also requests comment on whether only mediation or arbitration should be required. In order to provide for finality to a particular dispute, we believe that only binding arbitration should be required.

The SEC also requests comment on whether the dispute resolution mechanisms should be mandatory after 180 days. As a practical matter, trustees presented with a determination of a credit risk manager stating that a representation and warranty was breached will likely be required by the transaction documents to demand repurchase, cure or other appropriate remedies, either immediately or at the direction of investors; however, we believe that the parties to the transaction should have the flexibility to provide for alternatives to this approach, so long as they are clearly disclosed and agreed upon by all relevant parties. If arbitration is initiated, it would seem most efficient that the special purpose issuing entity would be represented by the credit risk manager in the arbitration, as they would be in the best position to present the case; however, we believe that the parties to the transaction should have the flexibility to provide for alternatives to this approach, so long as they are clearly disclosed and agreed upon by all relevant parties.

Although it would seem generally acceptable that the obligated party be responsible to pay expenses in the case it loses at arbitration, we believe that mechanisms to allocate dispute resolution expenses should be left to the discretion of the transaction parties and not mandated by the final rules. Additionally, if the obligated party is successful at arbitration, transaction parties should have the flexibility to structure payment of expenses by the issuer, but this should not be required by the rule either. Market participants should be allowed to develop appropriate methods for payment of these expenses over time and should not be locked-in to any particular structure.

Application to Non-RMBS Asset Classes

We appreciate the need in the RMBS market to improve the enforcement mechanisms for breaches of representations and warranties. However, in other asset classes, such as Auto ABS and ABS backed by credit card receivables ("Credit Card ABS"), there has been little or no historical repurchase request activity and these transactions have generally performed well, even throughout the financial crisis of the last three years. Requiring issuers of Auto ABS and Credit Card ABS to expend the time and resources necessary to establish a mechanism to fix a problem that does not exist for these particular asset classes seems unjustified. Furthermore, beginning in February 2012, all sponsors and depositors will be required to file a Form ABS-15G, which initially will disclose the disposition of all repurchase requests over a three year look back period, thereby providing investors with information regarding the quality of such sponsor or depositor's underlying assets. If, as is expected, the overwhelming majority of, if not all, Auto ABS and Credit Card ABS sponsors and depositors "check the box" on their initial Form ABS-15G filing indicating that there is no activity to report for the three year look back period, the credit risk manager requirement would appear to be a costly and unnecessary requirement. Therefore, we request that the SEC specifically exempt Auto ABS and Credit Card ABS from the credit risk manager requirements of the Proposed Rules.

In the typical multi-seller conduit CMBS transaction the special servicer and the operating advisor, third parties that are independent of the loan seller, effectively already perform the role envisioned by the SEC for the credit risk manager. In CMBS transactions the special servicer has access to all information regarding the underlying assets and it reviews all loans that are transferred to special servicing on behalf of all investors and reports its findings on an asset status report. Loans are moved to special servicing based on specific trigger events contained in the underlying transaction documents, including, among others, in an event of default or if default is reasonably foreseeable. Recently closed CMBS transactions also include an independent third party operating advisor that reviews asset status reports on behalf of the senior bondholders and may consult with the special servicer about the disposition of assets. Given the existence of the special servicer and operating advisor, inserting an additional party into a CMBS transaction would be costly, duplicative and counterproductive. We request that the SEC specifically allow CMBS transactions to utilize the current, market developed structure to address asset review issues and therefore request CMBS be exempt from the credit risk manager requirements of the Proposed Rules.

3. Investor Communications

As an additional shelf-eligibility requirement, the SEC is proposing that the underlying transaction agreements include a provision requiring the party responsible for making periodic filings on Form 10-D to include on such form any request from an investor to communicate with other investors related to an investor's rights under the terms of the ABS. While we agree that facilitating communication between investors is a good idea, we do not believe that including such request on Form 10-D is the most appropriate, timely or cost-effective manner in which to achieve that goal. Instead, investors and transaction parties should have the flexibility to set forth the specific terms that will facilitate communication among investors in the underlying transaction agreements. Including these mechanics in the underlying transaction agreements will contractually obligate the transaction parties to disclose an investor's desire to communicate. Additionally, providing the mechanics in the underlying transaction agreements will allow for a communication request from an investor to be made available to other investors both more quickly than if such request were included on Form 10-D and at a lower cost.

For example, as the SEC has recognized in the Re-Proposal, certain CMBS transactions have already begun including more extensive means for investor communication in the underlying transaction agreements. These include the establishment of an investor registry, which includes investors and beneficial owners that have registered for such registry. This investor registry is then made available to all investors and beneficial owners on a website that is administered by a transaction party and can be updated more frequently than once per month. In addition, this website generally contains, among other things, any notices by an investor that wishes to communicate with other investors. This website will also likely contain a specific investor question and answer forum where investors, beneficial owners and prospective purchasers can engage in an open dialogue with respect to investor rights under the terms of the CMBS. These mechanics achieve the objectives of the proposal without adding any unnecessary costs or delays to the process.

To the extent the SEC continues to believe that investor communications must be included on Form 10-D, we do not believe that the trustee should be required by rule to maintain a list of investors in the transaction for purposes of verifying an investor's interest before including a proposed communication on Form 10-D. As investors in a transaction can change at any time, maintenance of such a list would likely be costly and time consuming. Alternatively, the process that most trustees currently utilize to verify investor's interests is sufficient and works well. That process requires both investors of record and beneficial holders of book entry securities complete a certification regarding their ownership interest in the relevant securities. We believe this approach is preferable to requiring a trustee to maintain a list of investors in any particular transaction.

SECTION II: ITEM 1100(f) & ASSET-LEVEL DATA

1. Filing of Transaction Documents

Item 1100(f) of Regulation AB, as modified by the 2010 Proposal, would require that material transaction documents be filed at the time that the final prospectus is required to be filed pursuant to Rule 424. We support that proposal. However, the Re-Proposal would require that substantially final transaction documents be filed by the date the preliminary prospectus is required to be filed in accordance with newly proposed Rule 424(h).

Rule 424(h) would impose a five business day waiting period between the filing of a preliminary prospectus by an ABS issuer and the first contract of sale with an investor. In the Prior WF Comment Letter we supported the requirement that investors have sufficient opportunity to review a preliminary prospectus prior to making an investment decision, but we noted that we believe a five business day waiting period is too long, and suggested two business days in the alternative. As we noted previously, there is decreasing marginal utility for investors in extended waiting periods, while there are increasing consumer costs imposed by a delay in access to the capital markets through securitization. We believe that item 1100(f) as included in the Re-Proposal would greatly exacerbate this result and further increase those costs to consumers, as not only would issuers be required to prepare a preliminary prospectus at least five business days prior to sale, but they would be required to have finalized all the transaction documents at that time as well. As the preliminary prospectus is already required to contain all material information related to a particular transaction, including a description of all material provisions that will be included in the material transaction documents, we do not believe any additional benefit is achieved through inundating investors with these additional filings. We think it more appropriate that investors be able to focus on the disclosure included in the preliminary prospectus in making their investment decision. As we noted previously, in circumstances of particular complexity in a given transaction, any investor can request additional time to consider an investment.

2. Asset-Level Data

In connection with new Section 7(c) of the Securities Act, as added by Section 942(b) of Dodd-Frank, the SEC requests comment on whether the specific compensation paid to brokers would be useful in performing due diligence for RMBS and for other asset classes. We do not believe that this information would be useful in this regard. In the ABS markets, brokers are primarily only utilized in the origination of assets underlying RMBS and CMBS. In the context of RMBS, we agree with the SEC that the already proposed data points provide the information necessary to perform due diligence on an RMBS pool with broker involvement because investors already have the ability to analyze the method in which a loan was underwritten. In the context of CMBS, no additional data points regarding broker compensation are needed because such information is not relevant to investor due diligence. Commercial mortgage loans are typically non-recourse loans and all due diligence is generally focused on the income producing potential of the underlying commercial property and such property’s ability to produce income sufficient to service the debt that it secures. Providing underlying broker compensation would not add to this process in any meaningful manner.

3. Asset-Level Data Format

The SEC requests comment as to whether the proposed XML format is an adequate standard for the format of data that facilitates the comparison of data across securities in similar types of asset classes. As we stated in the Prior WF Comment Letter, we do not believe it is appropriate to require delivery of asset-level data in XML format at this time. Market participants will already be challenged to implement the dramatic changes in the Proposed Rules without the added requirement that they convert their systems to provide or consume all related data in XML format. We propose instead that all required transaction data be filed in CSV format initially, leaving open the possibility of changing to XML filings at a later times, should the market request it. The CSV format is widely used within the industry today, and most parties' systems are set to handle receipt and output of data in this format. The conversion to XML format would require far-reaching system changes and would substantially prolong the time needed for implementation of the Proposed Rules.

SECTION III: PRIVATELY ISSUED STRUCTURED FINANCE PRODUCTS

In a significant departure from established securities law practice, the 2010 Proposal required that as a condition to the utilization of safe harbors from registration under the Securities Act, private issuers of SFPs provide investors, upon request, with information that they would have been required to provide had the transaction been publicly registered. SFPs are more broadly defined than the Regulation AB definition of "asset-backed security"[8] and would encompass structured finance products not typically offered in registered offerings under Regulation AB. These provisions would effectively require that the same asset-level disclosures required in public transactions be available for investors in private SFP safe-harbored transactions that rely on Rule 506 (sales to accredited investors) or Rule 144A (private re-sales to QIBs). In addition, the 2010 Proposal would require issuers to file a notice with the SEC of an initial placement of SFPs that are eligible for resale under Rule 144A. The notice would include undertakings by the issuer to furnish the offering materials to the SEC upon written request. Conforming revisions would be made to the filing requirements for sales under Rule 506.

In the Re-Proposal, in response to numerous concerns raised by Wells Fargo and other industry organizations and participants, the SEC has requested comment as to whether the asset-level disclosure requirements should be limited to asset classes for which the SEC has prescribed specific asset-level reporting requirements, namely RMBS, CMBS, auto loan- and lease-backed ABS, equipment loan- and lease-backed ABS, student loan ABS, floorplan financings, corporate debt ABS and re-securitizations. We appreciate the SEC's recognition of our comments and its subsequent request for comment on possibly limiting the impact of the 2010 Proposal to Rule 506 or Rule 144A transactions

[8] In addition to the Regulation AB "asset-backed securities" definition, the definition of "Structured Finance Products" would also include synthetic ABS, CMOs, CBOs, CLOs, CDOs and any security commonly known as an asset-backed security or structured finance product.

collateralized by assets of an asset class for which there are prescribed asset-level reporting requirements in Regulation AB. While reducing the impact of this proposal is a step in the right direction, as outlined below, we reiterate to the SEC our concerns regarding the detrimental impact of treating private transactions like public transactions on securitization markets and the availability of credit.

As we stated in our Prior WF Comment Letter, various constraints such as privacy concerns (related to the privacy of the customer but also concerns over disclosing an issuer's own proprietary information), cost and timing concerns, have kept many issuers, including issuers of Regulation AB type asset classes, out of the public market. Additionally, issuers of more esoteric asset classes (e.g., future flow, royalty rights, some forms of equipment leasing, shipping containers) have avoided the public market because the underlying assets and the transaction structures are sufficiently unique such that Regulation AB disclosure is not flexible enough to allow adequate information to be provided to investors. In those transactions issuers prefer Rule 506 or Rule 144A transactions because they allow for more tailored disclosure, typically based on investor feedback, that more fully describes the unique characteristics of the underlying assets or transaction structure. The potential asset-level data requirements also create issues for ABS issuers in esoteric asset classes because they are not able to obtain all of the specific categories of asset-level data and the volume of information required would be prohibitive. The Proposed Rules would eliminate this important alternative means of financing. In our prior commentary we supported the idea for creation of a category of investors referred to in the industry and comment letters as a SQIB. The idea of the SQIB is to raise the bar on the definition of a sophisticated investor that would be eligible to participate in these transactions. We continue to believe that creation of the SQIB investor is the best way to address the concerns of the 2010 Proposal and the Re-Proposal.

If the SEC disagrees with the SQIB approach and in lieu requires additional disclosure in private transactions, we believe that such disclosure requirement should be limited to Regulation AB type assets and, in order to address the legitimate concerns of why issuers avoid the public markets in the first place, be a more flexible principles-based disclosure than the asset-level data proposed by the SEC. The ASF has made a detailed proposal on what such a principles-based disclosure model could be. Though we disagree that such model should extend to all asset classes, we do agree with ASF's approach as it relates to Regulation AB type assets. The securitization markets are in a constant state of evolution and it is not possible to create disclosure requirements with any real specificity for all potential transactions. We also think that any principles-based disclosure focused on Regulation AB type assets will cover the vast majority of securitization product. Novel asset classes (i.e. non- Regulation AB type assets or assets not currently securitized in the private, safe-harbored markets) tend to have small, unique groups of investors specifically familiar with the underlying asset and often the originators themselves, which gives them the leverage to negotiate for the specific information that they may require to make an investment decision.

TRANSITION PERIOD

Given the enormity of changes that will be required to comply with the Proposed Rules, we believe there should be an extended transition period for implementation. Adequate time will be needed by industry participants so that necessary changes can be made to systems, procedures and processes. We would suggest a transition period of at least one year from enactment of final rules.

CONCLUSION

We continue to believe that a strong securitization market is essential to the availability of credit to consumers and small businesses. We appreciate the opportunity to provide the foregoing comments and we look forward to working with the SEC in its rulemaking process.

WELLS FARGO & COMPANY

By:____________________
Name: Lawrence D. Rubenstein
Title: Capital Markets Managing Counsel

Exhibit A

Proposed Revisions to CEO/EOCS Certification

I, [identify the certifying individual,] certify as of [the date of the final prospectus under Securities Act Rule 424 (17 CFR §239.424)] that:

1. I have reviewed the prospectus relating to [title of all securities, the offer and sale of which are registered] and, based upon such review, as well as the review of information collected and analysis performed by others under my supervision, I am familiar with the structure of the securitization, including, without limitation, the material characteristics of the securitized assets underlying the offering, the material terms of any material internal credit enhancements and the material terms of all contracts and other arrangements entered into to ~~the~~ effect the securitization;

2. Based on my knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

3. Based on my knowledge, the prospectus and other information included in the registration statement of which it is a part, ~~fairly present~~describe in all material respects (i) the material characteristics of the securitized assets underlying the offering described therein, including all material credit enhancements, ~~-~~and (ii) the risks of ownership of the asset-backed securities described therein, ~~including all credit enhancements and~~ including all material risks ~~factors~~ relating to the securitized assets underlying the offering that would adversely affect the cash flows ~~sufficient~~ available to service payments on the asset-backed securities in accordance with their terms as described in the prospectus; and

4. Based on my knowledge, taking into account the material characteristics of the securitized assets underlying the offering, the structure of the securitization, including the material terms of any internal credit enhancements, and any other material features of the transaction, in each instance, as described in the prospectus, the securitization is ~~designed~~ structured to be expected to produce, but is not guaranteed by this certification to produce, cash flows at times and in amounts sufficient to service ~~expected~~ payments on the asset-backed securities offered and sold pursuant to the registration statement in accordance with their terms and subject to the assumptions described in the prospectus.

The certification set forth in paragraph 4 above is a forward-looking statement within the meaning of Section 27A of the Securities Act of 1933. This statement involves known and unknown risks, uncertainties and other important factors that could cause the actual results or performance to differ materially from the forward-looking statement. This forward-looking statement speaks only as of the date hereof. The signatory expressly disclaims any obligation or undertaking to disseminate any updates or revisions to this forward-looking statement to reflect changes in the signatory's expectations with regard to this statement or any change in events, conditions or circumstances on which any forward-looking statement is based.