BETTER MARKETS
TRANSPARENCY · ACCOUNTABILITY · OVERSIGHT

October 4, 2011

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

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

Dear Ms. Murphy:

Better Markets, Inc.[1] appreciates the opportunity to comment on the above-captioned proposed rules ("Proposed Rules") of the Securities and Exchange Commission ("Commission"), which would improve the regulation of the asset-backed securities ("ABS") markets by strengthening the eligibility requirements for shelf registration, facilitating the enforcement of representations and warranties, and improving disclosure to investors.

INTRODUCTION

The poorly regulated and poorly policed ABS market, operating in tandem with the unregulated derivatives market, triggered the financial crisis of 2008. At the center of the maelstrom were thousands of residential mortgage-backed securities ("RMBS"), overloaded with subprime mortgage loans.

Due to the bewildering complexity of these RMBS, investors were forced to rely on the credit rating agencies to judge their creditworthiness and on regulators like the Commission to protect them. Those rating agencies in turn produced horrendously inaccurate ratings through a combination of flawed methodologies, incomplete data, and in many cases, conflicts of interest that severely compromised the integrity and quality of the ratings. When mortgage default rates shot up and the value of RMBS plummeted, the derivatives markets, which were linked directly to the value of the RMBS, were overwhelmed and the effects cascaded through our entire financial system.

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[1] Better Markets, Inc. is a nonprofit organization that promotes the public interest in the capital and commodity markets, including in particular the rulemaking process associated with the Dodd-Frank Act.

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ABS investors stood among this wreckage, looked around, and asked, "where were the regulators?"

The toll of the crisis on our citizens, our economy, and our country has been devastating, and it has not been limited to the trillions of dollars in lost jobs, evaporated retirement savings, and foreclosed homes. The profound loss of confidence in the capital markets generally, the ABS market in particular, and the regulators of those markets continues to cripple our credit markets and impede our economic recovery.

Securitization can be an extraordinarily valuable mechanism for providing credit and liquidity in all major sectors of the economy, ranging from real estate, to the automobile industry, to consumer and commercial credit. But securitization will not function until integrity and honesty have been restored to those markets and effective regulation has been implemented. Only then will investors have the confidence to reenter those markets. As stated in the release accompanying the April 2010 rule proposal ("Initial Release"):

> As the crisis unfolded, investors increasingly became unwilling to purchase these securities, and today, this sentiment remains, as new issuances of asset-backed securities, except for government-sponsored issuances, have recently dramatically decreased. The absence of this financing option has negatively impacted the availability of credit.[2]

That confidence was shattered as securities portrayed as virtually riskless became worthless. Stunned investors were repeatedly shocked to learn that yet another part of the ABS market was loaded with securities of questionable or no value. To make matters worse, these offerings were made by top banks, accounting firms, rating agencies, and other market participants who sold these securities based, in part, on their alleged sterling reputations. Adding insult to injury, those very same investors later learned they had virtually no options for holding anyone accountable for such egregious actions and such inconceivable losses. The failings of the regulatory agencies were laid bare for all to see as well.

That is why investor confidence remains nonexistent today. Investors are appropriately wary of going anywhere near a market that is not clearly and fundamentally honest. Weak rules, ambiguities, and industry-driven loopholes and exceptions will do nothing to restore these vital markets. Given industry conduct before, during, and after the crisis, investors are going to require clear, strong, and inescapable rules that restore integrity in fact, not just a semblance of propriety based on marketing materials and slogans from the same salespeople who ripped them off before. That is the very high standard that these Proposed Rules must meet.

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2 Initial Release at 23330.

The Proposed Rules include a number of important provisions aimed at achieving a more disciplined, transparent, and accountable ABS market. They are a re-release of proposals that the Commission first made in April 2010, with a number of changes. Those changes reflect comments received in response to the April rule proposal. In drafting the Proposed Rules, the Commission has also taken into account the requirements of the provisions in the Dodd-Frank Act aimed at improving the ABS market.[3]

The Proposed Rules would enhance the quality and transparency of ABS offerings by—

- Imposing new eligibility requirements for shelf registration of ABS offerings, including new criteria to replace credit rating references;
- Improving the mechanisms for enforcing representations and warranties in shelf offerings;
- Requiring that investors in shelf offerings receive more complete and more timely information about the transaction;
- Requiring that prospectuses include extensive information about each asset in a securitization pool; and
- Requiring additional disclosure for the benefit of investors who purchase ABS under the private offering exemptions, including Rule 506 of Regulation D and Rule 144A.

However, to protect investors adequately and to truly restore the integrity of and confidence in the ABS market, the Proposed Rules must be made stronger in several important respects. Equally important, the Commission must resist the changes advocated by industry that would substantially weaken the Proposed Rules. Investors are watching—and they are counting on the Commission to fix the system with strong new regulations.

SUMMARY OF COMMENTS

Our comments address necessary changes in the Proposed Rules as well as provisions that must remain intact, notwithstanding the urgings from industry that they be removed or weakened. In summary—

- The certification from senior management regarding the ABS offering must cover the expected cash flows from the offering, as proposed, and not only the accuracy of prospectus disclosures, as advocated by industry proponents.

3 Dodd-Frank Act Title IX, Subtitle D, §§ 941-946.

- Language indicating that the certification is not a guarantee must be removed.
- The certification must be made by the chief executive officer.
- The triggers requiring a review of pool assets by a credit risk manager for noncompliance with representations and warranties should be expanded, and should include a catchall provision.
- Independence requirements for the credit review manager should be improved.
- The mediation and arbitration remedies must not preclude judicial recourse.
- The five day period in which investors must have access to transaction information prior to sale must not be shortened.
- Access to the underlying transaction documents is also essential for the benefit of investors.
- Use of model forms to disclose information about representations and warranties must be conditioned on use of a form reflecting the investors' perspective.
- Broker compensation must be included in the asset-level data set, as required by the Dodd-Frank Act.
- Disclosure of risk retention on an asset-level basis must also be required, in accordance with the Dodd-Frank Act.
- Disclosure of detailed information about esoteric assets underlying structured finance products is essential.

COMMENTS

Shelf Registration Requirements.

Under the Securities Act, issuers with an effective shelf registration statement are able to conduct delayed offerings of securities "off the shelf" without the need for further clearance by Commission staff. Along with this flexibility and efficiency, however, comes the need for additional safeguards to ensure that the securities offered are of high quality. That standard of quality is currently set by reference to investment grade credit ratings.

The Proposed Rules would remove credit ratings as the test for shelf registration eligibility and replace it with several new requirements, including

(1) a certification from a senior executive regarding the accuracy of the disclosures made and the ability of the offering to generate cash flows;
(2) a new mechanism for investigating and resolving breaches of representations and warranties in the offering documents; and

(3) a provision that will facilitate collective action by investors who wish to enforce their rights.

The certification from senior management must cover the expected cash flows from the offering, as proposed, and not only the accuracy of prospectus disclosures, as advocated by industry proponents.

The certification requirement is very important and generally a strong provision. It requires senior management to make several certifications. In addition to certifying that the prospectus is free of untrue statements and omissions of material fact, the senior officer would have to certify that—

> 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 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.[4]

It is critically important that the Commission reject attempts to weaken the content of the certification requirement by limiting its scope or substance. Some commenters have advocated that the certification requirement should encompass only the accuracy of the disclosures made in the prospectus, and should exclude any representations about the ability of the underlying assets to generate sufficient cash flows to meet obligations to investors.[5]

Such a change would defeat the fundamental purpose of the certification, which is to serve as a measure of the quality of the ABS, in place of credit ratings. Although the quality of an investment is in part a function of the accuracy of the disclosures made, it is much more than that. The quality of an ABS offering is fundamentally a function of whether the underlying assets and the structure of the transaction are capable of producing cash flows

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4 Proposed Rule § 229.601.
5 Release at 47591.

at times and in amounts sufficient to service payments in accordance with the prospectus and the registration statement.

Only by requiring senior management to certify ***this*** aspect of the offering, in addition to the accuracy of disclosures, will the Proposed Rules provide a meaningful alternative to credit ratings as a measure of quality for purposes of shelf registration. This aspect of the certification requirement in the Proposed Rules must not be removed.

Language indicating that the certification is not a guarantee must be removed.

The proposed certification requirement must also be strengthened by deleting language indicating that the certification does not "guarantee" that adequate cash flows will be produced. This language was added to the Proposed Rules in response to requests from industry for clarification, and so that the certification could not be "viewed" as a guarantee of future performance of the offering.[6] This addition is harmful, unnecessary, and counter to the interests of investors.

First and most importantly, the "no guarantee" reference is at odds with the way the securities laws and implementing regulations are framed. The claimed risk that such an absolute guarantee would be implied from the certification is virtually nonexistent. We are unaware of such an implied guarantee in the securities laws. Indeed, if the guarantee disclaimer were necessary here, then it would presumably be necessary in innumerable other contexts, yet no one would seriously make that contention. This fact demonstrates that no clarification is necessary as to whether the certification constitutes a guarantee.

This language is also unnecessary because the certification already contains ample limiting language to ensure that the certifying officer is not promising more than is reasonable or understandable to an ordinary investor. For example, the "certification" is clearly based solely "on the executive officer's ***knowledge***," not on omniscient predictions, and it only avers that the securitization is "***designed*** to produce" sufficient cash flows, not that it necessarily will produce those cash flows. Additionally, it is expressly a "certification" not a "guarantee" and a reasonable investor will know the difference. This is yet further evidence that there is no need for clarification as to the scope of the certification regarding cash flows.

The language negating that the certification constitutes a guarantee is also harmful. It will undermine efforts to hold senior management accountable for their ABS offerings. This in turn will make the certification itself that much less useful as an incentive to ensure the quality of the offering, which is its purpose. Any defendant called to account for a breach of the certification will claim broader immunity than he or she deserves, simply by pointing to the "no guaranty" clause. Such defendants will attempt to convert the no guaranty clause into a blanket immunity, regardless of the facts and circumstances.

6 Release at 47952.

As will be readily perceived by potential ABS investors, a weaker certification requirement will lead to weaker incentives for senior management to ensure that the securitization is structured correctly and comprised of high quality assets. The certification will be viewed as a poor substitute for credit ratings and as a poor measure of the overall quality of the offering. In many ways, it would replicate the worst defects in the way that ratings have traditionally been used: Management certification (like a rating) will be offered to induce investor reliance, but management will not really be held accountable because of the no guarantee clause (just as the rating agencies avoided liability).

Given the massive and devastating losses investors have suffered, they are on guard against such loopholes. Therefore, the goal of increasing investor confidence in, and rejuvenating the market for, ABS will be put at risk, if not defeated, by this unnecessary and counter-productive provision, innocuously portrayed as a "clarification" by industry. The guarantee reference must be removed.

The certification must be made by the chief executive officer.

The certification requirements should also be strengthened in terms of the officer making the certification. The Proposed Rules provide that the certification must be signed by either the chief executive officer of the depositor or the executive officer in charge of securitization.[7] However, there is no substitute for requiring that the chief executive officer sign such a certification, and the Proposed Rules must be changed accordingly.

Making the senior-most official responsible for the certification will maximize its intended effect, which is to incentivize senior management to oversee ABS offerings in a meaningful way and to ensure that they are conducted in accordance with applicable requirements. This in turn maximizes the value of the certification as a measure of the quality of the securitization and as a substitute for credit ratings.

Allowing the executive officer in charge of securitization to make the certification instead of the chief executive officer will only dilute its value. The Proposed Rules should instead require the officer in charge of securitization to sign the certification ***in addition*** to the chief executive officer. This change would provide the heightened quality assurance that is called for in connection with shelf registrations.

In addition, the Proposed Rules must not permit the certification to be replaced by an opinion supplied by an outside "independent evaluator," as suggested in the Release.[8] Such a provision would inject unwieldy complexity into the certification process, as issues regarding the qualifications and independence of such evaluators would have to be thoroughly addressed.

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7 Release at 47951-52.
8 Release at 47954.

Even more important, far from encouraging appropriate oversight of shelf registration offerings by senior management, such a provision would have just the opposite effect. By allowing senior management to outsource and thereby avoid responsibility for the certification, such a delegation would make the certification a less reliable indicator of the quality of the offering.

Enforcement of Representations and Warranties in Shelf Offerings.

The Proposed Rules include a number of important provisions intended to improve the mechanisms for investigating breaches of representations and warranties in ABS shelf offerings and for enforcing investors' rights for the breach of those representations and warranties.

As noted in the Release, there have been persistent complaints from investors about their inability to effectively enforce representations and warranties regarding pool assets in ABS securitizations, including in particular their inability to enforce repurchase rights.[9] The inclusion of new procedures and remedies in the transaction documents will help address these problems and will serve as an additional indication of the quality of the offering. Accordingly, the Proposed Rules would require that new review and enforcement mechanisms be included in the transaction documents as another condition of shelf eligibility.

These provisions have several components. As a condition of shelf registration, the transactions documents would have to—

- Require the trustee of the issuing entity to appoint a credit risk manager to review the underlying assets for compliance with the representations and warranties, upon the occurrence of certain triggers;

- Give investors the right to require that the credit risk manager review assets for potential breaches of representations and warranties;

- Enable a party seeking repurchase of an asset to insist on mediation or arbitration if the party obligated to repurchase the asset fails to do so within 180 days of request; and

- Include in periodic filings of the Form 10-D any request from an investor to communicate with other investors, so that investors have the ability to act collectively to enforce their rights.[10]

These measures are positive enhancements to the shelf registration offering process, and they are appropriate conditions on the right of issuers to use shelf

[9] Release at 47956-57.
[10] Release at 47955-60.

registration. However, these provisions in the Proposed Rules should be strengthened in several respects.

The triggers requiring a review of pool assets by a credit risk manager for noncompliance with representations and warranties should be expanded.

First, the triggers that would require asset review should be expanded. They are currently limited to (1) instances when credit enhancement requirements, such as reserve account amounts or overcollateralization ratios, are not met, and (2) instances when investors direct that a review be conducted.[11] These triggers are overly narrow and are unlikely to cover other situations in which a review of pool assets is appropriate and necessary to protect the interests of investors.

They should be expanded to include loans that are in default, including early payment defaults. In addition, the Proposed Rules should include a generic or catchall provision mandating a review of assets whenever the servicer or trustee has grounds for believing that a breach of the representations and warranties may have occurred. This will ensure that a review can be requested even if the cause for concern about a potential breach does not meet one of the specifically enumerated grounds for review.

Independence requirements for the credit review manager should be improved.

In addition, independence requirements for the credit review manager should be strengthened. The Proposed Rules currently provide for a considerable amount of disclosure about the credit risk managers, including their qualifications, duties, compensation, and relationships with other transaction parties.

However, the only substantive limitation relating to independence is that the credit risk manager not be an affiliate of the sponsor, depositor, or servicer.[12] This minimal requirement is inadequate to address potential conflicts that the credit risk manager might have. To ensure such independence, the Proposed Rules must provide that the credit risk manager be free of any conflicts of interest with respect to any transaction party, including, especially, the investors.

The mediation and arbitration remedies must not preclude judicial recourse.

The mediation or arbitration provision should also be clarified. The Proposed Rules would enable any party claiming that pool assets should be repurchased for breach of representations and warranties to insist on mediation or arbitration of their claim, if no action is taken within 180 days after a claim is first asserted.[13] However, the rule does not indicate whether the arbitration award would be binding, nor does it provide claimants

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11 Release at 47956.

12 *Id.*

13 Release at 47957.

with the option to seek relief in court. Therefore, although this provision has potential value in facilitating enforcement of the representations and warranties in the offering documents, it also represents a potential trap, since mediation and arbitration are often inadequate remedies.

Experience with mandatory, binding arbitration clauses in virtually all brokerage agreements has amply demonstrated that arbitration actually thwarts investor attempts to obtain meaningful relief for violations of the law. The Federal Arbitration Act provides extremely narrow grounds for overturning or modifying an arbitration award, limiting such relief to rare situations involving such things as misconduct by an arbitrator or miscalculation of figures.[14] Misapplication of the law or awards that fall well short of actual damages sustained will not suffice. And bias among industry-stacked arbitration panels is a chronic problem.

For years, investor advocates have decried the unfairness of mandatory arbitration.[15] One regulator has described FINRA's mandatory arbitration system as "an industry sponsored damage-containment and control program masquerading as a juridical proceeding."[16] In light of these widespread and longstanding criticisms, Congress expressly gave the Commission the authority to restrict the use of mandatory arbitration clauses in agreements between investors and brokers.[17]

The Proposed Rules must avoid these proven pitfalls. They must either give claimants the option to choose litigation in the first instance, or, at a minimum, they must provide that any arbitration award is not binding and will not preclude a subsequent action seeking relief from a court. This is the only way to ensure meaningful enforcement of the representations and warranties in ABS offerings.

To do otherwise, would be to throw investors into an unfriendly forum where relief is illusory. That is only going to confirm investors' worse fears about this market.

<u>Enhanced Disclosures in Shelf Offerings.</u>

The Proposed Rules include two important enhancements to the requirements governing disclosure of information about ABS shelf offerings to investors. Arguments seeking to weaken these provisions must be rejected.

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14 9 U.S.C. §§ 10, 11.

15 *The Time for Change in Securities Arbitration Has Come: The Unfolding Story of How the Financial Industry Regulatory Authority's Arbitration System Is Failing Investors*, Public Justice, *available at* http://www.publicjustice.net/Resources/Backgrounds/time-for-change-in-securities-arbitration.aspx.

16 Statement of William Galvin, Secretary of the Commonwealth of Massachusetts, *quoted in* Dan Solin, *FINRA's Mandatory Arbitration: A Story You Won't Believe*, Huff Post Business (Oct. 4, 2011), *available at* http://www.huffingtonpost.com/dan-solin/finras-mandatory-arbitrat_b_585870.html.

17 Dodd-Frank Act § 921.

The five day period in which investors must have access to transaction information prior to sale should not be shortened.

The Proposed Rules would require an ABS issuer to file a preliminary prospectus with the Commission for each takedown off the shelf at least five business days prior to the first sale of securities.[18] This is a clearly appropriate requirement that will give investors much needed additional time in which to consider complex transaction specific information, especially data regarding pool assets. This will not only promote the most basic regulatory objective of full and meaningful disclosure to investors, it also will promote independent credit analysis and less reliance on credit ratings.

While some commenters have sought to reduce the five day period, and while the Commission notes that it is still considering the matter, there is no question that this time frame should remain intact if investors' interests are to remain paramount and protected.

Access to the underlying transaction documents is also essential for the benefit of investors.

In a closely related and equally important vein, the Proposed Rules would require that the underlying transaction documents be filed and made part of the registration statement at the same time that the preliminary prospectus is furnished to investors—at least five business days prior to the first sale.[19] Those transaction documents contain important information regarding the terms of the offering, including the representations and warranties. Investors must have access to those documents prior to making an investment decision.

In practice, as noted in the Release, ABS issuers have often delayed providing these core documents to investors until days or weeks after a shelf offering commences. This conduct is antithetical to meaningful investor disclosure, and the Proposed Rules will provide a much needed remedy. Obviously, those requirements in the Proposed Rules must also remain undiluted.

Use of model forms to disclose information about representations and warranties must be conditioned on use of a form reflecting the investors' perspective.

The Release seeks comment as to whether the Proposed Rules should require issuers to provide investors with a copy of the representations and warranties marked to show how they compare with an industry-developed model provision.[20] This suggestion must be rejected. Using an industry form as the baseline standard for representations and warranties will only lower the bar from the investors' perspective regarding a critical element of the ABS offering process. The idea is plainly a bad one.

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18 Release at 47964.
19 *Id.*
20 Release at 47965.

Use of a model form for comparison purposes and to highlight the distinctive features of a specific set of representations and warranties ***might*** have value, since it would give investors an efficient way of identifying the unique attributes and potential risks associated with any given ABS offering. However, this approach to disclosure could only achieve the investor protection goals underlying the Dodd-Frank Act if it involved the use of a template that reflected a strong pro-investor point of view. Only under those circumstances should use of such a template be incorporated into the Proposed Rules.

Disclosure of Asset Level Information

In one of the most important improvements to the ABS offering process, the Proposed Rules would require the disclosure of extensive data about each asset in the pool underlying the ABS offering.[21] This is a critical enhancement to the regulatory regime for ABS, since asset-level information is essential to evaluating any ABS.

The Proposed Rules would require the disclosure of a broad range of asset-related information, including general characteristics that would apply across all asset classes, as well as data points that would be tailored to specific types of underlying assets, ranging from residential and commercial mortgages to automobiles, student loans, and corporate debt. In addition, to ensure that the data is available in a clear, comparable, and analyzable form, the Proposed Rules would require the data to be presented and filed on EDGAR in a tagged data format using XML.

Broker compensation must be included in the data set, as required by the Dodd-Frank Act.

These disclosure requirements, although strong, do not comply entirely with all of the specific requirements in the Dodd-Frank Act governing disclosure of asset-level data. For example, the Dodd-Frank Act requires ABS issuers, "at a minimum," to disclose asset-level data regarding "the nature and extent of the compensation of the broker or originator of the assets backing the security," if such data "are necessary for investors to independently perform due diligence."[22] However, the Release indicates that the Proposed Rules will not require asset-level disclosure regarding broker compensation, for reasons that are not clearly articulated.[23]

This is an unacceptable departure from the requirements of the Dodd-Frank Act. Broker compensation is necessary for evaluating how the compensation structure associated with an asset—including possible conflicts of interest—might affect its quality. Disclosure of that information must therefore be required, in accordance with the Dodd-Frank Act.

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[21] Release at 47965-65.

[22] Dodd-Frank Act § 942(b).

[23] Release at 47966.

Disclosure of risk retention on an asset-level basis must also be required.

The Dodd-Frank Act requires disclosure, on an asset-level basis, of the "amount of risk retention by the originator and the securitizer of such assets."[24] On this issue, the Release indicates that the Proposed Rules would simply require the sponsor to disclose generally any interest it has retained in the transaction, including the amount and nature of that interest.[25]

Here too the Proposed Rules fall short of the applicable statutory requirements. The degree of risk retained by the originator and the securitizer on an asset-level basis is information that would undoubtedly be of value to investors as they perform due diligence and assess the quality of the offering. This is especially true in light of the many forms of risk retention that have been proposed in accordance with Section 941(b) of the Dodd-Frank Act, including vertical, horizontal, and other configurations. Each of those forms of risk retention presents a different risk profile, depending on the specific underlying assets that are subject to the risk retention. Accordingly, the Proposed Rules must require the disclosure of asset-level risk retention information.

Disclosure in the Private Offering Market for ABS.

The Proposed Rules would substantially improve the amount of information about ABS and other structured finance products that investors would be entitled to receive in connection with private offerings and resales under Rule 506 of Regulation D and Rule 144A. In essence, those investors, upon request, would be entitled to receive the same amount of information that would be required if the transaction were fully registered under the Securities Act, including ongoing reports that would be required under the Exchange Act if the issuer were required to file such reports.[26] This disclosure would have to include asset-level information that, under the Proposed Rules, would be set forth in the prospectus for an ABS offering.

Disclosure of detailed information about esoteric assets underlying structured finance products is essential.

The Release notes that according to some commenters, requiring disclosure of asset-level information is not appropriate in connection with many of the esoteric structured finance products offered via the private market, since for such offerings, current regulations do not prescribe asset-level reporting requirements.[27] Supposedly, there would be significant uncertainty regarding disclosure obligations, and some unique products might not lend themselves to any conventional disclosure regime.

24 Dodd-Frank Act § 942(b).
25 Release at 47966.
26 Release at 47970.
27 Release at 47970-71.

These arguments should be firmly rejected. The need for comprehensive and clear disclosure of asset-level information is greatest with respect to the assets underlying structured finance products, precisely because of their esoteric and complex nature. The financial crisis proves the point beyond doubt.

Failures in the CDO market, which operated through private offerings, was a central cause of the financial crisis. As explained in the Release,

> [t]he lack of information about CDOs and other structured securities in the private market exacerbated the harm to investors and the markets as a whole during the financial crisis. In addition, other market participants and regulators did not have access to important information about this significant component of the capital markets.[28]

The notion that disclosure requirements with respect to these highly opaque and complicated offerings should actually be less robust is absurd. The Proposed Rules should unequivocally require the same exacting level of detail in the asset-level disclosure that is required with respect to more conventional ABS.

Anything short of full disclosure for all types of assets underlying ABS offerings would create a huge loophole. If there were little or no disclosure requirements for the more esoteric structured finance products, the rules would actually incentivize the creation of products that are as esoteric as possible. It would be difficult to think of a more perverse incentive, which would almost certainly usher in an explosion of products about which there would little disclosure, transparency, or knowledge. That must not be allowed to happen.

To the extent that esoteric structured finance products require the formulation of new disclosure specifications tailored to each type of underlying asset, those standards must be developed without delay. Any other approach would violate not only the explicit requirements of the Dodd-Frank Act, but also the spirit of transparency that is nowhere more critical than in the ABS and structured finance market.

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28 Initial Release at 23393-94.

CONCLUSION

We hope these comments are helpful as you finalize the Proposed Rules in this critically important area of regulatory reform.

Sincerely,

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