

## MEMORANDUM

**To:** Commission File No. S7-08-10  
Commission File No. S7-14-11

**From:** Robert Errett  
Special Counsel  
Office of Structured Finance  
Division of Corporation Finance  
U.S. Securities and Exchange Commission

**Date:** May 18, 2012

**Re:** Meeting with Representatives of the Equipment Leasing and Financing Association.

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On May 16, 2012, Paula Dubberly, Katherine Hsu, Rolaine Bancroft, Steve Gendron, David Beaning and Robert Errett of the Division of Corporation Finance and Emre Carr and Stanislava Nikolova of the Division of Risk, Strategy and Financial Innovation met with the representatives of the Equipment Leasing and Finance Association (“ELFA”). The meeting participants discussed topics relating to the Commission’s April 7, 2010 proposals regarding asset-backed securities transactions and the Commission’s June 6, 2011 proposals regarding credit risk retention. An agenda and a list of the members of ELFA that attended the meeting are attached to this memorandum.

Attachment

## 2012 Capitol Connections

**Securities and Exchange Commission – Office of Structured Finance**  
**100 F Street N.E.**  
**Mr. Robert Errett**

**May 16 at 10:00 am**

Please bring your photo ID to enter the building

Richard Shanahan	Equipment Leasing and Finance Association
Daniel Hampton	Key Equipment Finance
Mike DiCecco	Huntington Equipment Finance
Brian Madison	Key Equipment Finance
Steven LaBarron	Constellation Financing Systems
Paul Frechette	The Alta Group
Bob Blee	GE Capital Markets Group
Lori Frasier	Key Equipment Finance
Robert Goldberg	Wells Fargo Equipment Finance
Steve Whelan	Blank Rome LLP

## 2012 Capitol Connections

**Securities and Exchange Commission – Office of Structured Finance**  
**100 F Street N.E.**  
**Mr. Robert Errett**

**May 16 at 10:00 am**

- Dodd-Frank Wall Street Reform Act
  - Sections 941-946: Securitizations/Syndications/Risk Retention
  - Section 113: Significantly Important Financial Institutions
  - Reg D. and Rule 144A: Equipment Asset Back Securities
  - Section 1071: ECOA data collection
- Timeframe for final rules
- Upcoming regulatory priorities of the SEC on Financial Institutions

### **Background: SEC Office of Structured Finance**

This office is focused exclusively on disclosure reviews and policy-making for asset-backed securities and other structured finance products. The office also leads the rulemaking and interpretive activities related to structured products.

### **Securitization/Syndications/Risk Retention**

In June 2011, ELFA urged regulators in a comment letter to establish a workable framework for equipment finance securitizations as ELFA remains concerned about the potential impact of credit risk retention regulations on the equipment finance securitization and syndications markets. ELFA recommends that the new rules (1) conform to typical investor requirements for risk retention in the equipment finance industry and (2) reflect the realities of equipment lease and loan securitization.

The submission highlighted the strong performance of equipment asset backed securities (ABS) relative to other asset classes and attributes its strong performance to the already sound practices followed by issuers in this sector, including (1) historic risk retention that is well in excess of five percent (2) stronger underwriting practices for equipment finance contracts as compared to mortgage lending (3) more conservative valuations for equipment as compared to housing and (4) the absence of the “originate to distribute” business model in the Equipment ABS sector.

The comment letter pointed out that since Equipment ABS is expected to utilize horizontal risk retention almost exclusively, it is critical that the final regulations include variations which issuers and investors in this market segment have found acceptable during both good and challenging times. Specifically, the comment letter recommended that the final regulations permit Equipment ABS to recognize horizontal risk retention in the form of overcollateralization.

### **Significantly Important Financial Institutions**

The Dodd-Frank Act creates a systemic risk regulator with authority to define corporates involved in whole or in part, directly or indirectly, in financial activities as systemically significant and subject to regulatory standards, capital requirements and liquidity requirements. This extends into companies that are nonbank entities.

The Act provided for an exemption if a company earns less than 85% of its revenue from financial services and restricts the Federal Reserve’s regulation to companies predominately engaged in financial activities, again defined as less than 85% of its consolidated revenue or consolidated assets. In March 2011, the Financial Stability Oversight Council (FSOC) defined a significant nonbank financial company as one with less than \$50 billion in assets, tracking with the Bank Holding Company threshold created in Dodd-Frank, with a final rule issued in April of 2012.

### **Regulation D and Rule 144A: Equipment Asset Backed Securities**

In August 2011, the Securities and Exchange Commission requested comments on proposed rules that would require asset level information reporting with respect to equipment asset-backed

securities (“*Equipment ABS*”). ELFA is concerned that the SECs proposed asset level reporting requirements under Regulation AB would have an adverse impact on the ability of the equipment finance sector to access the capital markets and thereby impair the availability of credit for its customers who lease or borrow to acquire essential equipment for their businesses.

ELFA filed a comment letter stating that the final Regulation AB reporting rules should recognize that additional asset level reporting is valuable only if it has the potential to enhance decision making by investors and that the costs associated with the tracking and reporting of information not otherwise required by issuers or investors merely imposes additional regulatory costs and constraints on capital formation.

### **ECOA Data Collection**

Section 1071 of Title 10 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111- 203) adds extensive new business credit applicant data collection requirements to the Equal Credit Opportunity Act (ECOA). The Small Business Loan Data Collection requirements under Dodd-Frank subject commercial loans of financial institutions to the jurisdiction of the Consumer Financial Protection Bureau (CFPB) even though, as its name suggests, the CFPB was not intended to regulate commercial loans or lenders. Section 1071 requires any financial institution that receives an application for commercial credit to inquire as to whether the applicant is a women-owned, minority-owned or small-business enterprise. This inquiry is currently prohibited by Section 202.5 of Regulation B promulgated under the ECOA.

The section appears to be in conflict with the requirements of ECOA, and jurisdiction by the CFPB seems to be counter to their goal in consumer protection since this provision deals with commercial transactions. It will further impose significant burdens on small businesses to ensure data collected for Section 1071 is shielded from those making credit decisions and comply with ECOA requirements and hinder their ability to extend credit.