

## MEMORANDUM

**To:** Commission File No. S7-08-10  
**From:** Division of Corporation Finance  
**Re:** Disclosure of Asset-Level Data  
**Date:** February 25, 2014

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This memorandum describes a potential approach for disclosure of asset-level information to investors and potential investors in asset-backed securities (“ABS”) taking into account the potential sensitivity of certain asset-level information. In particular, instead of filing and making publicly available certain types of asset-level information on EDGAR as described in the proposal by the Securities and Exchange Commission (the “Commission”) for enhanced regulation of ABS offerings in 2010 (the “2010 ABS Proposing Release”),<sup>1</sup> this approach would require issuers to make asset-level information available to investors and potential investors through an issuer’s Web site which would enable issuers to address privacy concerns associated with such disclosures, including through restricting access to potentially sensitive information.<sup>2</sup> The staff of the Division of Corporation Finance believes that, for the reasons discussed below, this approach would be a better mechanism to address certain privacy concerns that have been raised in connection with the 2010 ABS Proposing Release and to provide these disclosures to investors in ABS offerings.

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<sup>1</sup> See Asset-Backed Securities, Release No. 33-9117 (Apr. 7, 2010) [75 FR 23328].

<sup>2</sup> If an issuer determines it could meet its obligations under the privacy laws through the use of a Web site operated and maintained by a third party on the issuer’s behalf, our approach would not prohibit issuers from doing so.

## I. Background

In 2010, the Commission proposed, among other things, to require that issuers of most asset classes of ABS file on EDGAR standardized asset-level information in prospectuses and, on an ongoing basis, in periodic reports. The Commission noted in the 2010 ABS Proposing Release that it was sensitive to the possibility that certain asset-level disclosures may raise concerns about the underlying obligor's personal privacy. In particular, the Commission noted that requirements to disclose the geographic location of the obligor or the obligor's collateralized property, credit score, income and debt could raise privacy concerns. The Commission also noted, however, that information about credit scores, income and employment status would permit investors to perform better risk and return analysis of the underlying assets and therefore of the ABS.

In light of these privacy concerns, the proposal did not require issuers to disclose an obligor's name, address or other identifying information, such as the zip code of the property.<sup>3</sup> The Commission also proposed ranges, or categories of coded responses, instead of requiring disclosure of an exact credit score<sup>4</sup> or income or debt amounts in order to prevent the

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<sup>3</sup> The Commission proposed to require the broader geographic delineations of Metropolitan or Micropolitan Statistical Areas location in lieu of the narrower geographic delineation of zip codes. Metropolitan and Micropolitan Statistical Areas are geographic areas designated by a five-digit number defined by the U.S. Office of Management and Budget (OMB) for use by federal statistical agencies in collecting, tabulating and publishing federal statistics. A Metropolitan Statistical Area contains a core urban area of at least 10,000 (but less than 50,000) population. Each Metro or Micro area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core. The OMB also further subdivides and designates New England City and Town Areas. The OMB may also combine two or more of the above designations and identify it as a Combined Statistical Area.

<sup>4</sup> For asset-level disclosure requirements for the disclosure of obligor credit scores, the Commission proposed coded responses that represent ranges of credit scores (e.g., 500-549, 550-599, etc.). The ranges were based on the ranges that some issuers used in pool-level disclosure. See the 2010 ABS Proposing Release at 23357.

identification of specific information about an individual.<sup>5</sup> The Commission also solicited comment on whether there were alternative approaches to addressing privacy concerns.

Several commenters noted that the asset-level requirements, as proposed, would still raise privacy concerns.<sup>6</sup> These commenters suggested that, while the proposed asset-level disclosures would not include direct identifiers, if the responses to certain asset-level data requirements are combined with other publicly available sources of information about consumers it could permit the identity of obligors in ABS pools to be uncovered or “re-identified.”<sup>7</sup> A number of commenters noted that, if an obligor was identified through this process, then the obligor’s personal financial status could be determined.<sup>8</sup> The commenters noted that if obligors are re-

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<sup>5</sup> For monthly income and debt ranges, the Commission proposed to require ranges based on a review of statistical reporting by other governmental agencies (e.g., \$1,000-\$1,499, \$1,500-\$1,999, etc.). See the 2010 ABS Proposing Release at 23357.

<sup>6</sup> See, e.g., letters from American Bar Association dated Aug. 17, 2010 submitted in response to the 2010 ABS Proposing Release (“ABA”), Consumers Union dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (“CU”), Mortgage Bankers Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (“MBA I”) (suggesting that the use of Metropolitan Statistical Areas or divisions in lieu of zip codes would not mask the location of particular properties), and World Privacy Forum dated Aug. 2010 submitted in response to the 2010 ABS Proposing Release (“WPF”) (also suggesting that the use of the proposed asset-level disclosures would not mask the location of particular properties and additionally that it may provide information useful in the re-identification process).

<sup>7</sup> See, e.g., letter from WPF (suggesting that attempts to mask the location of particular properties and the identity of borrowers is not workable because there is too much information about mortgages publicly available that would allow the location of a particular property to be found).

<sup>8</sup> See, e.g., letters from ABA, American Financial Services Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, American Resort Development Association dated July 22, 2010 submitted in response to the 2010 ABS Proposing Release, American Securitization Forum, Auto Issuer Subforum and Auto Investor Subcommittee dated Aug. 31, 2010 submitted in response to the 2010 ABS Proposing Release (“ASF II”), Consumer Data Industry Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (“CDIA”), CNH Capital America LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, CU, Anita B. Carr dated May 12, 2010 submitted in response to the 2010 ABS Proposing Release, Daniel Edstrom dated May 12, 2010 submitted in response to the 2010 ABS Proposing Release, Epicurus Institute dated Aug. 1, 2010 submitted in response to the 2010 ABS Proposing Release (“Epicurus”), Equipment Leasing and Finance Association dated July 22, 2010 submitted in response to the 2010 ABS Proposing Release, Financial Services Roundtable dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, MBA I, National Association of Federal Credit Unions dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, Navistar Financial Corporation dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, Securities Industry and Financial Markets Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (“SIFMA”), Student Loan Servicing Alliance

identified then information about an obligor's credit score, monthly income and monthly debt would be available to the general public through the EDGAR filing. Commenters also noted that if personal information was linked to an individual through the asset-level disclosures this may conflict with<sup>9</sup> or undermine<sup>10</sup> the consumer privacy protections provided by federal and foreign laws restricting the release of individual information and/or increase the potential for identity theft and fraud.<sup>11</sup>

Commenters differed on whether coded ranges could effectively address privacy concerns and how to balance privacy concerns with the Commission's objective of improving disclosure for ABS investors. On the one hand, two commenters noted that using coded ranges would not mitigate privacy concerns because the ranges are so narrowly defined they would identify the actual score or dollar amount of income.<sup>12</sup> On the other hand, other commenters urged that the use of ranges for disclosures, such as credit scores and income, or requiring a broader geographic identifier for the property, such as Metropolitan Statistical Areas or

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dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release, TYI, LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("TYI"), Ally Financial et al. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("VABSS I"), Vantage Score Solutions LLC dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Vantage"), and WPF.

<sup>9</sup> See, e.g., letters from ABA (stating that the asset-level disclosures would potentially result in release to the public of detailed non-public personal financial information (as defined in Title V of the Gramm-Leach-Bliley Act ("GLBA")) as well as consumer report information (as defined in the Fair Credit Reporting Act ("FCRA")), CDIA (suggesting that certain data may fall under the protections of the FCRA, GLBA, or both), Epicurus, TYI (suggesting that if the disclosures could be used to identify a borrower in a European-based ABS, this may violate European privacy laws), and WPF.

<sup>10</sup> See letter from WPF (suggesting that if data that may fall under the scope of the FCRA is posted on EDGAR and subsequently linked to an individual, the data may become public and, therefore, the transfer of this information to others may contravene FCRA restrictions).

<sup>11</sup> See letters from CDIA, Vehicle ABS Sponsors dated Nov. 8, 2010 submitted in response to the 2010 ABS Proposing Release ("VABSS II"), and WPF (suggesting that the cost of identity theft would not only fall on borrowers, but also on asset holders and, therefore, investors would demand higher returns to protect against those losses).

<sup>12</sup> See letters from CDIA and MBA I.

divisions, would greatly reduce transparency.<sup>13</sup> Commenters also noted that disclosure of data that relates to the credit risk of the obligor, such as an obligor's credit score, income, or employment history, would strengthen investors' risk analysis of ABS involving consumer assets.<sup>14</sup> Commenters also suggested that exact income and credit scores are necessary to appropriately price the securities<sup>15</sup> and verify issuer disclosures.<sup>16</sup>

The Commission received few suggestions for alternative approaches to balancing individual privacy concerns and the needs of investors to have access to detailed financial information about obligors. Commenters suggested the Commission work with other federal agencies to evaluate whether the proposed asset-level information was in fact anonymized<sup>17</sup> and to assess whether the required asset-level disclosures would subject issuers to liability under the federal privacy laws.<sup>18</sup> Many comments that supported grouped account disclosures rather than asset-level disclosures indicated that grouped disclosures could also address privacy concerns

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<sup>13</sup> See letters from American Securitization Forum dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("ASF I") (expressed views of investors only), The Beached Consultancy dated July 8, 2010 submitted in response to the 2010 ABS Proposing Release (suggesting that the metropolitan area is too broad to be useful, and, therefore, a "3-digit zip code" should be permitted), and Wells Fargo & Co. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release ("Wells Fargo I").

<sup>14</sup> See letters from ASF I (requesting disclosure of exact credit score and noting that requiring ranges would be a step back in terms of transparency), Interactive Data Corporation dated Aug. 2, 2010 (noting that asset-level granularity is essential for robust evaluation of loss, default and prepayment risk associated with RMBS), Prudential Investment Management, Inc. dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release (suggesting that ranges of FICO score bands are not sufficient to appreciate the linkages between collateral characteristics), and Wells Fargo I (expressing concern that restricting information available to investors could result in substantially lower pricing for new residential mortgage backed securities offerings). See also SIFMA (expressed views of investors only) (recommending 25-point buckets for credits scores rather than the 50-point buckets as proposed).

<sup>15</sup> See footnote 14.

<sup>16</sup> See letter from ASF I (expressed views of investors only) (suggesting that exact income allows them to double check the issuer's debt-to-income calculations).

<sup>17</sup> See letters from ABA and ASF I.

<sup>18</sup> See letter from ABA.

with asset-level disclosures.<sup>19</sup> Other commenters suggested addressing privacy concerns by changing the disclosure format, such as by requiring that disclosure be presented in ratios rather than dollar amounts,<sup>20</sup> requiring a default propensity percentage in lieu of a credit score,<sup>21</sup> or requiring narrative disclosure in lieu of a response to data requirements.<sup>22</sup>

The Commission also received suggestions that it should restrict or provide guidance about access to sensitive data. For instance, a commenter suggested that the Commission establish a central “registration system” where access to “sensitive data” is only made to persons who had independently established their identity as investors, rating agencies, data providers, investment banks or other categories of users while forbidding others to use the data or include the data in commercially distributed databases.<sup>23</sup> Another commenter suggested that the Commission consider restricting access to registered users who acknowledge the potentially sensitive nature of the data and agree to maintain its confidentiality.<sup>24</sup> This commenter suggested that requiring users to identify themselves and accept appropriate terms of use would

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<sup>19</sup> See e.g., letters from ASF II (expressing the views of a portion of their investor membership and their issuer members) (suggesting a grouped data disclosure format is sensitive to issuer concerns regarding the disclosure of proprietary data and consumer privacy issues), Sallie Mae, Inc. (SLM Corporation) dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (“Sallie Mae II”) (suggesting that “data presented on a grouped basis should address all privacy concerns”), and VABSS II and Ally Financial et al. dated Oct. 13, 2011 submitted in response to the 2011 ABS Re-Proposing Release (“VABSS III”) (both suggesting that a grouped data approach minimizes, but does not eliminate, privacy concerns), and Ally Financial Inc. et al. dated Aug. 3, 2012 submitted in response to the 2010 ABS Proposing Release and the 2011 ABS Re-Proposing Release (“VABSS IV”) (stating that they believe a grouped data approach is the best way to provide additional information to investors while addressing obligor privacy and competitive concerns).

<sup>20</sup> See letter from CU (suggesting that liquid cash reserves be expressed as a ratio relative to the borrower’s debt).

<sup>21</sup> See letter from Vantage (describing default propensity as, “simply, the chance that a consumer will become 90 or more days late on a debt that he or she owes expressed as a percentage”).

<sup>22</sup> See letter from American Bankers Association/ABA Securities Association dated Aug. 2, 2010 submitted in response to the 2010 ABS Proposing Release.

<sup>23</sup> See letter from VABSS II.

<sup>24</sup> See letter from CDIA.

provide a deterrent to those who might attempt to abuse personal financial data and permit identification of such users should any abuse occur. A third commenter suggested establishing rules applicable to the posting, use and dissemination of potentially sensitive data disclosed on EDGAR, including penalties for violation of the rules.<sup>25</sup>

In light of the comments received raising individual privacy concerns and the requirements of new Section 7(c) of the Securities Act, the Commission requested additional comment on privacy generally in July 2011.<sup>26</sup> The Commission received limited additional feedback on how to address the potential privacy issues surrounding the proposed asset-level disclosures. Commenters again stated that the asset-level requirements, as proposed, would raise privacy concerns.<sup>27</sup> One commenter suggested that the Commission could address privacy concerns by not requiring the disclosure of Social Security numbers, only requiring Metropolitan Statistical Area information about the property instead of a property's full address, and replacing

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<sup>25</sup> See letter from Epicurus.

<sup>26</sup> See Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities, Release No. 33-9244 (July 26, 2011) [76 FR 47948] (the "2011 ABS Re-Proposing Release" or the "2011 ABS Re-Proposal"). For instance, the Commission asked how asset-level data could be required, both initially and on an ongoing basis, to implement Section 7(c) effectively, yet also address commenters' privacy concerns. Section 7(c) requires, in relevant part, that the Commission adopt regulations requiring an issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security, including asset-level or loan-level data, if such data is necessary for investors to independently perform due diligence. The Commission also asked what particular data elements could be revised or eliminated for each particular asset class in order to address commenters' privacy concerns, yet still enable an investor to independently perform due diligence and whether there are other ways to present data that is useful to investors, implement Section 7(c) but also address commenters' privacy concerns related to asset-level reporting. The Commission also requested comment on whether it would be appropriate to require an obligor's credit score and income be provided on a grouped basis in a format similar to the proposal for credit cards in the 2010 ABS Proposing Release.

<sup>27</sup> See, e.g., letter from Mortgage Bankers Association dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("MBA II") (reiterating that several of the data fields proposed could allow someone to identify the obligor and that "the income and credit score ranges do not mitigate privacy issues because the suggested ranges are so narrowly defined that they virtually identify the actual score or dollar amount of income").

borrower name with an ID number.<sup>28</sup> Other commenters reiterated that for some asset classes a grouped-account and/or pool-level disclosure format may mitigate privacy concerns.<sup>29</sup> One commenter repeated the suggestions it provided in previous comment letters that the Commission could establish and manage (or have a third-party manage) a central “registration system” that would permit access to sensitive data only to persons who had independently established their identity as investors, rating agencies, data providers, investment banks or other categories of users while forbidding others to use the data or include the data in commercially distributed databases.<sup>30</sup> The commenter suggested it would not be an “overwhelming process to establish and maintain a restricted-access system” and that Section 7(c) does not require that data that raises privacy concerns must be publicly available; therefore, the commenter believed that the Commission would be well within its authority to limit access to the data.

## **II. Potential Approach for the Disclosure of Asset-Level Data**

We believe the Commission should consider an approach that does not require that certain potentially sensitive asset-level information be made publicly available on EDGAR, but instead requires that such information be made available by issuers to investors and potential investors. Although the Commission’s general approach has been for all required disclosures that are provided to investors as part of a registered offering to be publicly filed on EDGAR, we think an approach that relies on issuers to provide this information to investors and potential investors through a Web site without disseminating the potentially sensitive information on EDGAR is preferable because issuers are better situated to identify persons that should be able to

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<sup>28</sup> See letter from Metropolitan Life Insurance Company dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release (“MetLife”).

<sup>29</sup> See letters from Sallie Mae II and VABSS III.

<sup>30</sup> See letters from VABSS III and VABSS IV.

access the potentially sensitive information in a cost-efficient manner in accordance with the privacy laws. As discussed further below, given existing practices and preferences expressed in this market, we also believe that sponsors and issuers should be capable of providing this information to investors and potential investors with appropriate safeguards.

As noted above, commenters suggested that the Commission consider limiting access to particular information filed through EDGAR. For example, one commenter suggested that the Commission establish separate rules for the posting, use and dissemination of private data on EDGAR, as well as penalties for the violation of those rules. We have considered whether the Commission could implement controls to address potential privacy issues raised by asset-level data. Commission staff identified significant legal and resource constraints related to modifying the existing EDGAR system, or creating a new system, to securely store and disseminate asset-level information to investors in a timely manner that complies with the privacy laws and other applicable laws.<sup>31</sup> We believe there may be inefficiencies for the Commission to prescribe a standard set of privacy controls for all issuers of asset-backed securities where an issuer may already have in place a system to control the transfer of potentially sensitive information related to the assets underlying the securities sold to investors.<sup>32</sup> We believe, therefore, that the

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<sup>31</sup> A new storage and dissemination mechanism developed for this information would also have to comply with information security controls under the Federal Information Security Management Act (“FISMA”) and related Office of Management and Budget memoranda and National Institute of Standards and Technology (“NIST”) standards. Since April 2013, these include a new, structured set of privacy controls that NIST promulgated in Special Publication (SP) 800-53 Rev. 4, *Security and Privacy Controls for Federal Information Systems and Organizations*. The Commission is required to follow SP 800-53 by NIST Federal Information Processing Standard 200, a mandatory federal standard for all agencies under FISMA. 40 USC 11331(b); 15 USC 278g-3(b).

<sup>32</sup> In addition, the commenter who urged that the Commission establish separate rules and penalties for posting, use and dissemination of private data also suggested that instead of requiring that issuers provide investors with raw data, the Commission consider establishing “an independent third-party analysis” of the information and investors be provided with “direct analysis tools” on a monitored, subscription basis. See letter from Epicurus. We believe such an approach would be contrary to a stated intention of the

Commission is not in the best position to gather potentially sensitive personal information and implement controls over its dissemination.

We also note that among other privacy laws, the Fair Credit Reporting Act (FCRA) is implicated by certain asset-level information about an individual underlying obligor. FCRA places limitations on the ability to share that information, absent an exception. We understand that certain asset-level information about an obligor that an issuer would be required to disclose under the rule may be considered a “consumer report” subject to regulation under FCRA. FCRA, however, provides an exclusion, which should apply in this context, for disclosure to someone who “intends to use the information, as a potential investor ... in connection with a valuation of, or an assessment of the credit or repayment risks associated with an existing credit obligation.”<sup>33</sup> In this case, we believe that issuers are best situated to make the determination of who is an investor or a potential investor and whether the exclusion from FCRA is available.

Under the federal securities laws, issuer information filed with the Commission and not subject to confidential treatment is made publicly available on EDGAR.<sup>34</sup> We consulted with other federal agencies and considered other ways to make the information available to investors and potential investors, including whether the Commission could restrict access to certain of the sensitive information on EDGAR. We believe that an issuer or issuer-sponsored Web site would permit issuers to implement their own procedures that would provide both flexibility and the possibility of innovation in the delivery of information and the design of privacy controls.

Issuers could determine for themselves the specific controls needed for the dissemination of

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Commission’s proposals regarding asset-level information to provide investors with the ability to conduct their own due diligence prior to an investment decision.

<sup>33</sup> 15 U.S.C. 1681(a)(3)(F).

<sup>34</sup> Exchange Act Section 24 [15 U.S.C. § 78x] and Section 35A [15 U.S.C. § 78ll].

sensitive information on a Web site. For example, issuers could require user registration and a certification by users that they will not attempt to reverse engineer downloaded data. We also believe that requiring that the information be disseminated through a Web site would bring uniformity and clarity over other non Web site-based methods (e.g., physical delivery of data on a CD or by email) because disseminating the information from a central location would ensure that the same information is provided to all investors in the same manner, which could improve investors' access to the data and simplify compliance. Further, this requirement would provide certainty to investors about how they would receive asset-level information from registered ABS issuers.<sup>35</sup> It would also allow the staff to evaluate more easily how the information is made available to investors.

We believe sponsors and issuers would be capable of providing this information to investors and potential investors with appropriate safeguards to comply with privacy laws. As a general matter, we note that it has been a longstanding market practice for issuers to post certain information about an ABS (e.g., transaction agreements and asset pool information) on Web sites.<sup>36</sup> ABS transaction agreements across asset classes typically contain provisions that require

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<sup>35</sup> As noted in this memorandum, it has been market practice for issuers to post certain information about ABS on Web sites, and our rules require that ABS prospectuses include disclosure about how investors can access information on a Web site. See footnotes 36 and 39.

<sup>36</sup> For example, prior to Section 942(a) of the Dodd-Frank Act eliminating the automatic suspension of the duty to file under Section 15(d) of the Exchange Act for ABS issuers, issuers often made information available to security holders through their Web sites. See Asset-Backed Securities, Release No. 33-8518 (Jan. 7, 2005) [70 FR 1506] at 1561 (noting that some require registration and pre-approval before permitting access). At this time, Fannie Mae publicly discloses at issuance approximately 50 items of loan-level disclosure for their newly-issued single-family MBS. See Fannie Mae's loan-level Disclosure File Layout available at <http://www.fanniemae.com/resources/file/mbs/pdf/filelayout-lld.pdf>. Also, Freddie Mac currently provides asset-level information at issuance and on a monthly basis for all newly issued fixed-rate and adjustable-rate mortgage participation certificate securities. See Freddie Mac's asset-level disclosure requirements available at [http://www.freddiemac.com/mbs/docs/fs\\_lld.pdf](http://www.freddiemac.com/mbs/docs/fs_lld.pdf).

Furthermore, investors in Freddie Mac's Structured Agency Credit Risk (STACR) securities are able to access asset-level data on the mortgages that are included in the reference pool that is linked to the STACR securities. See [http://www.freddiemac.com/creditsecurities/security\\_data.html](http://www.freddiemac.com/creditsecurities/security_data.html).

issuers to provide reports to investors on Web sites.<sup>37</sup> One commenter, for example, noted that for commercial mortgage-backed securities, it is current industry practice to use Web sites to provide information to investors and to enable investors to communicate with each other.<sup>38</sup> Further, we note from our review of RMBS transaction agreements that some RMBS transaction agreements require that asset-level information be provided to investors through a Web site. As a reflection of these existing practices, Regulation AB currently requires ABS prospectuses to include disclosure about how investors can access information on a Web site.<sup>39</sup> We also note that some investors have expressed their preference for accessing information about ABS performance through Web sites.<sup>40</sup> To the extent an issuer uses the same Web site to provide investors with the required asset-level disclosures as it does to provide other reports, investors may benefit from receiving all the information in one location. Investors also may benefit from an issuer's ability to customize the Web site to suit investors' preferences.

We also note that such an approach is similar to that of the Bank of England, which requires that asset-level information be provided for certain ABS submitted as collateral against transactions with the Bank of England.<sup>41</sup> The Bank of England requires that asset-level

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<sup>37</sup> We note from a review of CMBS, RMBS and Auto ABS transaction agreements that these agreements frequently require that all notices, reports and communications to investors be posted and made available to all investors on a Web site that may be password protected.

<sup>38</sup> See letter from CRE Finance Council dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release ("CREFC") (stating that "the industry currently provides a number of methods of communication with investors including distribution date statements, the comprehensive Investor Reporting Package developed by the CRE Finance Council and transaction level Websites, which provide investors with real time forums to communicate and receive information").

<sup>39</sup> See Item 1118(c) of Regulation AB [17 CFR 229.1118(c)].

<sup>40</sup> Due to the possible delay between the time information is posted on an investor accessible Web site and the time information is filed on EDGAR, some commenters noted that investors prefer to receive information and communications through regularly monitored existing channels rather than wait to access information on EDGAR. See letters from CREFC, MBA II, and MetLife.

<sup>41</sup> See the market notices from the Bank of England discussing its eligibility requirements for RMBS and covered bonds backed by residential mortgages, CMBS, small-medium enterprise loan backed securities

information, as well as other transaction information, be made available to investors, potential investors, and certain other market professionals acting on their behalf through a Web site managed by or on behalf of the transaction originator or arranger. A party must register before accessing the data and the Bank of England notes that parties that seek to access the data should be required to keep the information confidential, and agree that they will only use the information to evaluate the security. The Bank of England also permits other controls necessary for legal or regulatory compliance.

In addition, we understand that CMBS transaction agreements often include provisions limiting the ability to access information about the ABS on a Web site to certain classes of persons, including investors. Those provisions may include requirements that a person must make certain representations, including certifying to being an investor or potential investor and agreeing to limits on the use of the information, in order to gain access to the Web site.

Finally, some asset-level data is available today through third-party data providers who collect asset-level information about agency and non-agency mortgage loans and provide access to the data for a fee.<sup>42</sup> Third-party providers obtain the asset-level data from the issuer or the servicer, and the third-party providers put in place certain controls over the access and use of the information (e.g., user accounts and confidentiality agreements).

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and asset-backed commercial paper, and asset-backed securities backed by consumer loans, auto loans, and leases that are delivered as collateral against transactions in the Bank's operations at:  
<http://www.bankofengland.co.uk/markets/Documents/marketnotice121002abs.pdf>,  
<http://www.bankofengland.co.uk/markets/Documents/marketnotice111220.pdf>,  
<http://www.bankofengland.co.uk/markets/Documents/marketnotice121217.pdf>.

<sup>42</sup> See, e.g., Blackbox Logic (providing RMBS loan level data aggregation and processing services allowing clients to analyze both current and historical RMBS trends) available at <http://www.bbxlogic.com/>, Core Logic (providing data and analytic services) available at <http://www.corelogic.com/> and LPS McDash Online (providing access to loan-level data) available at <http://www.lpsvcs.com/Products/CapitalMarkets/LoanData/Products/Pages/McDashOnline.aspx>.

Asset-level information that does not raise privacy concerns would still be filed on EDGAR in order to provide the public with access to as much asset-level information as possible. Potentially sensitive asset-level disclosure that raises privacy concerns would be provided through an issuer-sponsored Web site. Under this approach, issuers would provide access to potentially sensitive asset-level data to investors and potential investors and would be permitted to restrict access as necessary to comply with privacy laws.<sup>43</sup> Issuers would be required to disclose on the Web site specific credit scores, income and debt amounts, instead of coded ranges, as proposed, thereby increasing the utility of the data for investors. Investors would likely benefit from having all asset-level information in one location, so under this approach, an issuer would provide access to all asset-level information on the Web site, including potentially sensitive asset-level information. In addition to filing the non-sensitive asset-level information publicly on EDGAR, a copy of the information disclosed on a Web site could be provided to the Commission in a non-public filing to preserve the information and enable the Commission to have a record of all asset-level information provided to investors.<sup>44</sup> An issuer would be required to keep the information on the Web site for at least five years and the information would be accessible free of charge. The prospectus would need to disclose the Web site address for the information and the issuer would have to incorporate the Web site

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<sup>43</sup> We note, for example, that the Commission received comments suggesting that information that may raise individual privacy concerns could be provided to investors through a limited-access Web site rather than through public dissemination of this information on EDGAR. See letter from VABSS IV (urging the Commission “to consider whether loan-level data (or even grouped data) needs to be made publicly available or could be made available to investors and other legitimate users in a more limited manner, such as through a limited access website”). See also letters from VABSS II and VABSS III (suggesting the Commission establish a central “registration system” where access to “sensitive data” is only made to certain parties, which includes investors).

<sup>44</sup> The copy would be non-public as we believe that the information is of the type that would be subject to an exemption from the release of information under the Freedom of Information Act (FOIA).

information by reference.<sup>45</sup> We believe it is important that information included in the prospectus and provided to investors at the time of sale be provided to the Commission and be readily identifiable for purposes of assessing compliance with the Securities Act requirements.

Issuers may face different costs under this approach than those costs identified under the approach described in the 2010 ABS Proposing Release. We have identified three categories of potential direct costs: 1) establishing a Web site; 2) obtaining privacy legal advice and related potential litigation and liability; and 3) implementing any necessary controls.

We believe that most, if not all, issuers and sponsors already use a Web site to disseminate some information to investors, so they will likely not incur the cost of establishing a Web site for this information. One commenter noted that “nearly every major trustee has a website portal through which investors can access servicer reports.”<sup>46</sup> Another commenter noted that for CMBS, it is current industry practice to use Web sites to provide information to investors and to provide the ability for investors to communicate with each other.<sup>47</sup> To the extent issuers already have a Web site in place, our approach to establish a Web site would impose minimal cost.

We believe that all issuers, even those that currently maintain Web sites, would incur additional costs associated with privacy obligations related to the maintenance and dissemination of the relevant asset-level data. These costs to issuers could include consulting with privacy experts to understand their obligations as well as potential litigation and liability costs. Some issuers may already have obtained legal advice on privacy matters. Because the nature and

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<sup>45</sup> Similarly, issuers would have to incorporate the Web site information by reference into periodic reports.

<sup>46</sup> See letter from Prudential Investment Management, Inc. dated Oct. 4, 2011 submitted in response to the 2011 ABS Re-Proposing Release.

<sup>47</sup> See footnote 38.

extent of the advice will depend on the issuer's current practices, it is difficult to estimate these costs. Possible litigation and liability costs are also difficult to estimate because the nature and extent of legal challenges and any ultimate liability will depend on how issuers handle the potentially sensitive data and the nature of the harm caused.

Issuers may also incur costs developing and implementing appropriate privacy controls for their sites (e.g., designing safeguards to make sure certain data is not publicly released or restricting Web site access). We estimate that the cost to provide information to investors on a Web site with appropriate controls should be small relative to the total cost of requiring that issuers comply with the Commission's proposal, if adopted, for standardized, tagged asset-level requirements and it is possible that some issuers would post this data even if it is not mandatory. For issuers that do not already have access controls on their Web site, we preliminarily estimate that this approach would add 320-480 hours of initial set up costs, or \$70,400 to \$105,600.<sup>48</sup> After the initial set-up, we preliminarily estimate \$7,040 to \$10,560 annually for the costs of maintaining access controls on the Web site. If issuers have a Web site in place that provides similar functionality, the costs would be significantly lower because we expect that they would have some existing controls in place, however, they would still incur certain additional compliance costs in connection with the approach described in this memorandum. By comparison, in the Commission's adopting release for rules that impose requirements to address

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<sup>48</sup> The staff used salary data from SIFMA's Management & Professional Earnings in the Securities Industry 2012, modified by the staff, to calculate initial costs for establishing access controls on an existing Web site. We expect that building the controls on the Web site would entail four to six weeks of initial development by a database programmer at \$206 an hour and a business analyst at \$234 an hour. We estimate that the maintenance costs associated with access controls on the Web site once operational would be 10% annually of the initial costs.

conflicts of interest with nationally recognized statistical rating organizations (“NRSROs”)<sup>49</sup> the Commission estimated it would take each arranger of asset-backed securities approximately 300 hours to develop a password-protected Web site system and a set of policies and procedures for disclosing the information. The Commission estimated that it would also take each arranger approximately one hour per transaction to post information to its password-protected Web site.

In addition to these direct costs, there may also be some indirect costs to issuers. Some issuers and investors may decide to move to the private market instead of incurring the costs attendant to providing or receiving information through a Web site, which may affect capital formation. If investors in the private market expect the same or similar information as provided in the public market, this move may not be significant, as issuers would be required to develop comparable disclosure systems for the private market. Finally, these costs may be marginal if issuers already provide this information in a manner similar to our approach. Alternatively, issuers may pass the increased costs on to borrowers or investors.

For investors, there may be costs associated with certain asset-level data not being publicly available on EDGAR. As the Commission noted with respect to the temporary accommodation for web-posting of static pool information, when information is made available on the EDGAR website, “the Commission, investors and staff can access the information from a single, permanent, and centralized location.”<sup>50</sup> To help mitigate the cost of not having the information publicly available on EDGAR, our approach would impose additional requirements

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<sup>49</sup> The rules require that an arranger develop a password protected Web site where non-hired NRSROs, if the non-hired NRSRO met certain conditions, could obtain information the arranger provided to hired NRSROs during the initial rating process and for subsequent monitoring of ratings. See Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34-61050, (Nov. 23, 2009) [74 FR 63832].

<sup>50</sup> See Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities, Release No. 33-9137 (Aug. 30, 2010) [75 FR 54059] at 54062.

similar to those adopted with respect to the temporary static pool accommodation: the prospectus for the offering and periodic reports must include the Internet Web site address where the asset level data is available, the Web site must be free of charge for investors and potential investors, and the data must remain available on the Web site for five years. Furthermore, the issuers should be required to undertake that the information is deemed included in the prospectus and periodic reports and therefore would be subject to all liability provisions applicable to prospectuses, registration statements and periodic reports.

Unlike the static pool accommodation, the potential approach would permit issuers to institute controls to restrict access to the data. We recognize that allowing issuers to institute such controls would require investors to take additional steps to gain access to the disclosures, which may deter their participation in the ABS market, and, thereby, have an impact on capital formation. However, we do not believe these additional steps are likely to significantly deter investor participation in the ABS market for several reasons. First, commenters have indicated that this type of information is particularly important to allow investors to evaluate and appropriately price the ABS. Second, as noted, it is already industry practice to provide investors with information about the ABS through a Web site and, at least in some instances, restrict access to portions of that data. Finally, as noted above, some investors have expressed their preference for accessing information about ABS performance through Web sites. To the extent that issuers design their Web sites to provide reports and other information along with the required asset-level disclosures and present the information in a user-friendly manner, investors and potential investors may benefit from the ease of obtaining information in one location.

We believe that the potential approach strikes a better balance between addressing potential privacy concerns and providing investors with information to better evaluate

investment risk than the approach described in the 2010 ABS Proposing Release. Under such an approach, issuers could disclose specific credit scores, income and debt amounts, instead of coded ranges, as proposed, thereby increasing the utility of the data for investors.<sup>51</sup> Providing investors with access to such information about obligors would allow investors to more accurately evaluate risk, price the securities, and verify issuer disclosures. This, in turn, may enable investors to more accurately price the securities, which would improve allocative efficiency.

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<sup>51</sup> Some commenters expressed concerns that ranges or grouped account data would not adequately address privacy concerns because personal financial information could still be re-identified. See footnote 12. See also letter from VABSS III.