Capital One Financial Corporation
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April 28, 2014

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

Re: Re-Opening of Comment Period for Asset-Backed Securities Release (S7-08-10)

Ladies and Gentlemen:

Capital One Financial Corporation ("Capital One")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission (the "SEC") during the re-opening of the comment period on the SEC's proposed rules ("Regulation AB II")[2] governing asset-backed securities ("ABS"). Capital One has been an active participant for a number of years in the ABS market, both as an investor and as an issuer. Since the beginning of 2013, Capital One has issued approximately $4.7 billion in credit card ABS. At the end of 2013, our investment portfolio contained over $10 billion in private-label residential and commercial mortgage-backed securities ("MBS") and consumer ABS. This comment letter reflects our market position as both an issuer of and an investor in ABS and supplements our letter dated August 2, 2010.

As a large and active participant in the ABS market, we support the SEC in its efforts to introduce greater transparency where reasonable and necessary for investors to independently perform due diligence. We also appreciate the SEC's recognition of, and efforts to, respond to privacy concerns related to the disclosure of sensitive consumer information. While we are supportive of these efforts, we have concerns that changing the method of disseminating

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[1] Capital One Financial Corporation (http://www.capitalone.com) is a financial holding company whose subsidiaries, which include Capital One, N.A., and Capital One Bank (USA), N. A., had $204.5 billion in deposits and $297 billion in total assets as of December 31, 2013. Headquartered in McLean, Virginia, Capital One offers a broad spectrum of financial products and services to consumers, small businesses, and commercial clients through a variety of channels. Capital One, N.A. has more than 900 branch locations primarily in New York, New Jersey, Texas, Louisiana, Maryland, Virginia, and the District of Columbia. A Fortune 500 company, Capital One trades on the New York Stock Exchange under the symbol "COF" and is included in the S&P 100 index.

[2] *Asset Back Securities*, Securities Act Release No. 33-9117 (April 7, 2010), 75 FR 23328, and *Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities*, Securities Act Release No. 33-9244 (July 26, 2011), 76 FR 47948.

sensitive consumer data may not meaningfully decrease the potential harm to consumers raised by loan level public disclosure. Changing the source of the disclosure from the SEC's EDGAR system to an issuer-sponsored website or other channel does not materially advance protections under privacy and data security laws because the data will still be available to an extremely broad distribution group—i.e. any existing or potential investor. Once this data is distributed to such a wide group, the potential for it being misused or acquired by criminals materially increases as the issuer can no longer control the further dissemination of the data. Hence, the same inherent risk will exist as if it were publicly available on EDGAR. Moreover, with respect to credit card and auto ABS markets, which have been liquid and well-functioning, incremental data requirements have the potential to create consumer privacy concerns and increase the cost of credit for borrowers as issuers forego securitization in lieu of more expensive funding sources, while not meaningfully improving the functioning of those markets.

In light of the foregoing, we submit the following comments.

I. The SEC should re-propose disclosure requirements to allow further comment to ensure that the data disclosed does not pose potential consumer privacy and data security concerns.

In the memorandum from the Division of Corporate Finance accompanying the reopening of the comment period (the "Memorandum"), the Division of Corporate Finance proposes an approach whereby "potentially sensitive asset-level information" would be made available by issuers to investors and potential investors through the issuer's website instead of disclosing the data through EDGAR. We appreciate the goal of the proposal, but changing the channel for disclosure of potentially sensitive asset-level data, in the case of the proposal in the Memorandum, from EDGAR to issuer-operated websites, may not adequately advance privacy protections if the data would nonetheless be available to an extremely broad distribution group including any bond investor or potential bond investor.

By its own admission, the Division of Corporate Finance states that the data is "potentially sensitive asset-level information." The proposed loan level data requirements associated with Regulation AB II, and other information that is already public or that may be obtained by third parties, may be combined to create a more complete profile of consumers, which could then be leveraged to commit identify theft, tax fraud, and other types of targeted scams.[3] While we appreciate the desire for more transparency in the ABS and MBS market, doing so should be balanced against legitimate concerns of threats posed to consumer privacy and data security. We do not believe that the proposed alternative method for disclosing asset-level data sufficiently addresses these concerns.

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[3] The substantial risk to borrowers is highlighted in the comment letter, dated August 2, 2010, from the World Privacy Forum, the Center for Digital Democracy, Consumer Action, the Center for Financial Privacy and Human Rights, and Privacy Activism, to the SEC, which letter states "If Adopted in its present form, the SEC rule would represent the largest public disclosure of personal financial information ever mandated by federal law."

Although ABS issuers generally maintain strong relationships with key investors and often attempt to have a regular and active dialogue with them, a significant number of unique investors have participated in ABS programs over the years. If data disclosed would present privacy and data security concerns for U.S. consumers, disclosing that data to investors and potential investors through an issuer's website or another channel would not adequately prevent the information from being misused or ensure issuers will have the ability to track how the information is used.

Although we support disclosure requirements that would provide more information to investors to allow them to conduct due diligence, we do not believe those requirements should trump legitimate consumer privacy and data security concerns. For residential MBS securitizations, rather than changing the dissemination method for disclosure of potentially sensitive asset data, we believe the better approach would be to modify the disclosure requirements such that the data disclosed provides sufficiently granular information to increase transparency, while still respecting the privacy of borrowers' information. The present reopened comment period, however, does not address this core concern. Rather than changing the dissemination method for disclosure of potentially sensitive asset data, we urge the SEC to re-propose the disclosure requirements based on the comments received to date so that the public can evaluate whether the data would present a substantial threat to the privacy of individuals who obtain loans that could be securitized. Although we support disclosure requirements that would provide more information to investors in a reasonable manner to allow them to conduct due diligence, the potential benefit of any new requirement must be balanced against the cost of putting consumers' privacy at risk. We believe the best approach to creating this new data set would be to create working sessions where consumer privacy advocates, as well as representatives from government agencies or departments charged with protecting consumers from identity theft, fraud, or other harms that might arise as a result of the proposed disclosures, can identify risks to consumers; investors can lay out specific data that will create more transparency to assist investors in conducting diligence; and issuers can affirm that the data does not create competitive or operational concerns. Such an approach would ensure that disclosure requirements properly balance the concerns of these three key constituencies. For these reasons we urge the SEC to re-propose the disclosure requirements based on the comments received to date so that the public can evaluate whether the data would present a substantial threat to the privacy of individuals who obtain loans that could be securitized.

II. The SEC should not adopt additional disclosure requirements for credit card and auto ABS because additional disclosures are not necessary to allow investors to conduct independent due diligence in those markets.

We urge the SEC to not impose additional data disclosure requirements on credit card and auto securitizations because investors in those markets have not suffered from a lack of disclosure and those markets have been and continue to be liquid and well-functioning. Incremental data requirements would have the potential of increasing the cost of credit for borrowers and may create consumer privacy and data security concerns, without meaningfully improving the operation of the credit card and auto ABS markets. The SEC has not demonstrated that the lack of additional disclosure requirements has caused or is causing the

credit card or auto securitization markets to fail to function properly or is creating meaningfully more risk to investors, which should be a prerequisite to requiring additional disclosure.

While market failures and subsequent economic consequences with respect to MBS offerings have been well documented, such failures requiring the need for regulatory intervention or reform did not occur in credit card and auto ABS markets. Requiring additional disclosures for those asset classes, particularly loan level requirements for auto securitizations, creates additional privacy and data security risks and imposes additional unnecessary operational costs on issuers without meaningfully improving the transparency or operation of those markets. Given the resiliency of credit card and auto ABS demonstrated during the credit crisis and the current stability of those markets, the SEC should not adopt changes to data disclosure requirements related to those assets classes.

During the recent crisis, the vast majority of credit card and auto ABS investors suffered no losses because the underlying collateral was properly underwritten, structures were properly enhanced, and investors understood the risk. These factors were driven by the retained risk inherent in the structures and the data disclosure requirements that predated the crisis and that continue today. From 2002-2007, a total of $1.2 trillion in non-agency home equity securitizations and $900 billion in card and auto securitizations were issued. Over the next six years, 2008-2013, credit card and auto ABS issuance remained healthy at $600 billion in total issuance, despite reduced consumer leverage and changes in accounting rules that made card securitization less attractive. During the same time, however, non-agency mortgage securitizations decreased to $21 billion.[4] This striking difference in issuance amounts is evidence of the stark difference between functioning credit card and auto ABS markets and the non-agency securitization market that has been essentially broken since the financial crisis. Any incremental data requirements imposed on credit card and auto ABS would not increase investors' understanding of risk, but could disrupt what have otherwise been and continue to be fully functioning markets.

Moreover, unnecessary incremental disclosure requirements in the credit card and auto ABS markets would result in increased costs that would not be outweighed by sufficient benefits to issuers or investors. Potential increased costs would be the result of two dynamics. First, if new data requirements are implemented, some issuers may opt to reduce securitization volumes or forego securitization altogether because the risks and costs associated with the disclosure of proprietary information or disclosure of data that may present consumer privacy and data security concerns may incentivize them to access alternative and potentially more expensive funding sources. Second, issuers that do continue to participate in the ABS market will have increased operational costs related to providing and protecting the loan level data and will pay higher liquidity premiums due to a smaller market. The result of these dynamics will be increased costs of credit to consumers, while not providing significantly more transparency or safety to investors.

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[4] Bloomberg L.P. (data pulled March 2014).

As an investor in credit card and auto ABS, increased loan level or other incremental data would not change our investments or investment strategy, particularly given that we generally invest in more senior tranches. Senior tranches account for the vast majority of issuance in the market, and we believe that, especially for those classes of securities, current disclosure is sufficient for us to do the necessary credit work as an investor to make safe and sound investment decisions. We are unlikely to fully leverage any incremental data given that there would be only a marginal benefit, versus the cost of creating systems to be able to deconstruct and model loan level or incremental data for these asset classes.

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We appreciate the opportunity to comment on the U.S. Proposal and would be happy to discuss any questions regarding the content of this letter.

Sincerely,

Thomas A. Feil
Treasurer