by e-mail to rule-comments@sec.gov

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-2521

May 21, 2014

Re: Dissemination of Asset-Level Data (File Number S7-08-10)

Dear Ms. Murphy:

I appreciate the opportunity to provide comments regarding the Commission's February 25, 2014, staff memorandum (the "**Memorandum**"),[1] suggesting that issuers might use their websites to disseminate asset-level data and other offering information to investors and potential investors, as required under the Commission's proposed offering, disclosure, and reporting requirements for asset-backed securities ("**ABS**").[2]

I am a retired lawyer. In my career, I have been a financial journalist, a federal government employee working in financial regulation, and a securitization attorney at a large national law firm. The views expressed are solely my own and not the views of my current employer or any previous employer.

My perspective. I commend the Commission for its continuing efforts to promote more efficient and transparent ABS markets and for facilitating dialogue on its regulatory proposals.

Furthermore, I fully support the disclosure of asset-level data with respect to the ABS asset classes to which it is proposed to apply. I urge the Commission to preserve the ingenious disclosure mechanism suggested in the Memorandum. The proposed approach places liability for errors in filed loan-level data squarely on the issuer by requiring that asset-level records be filed with (but not disclosed by) the Commission. At the same time, it preserves the privacy interests of mortgagors by mandating disclosure of the loan-level data on issuer websites, but only (1) to ABS owners, offerees, or other "bona fide" ABS market participants, (2) to service providers to such persons, or (3) to academic researchers. Each such person must have signed a nondisclosure and confidentiality agreement.

There is no need for further study of policy concerns surrounding the filing and disclosure of asset-level data. The time for action is now.

Prior criticism of the Commission's approach to structured data. Commenters have criticized the lack of transparency surrounding the way in which the Commission collects corporate financial statements filed under the Securities Act and the Securities Exchange Act. In that context, commenters have noted that the Commission's system of disclosure requirements under the securities laws is a source of

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[1] Securities and Exchange Commission Staff Memorandum, Disclosure of Asset-Level Data (Feb. 25, 2014), *available at* http://www.sec.gov/comments/s7-08-10/s70810-258.pdf (hereinafter, "**Memorandum**").

[2] Release Nos. 33-9117; 34-61858; File No. S7-08-10, dated April 7, 2010 (the "**2010 ABS Release**"), Asset-Backed Securities, 75 Fed. Reg. 23328 (May 3, 2010). Release Nos. 33-9244; 34-64968; File No. S7-08-10, dated July 26, 2011 (the "**2011 ABS Release**"), Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities, 76 Fed. Reg. 47948 (Aug. 5, 2011) (collectively, the "**ABS Releases**").

valuable information for investors, analysts, the agency's own staff, and other regulators. Yet, for the most part, the Commission's disclosure system has yet to be transformed from documents into data. With some exceptions, corporate and investment company filings and submissions are still expressed as unstructured documents, which must be manually reviewed by Commission staff and by investors. Moreover, the disclosure system does not use unique electronic identifiers for entities mentioned in disclosures; for key individuals, such as officers, directors, and fund managers; or for transactions and other common concepts. As a result, it is nearly impossible for investors, or Commission staff, for that matter, to use Commission disclosures to keep track of corporate ownership, officer and director interrelationships, and other important connections.

Commenters have criticized the Commission for its failure to require corporate filers to eliminate errors in their filings of financial statements in eXtensible Business Reporting Language ("**XBRL**"), with the result that many investors and analysts do not trust the accuracy of XBRL financial statement data and will not use it. This lack of support by enforcing quality control has made XBRL financial reporting fall far short of its potential.

But with the Commission staff's proposed method for the collection and making available of asset-level data on the loans backing ABS, the Commission has gotten data transparency right.

Getting ABS asset-level data right.

Asset-level data is necessary for investors. The finance textbook approach to valuing ABS requires modeling the future cash flows of the asset pool to examine the effect of accelerated, delinquent or defaulted payments over the life of the ABS transaction. This is done by running a computer program which has as its inputs asset-level data and a piece of computer code implementing the payment terms of the ABS (referred to in the industry as a "deal script"). Using these inputs and another kind of computer-generated input ("scenarios") consisting of thousands of different possible future paths of interest rates, delinquency and default rates, and recovery rates, the program generates simulated future cash flows available to service the ABS under each scenario (a "Monte Carlo simulation"), and from these projected cash flows, uses statistical methods to determine the value or range of values of the ABS.

To be clear, no finance professional is modeling and valuing an ABS without using a program that has asset-level data as one of its inputs. Underwriters use this method. Rating agencies use it. Some investors use it, but it is not as easy for them to get access to the asset-level data.

From a statistical perspective, disclosing asset-level data to investors is materially superior to providing them with statistical summaries of the asset pool, because it conveys more information. A pool could achieve an average FICO score of 730 in many different ways, and some FICO distributions producing an average of 730 will be much riskier than others. For example, a pool consisting of borrowers with uniform FICO scores of 730 would be expected to perform differently than a pool averaging 730 but consisting of borrowers of whom half have scores of 800 and the other half have scores of 660. The mixed pool would have a higher expected default rate (owing to the cohort of 660 FICO borrowers).

The SEC's plan will not jeopardize mortgagor privacy. In a letter to the Commission dated March 28, 2014, the Securities Industry and Financial Markets Association and the Financial Services Roundtable (together, the "**Associations**") call the Commission's approach "severely flawed."

According to the Associations, "an issuer that makes customer data more freely available in order to comply with securities laws faces increased consumer privacy and business risks. The Memorandum's proposal not only exposes issuers to liability for improper data access or use by requiring them to disclose asset-level information in a manner that may be inconsistent with federal, state, and international privacy laws, but suggests that issuers could disclose specific credit scores, income and debt amounts in place of coded ranges, which would render the asset-level data even more susceptible to reverse engineering and misuse."[3]

[3]Letter dated March 28, 2014, from the Associations to the Commission.

Loan-level data is already being released to investors and analysts without incident. The Associations' handwringing is overdone. Fannie Mae has been disclosing full loan-level data since 2013.[4] The same full loan-level data is available from commercial vendors such as Blackbox Logic, Core Logic and LPS McDash Online[5].

Notwithstanding this release of full loan-level data, the sky has not fallen, and borrower privacy has not been compromised. The customers for asset-level data of Fannie, Blackbox, Core Logic and LPS McDash Online--who have, to all appearances, succeeded in respecting the privacy of the borrowers whose asset-level information has been provided to them--are the same group of investors and analysts who will be receiving asset-level data from ABS issuers under the Memorandum's approach. These by and large consist of institutional investors, many of them regulated entities or fiduciaries, who have corporate policies designed to keep private information confidential. They do not appear to have failed to maintain the confidentiality of other loan-level data they have obtained and consumed, and there is no reason to think they will fail to maintain to maintain the confidentiality of asset-level data provided to them pursuant to the Memorandum's approach by ABS issuers offering SEC-registered securities. If they do, a properly drafted nondisclosure and confidentiality agreement should be sufficient to ensure that any legal liability for the breach will fall on the party guilty of the improper disclosure (e.g,, the investor), not on an ABS issuer who, in fulfilling its obligations under the securities laws, has taken appropriate steps to protect borrower confidentiality. Furthermore, an investor of this type will generally have the financial resources to make amends if breach of the nondisclosure agreement harms a mortgagor.

The Associations Are Not Privacy Experts. The Associations' concern for the privacy interests of mortgage borrowers is touching. They are willing to champion their rights even at a cost of denying investors access to needed information. However, the Associations are not privacy experts, and their lack of expertise shows when they step outside their core competency of financial markets to opine that the Memorandum's approach "may be inconsistent with federal, state, and international privacy laws." (One wonders how intergalactic privacy laws came to be omitted from this list.)

By contrast, the SEC took into account the views of David Medine, a privacy law expert, in shaping its approach. Mr. Medine worked at the SEC as an Attorney Fellow, advising on privacy issues relating to dissemination of asset-level data, before being appointed as the full-time Chairman of the federal Privacy and Civil Liberties Oversight Board on May 27, 2013. From 2002 to 2012, Mr. Medine was a partner in the law firm WilmerHale, where his practice focused on privacy and data security. From 1992 to 2000, Mr. Medine was the Associate Director for Financial Practices at the Federal Trade Commission (FTC) where, in addition to enforcing financial privacy laws, he took the lead on Internet privacy, chaired a federal advisory committee on privacy issues, and was part of the team that negotiated a privacy safe harbor agreement with the European Union. In other words, David Medine knows privacy. I understand that the Commission staff's approach – filing of asset-level data with the SEC on a confidential basis, and dissemination of asset-level data by ABS issuers to a limited group of investors and investment professionals under a confidentiality and nondisclosure agreement – is largely a response to Mr. Medine's analysis of the privacy issues.

With all due respect to the Associations, I believe, with the SEC, that the Memorandum's approach allows ABS issuers to give investors and their advisors the information they need without

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[4]http://www fanniemae.com/portal/funding-the-market/mbs/news/2013/announcement-101513.html

[5] Blackbox Logic provides RMBS loan level data aggregation and processing services allowing clients to analyze both current and historical RMBS trends, see http://www.bbxlogic.com/. Core Logic provides loan-level data and analytic services. See http://www.corelogic.com/. LPS McDash Online provides access to loan-level data. See http://www.lpsvcs.com/Products/CapitalMarkets/LoanDa/Products/Pages/McDashOnline.aspx.

violating individual privacy rights. Contrary to the argument by the Associations that the Memorandum's approach "would expose both consumers and issuers to unwarranted risks and liabilities," the approach can be implemented without jeopardizing consumer privacy interests, and materially improves disclosure to investors. The road to reviving US public ABS market passes through a landscape of more data transparency, not less. In their letter, the Associations write as if the status quo in which ABS issuers do not need to provide asset-level data has been a satisfactory one for the industry. Have they forgotten so quickly the approximately $93 billion in mortgage-backed securities litigation settlements agreed to by the six major Wall Street banks?[6] These settlements, and the inadequacy of prior ABS disclosures that failed to make asset-level data available on an initial basis with monthly updates, are not unrelated.

Asset-Level Data is Necessary for Implementation of the SEC's Waterfall Computer Program Proposal. In the 2010 ABS Release, the SEC proposed that each ABS issuer be required to file a computer program in an open-source programming language that implements the priority of payments rules of the ABS definitively and authoritatively. This proposal requires that investors have access to loan-level data, updated monthly, in order to obtain its intended benefits.

One intended benefit is to encourage new entrants to compete in the market for cash flow modeling of ABS transactions. This market is currently highly concentrated; the leading service provider advertises on its website that it has a 100% market share of public ABS transactions, and a commanding leadership position in private ABS transactions.

Another intended benefit is improving the accuracy of ABS cash flow modeling, Knowledgeable market professionals know that pooling and servicing agreements often contain errors or conflicting provisions, which is not surprising given that these documents are very complex and have often been drafted under extreme time pressure.[7] Even where the pooling agreement contains no errors, it is not uncommon for cash flow models to calculate cash flows incorrectly.[8] If a provision has two possible

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[6] In October 2013, Business Week reported that "Since the end of 2010, the six major Wall Street banks—JPMorgan, BofA, Citigroup (C), Wells Fargo (WFC), Goldman Sachs (GS), and Morgan Stanley (MS)—have agreed to pay $67 billion in settlements and penalties related to the financial crisis, according to research firm SNL Financial. Three more deals expected soon—including JPMorgan's proposed $13 billion omnibus settlement, a pact between the bank and investors seeking $5.75 billion, and a BofA payout of as much as $8 billion to a housing regulator—would swell the total to $93 billion to be paid to the government, homeowners, and investors. More civil cases, criminal investigations, and lawsuits are on the way." http://www.businessweek.com/articles/2013-10-31/banks-finally-pay-for-their-sins-five-years-after-the-crisis. The settlements that were only "expected" at the time of Business Week's report were agreed by JPMorgan and BofA a short time later. http://www housingwire.com/articles/28036-its-official-jpmorgan-signs-13b-rmbs-settlement; http://www.huffingtonpost.com/2014/03/27/bank-of-america-fhfa-settlement_n_5037885.html.

[7] Following the market trauma of September 2008, during which Fannie Mae and Freddie Mac were put into federal conservatorship, Lehman Brothers was allowed to go bankrupt, and the federal government bailed out AIG, a senior derivatives attorney at a major Wall Street bank described his workload in the winter of 2009 as consisting primarily of reviewing collateralized debt obligation indentures to ensure they properly reflected the intent of the parties. In many cases, mistakes in drafting were identified that required the adoption of indenture amendments to correct the errors. The attorney explained this by saying, "As you know, many of these transactions were not done under ideal conditions," that is, with enough time to allow the parties and their lawyers to ensure that the operative documents correctly reflected the business deal.

[8] A founder of the leading service provider told SEC staff that his company has one group of cash flow modelers working on "deal scripts" (deal-specific computer code that implements the priority of payments provisions for an ABS) for new deals, and another unit that works on correcting errors that have come to light in the deal scripts coded by the first unit. Ann Rutledge and Sylvain Raines, the principals of R & R Consulting, a cash flow modeling firm, have asserted that there are certain types of multiple pool, cross collateralized transactions that have never been modeled correctly: the models used by other cash flow modeling services have in every instance failed to capture important terms of the priority of payments rules

meanings, the modeler will have to choose one meaning when building his model, but the parties may have intended for the other meaning to prevail.

Finally, a third benefit is to lower the price to investors of obtaining accurate cash flow modeling of purchased ABS. A lower price should result investors purchasing more cash flow modeling services, a situation preferable to investors similar relying on a rating agency's rating without testing the rating by running its own cash flow projections using its own assumptions about the future path of interest rates, loan defaults and delinquencies, and recovery rates.

I know that the Waterfall Computer Program proposal attracted much comment, including adverse comment. Notwithstanding the negative comment on the Waterfall Computer Program, in my view, the problems raised by opponents can be dealt with simple, inexpensive tweaks to the SEC's proposal. I further believe that the Waterfall Computer Program could be the single most important response by the SEC to the financial crisis, in terms of eliminating information asymmetries between issuers and underwriters, on the one hand, and investors, on the other, and thus restoring investor confidence in the ABS market.

Conclusion. I strongly support the two-pronged approach outlined by Commission staff to require that asset-level data be filed with the Commission on a confidential basis, but disseminated by ABS issuers on their websites to ABS investors subject to confidentiality and nondisclosure agreements. This approach will improve ABS disclosure while protecting borrower privacy interests. It is an important step towards creating an ABS regulatory regime that will remedy the disclosure deficiencies in ABS offering documents, and create a level playing field for ABS investors.

Sincerely,

Allison Schwartz

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contained in the pooling and servicing agreement. Conversation with Ann Rutledge and Sylvain Raines, Friday, April 11, 2014.