American SECURITIZATION FORUM®

August 2, 2010

By E-Mail: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attn: Elizabeth M. Murphy, Secretary

Re: Release Nos. 33-9117; 34-61858 (File No. S7-08-10)

Ladies and Gentlemen:

The American Securitization Forum ("ASF")[1] appreciates the opportunity to submit this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments regarding Release Nos. 33-9117; 34-61858; File No. S7-08-10, dated April 7, 2010 (the "Proposing Release"), relating to offering, disclosure and reporting requirements for asset-backed securities under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). We value the Commission's efforts in proposing regulations designed to improve investor protection and promote more efficient asset-backed markets in the wake of the financial crisis, and we commend the Commission for seeking industry input and facilitating ongoing dialogue regarding reforms in these markets.

Over the past decade, ASF has become the preeminent forum for securitization market participants to express their views and ideas. ASF was founded as a means to provide industry consensus on market and regulatory issues, and we have established an extensive track record of providing meaningful comment to the Commission on issues affecting our market, including Regulation AB. When the Commission proposed its original rules for asset-backed securities (Nos. 33-8419; 34-49644) in May 2004, ASF facilitated an unprecedented effort by the securitization industry to respond to what would ultimately be the first regulatory framework for

[1] The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 340 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com.

participation in the asset-backed securities market.[2] Then, after the Commission published final rules (Nos. 33-8518; 34-50905) in December 2004, ASF embarked on a broad-based implementation effort to ready the industry for the new requirements. The Commission's current request for comment has been met with even greater member participation than our past efforts, and we are hopeful that the comments included in this letter will assist the Commission as it begins to craft final regulations.

To ensure a representative and efficient process, ASF assembled the ASF Reg AB II Taskforce (the "Taskforce") consisting of current members of ASF, including issuers and investors for various asset sectors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and data and analytics firms. We divided the Taskforce into committees representing the four major sections of the Proposing Release, including the Registration Committee, the Disclosure Committee, the Reporting Committee and the Private Placement Committee. To address the more detailed SEC proposals, including disclosure requirements for different asset classes and the waterfall computer program, we established more focused subcommittees of the Taskforce. Each of the Taskforce committees and subcommittees were co-chaired by members of ASF's committees and subforums.[3] In all, nearly 600 individuals directly participated in the comment process as part of the Taskforce. Members of the Taskforce took considerable time out of their daily schedules to participate in more than 125 conference calls and collectively devoted thousands of hours to develop, draft and review this letter. ASF also solicited input and comment from the broader ASF committees and subforums to facilitate a fulsome industry-wide response.

The recommendations presented in this letter, therefore, are the product of an intense effort by representatives of all segments of the securitization market to offer the Commission an industry response to the Proposing Release. During the process, members of the Taskforce advocated their respective interests which, at times, were competing. When divergent views developed, such as between issuers and investors, further meetings were held and special efforts were made to find common ground and reach a practical compromise that effectively addressed the competing concerns. Where consensus could not be reached, each view was taken into consideration and expressed accordingly in this letter. We urge the Commission to carefully consider each of the views set forth in this letter before imposing changes to the existing regulatory framework.

PRELIMINARY COMMENTS

The Importance of Securitization

Over the years, securitization has grown in large measure because of the benefits and value it delivers to transaction participants and to the financial system, including increased efficiency of funding, reduced cost of financing for businesses and credit for consumers, and incremental

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[2] Our comment letter to the Commission's request for comment on the original Regulation AB (Release Nos. 33-8419, 34-49644) is located at http://sec.gov/rules/proposed/s72104/vhcwright071204.pdf, with a supplement located at http://www.sec.gov/rules/proposed/s72104/asf073004.pdf.

[3] Please see Attachment I to this letter for the Taskforce's organizational chart.

credit and liquidity creation. Over the past 25 years, securitization has grown from a relatively small and unknown segment of the financial markets to a mainstream source of credit and financing for individuals and businesses, representing a vital sector of today's financial markets. It has been estimated that securitization funded between 30% and 75% of lending in various markets, including an estimated 59% of outstanding home mortgages.[4] Securitization plays a critical role in non-mortgage consumer credit as well. Historically, most banks have securitized 50-60% of their credit card assets.[5] Meanwhile, in the auto industry, a substantial portion of automobile sales are financed through auto ABS.[6] Overall, recent data collected by the Board of Governors of the Federal Reserve System show that securitization has provided over 25% of outstanding U.S. consumer credit.[7] For more information on the importance of securitization, please see Attachment II to this letter.

Industry Improvements to the Market Infrastructure

ASF has actively identified, designed and implemented numerous industry-driven market standards and practice improvements to rebuild and strengthen the securitization infrastructure. One such effort is ASF Project RESTART,[8] which is a broad-based industry-developed initiative to help rebuild investor confidence in mortgage and asset-backed securities, restore capital flows to the securitization markets, enhance market lending discipline and, ultimately, increase the availability of affordable credit to all Americans. Project RESTART has sought to identify areas of improvement in the process of securitization and refashion, in a comprehensive and integrated format, the critical aspects of securitization with market-based solutions and expectations. It has been recognized by senior policymakers and market participants as a necessary industry initiative to improve the securitization process by developing commonly accepted and detailed standards for transparency, disclosure and diligence that each appropriate market participant will be recommended to implement. To date, members of Project RESTART have worked to produce various market standards including loan-level RMBS Disclosure and Reporting Packages, a unique loan identifier called the ASF LINC ™, Model RMBS Representations and Warranties, and a proposed RMBS Bond-Level Reporting Package. ASF also plans to produce Model Repurchase Provisions and Model Servicing Provisions as part of the market standards established under Project RESTART. For more information on Project RESTART, please see Attachment III to this letter.

Further Review

ASF values greatly the interaction it has had with the Commission regarding various legal and regulatory issues over the years. We consider the topics covered in the Proposing Release to be of the utmost importance and are prepared to assist the Commission in any way possible. To that end, we offer our staff and members as a resource to the Commission, available upon request.

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4 Citigroup, "Does the World Need Securitization?" pg. 10-11 (December 2008), www.americansecuritization.com/uploadedFiles/Citi121208_restart_securitization.pdf.
5 Ibib., pg. 10.
6 Ibib., pg. 10.
7 Board of Governors of the Federal Reserve System, "G19: Consumer Credit," (September 2009), www.federalreserve.gov/releases/g19/current/g19.htm.
8 For more information on Project RESTART, see www.americansecuritization.com/restart.

ASF members represent the securitization industry across all of its constituencies, and we have been at the forefront of industry changes and developments since our founding.[9] ASF, therefore, is uniquely positioned to provide the Commission with comprehensive, balanced and practical recommendations reflecting the views of all market participants, including investors and issuers, and has gone to significant lengths to do so in this comment letter. We would, therefore, be very interested in convening one or more meetings with the Commission staff to review our comments on the Proposing Release as the Commission progresses toward adoption of final rules and regulations. Should you desire a meeting or if you otherwise have any questions concerning our views or comments, please do not hesitate to contact Tom Deutsch, ASF Executive Director, at 212.412.7107.

Organization of Letter

We have organized this letter into five primary sections, according to the five primary regulatory areas addressed in the Proposing Release: Securities Act registration; disclosure; the definition of an asset-backed security; Exchange Act reporting; and privately-issued structured finance products. We introduce those sections with an Executive Summary that provides an overview of key concerns with respect to some of the Commission's more significant proposals. Following the discussion of the five primary sections of the proposing Release, we address the Commission's proposals concerning a transition period for implementation of the new rules and regulations. We have also included a number of exhibits and other attachments to the letter that are described in more detail in the table of contents for this letter.

Supplemental Letters

We do not, however, include in this letter any discussion of the Commission's proposals concerning a waterfall computer program. During the past three months, market participants have spent a substantial amount of time discussing the proposed waterfall computer program and its potential implications on the offering process and the market in general. Issuers, financial intermediaries, investors and data and analytics providers alike have raised considerable concerns, issues and scenarios relating to the waterfall computer program that need to be given additional, focused attention. As of the date of this letter, we are actively engaged in robust discussions in an effort to develop balanced and practical recommendations on how to best move forward to achieve the Commission's goals in the context of the waterfall computer program. For these reasons, we plan to continue discussions on the proposed waterfall computer program requirement beyond the Commission's deadline and to provide a supplemental letter to the Commission focused on this topic. We expect to submit this supplemental comment letter on or before August 30, 2010.

In addition, as described in greater detail in <u>Section II.A</u> of this letter, market participants in the private-label residential mortgage and credit and charge card sectors were able to leverage the resources and participation organized through Project RESTART to provide comprehensive approaches to the Commission's proposed rules regarding disclosure of pool asset information for RMBS and ABS backed by credit and charge cards. Unfortunately, similar industry-wide

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[9] A list of ASF's membership is available at www.americansecuritization.com/uploadedFiles/ASFMemberList.pdf.

initiatives had not previously been organized to develop consensus on comprehensive disclosure and reporting packages for other asset sectors. Therefore, market participants in ABS sectors other than private-label residential mortgages and credit and charge cards have not yet had adequate time to develop consensus on the appropriate pool asset disclosure that would be both beneficial to investors and feasible and appropriate for issuers to provide. We are actively engaged in continuing discussions on the proposed disclosure requirements for other ABS sectors, particularly in the auto loan, auto lease and floorplan sectors, and we hope to be in the position to provide a supplemental letter to the Commission addressing this topic.

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EXECUTIVE SUMMARY

SECURITIES ACT REGISTRATION

We appreciate and support the Commission's goal of providing investors with adequate information and time to make an informed investment decision, as well as the Commission's sensitivity to balancing the needs of investors with the interests of asset-backed issuers in timely access to the capital markets. Our members agree, however, that a mandatory five-day waiting period between the proposed Rule 424(h) filing and the first sale of securities is too long. We recommend a two business-day waiting period and, in cases where there has been a material change in the legal structure, terms of the securities or composition of the asset pool, a one business-day waiting period.

With respect to the Commission's proposal to replace the investment grade ratings requirement in the ABS shelf eligibility conditions with four new requirements:

- while we support efforts to align the economic interests of originators and sponsors with investors, with the adoption of the Financial Reform Act, we request that the Commission undertake a coordinated approach with other federal agencies tasked with developing risk retention requirements that may overlap significantly with the Commission's proposals, and consider the views of our members on how risk retention requirements should be applied across asset classes and transaction structures;

- we request that the Commission consider including, as an alternative to the proposed third party repurchase review eligibility requirement, a more robust mechanism for the investigation and resolution of disputes relating to breaches of representations and warranties;

- we request that the Commission consider our significant concerns with the proposed CEO certification eligibility requirement and adopt an alternative certification requirement that focuses on the sufficiency of the disclosure in the offering documents rather than on future performance of the assets; and

- we request that the Commission (i) consider the interaction of the Financial Reform Act with current Commission regulations in connection with the proposed ongoing reporting eligibility requirement and (ii) codify the staff's "one bite" rule relating to timely Exchange Act reporting.

We also request that the Commission make important changes to the other proposed Form SF-3 requirements and consider our significant concerns with the operation of Securities Act Rule 401(g) as the Commission has proposed to revise it.

DISCLOSURE REQUIREMENTS

The Commission's proposed rules with respect to pool asset disclosure for private-label residential mortgage-backed securities ("RMBS") transactions substantially incorporate the spirit and substance of the asset-level disclosure and reporting packages that had gained industry-wide consensus through ASF's RMBS Project RESTART initiative. We generally concur with both the substance and the format of the Commission's proposed rules regarding disclosure of asset-level information for RMBS transactions and propose only a small number of specific modifications to those proposed rules.

Since the Credit Card Project RESTART initiative had not reached an industry-wide consensus by the time of the Commission's proposal, the Commission did not have a similar market-developed proposal regarding disclosure and reporting packages on which to base its proposal for credit and charge card ABS. Therefore, we propose an alternative disclosure and reporting package for credit and charge card ABS that represents an industry-wide consensus and builds upon the Commission's proposals, but with important modifications, including more expansive data relating to certain collateral performance metrics.

We also indicate that it is of paramount importance that any pool asset disclosure ultimately required be both beneficial to investors and feasible and appropriate for issuers to provide, and so we encourage the Commission to phase in pool asset disclosure requirements in stages by asset sector, beginning with the private-label residential mortgage and credit and charge card asset sectors.

We also encourage the Commission to adopt a permanent rule under Regulation S-T – favored by issuers and investors – that would permit asset-backed issuers to post static pool information required by Item 1105 on an internet website rather than file the information with the prospectus on EDGAR.

DEFINITION OF AN ASSET-BACKED SECURITY - EXCEPTIONS TO THE "DISCRETE" POOL REQUIREMENT

While we appreciate the Commission's concern that asset pools be sufficiently developed at the time of an offering so that investors receive appropriate information regarding offered securities, issuers and investors agree that the current exceptions to the discrete pool requirement – particularly those for master trusts and revolving periods – merely "level the playing field" so that transactions supported by revolving and non-revolving assets are treated similarly under the regulations and, as a result, make it possible to better match investor preferences by offering a broader range of investment products and options that both issuers and investors desire.

EXCHANGE ACT REPORTING PROPOSALS

We request that the Commission revise its proposal regarding the reporting of repurchase demands to require monthly reporting of the amount, if material, of pool assets that were the subject of a demand for repurchase and quarterly reporting of additional information for which monthly reporting would not be appropriate.

We also request that the Commission resolve a long-standing concern with Item 1100(b)(1) and its one-size-fits-all approach across different asset classes and for different disclosure purposes, by making revisions to Item 1100(b)(1) that are broadly supported by issuers and investors that would provide for the consistent presentation of delinquency information across issuers within the same asset class but at the same time would recognize that some variation across asset classes is meaningful and appropriate.

PRIVATELY-ISSUED STRUCTURED FINANCE PRODUCTS

Although we support the Commission's goal of ensuring that sophisticated investors are able to consider and understand the risks of their investments, we have a number of concerns with the Commission's proposal to condition the availability of safe harbors for privately-issued structured finance products on an issuer's undertaking to provide investors the same information as would be required in a registered transaction.

In light of these concerns, we offer a more balanced approach toward ensuring that only sophisticated investors participate in the private market for structured finance products and creating incentives for those investors to consider and understand the risks of their investments. In addition to a detailed description of the approach recommended, we discuss the related views and concerns within and across our various constituencies.

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COMMENTS REGARDING THE PROPOSALS

I. SECURITIES ACT REGISTRATION

A. New Registration Procedures and Forms for Asset-Backed Securities

1. New Shelf Registration Procedures

a. Rule 424(h) Filing

The Commission proposes to require an asset-backed issuer using a shelf registration statement to file, in accordance with proposed Securities Act Rule 424(h), a preliminary prospectus containing substantially all the information for the specific ABS takedown previously omitted from the prospectus filed as part of an effective registration statement, except for pricing and price-dependent information, at least five business days in advance of the first sale of securities in the offering. A material change in the information provided in the Rule 424(h) filing, other than offering price, would require a new Rule 424(h) filing and a new five business-day waiting period.

We appreciate and support the Commission's goal of providing investors with adequate information and time to make an investment decision, as well as the Commission's sensitivity to balancing the needs of investors with the interests of asset-backed issuers in timely access to the capital markets. Issuers and investors agree, however, that a mandatory waiting period of five business days is too long, providing investors with considerably more time than is necessary to analyze most ABS shelf transactions and exposing issuers and investors to market risk for a minimum of an entire week (seven calendar days), and longer in the case of waiting periods that include holidays.

Most ABS shelf transactions are part of a program of issuances by a sponsor that is well known to the marketplace, and are conducted by means of a prospectus prepared at the time of the specific takedown that supplements the robust information included in the prospectus filed as part of the effective shelf registration statement. In the case of revolving asset master trusts, for example, the prospectus filed as part of the effective registration statement typically includes detailed information concerning the legal structure of the program and transactions, the sponsor's credit-granting or underwriting criteria and the composition and performance of the pooled assets, including historical and static pool information. In the case of amortizing asset pools, while information regarding the transaction structure and specific assets comprising the asset pool is not known until the time of the takedown, the marketplace is typically familiar with the sponsor's credit-granting or underwriting criteria as well as historical and static pool information relating to the sponsor's managed portfolio and prior securitized pools.

Thus, while it is the case that, for the most part, each ABS offering involves securities backed by different assets (obvious exceptions being revolving asset master trusts and resecuritizations), issuers and investors agree that the Commission makes an overgeneralization and draws an inappropriate comparison when it likens ABS shelf offerings to initial public offerings, the latter of which are characterized by unknown credits that often are of a highly speculative character.[10]

Investors also indicate that they have the staff and expertise to evaluate most ABS shelf transactions within two business days. In the more limited cases where a transaction or structure is unfamiliar or more complex, investors indicate that they can and do insist on more time before they make an investment decision. Conversely, in cases where a transaction or structure is very familiar, investors agree that they need considerably less time before they make an investment decision.

Moreover, issuers and investors agree that a mandatory minimum waiting period that is too long unnecessarily interferes with market mechanics, to the detriment of issuers and investors, by artificially delaying pricing and the formation of contracts of sale and exposing issuers and investors to the vagaries of market movements that may be adverse to one or the other. Issuers also find it particularly anomalous that, if a mandatory waiting period is to be imposed, the period would be any longer than the 48-hour period imposed on initial public offerings pursuant to Rule 15c2-8.

For all of these reasons, issuers and investors agree that a two business-day waiting period would strike a more appropriate balance between the needs of investors and the interests of issuers.

In the case of a material change in the information provided in the Rule 424(h) filing, issuers and investors again agree that a mandatory waiting period of five business days is much too long and that, if a mandatory minimum waiting period is to be imposed at all, a one business-day waiting period is more appropriate. However, issuers and investors also agree that even a one business-day waiting period is too rigid and may be unnecessarily long in many cases. To illustrate, in the more limited cases where there has been a material change in the legal structure, terms of the securities or composition of the asset pool disclosed in the Rule 424(h) filing, depending on the facts and circumstances, a one business-day waiting period might be appropriate. On the other hand, in cases where a fact or event surfaces after the Rule 424(h) filing that requires a more discrete or limited change in the information conveyed to investors, issuers and investors believe that it is unnecessary and unwarranted to override the market's timing determinations by imposing a mandatory waiting period, and believe that Securities Act Rule 159 continues to provide adequate protections by promoting the delivery of the new or changed information in a manner that provides investors with an opportunity to assess the information before they enter into a contract of sale.[11]

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[10] We note that ABS offerings are only eligible for shelf registration when they meet eligibility criteria that serve as measures of quality and that the Commission's current rule proposals would add new shelf eligibility criteria intended to serve as additional measures of quality.

[11] As the Commission is aware, Rule 159 directs that disclosure liability will attach at the time of the contract of sale, which occurs when an investor has taken the actions necessary to become committed to purchase the securities. In the context of most securities offerings, including most ABS offerings, this means that disclosure liability will attach prior to the availability of a final prospectus. Rule 159 has been very effective to promote the delivery of full-scale preliminary prospectuses (or free writing prospectuses that include substantially all the information that is required in a full-scale preliminary prospectus – referred to as "virtual" reds) prior to the time

b. New Rule 430D

Proposed Securities Act Rule 430D would require that, with respect to each offering, substantially all the information previously omitted from the prospectus filed as part of an effective registration statement, except for pricing and price-dependent information, be included in the Rule 424(h) filing.

Once again, we appreciate and support the Commission's goal of providing investors with adequate information and time to make an investment decision and, taking into account our views as expressed in the preceding section, we also support a standard that prescribes delivery of substantially all the information that is required in a full-scale preliminary prospectus. Issuers and financial intermediaries observe, however, that the exception for pricing and price-dependent information is extremely narrow and does not take into account certain other categories of information that, while not technically price-dependent information, are typically not known or available to the issuer until at or about the time of pricing.

For example, in a transaction involving interest rate or currency swaps, the preliminary prospectus, or a free writing prospectus that serves as a "virtual" red, includes substantially all the information that is required in a full-scale preliminary prospectus, including information about the terms of the swap and the eligibility criteria to serve as a swap counterparty, but would not include information relating to a specific swap counterparty or information dependent on the pricing of the swap (such as the fixed rate in an interest rate swap) because, as a hedge for market risk associated with the offered securities, the optimal pricing of the swap and the counterparty with the most competitive bid cannot be determined by the issuer until at or about the time of pricing for the offered securities.

As a result, for transactions involving derivative instruments, we request that proposed Rule 430D be revised to permit an issuer to omit information relating to the specific derivative counterparty and information dependent on the pricing of the derivative instrument from the Rule 424(h) filing, provided that such information is conveyed to investors by the time they enter into contracts of sale.

2. Proposed Forms SF-1 and SF-3

The Commission proposes to create new registration forms for use in connection with sales of securities that meet the Regulation AB definition of an asset-backed security. Offerings that qualify for delayed shelf registration would be registered on proposed Form SF-3 and all other offerings would be registered on Form SF-1.

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of the contract of sale, without imposing prescribed disclosure or prescribed minimum waiting periods before entering into contracts of sale.

We note, therefore, that the Commission's observation in footnote 184 to the Proposing Release - that stand alone trust issuers do not usually provide preliminary prospectuses to investors – is inconsistent with our own observations about the use of preliminary offering materials. Many ABS issuers, stand alone and master trust alike, have used preliminary prospectuses in the marketing of ABS for many years. Following the adoption of Rule 159 and Securities Offering Reform, use of preliminary prospectuses or virtual reds in the ABS market has become even more prevalent, with a notable exception being in "iterative" residential mortgage-backed securities transactions.

The Commission is proposing changes to shelf eligibility for ABS issuers, which would become the eligibility criteria for proposed Form SF-3, including an eligibility requirement in existing Form S-3 relating to delinquent filings of the depositor or an affiliate of the depositor. Specifically, the Commission proposes to repeal the existing exception from the filing timeliness requirement for Item 6.05 Form 8-K reports. Item 6.05 Form 8-K reports, which we comment on in more detail later in this letter, are required to be filed if any material pool characteristic of the actual asset pool at the time of issuance of the ABS differs by five percent or more (other than as a result of the pool assets converting into cash in accordance with their terms) from the description of the asset pool in the final prospectus.[12] In those cases, all of the information required by Items 1111 [Pool Assets] and 1112 [Significant Obligors of Pool Assets] of Regulation AB regarding the characteristics of the actual asset pool is required to be filed by Form 8-K. In addition, if applicable, information required by Items 1108 [Servicers] and 1110 [Originators] of Regulation AB regarding any new servicers or originators is required. An Item 6.05 Form 8-K report is required to be filed with the Commission within four business days after occurrence of the event, which we understand to be the issuance of the ABS.

The Commission added Item 6.05 to the list of Form 8-K Items excepted from the filing timeliness requirement for Form S-3 eligibility purposes when it adopted Regulation AB because Item 6.05 relates to offerings for specific takedown transactions and not to ongoing reporting.[13] Stated another way, the information required to be filed operates to update disclosure contained in the related Securities Act registration statement for a specific ABS transaction and, therefore, is distinguishable from Form 8-K reports filed for the purpose of ongoing reporting. In fact, the Instruction to Item 6.05 indicates that the information called for by Item 6.05 may be filed by means of a post-effective amendment to the Securities Act registration statement or in a subsequent prospectus filed pursuant to Securities Act Rule 424, or may be incorporated by reference in the registration statement by means of the Item 6.05 Form 8-K report. Because the information contained in an Item 6.05 Form 8-K report relates exclusively to the offering process for a specific ABS transaction and functions as an update to the underlying registration statement, we respectfully request that the Commission retain the existing exception from the filing timeliness requirement for Item 6.05 Form 8-K reports.

For substantially the same reasons, we request that the Commission also add proposed Items 6.06, 6.07 and 6.08 to the list of Form 8-K Items excepted from the filing timeliness requirement for Form SF-3 eligibility purposes. In making these requests, we think it relevant and worthwhile to note that, in order to qualify for delayed shelf registration on Form SF-3, the registrant would still have to satisfy the other requirements of General Instruction I.A.4 to proposed Form SF-3, which require that the registrant and certain of its affiliates be current (and, in most cases, timely) in all of their Exchange Act reporting at the time of filing the Form SF-3 and, if proposed Securities Act Rule 401(g)(4) is adopted, on an annual basis thereafter. We respectfully submit, therefore, that these shelf eligibility requirements provide adequate

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12 The Commission is proposing to lower the threshold that would trigger a filing requirement for Item 6.05 8-K reports from a five percent change in any material pool characteristic to a one percent change. We provide comment on that proposal later in this letter.

13 *See* Release No. 8518 (Dec. 22, 2004) [70 FR 1506] (the "2004 ABS Adopting Release") at 1526.

incentives, and produce adequate consequences, to cause registrants to comply with their Securities Act disclosure updating requirements.

If the Commission nevertheless decides to repeal the existing exception from the filing timeliness requirement for Item 6.05 Form 8-K reports, we respectfully request that the filing due date for such reports be extended to 15-calendar days after the occurrence of the event, to allow registrants sufficient time to compile and verify the updated pool data before they file it with the Commission. The four business-day filing deadline has always been a potential concern for asset-backed issuers but the concern becomes elevated to the extent the Commission adopts its proposal to lower the threshold that would trigger a filing requirement from a five percent change in any material pool characteristic to a one percent change.[14]

In addition, we respectfully request that the Commission add an Instruction to Item 6.05 of Form 8-K comparable to Instruction 2 to Item 6.03 of Form 8-K, to account for the fact that, through no fault on the part of the registrant, certain information called for by Item 6.05 regarding significant obligors, servicers or originators may not be determined or may be unavailable at the time of the required Form 8-K filing.[15] In such cases, we think it would be inappropriate and unfair for a registrant to lose its eligibility to use Form SF-3.

3. Shelf Eligibility for Delayed Offerings

a. Risk Retention

The Commission proposes to replace the investment grade ratings requirement in the ABS shelf eligibility conditions with, among other things, a condition that the sponsor or an affiliate of the sponsor retain a net economic interest in each securitization in one of two ways:

- Retention of at least five percent of the nominal amount of each tranche sold or transferred to investors; or

- In the case of revolving asset master trusts, retention of the originator's interest of at least five percent of the nominal amount of the securitized exposures, provided that the originator's interest and securities held by investors are collectively backed by the same pool of receivables and the originator's interest ranks *pari passu* with the investors' interest in the pool of receivables.

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[14] An asset-backed issuer rarely makes pool asset changes that would cause a five percent change in any material pool characteristic. As discussed later in this letter, however, a requirement to update disclosure based on a lower percentage change in a material pool characteristic is more in the nature of a hair trigger that could significantly increase the likelihood that an Item 6.05 Form 8-K report would be required and makes concerns about a four business-day filing deadline much more relevant.

[15] Instruction 2 to Item 6.03 of Form 8-K provides that "[t]o the extent that any information called for by this Item regarding the enhancement or support is not determined or is unavailable at the time of the required filing, the registrant shall include a statement to this effect in the filing and then must file an amendment to its Form 8-K filing under this Item 6.03 containing such information within four business days after the information is determined or becomes available."

In each case, the retained interest would be measured net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate and the net economic interest would be measured at issuance (or at origination, in the case of the originator's interest),[16] and then maintained on an ongoing basis. Proposed Form SF-3 would also require disclosure relating to the interest that is retained by the sponsor or its affiliate.

i. Need for a Coordinated Approach to Risk Retention

We support efforts to align the economic interests of originators and sponsors with securitization investors and agree that risk retention is one mechanism that can help to establish a better alignment of interests. As noted by the Commission, however, new laws and proposals with risk retention requirements have come in several different forms, including in the Dodd-Frank Wall Street Reform and Consumer Protection Act that was recently adopted by the United States Congress and signed into law by the President on July 21, 2010, and in recent rule proposals by the Federal Deposit Insurance Corporation ("FDIC") regarding the treatment by the FDIC as conservator or receiver of financial assets transferred by an insured depository institution in connection with a securitization or participation.[17]

The Financial Reform Act directs specified regulatory authorities to study certain effects of the risk retention requirements and promptly report their findings to Congress, and to develop corresponding implementing regulations. More specifically, the new law requires that –

- the Board of Governors of the Federal Reserve System ("Federal Reserve"), in consultation with the Office of the Comptroller of the Currency ("OCC"), the FDIC and the Commission, study the effects of the credit risk retention requirements and FAS 166 and 167 on each class of asset-backed securities established pursuant to the implementing regulations and issue a report to Congress within 90 days following enactment of the Financial Reform Act;

- the Chairperson of the Financial Services Oversight Council study the macroeconomic effects of the credit risk retention requirements, focusing in particular on potential benefits with respect to stabilizing the real estate market, and report to Congress within 180 days of enactment of the Financial Reform Act; and

- the Commission work with the Federal Reserve, the OCC, the Director of the Office of Thrift Supervision, the FDIC and the National Credit Administration Board to jointly prescribe risk retention requirements for all securitizers not later than 270 days following enactment of the Financial Reform Act.

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[16] The Commission proposes that, in the case of the originator's interest, the net economic interest would be measured at origination, which in most cases would be at the time the revolving asset master trust was created. We respectfully submit that the appropriate measurement date for the originator's interest would be at the time of issuance of the first shelf takedown after the new ABS shelf eligibility criteria become effective.

[17] Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. (2010) (the "Financial Reform Act"); Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection with a Securitization or Participation After September 30, 2010 (75 FR 27471, May 17, 2010).

The regulatory processes relating to the Financial Reform Act's risk retention requirements are moving forward rapidly and the Commission's risk retention proposals overlap significantly with provisions in the Financial Reform Act as well as the FDIC's proposed securitization rule. We strongly believe, therefore, that any action taken by the Commission to impose risk retention requirements should be undertaken on a coordinated basis, in accordance with the legislative mandate that such regulations be developed on an interagency basis, as informed by the findings and recommendations presented to Congress in the risk retention reports outlined above.[18]

Moreover, if the Commission were to impose risk retention requirements before the regulatory processes relating to risk retention are complete, and on a unilateral rather than interagency basis, issuers may ultimately be subject to multiple and possibly conflicting requirements. We recognize that legislators and regulators have an interest in fashioning effective regulations to enhance practices of issuers and confidence of investors in the securitization process, but we remain very concerned that the fragile securitization markets face uncertainty and the potential for costly administrative changes if multiple layers of regulation addressing the same basic issues are introduced on a staggered basis.[19]

If reform occurs at several levels and over time, revitalization of the securitization markets will inevitably be slowed. Issuers may exit the securitization market with the enactment of the first set of rules and return only after all of the contemplated legislative and regulatory actions have been taken. If the aggregate burden for issuers is ultimately too great, they may significantly reduce or cease their securitization activities and rely on alternative sources of funding. This would likely lead to a contraction of available credit for consumer finance and small business, where securitization has provided a significant source of funding, including mortgage loans, auto loans and leases, small business loans and credit cards. We strongly believe, therefore, that risk retention requirements should be implemented only on an interagency basis.

ii. ASF Member Views on Risk Retention

As noted above, both our investor and issuer members support efforts to align the economic interests of originators and sponsors with investors. Our investor members are firmly of the view that risk retention is necessary to establish a better alignment of interests, but they are split on how risk retention requirements should be applied to different asset classes. They recognize that different types of securitized assets present significant variations in expected credit and performance characteristics and that risk retention procedures, ideally, should be calibrated to the specific risks. Some investors believe that calibrating retention requirements for individual asset types would be too difficult and so support the more standardized risk retention requirements proposed by the Commission. Other investors believe that the Commission's proposed risk retention requirements do not provide enough flexibility and should account for other ways in which issuers can retain risk, such as the retention of a horizontal slice in the case of auto or

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[18] While, as a technical matter, the Commission's risk retention proposals are limited to shelf eligibility, as a practical matter, the proposals would impact virtually every registered ABS transaction. If the Commission were to adopt these proposals in advance of the regulatory processes relating to risk retention, the Commission would effectively preempt the legislative mandate to develop regulations on an interagency basis.

[19] ASF raised these same concerns in its comment letter relating to the FDIC's securitization proposal, which ASF submitted on July 1, 2010.

equipment securitizations, and for other ways in which the interests of issuers and investors can be better aligned, such as transactions where a third-party purchaser of the first-loss piece performs thorough diligence on the entire pool of assets in the case of commercial mortgage-backed securities transactions.

Our issuer members believe that a five percent risk retention requirement across the board for any and all asset types is ill-founded and that, if risk retention is employed in this manner, it should be calibrated to reflect the risk in any given asset pool. Issuers note that the risk retention provisions included in the Financial Reform Act endorse the concept of calibrating risk retention with asset quality by mandating the exemption of ABS supported by qualified residential mortgages from any risk retention requirement.[20] The new law also recognizes that different types of loans and securitized assets present variations in expected credit and performance characteristics by directing that –

- the implementing regulations establish asset classes, with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other class of assets that the federal banking agencies and the Commission deem appropriate; and

- for each asset class established, the implementing regulations must include underwriting standards established by the federal banking agencies that specify the terms, conditions and characteristics of a loan within the asset class that indicate a low credit risk with respect to the loan.

It seems self-evident that mortgage loans made to prime borrowers possess vastly different credit risks than those made to non-prime borrowers. Given this variability, issuers point out that any blanket or one-size-fits-all retention requirement would be arbitrary in its application to any particular asset type, and would not account for important differences in the expected credit and performance characteristics of that asset type versus other types of assets.[21]

Issuers also emphasize that there are valid and competing considerations and policy goals that stand in opposition to a requirement that credit risk be retained by one, and only one, means. For example, many sponsors already have significant equity and other investments in the capital structure of their transactions in the form of subordinated and first loss positions, IO strips that represent an interest in excess finance charge collections, over-collateralization, reserve accounts and the like. Adding a vertical slice component as proposed by the Commission could add too

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[20] The Financial Reform Act also endorses the concept of calibrating risk retention with asset quality by authorizing the Commission and the federal banking agencies to jointly adopt or issue other exemptions, exceptions or adjustments to the risk retention regulations so long as those exemptions: (a) help ensure high underwriting standards for securitizers and originators of assets that are securitized or available for securitization, and (b) encourage appropriate risk management practices by securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or are otherwise in the public interest and for the protection of investors.

[21] Issuers believe, for example, that if a 5% risk retention requirement were imposed on high quality jumbo prime loans, it would become uneconomical to securitize such loans and would put in jeopardy certain policy objectives of Congressional housing legislation.

much incremental cost and render securitization transactions uneconomical relative to other funding options available to the sponsor.

Issuers also continue to have concerns about the impact of the proposed risk retention requirement on the accounting consolidation analysis for a securitization. Risk retention of five percent of a vertical slice of a pool of assets may not in and of itself trigger a requirement to consolidate assets but, when coupled with other factors (including meaningful equity or other investments in the transactions as described above), may be significant enough to trigger consolidation.

Another risk retention option – retaining risk through the retention of randomly selected exposures – could eliminate the accounting consolidation issues posed by the Commission's current retention proposals and still achieve the same economic effects as would be achieved by the current proposals. The Commission indicates that it considered, but did not propose, this option because of concerns that it would be difficult and potentially costly for investors and regulators to verify that exposures were in fact selected randomly. Issuers believe that these concerns are unwarranted and that this option is workable and merits further consideration by the Commission.[22] Randomization as a basis for selection criteria has been properly and effectively utilized for other compliance purposes, including the removal of accounts from credit card master trusts in accordance with FAS 140, and can be verified without excessive cost.

For all of these reasons, issuers strongly believe that a range of risk retention options should be available and that a sponsor or an affiliate of the sponsor should be able to satisfy the risk retention requirement through any one, or a combination, of these options. These options include:

1. Vertical Slice: Retention of a minimum of 5% of the nominal amount of each of the tranches sold or transferred to investors, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate.

2. Horizontal Slice: Retention of (i) a subordinated, first-loss or equity position in the capital structure of the transaction that represents a minimum of 5% of the aggregate nominal amount of all tranches, including residual or equity interests in the issuing entity, overcollateralization, excess spread and cash reserves[23] or (ii) a portion of the nominal amount of a specified tranche or tranches sold or transferred to investors that represent a minimum of 5% of the aggregate nominal amount of all tranches.[24] In each case, the retained interest would be measured net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate.

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[22] Issuers note that this option is included in the FDIC's proposed securitization rule.

[23] Each of these interests represents first-loss exposure and, therefore, credit enhancement for the transaction, which would operate to align the interests of sponsors and investors since the sponsor will absorb all of the losses reasonably anticipated in the transaction.

[24] A condition that the tranche or tranches retained by the sponsor have an aggregate weighted average life that is as long or longer than the weighted average life of each tranche sold or transferred to investors would mitigate concerns about potential misalignments of the economic interests of sponsors and investors.

3. Originator's Interest: In the case of revolving asset master trusts, retention of the originator's interest of a minimum of 5% of the nominal amount of the securitized exposures, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate, provided that the originator's interest and securities held by investors are collectively backed by the same pool of receivables and the originator's interest ranks *pari passu* with the investors' interest in the pool of receivables.

4. Random Exposures: Retention of randomly selected exposures that represent the same credit risk as the securitized exposures and that represent a minimum of 5% of the nominal amount of the securitized exposures, net of hedge positions directly related to the exposures retained by such sponsor or affiliate. For example, randomly select and retain $5 million of a pool of $105 million in loans and then securitize the remaining $100 million in loans.

5. Third-Party Purchaser: Retention of the first loss position by a third-party purchaser that specifically negotiates for it, holds adequate financial resources to back losses, and performs diligence on the entire pool of assets.

6. Representations and Warranties: Provision of adequate representations and warranties and related enforcement mechanisms.[25]

Issuers strongly believe that, in addition to the qualified residential mortgage exemption mandated under the Financial Reform Act, the Commission should utilize the authority conferred upon it to provide exemptions from any risk retention requirement for issuances of asset-backed securities supported by other high quality assets. In providing these exemptions, the Commission could rely, in part, on the underwriting standards to be established by the federal banking agencies under the Financial Reform Act that specify the terms, conditions and characteristics of a loan within each of various asset classes that indicate a low credit risk with respect to the loan.

Each of the options outlined above, including the exemptions for high quality assets, would operate to better align the economic interests of originators and sponsors with investors by establishing and reinforcing commercial incentives for originators and sponsors to create and fund assets that conform to stated underwriting standards and securitization eligibility criteria, thereby making those parties economically responsible for the underwriting quality of securitized assets. The creation and maintenance of effective incentives of this type will, in turn, facilitate responsible lending, as well as a more disciplined and efficient funding of consumer and business assets via securitization.

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[25] As described in more detail in Attachment III to this letter, the ASF has released a final version of a model set of representations and warranties for RMBS transactions and has begun developing a uniform set of procedures to enforce these model representations and warranties by, among other things, clearly delineating the roles and responsibilities of transaction parties in the repurchase process.

b. Third-Party Review of Repurchase Obligations

The Commission has proposed, as the second condition of eligibility to register ABS on a shelf basis under proposed Form SF-3, that the pooling and servicing agreement or other transaction agreement for the securitization which is required to be filed with the Commission contain a provision requiring the party that is making representations and warranties relating to the pool assets and that is obligated to purchase or substitute for any noncompliant pool asset, to furnish an opinion or certificate of a non-affiliated third party to the securitization trustee on a quarterly basis, to the effect that any pool asset as to which the trustee asserted a breach of a representation or warranty and which was not repurchased or replaced by the obligated party, did not violate a representation and warranty contained in the agreement. This proposed criterion is, as the Commission notes in the Proposing Release, a reaction to the widespread ineffectiveness of contractual remedies for breaches of representations and warranties, primarily in subprime RMBS transactions, during the recent financial crisis. We understand the Commission's sensitivity to this issue based upon the proposed revisions to Item 1104 and Item 1110 of Regulation AB relating to repurchase demands made of the sponsor or certain originators in prior transactions and the new reporting requirement with respect to repurchase demands and unfulfilled repurchases in the proposed revision to Item 1121 of Regulation AB.

We agree with the Commission that the effectiveness of the specific mechanisms to identify breaches or to resolve a question as to whether a breach occurred in the RMBS sector has in many cases been insufficient. Various groups within ASF, including participants in Project RESTART, have been discussing alternative approaches to investigating, resolving and enforcing remedies with respect to representations and warranties in ABS transactions. Although ASF has not yet established a market standard for best practices, our membership's thinking has coalesced around the proposition that proper governance principles for ABS would require a considerably more robust mechanism for the investigation and resolution of disputes regarding breaches of transaction representations and warranties. The elements of this mechanism, which represents a consensus view among our issuer and investor members, would involve (i) review of pool assets by an independent[26] third party that is given full access to the files regarding the pool assets for compliance with representations and warranties following the occurrence of a triggering event (for which our member views differ and are described below), (ii) recommendation by the independent third party to the securitization trustee of whether or not to demand repurchase of, or substitution for, the pool asset by the representing party and (iii) if the representing party disputes the independent third party's findings, submission of the dispute to a binding determination by a second independent party. We believe that a strong third-party mechanism will ensure that representations and warranties in securitizations have "teeth," with the beneficial effect of causing asset originators to exercise more caution in underwriting and deterring transfers of substandard assets to securitization vehicles.

As noted above, our members have not come to consensus on defining what would trigger the initial review by the independent third party. Our investor members believe that the triggering

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[26] Our investor members stress the importance of the third party being truly independent from the sponsor and the issuer, and believe that the third party would likely have to be hired by the trustee.

event must be a quantitative test, such as the occurrence of a delinquency of a specified duration. Investors believe that such an objective test would ensure that the review and repurchase process remained truly independent. Our issuer members do not believe it is appropriate to limit the triggering event to one type of test and that there should be a subjective component, such as a *bona fide* and substantiated allegation of breach by a securityholder. Such a qualitative test could be set forth in the transaction agreement and interpreted appropriately by the independent third party.

Although the Commission's proposed shelf eligibility criterion would ensure that some ongoing disclosure is made in shelf offerings about the propriety of a representing party's decision not to repurchase pool assets as to which claims of breach of representations or warranties are asserted, it would not ensure that the repurchase of noncompliant assets is effected, as it is a purely disclosure-based mechanism. We understand and appreciate that the Commission is reluctant to impose substantive transactional, rather than disclosure-based, solutions to inadequate securitization market mechanisms for enforcement of remedies. However, we will continue to work to promulgate best practices for securitization governance, including the identification and administration of breaches of transaction representations and warranties. We believe that securitization participants would be incentivized to adopt better practices if the framework for a third-party mechanism of the type described above were permitted as an alternative to the third-party opinion (or certificate) condition proposed by the Commission. We believe that a robust third-party mechanism for investigating and resolving breaches better serves the interests of investors than a post-mortem opinion or certificate unaccompanied by an adequate and ultimately binding repurchase mechanism. We also believe that such an opinion or certificate would not be necessary in any transaction in which a robust third-party investigation and enforcement process is present, as it would remove control of the remedies for breach from the representing party or its affiliates. Accordingly, we request that the Commission modify proposed General Instruction I.B.1(b) to Form SF-3 by replacing it with the language set forth in Exhibit A to this letter, which would provide that the third-party opinion requirement would apply unless the applicable pooling and servicing agreement or other transaction agreement contains a third-party governance mechanism having the minimum features described above. We also note that this proposal permits an opinion or a certificate to be provided and we request, as noted in other sections of this letter, that the related requirements under Items 1104, 1110 and 1121 of Regulation AB be conformed to this requirement and require disclosure of whether an opinion *or a certificate* was provided.

c. Certification of the Depositor's Chief Executive Officer

The third condition proposed by the Commission for ABS shelf eligibility is a requirement that the issuer provide a certification of the chief executive officer of the depositor of the securitization regarding the assets underlying the securities for each transaction. The certification would indicate that the officer has reviewed the prospectus and other necessary documents and state that to the officer's knowledge "the securitized assets backing the issue have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service any payments on the securities as described in the prospectus." A certification concerning the quality of the assets, and ultimately of the securities being offered, is unprecedented under the federal securities laws and a departure from traditional requirements in U.S. offerings of ABS as well as debt and equity securities.[27] Indeed, the Commission notes in its commentary in the Proposing Release that the content of its proposed certification is similar to language required by the European Union ("the securitised assets backing the issue have characteristics that demonstrate capacity to produce funds to service any payments due and payable on the securities") for offerings of ABS. Notably, however, this EU requirement is a disclosure requirement to be read in the context of the offering document as a whole and is not a certification of an executive as proposed by the Commission.

The Commission states that a certification has been proposed rather than a disclosure requirement because it believes "the potential focus on the transaction and the disclosure that may result from an individual providing a certification should lead to enhanced quality of the securitization."[28] As support for this conclusion, the Commission cites the Sarbanes Oxley certifications required by Exchange Act Rule 13a-14(d) and Rule 15d-14(d) and indicates that the proposed certification may cause the executive "to review more carefully the disclosure, and in this case, the transaction, and to participate more extensively in the oversight of the transaction."[29] We believe it is inappropriate to compare the proposed certification to those under Sarbanes Oxley, as the meaning and intent of the certifications are fundamentally different. In a Sarbanes Oxley certification, an executive will certify to the procedures done to ensure that information was disclosed, the material accuracy of the disclosure and the obligations of certain parties. Instead, the proposed certification looks to the future performance of the assets by requiring the executive to have a "reasonable basis to believe" that the assets will produce timely and sufficient cash flows. Our issuer members have significant concerns with the proposed certification language and believe that it is not an appropriate condition to registration of ABS on a shelf basis and does not effectively implement the Commission's intent to replace a ratings-based condition to shelf eligibility with other measures of ABS quality, as noted in the commentary in the Proposing Release.[30] Our membership views the proposed certification as another significant impediment to recovery of the securitization market.

Issuers are generally concerned that the proposed certification is tantamount to a guarantee by the chief executive officer as to the future performance of the assets underlying the ABS. Although we appreciate the Commission's commentary that the certification is not intended as a guarantee,[31] that is not obvious from the face of the certification. At a minimum, the potential consequences of a strict reading of the proposed language warrant changes to its form.

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[27] We do not believe that Regulation AC provides a meaningful analogy, as the certification of research analyst opinions involves a confirmation that the analyst's opinion fairly reflects his views and is free from conflict. As discussed below, the substance of the proposed certification for ABS goes well beyond the integrity of stated disclosures and into the realm of the predictive.

[28] *See* Proposing Release at 23345.

[29] *See* Proposing Release at 23345.

[30] We did not receive specific investor commentary on this subject as most investors did not believe that a certification would add additional incentives for quality securitizations beyond what the federal securities laws already provide.

[31] "The certification would be a statement of what is known by the signatory at the time of the offering and would not serve as a guarantee of payment of the securities." *See* Proposing Release at 23346.

The certification fails to acknowledge the Commission's intent to qualify the certification by the disclosure in the prospectus.[32] In its proposed form, the qualifying language "taking into account internal credit enhancements" fails to address a number of other important factors, risks, assumptions and scenarios that must be taken into account by the officer when providing the certification.[33] Indeed, the Commission notes as an example that "if the prospectus describes the risk of non-payment, or probability of non-payment, or other risks that such cash flows will not be produced or such payments will not be made, then those disclosures would be taken into consideration in signing the certification."[34] This important qualification is nowhere evidenced in the certification itself. Furthermore, the proposed language of the certification states that the assets will produce cash flows necessary "to service *any* payments of the securities as described in the prospectus" (emphasis added). The use of the word "any" could imply that even the most remotely possible payments will be paid, which is not possible when reading the certification in the context of risks outlined in the prospectus. Quite to the contrary, it is often the case that investors in securitizations, particularly RMBS that utilize a senior/subordinate structure for credit support, expect that assets will be insufficient to fully make payment on all classes of the securities; that's precisely why subordinate tranches of RMBS are sold at steep discounts from par.

Even with the addition of qualifying language, we believe it is inappropriate to substitute a judgment as to cash flow adequacy by an executive officer of the depositor for that of a credit rating agency. Even though their judgment, processes and independence have been called into question as a result of the performance of RMBS issued from 2005-2007, credit rating agencies will remain an integral part of the securitization process even if ratings are not a condition to shelf eligibility. Indeed, the Commission has actively encouraged the issuance of unsolicited ratings through its recently-adopted Exchange Act Rule 17g-5. Credit rating agencies, not asset originators, sponsors or officers of depositors, are the ones whose business consists of marshalling the expertise required to analyze and gauge asset performance under various pool-specific and macroeconomic scenarios and the adequacy of credit enhancement to protect ABS holders to a degree consistent with the assigned credit rating. To the extent that the judgment of an executive of the depositor is intended to be substituted for that of a credit rating agency, our members believe it is a poor substitute and our investor members derive no additional comfort therefrom. Therefore, we ask that the Commission refocus the certification to emphasize transparency and full disclosure for securitization transactions, as the most effective means for investors to evaluate the risks and merits of ownership of ABS.

To that end, an executive of the depositor is in a unique position to certify as to the disclosure of a given transaction and, as such, we believe that a certification focusing on that aspect would be more appropriate and effective than one concerning future performance. As noted above, the Commission has indicated that the goal of the certification is to cause the executive "to review

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[32] "[A]ny issues in providing the certification would need to be addressed through disclosure in the prospectus." *See* Proposing Release at 23346.

[33] Even if the qualification were appropriately limited to credit enhancements, it would be inappropriate to solely limit such language to *internal* credit enhancements. Depending on the structure of the transaction, *external* credit enhancements can play an integral role in maximizing the likelihood that the securities will receive payments.

[34] *See* Proposing Release at 23346.

more carefully the disclosure, and in this case, the transaction, and to participate more extensively in the oversight of the transaction" which "should lead to enhanced quality of the securitization." If the Commission seeks to ensure that the executive has taken more responsibility in reviewing the adequacy of the disclosure document, our issuer members believe that it is more appropriate to require that such officer certify to that effect.

As such, we have set forth in Exhibit B to this letter a proposed replacement for the Commission's proposed certification, which focuses on the sufficiency of the disclosure in the offering documents rather than on future performance of the assets. This certification, and the attendant liability it carries under Section 17 of the Securities Act, should ensure that the signing officer actually reviews and takes an active role in the preparation of the disclosure, and should make certain that the single largest factor affecting the likelihood of meeting an investor's expectations (*i.e.*, undisclosed and therefore unquantifiable risk) is minimized. Our issuer members believe the proposed replacement will eliminate concerns that the certification would constitute a guarantee by an executive officer of the depositor while still effectively serving the Commission's goal of re-tooling the shelf registration process for ABS by ensuring senior management review of the adequacy of disclosure of risks affecting cash flows. Finally, consistent with the Commission's other proposal to require the senior officer in charge of securitization of the depositor to sign the registration statement, our proposed replacement certification would also be signed by that person.

d. Undertaking to File Ongoing Reports

i. Shelf Eligibility Criterion

The Commission's last proposed new shelf eligibility criterion to replace the investment grade ratings requirement is a requirement that the issuer provide an undertaking to file Exchange Act reports with the Commission on an ongoing basis. This proposal was prompted by the operation of Exchange Act Section 5(d), which, at the time of the proposal, automatically suspended the duty to file ongoing reports after the first year if the securities of each relevant class were held of record by fewer than three hundred persons. As a result, the reporting obligations of most ABS issuers suspended after they filed one annual report on Form 10-K. The Financial Reform Act, however, amends Section 15(d) to exclude asset-backed securities from the automatic suspension provisions and, in its place, authorizes the Commission to suspend or terminate Section 15(d) reporting requirements for any class of asset-backed security on such terms and conditions and for such periods as the Commission deems appropriate.

We acknowledge the importance to investors and the markets of post-issuance reporting and support efforts to encourage transparency generally. We do, however, have certain concerns stemming from the new Exchange Act reporting standards.

(a) Amendment to Exchange Act Section 15(d)

One area of concern relates to the potential future reporting status of outstanding ABS completed prior to enactment of the Financial Reform Act (and, therefore, under Section 15(d) in its pre-amended form)[35] and ABS issuances completed under current Commission regulations, including in particular, Exchange Act Rule 15d-22. Currently, with respect to ABS shelf issuances, Rule 15d-22 automatically suspends the duty to file ongoing reports after the first year if the securities of each relevant class are held of record by fewer than three hundred persons. To the extent the Commission may in the future seek to amend Rule 15d-22 to modify this automatic suspension provision, we believe it is critical that the amendments to Section 15(d) implemented under the Financial Reform Act apply only to ABS issuances completed after the Commission amends Rule 15d-22 and, conversely, that ABS issuances completed before any such amendments take effect should be grandfathered and, as a result, should continue to be eligible to rely on Rule 15d-22 in its current form.

Thousands of registered ABS issuances, each by a separate ABS issuer, that were issued over a period of many years are currently outstanding and new issuances are occurring at this time. These ABS issuers completed or are completing those issuances on the basis of a regulatory framework that provides for the automatic suspension of ongoing reporting obligations as to fiscal years other than the first year, and those reporting obligations are, in effect, permanently suspended because each class of securities is held of record by far fewer than three hundred persons. For the vast majority of these issuances, the ABS issuer has not filed periodic reports for as many years (other than the initial year) as the ABS have been outstanding and the related transaction documents do not contain provisions necessary to support an ongoing reporting obligation, or provide for the funds to cover the costs of such reporting, because it was never envisaged that such a springing reporting obligation might arise. Moreover, in practical terms, the sheer scale of the undertaking that would be necessary for many thousands of ABS issuers even to attempt to ready themselves for such a springing reporting obligation makes apparent that ABS issuances completed under Section 15(d) in its pre-amended form and before any amendments to Rule 15d-22 occur, should be grandfathered.

Accordingly, to the extent the Commission may in the future seek to amend Rule 15d-22 to modify the automatic suspension provision, we respectfully request that the Commission do so in a manner so that shelf and non-shelf ABS issuances completed before the effectiveness of any such amendments are grandfathered and, as a result, continue to be eligible to rely on Rule 15d-22 in its current form.[36] In addition, in the event the Commission does amend Rule 15d-22, we respectfully request that the Commission also confirm (i) ABS issuers can suspend ongoing reporting for so long as all of the issuer's securities that were sold in registered transactions are held by affiliates of the depositor and (ii) on a more technical point, that ABS issuers can cease ongoing reporting at such time as all of the issuer's securities that were sold in registered transactions are no longer outstanding.

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[35] As noted above, under Section 15(d) in its pre-amended form, reporting obligations are automatically suspended as to any fiscal year, other than the fiscal year within which the transaction occurred, if, at the beginning of such fiscal year, the securities of each relevant class are held of record by fewer than three hundred persons.

[36] As noted above, the Financial Reform Act authorizes the Commission to suspend or terminate Section 15(d) reporting requirements for any class of asset-backed security on such terms and conditions and for such periods as the Commission deems appropriate. As the Commission is aware, Exchange Act Section 12(h) also authorizes the Commission to exempt in whole or in part any issuer or class of issuers from the provisions of Exchange Act Section 15(d).

(b) Codification of the Commission Staff's "One Bite" Rule

Another area of concern relates to the consequences to ABS issuers from delays in filing, or failures to file, required reports under the Exchange Act as a result of circumstances beyond an issuer's control. It is often the case that the content and completeness of Exchange Act reports for ABS issuers is dependent on the timely receipt of reports and other information from unaffiliated third parties. For example, where multiple servicers are involved in servicing the pool assets for a particular ABS transaction, a separate report on assessment of compliance with servicing criteria and related attestation report under Item 1122 of Regulation AB and a separate servicer compliance statement under Item 1123 of Regulation AB would typically be required from each servicer for inclusion in the ABS issuer's annual report on Form 10-K.

In the case where a *bona fide* effort is made to file an Exchange Act report in a timely manner, but such report is filed in an incomplete form, or is not filed, as a result of a delay in obtaining, or the inability to obtain, reports or other information from one or more unaffiliated third parties, we believe that the delay in filing or failure to file such Exchange Act report should be deemed involuntary and, therefore, should not affect the Form SF-3 eligibility of the subject depositor or its affiliates.[37]

We believe this concern becomes even more pronounced under the Commission's current proposals because (i) ongoing Exchange Act reporting requirements will continue without suspension throughout the life of the ABS and (ii) Form SF-3 eligibility and eligibility to use an effective Form SF-3 registration statement will continue to be based, in part, on timely Exchange Act reporting and will be reevaluated with greater frequency. Accordingly, we respectfully request that the Commission incorporate into the General Instructions to Form SF-3 a provision to the effect that a good faith delay in meeting the timely filing requirements under the Exchange Act, or failure to file, as a result of a delay in obtaining, or the inability to obtain, reports or other information from an unaffiliated third party, would not result in the loss of Form SF-3 eligibility.[38]

ii. Item 1106 of Regulation AB

The Commission also proposes to add a disclosure requirement to Item 1106 of Regulation AB that would require disclosure in a prospectus of any failure in the last year of an issuing entity

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[37] This would be, in essence, a codification of the Commission staff's "one bite" rule – an informal position that a good faith delay in filing, or failure to file, as a result of a delay in obtaining, or the inability to obtain, reports or other information from an unaffiliated third party, would not affect shelf eligibility. We saw this situation arise on a relatively broad scale during the 2008 10-K reporting season (for ABS issuers with fiscal years ending 12/31/07) when, in connection with a precipitous decline in financial condition, certain unaffiliated servicers breached their contractual commitments to produce Item 1122 reports on assessment and Item 1123 servicer compliance statements, causing a number of ABS issuers across the market to file incomplete Form 10-K reports and triggering a series of written requests to the Commission staff to issue "no-objection" letters if the depositor and certain of its affiliates continued to register ABS for delayed offering on Form S-3 registration statements.

[38] This could also be accomplished by means of a General Instruction to Form SF-3 comparable to Instruction 2 to Item 6.03 of Form 8-K, to account for the fact that, through no fault on the part of the registrant, certain information called for in an Exchange Act report regarding unaffiliated third parties may be unavailable at the time of the required Exchange Act filing.

established by the depositor or an affiliate of the depositor to file, or file in a timely manner, an Exchange Act report that was required to be filed. The Commission specifically solicits comment on this proposal, and we appreciate the opportunity to express our views.

We are very concerned with this proposal which, in essence, requires an ABS issuer to self-report, for itself and all of its affiliates, on compliance with the federal securities laws each time the ABS issuer prepares a prospectus. We do not believe this information would be material to an ABS investor in most cases, are not aware of any precedent for such a disclosure requirement, and see no reason why this type of disclosure would be any more relevant to an ABS investor than it would be to a corporate investor.

We are also concerned that the proposed disclosure requirement blurs the distinction between standards for disclosure – which traditionally are based on principles of materiality – and standards for compliance – which may be based on a variety of factors unrelated to materiality. As a result, we believe it would be inappropriate and imprudent for the Commission to embark on a course of compliance-based disclosure standards, which in many cases would result in unnecessary and immaterial disclosure that may overstate a compliance matter and distract from information that is material to investors.

We respectfully submit, therefore, that the Commission should not require the disclosure of failures of an issuing entity established by the depositor or any affiliate of the depositor to file, or file in a timely manner, an Exchange Act report that was required to be filed.

e. Other Proposed Form SF-3 Requirements

The Commission also proposes other changes to the shelf eligibility criteria for ABS offerings and related amendments to Securities Act Rule 401. Specifically, the Commission proposes to add new registrant requirements that pertain to compliance with the proposed new transaction requirements (risk retention, third-party opinion review of repurchase demands, certification, and ongoing Exchange Act reporting). These new registrant eligibility criteria would be conditions to registration on proposed Form SF-3 and would also be conditions to the use of an effective Form SF-3 registration statement.

i. Registrant Requirements to be Met for Filing a Form SF-3

In order to be eligible to file a Form SF-3 registration statement, the Commission proposes that the registrant also meet certain new requirements, which the Commission indicates are, in many respects, consistent with the existing Form S-3 registrant requirements relating to Exchange Act reporting.[39] We agree that most of the proposed new registrant requirements are generally

[39] The proposed new registrant requirements to be eligible to file a Form SF-3 registration statement are:
(i) to the extent the sponsor or an affiliate of the sponsor of the ABS transaction being registered was required to retain risk with respect to a previous ABS offering involving the same asset class, then, at the time of filing the registration statement, such sponsor or affiliate must be holding the required risk;

consistent with the existing Form S-3 registrant requirements but there are some significant departures – particularly with regard to the requirements relating to risk retention – about which we have comments.

First, as noted above, the proposed new registrant requirements pertain to compliance with the four proposed new transaction requirements. To the extent the Commission modifies its proposed new transaction requirements – in response to the legislative mandates of the Financial Reform Act, market comments on the proposals, or both – we understand and expect that corresponding modifications would be made to the proposed new registrant requirements.

Second, while we appreciate the Commission's interest in ensuring that sponsors continue to comply with their risk retention requirements, we do not believe the Commission's new proposed registrant requirement pertaining to risk retention can be implemented in its current form because it presupposes that the identity of the sponsor is known at the time the registration statement is filed. In some ABS programs, the identity of the sponsor changes from one takedown transaction to the next and is not known until the time of the takedown (and, therefore, until after the shelf registration statement has been filed and declared effective).

Third, putting aside the issue of when the identity of the sponsor is known, we are very concerned that extending the proposed risk retention registrant requirement to previous ABS offerings for which sponsors and their affiliates were required to retain risk would carry with it unintended and unjust consequences. In some ABS transactions, the sponsor or sponsors are not affiliates of the depositor-registrant and many of these entities also act as sponsors in relation to other unaffiliated depositors-registrants under entirely unrelated ABS programs and shelf registration statements. As a result, the same entity could be a sponsor under any number of unrelated ABS programs and shelf registration statements, each involving the same asset class. Assuming it was even possible to identify the relevant sponsor or sponsors prior to the filing of an SF-3 registration statement, under the proposed risk retention registrant requirement the depositor-registrant could lose its eligibility to file a shelf registration statement based on the actions of an unaffiliated sponsor relating to an unrelated ABS program. In our view, it would be neither fair nor appropriate to penalize a depositor for breaches of a risk retention requirement by an unaffiliated sponsor. Accordingly, if a risk retention registrant requirement is retained in one form or another, we respectfully request that the Commission limit its application to sponsors that are affiliates of the depositor seeking to file a Form SF-3 registration statement.

(ii) to the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor were at any time during a twelve-month look-back period required to comply with the other transaction requirements of Form SF-3 with respect to a previous ABS offering involving the same asset class, the following requirements would apply:

- such depositor and each such issuing entity must have timely filed all the transaction agreements that contained the required provision relating to the third-party opinion review of repurchase demands;
- such depositor and each such issuing entity must have timely filed all the required certifications of the depositor's chief executive officer; and
- such depositor and each such issuing entity must have filed all the Exchange Act reports they had undertaken to file during the previous twelve-month look-back period; and

(iii) there must be disclosure in the Form SF-3 registration statement stating that these proposed registrant requirements have been met.

Finally, by way of more technical comments, we request that the Commission clarify in clauses (a) and (b) to General Instruction I.A.2 to Form SF-3 that the timely filing requirement relates to the previous twelve-month period (or such shorter period that each such entity was required to file such materials).

ii. Evaluation of Form SF-3 Eligibility in Lieu of Section 10(a)(3) Update

The Commission proposes to amend Securities Act Rule 401(g) to require, as a condition to conducting an offering off of an effective shelf registration statement, an annual evaluation of whether the Exchange Act reporting registrant requirements have been satisfied. The Commission indicates that this annual evaluation would be undertaken in lieu of Section 10(a)(3) updating, which only arises for registrants that are required to include financial statements in their registration statements. An ABS issuer seeking to conduct a takedown off an effective shelf registration statement would be required to evaluate whether affiliated issuers that were subject to ongoing Exchange Act reporting requirements during the twelve-month look-back period have filed such reports on a timely basis, as of ninety days after the end of the depositor's fiscal year end.

We appreciate the Commission's interest in ensuring that ABS issuers continue to comply with the Exchange Act reporting registrant requirements. As a result, while we question the nexus between Section 10(a)(3) updating in the corporate context and the Commission's current proposal in the asset-backed context,[40] we nevertheless acknowledge the Commission's authority to establish relevant conditions for the use of an effective Form SF-3 registration statement.

Our most significant area of concern with this proposal is the operation of Rule 401(g) as the Commission proposes to amend it. As the Commission is aware, Rule 401 sets out the requirements as to proper form that apply to registration statements filed under the Securities Act. Rule 401(a) establishes the core rule that "[t]he form and contents of a registration statement and prospectus shall conform to the applicable rules and forms as in effect on the initial filing date of such registration statement and prospectus."

At the time a registrant files a registration statement, it certifies that is has reasonable grounds to believe that it meets all of the requirements for filing on the form filed. Following effectiveness of a registration statement, however, a registrant needs a requisite degree of certainty that it can conduct offerings without concern that some eligibility standard might subsequently be called

[40] As noted by the Commission, the updating of a registration statement under Securities Act Section 10(a)(3) requires that refreshed, audited financial statements be filed. Section 10(a)(3) updating is relevant in the context of corporate registrants since their registration statements contain issuer financial statements, and shelf eligibility based on timely Exchange Act reporting is relevant in the context of seasoned corporate registrants since they rely on incorporation by reference to their Exchange Act reports in order to keep their shelf registration statements, or the prospectuses forming a part thereof, current. In contrast, Section 10(a)(3) updating is not relevant in the context of ABS registrants since their registration statements do not contain issuer financial statements, and shelf eligibility based on timely Exchange Act reporting is not directly relevant in the context of ABS registrants since they do not rely on incorporation by reference (nor do they otherwise rely on the content of Exchange Act reports) in order to keep their shelf registration statements, or the prospectuses forming a part thereof, current.

into question and thereby give rise to a potential violation of Section 5 of the Securities Act for the completed offerings. Rule 401(g)(1) in its current form addresses this concern by providing that, except in limited cases that are not relevant here, "a registration statement or any amendment thereto is deemed filed on the proper registration form unless the Commission objects to the registration form before the effective date."[41]

Under the Commission's current proposal, Rule 401(g) would be amended to provide that, notwithstanding the effectiveness of an ABS registration statement, requirements as to proper form would be violated if the Exchange Act reporting registrant requirement is not met as of ninety days after the end of the depositor's fiscal year end.[42] ABS issuers are very concerned with this proposed amendment because, despite appropriate diligence, it is not possible to fully verify compliance with the Exchange Act reporting registrant requirement because there could be an unknown defect, latent or otherwise, in one or another of the relevant issuing entity's periodic reports or in its reporting history.[43] As a result, for any offering of ABS following the annual evaluation of the Exchange Act reporting registrant requirement, an ABS issuer would have the continual concern that a relevant issuing entity's Exchange Act reporting might subsequently be called into question and give rise to a potential violation of Section 5 of the Securities Act for the completed offering.

We respectfully submit, therefore, that the Commission should revise proposed Rule 401(g)(4) to incorporate the standard adopted by the Commission in Rule 401(g)(2), which deems a registration statement to be filed on the proper registration form unless and until the Commission notifies the issuer of its objection to the use of such form.

iii. Quarterly Evaluation of Eligibility to Use Effective Form SF-3 for Takedowns

The Commission also proposes to amend Securities Act Rule 401(g) to require, as a condition to conducting an offering off of an effective shelf registration statement, a quarterly evaluation of whether the ABS issuer has satisfied the proposed new registrant requirements relating to risk retention, third-party opinions, the depositor's chief executive officer certification, and the undertaking to file ongoing Exchange Act reports. An ABS issuer seeking to conduct a takedown off an effective shelf registration statement would be required to evaluate its compliance with these new registrant requirements as of the last day of the most recent fiscal quarter.

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[41] Similarly, Rule 401(g)(2) provides that an automatic shelf registration statement (as defined in Rule 405) and any post-effective amendment thereto are deemed filed on the proper registration form *unless and until the Commission notifies the issuer of its objection to the use of such form*. [Emphasis added.]

[42] The Commission proposes a substantially similar amendment to Rule 401(g) as it relates to its proposal to require quarterly evaluation of eligibility to use an effective Form SF-3 for takedown transactions. We have the same concerns with that proposed amendment to Rule 401(g).

[43] For example, an ABS registrant could have a good-faith belief after appropriate diligence that the Exchange Act reporting registrant requirement had been met, but subsequently might learn that a relevant issuing entity filed an Exchange Act report that was incomplete or incorrect and required an amendment, or that the issuing entity inadvertently failed to timely file a Form 8-K report that previously was believed to have been timely filed.

Inasmuch as the Commission's proposals here pertain to compliance with other proposed new rules on which we have made comment, for the avoidance of doubt, we note that those comments apply equally to the Commission's proposals here.

In addition, while we again acknowledge the Commission's authority to establish relevant conditions for the use of an effective Form SF-3 registration statement, we think it is important to note that a quarterly evaluation of continued eligibility – particularly where that eligibility may be impacted by the actions of affiliated and non-affiliated third parties – seems severe and unjust in its potential consequences, particularly in comparison with the eligibility standards applicable to corporate registrants, and tends to undercut the very benefits of the shelf registration framework based, in part, on the actions of persons other than the registrant.

4. Continuous Offerings

The Commission proposes to amend Securities Act Rule 415 to limit registration of continuous ABS offerings to "all or none" offerings. The Commission indicates that it believes its proposal would help ensure that investors in a continuous ABS offering receive sufficient information relating to the pool assets because, in an "all or none" offering, the transaction is completed only if all of the securities are sold. In contrast, in a best efforts or "mini-max" offering, the Commission indicates that a variable amount of securities may be sold. Because the size of the offering would be unknown, investors would not have the transaction–specific information and, in particular, would not know the specific assets to be included in the transaction.

We understand the Commission's concern that, in a continuous offering where the ultimate size of the offering is unknown, investors would not necessarily know the specific assets to be included in the transaction and, in principle, we have no objection to the Commission's proposal. We do, however, believe that the distinction that the Commission draws between "all or none" continuous offerings and best efforts or "mini-max" offerings warrants further refinement in the context of ABS offerings.

In some ABS offerings, particularly in the current distressed capital markets, all or a portion of one or more classes of ABS that are offered for sale to investors through one or more underwriters may initially be retained by the depositor or sold to one or more of its affiliates.[44] In these cases, the offering may be conducted as a firm commitment underwritten offering or as a best efforts offering, but would not be a "mini-max" offering because the total size of the offering is known and disclosed in the prospectus. Similarly, in contrast to a mini-max offering, the prospectus includes all transaction-specific information, including information about the specific assets included in the pool.

We believe that an ABS offering of the type described above (which, again, is quite common in the current distressed capital markets) does not raise any of the concerns identified by the Commission and, to the extent treated as a continuous offering, should be viewed as an "all or

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[44] As noted by the Commission in the discussion of its risk retention proposals, this typically arises when the offered securities have a lower return or carry a lower spread relative to market demand. Any subsequent sale of the securities by the depositor or its affiliates would be undertaken in accordance with the registration provisions under the Securities Act.

none" offering. We request that the Commission confirm our view in any final regulations adopted.

B. Exchange Act Rule 15c2-8(b)

The Commission proposes to amend Exchange Act Rule 15c2-8(b) to require a broker or dealer to deliver a preliminary prospectus at least 48 hours before sending a confirmation of sale for all offerings of ABS, including those involving master trusts. As with proposed Rules 424(h) and 430D, we appreciate and support the Commission's goal of providing investors with adequate information and time to make an investment decision. As a consequence, we have only limited comments on the Commission's proposal.

First, in the Commission's Requests for Comment on this proposal, the Commission notes that, as proposed, there are no specific disclosure requirements applicable to the 48-hour preliminary prospectus. We agree that, in light of proposed Rule 430D and the proposed Rule 424(h) filing requirements, no specific disclosure requirements are necessary for the 48-hour preliminary prospectus.[45]

Second, inasmuch as brokers and dealers would now have an affirmative obligation to deliver a preliminary prospectus, we request that the Commission further amend Rule 15c2-8 to adopt an "access equals delivery" model - akin to the model adopted by the Commission for final prospectuses - that would allow brokers and dealers to satisfy their preliminary prospectus delivery obligations if the preliminary prospectus is filed with the Commission within the timeframe required by Rule 15c2-8(b).[46] As noted by the Commission in 2005 when it adopted an access equals delivery model for final prospectuses, internet usage in the United States has grown to the point that investors can be presumed to have access to materials posted on a website, and this is unquestionably the case for ABS investors.

C. Including Information in the Form of Prospectus in the Registration Statement

1. Presentation of Disclosure in Prospectuses

The Commission proposes to eliminate the practice of providing a base prospectus and a prospectus supplement for ABS offerings registered on a shelf basis. The Commission would accomplish this by adding a provision in new Rule 430D and an instruction to proposed

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[45] If the Commission were to prescribe specific disclosure requirements for the 48-hour preliminary prospectus, we would request that they be conformed to the change we have requested in the context of Rule 430D and the Rule 424(h) filing. Specifically, we would request that, for transactions involving derivative instruments, the Commission clarify that the 48-hour preliminary prospectus delivery requirement will be satisfied if the preliminary prospectus delivered by a broker or dealer omits information relating to the specific derivative counterparty and information dependent on the pricing of the derivative instrument from the preliminary prospectus, provided that such information is conveyed to investors at or before the time they enter into a contract of sale.

[46] Under this model, a broker or dealer would, therefore, normally satisfy the 48-hour preliminary prospectus delivery requirement in Rule 15c2-8(b) if the issuer makes a timely Rule 424(h) filing. Presumably, the broker or dealer would also be subject to a notice requirement comparable to the notice requirement set forth in Securities Act Rule 173, which notice could be sent separately or included in an Exchange Act Rule 10b-10 confirmation of sale.

Form SF-3 that would require ABS issuers to file a form of prospectus at the time of effectiveness of the proposed Form SF-3 and to file a single prospectus for each takedown, which would require that all of the information required by Regulation AB be included in the prospectus. The Commission also proposes to limit each shelf registration statement to one asset class and one depositor.[47] Each depositor would be required, therefore, to file a separate registration statement for each form of prospectus (and, therefore, for each asset class).

We appreciate the Commission's interest in making prospectuses more useful to investors, but believe the Commission's concerns that the base and supplement format has led to unwieldy documents with excessive inapplicable disclosure and that investors are therefore inappropriately burdened in their review of the prospectus are unwarranted.

As required by Commission regulation, base prospectuses do describe the types of offerings contemplated by the registration statement, including the assets, structural features, credit enhancement and other features contemplated, and ABS registrants currently prepare and file as a part of their registration statements separate base prospectuses for each asset class. In our experience, however, the base prospectus disclosure relating to this optionality typically is neither unwieldy nor excessive – often amounting to only a few extra pages – and most ABS issuers heed the admonitions of the Commission and its staff and describe only those material asset types and features reasonably contemplated to be included in an actual takedown.

The Commission's proposal contemplates that, as is the case today, assets, structuring and other features would be presented in brackets in the form of prospectus filed with the registration statement but that, at the time of the offering, only the disclosure applicable to the transaction at hand would be included in the prospectus provided to investors. As described above, this redaction would typically result in a shortening of the disclosure document by only a few pages because the vast majority of the information included in the base prospectus is relevant to investors in each shelf offering.

In addition, the reactions of our investor members are mixed. Some investors indicate that they prefer the base and supplement format because the supplement, by its nature, highlights transaction-specific information, such as the transaction structure, pool composition, credit enhancement and other features, that would otherwise be interlaced with more general information that is relevant to each shelf offering. Other investors indicate that an integrated document would be more useful.

Moreover, the Commission's proposal to limit each shelf registration statement to one asset class and one depositor has no bearing whatsoever on the nature and quality of disclosure for any particular shelf offering and, as a result, seems like a completely unnecessary change in the shelf registration process. Although the Commission's pay-as-you-go registration fee proposal may in some cases alleviate some of the burden of managing multiple registration statements, at least as it relates to concerns about the loss of the flexibility to file so-called "unallocated shelf" registration statements, issuers would lose the flexibility to pay a single, upfront registration fee

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[47] In cases where an underlying security such as a special unit of beneficial interest (SUBI) or collateral certificate is also registered, the depositor of the underlying SUBI or collateral certificate would also be included in the same registration statement.

that could be allocated across asset classes as needed. Accordingly, the requirement to maintain more than one registration statement where one registration statement has been used historically, and without any indication that the practice has investor protection implications, seems like an unnecessary regression in regulatory approach.

In addition, the Commission's proposed limitation of one depositor and asset class per registration statement would not seem to permit securitization platforms where more than one depositor transfers or sells pool assets into the same issuing entity to conduct shelf offerings. If the Commission were to adopt its proposals (which we hope the Commission will reassess based on our comments), the Commission's limitation should instead be to only those depositors that transfer or sell pool assets to the same issuing entity.

Finally, and as noted above, we do appreciate and support the Commission's goal of making prospectuses more useful to investors, and we remain fully committed to the principles of the Commission's plain English rules. Indeed, several ABS registrants volunteered to participate in the Commission's plain English pilot program more than a decade ago, which paved the way for a transformation in the form and content of ABS prospectuses that continues to guide the form and content of ABS prospectuses in 2010.

D. Pay-as-You-Go Registration Fees

The Commission proposes to permit, but not require, ABS issuers eligible to use Form SF-3 to pay filing fees as securities are offered off of a shelf registration statement. Under the Commission's proposal, the triggering event for a fee payment would be the filing of a preliminary prospectus under proposed Rule 424(h).

We support the Commission's proposal and believe it should be available regardless of whether the Commission proceeds with its proposals to require the use of an integrated prospectus. We also believe that, in cases where an ABS offering is not completed after the fee is paid, the fee should be available for application as an offset against the filing fee due for subsequent ABS shelf issuances by the same depositor or affiliates of the depositor, as currently provided in Securities Act Rule 457(p). Finally, we request that the Commission confirm that a registrant using the pay-as-you-go approach may rely on Rule 457(p) and apply a portion of the fee associated with unsold securities under a previously-filed registration statement as an offset against the total filing fee due at the time of the filing of a Rule 424(h) filing under the Commission's pay-as-you-go registration fee proposal.

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II. DISCLOSURE REQUIREMENTS

A. Pool Assets

For most ABS offerings, the Commission proposes to require asset-level information in XML format to be included in the prospectus and periodic reports filed on EDGAR. The asset-level information includes standardized data points that are generally applicable to most asset classes and additional data points for residential mortgages, commercial mortgages, auto loans, auto leases, equipment loans, equipment leases, student loans, floorplan financings, corporate debt and resecuritizations. For credit and charge card ABS, the Commission proposes to require "grouped account data" in XML format to be included in the prospectus and periodic reports filed on EDGAR.

We appreciate and support the Commission's goal of ensuring that investors have access to robust information concerning pool assets to make informed investment decisions.

The Commission's proposed rules for RMBS transactions substantially incorporate the spirit and substance of the asset-level disclosure and reporting packages developed by market participants through ASF's 16-month RMBS Project RESTART initiative. As described in Attachment III to this letter, through RMBS Project RESTART, the market developed an industry-wide consensus on broad improvements to RMBS disclosure practices. Leveraging the resources and participation organized for RMBS Project RESTART, ASF organized committees and working groups to review and analyze the Commission's proposal as it relates to RMBS. As more specifically detailed in our comprehensive response to the Commission's proposal in Section II.A.1 below, we generally concur with both the substance and format of the Commission's proposed rules regarding disclosure of asset-level information for RMBS transactions.

Building on the success of RMBS Project RESTART, ASF organized a similar initiative to develop an industry-wide consensus on improvements to credit and charge card ABS disclosure practices ("Credit Card Project RESTART"). By the time of the release of the Commission's proposal, however, the Credit Card Project RESTART initiative had not yet reached an industry-wide consensus. Consequently, unlike RMBS, the Commission did not have a market-developed proposal regarding disclosure and reporting packages upon which to base its proposal for credit and charge card ABS. However, leveraging the resources and participation organized for Credit Card Project RESTART, ASF again organized committees and working groups to review and analyze the Commission's proposal as it relates to credit and charge card ABS. As more specifically detailed in our comprehensive response to the Commission's proposal in Section II.A.2 below, we have several significant concerns with the Commission's proposal regarding disclosure of grouped account data for credit and charge card ABS transactions. To address these concerns, we have developed an alternative disclosure and reporting package for credit and charge card ABS that represents the consensus view of the industry. Notably, this disclosure and reporting package builds upon the Commission's proposal but with important modifications, including more expansive data relating to certain collateral performance metrics. Issuers and investors agree that our proposed disclosure and reporting package will provide extensive metrics on collateral performance and enable informed investment decisions without disclosing proprietary information about the issuer's credit or charge card business and, therefore, will preserve the viability of securitization as a continued source of funding for their businesses.

By the time of the release of the Commission's proposal, unlike RMBS Project RESTART and Credit Card Project RESTART, the market had not yet endeavored to create industry-wide initiatives to examine and develop consensus on comprehensive disclosure and reporting packages for other ABS sectors.[48] ASF has, however, organized committees and working groups to review and analyze the Commission's proposal as it relates to some of these other ABS sectors, particularly the auto loan, auto lease and floorplan financings sectors. Despite the efforts of these committees and working groups, without the ability to leverage the resources and participation of a standing Project RESTART program, market participants have not yet had adequate time to develop consensus on the appropriate asset-level disclosure that would be both beneficial to investors and feasible and appropriate for issuers to provide. Market participants do, however, recognize and agree that the asset-level disclosure requirements contained in the Commission's proposal require modifications and that, without these modifications, unintended consequences have the potential to significantly hamper or even dismantle an already fragile market.

As of the date of this letter, we are actively engaged in robust discussions in an effort to develop balanced and practical recommendations on how best to move forward to achieve the Commission's goals in the context of the auto loan, auto lease and floorplan financing sectors. As discussions in these sectors progress, we hope to be in the position to submit a supplemental letter addressing the Commission's proposals concerning pool asset disclosure requirements for those sectors.

In light of the foregoing, we do not include in this letter any discussion of the Commission's proposals with respect to the provision of asset-level information for ABS backed by asset classes other than private-label residential mortgages and credit and charge cards. At the same time, as the Commission has recognized, its proposals in this area involve significant changes from current disclosure requirements and, as noted above, it is of paramount importance that any pool asset disclosure ultimately required be both beneficial to investors and feasible and appropriate for issuers to provide. We also think it important to highlight that each asset sector comprising the ABS market itself represents a separate industry within the broader U.S. and global economies, and each of these industries has its own unique issues and considerations, including greater or lesser sensitivities to certain asset-level disclosure requirements. We encourage the Commission, therefore, to phase in pool asset disclosure requirements in stages by asset sector, beginning with the private-label residential mortgage and credit and charge card sectors. For the private-label residential mortgage and credit and charge card sectors, we request that the Commission adopt an implementation date for enhanced pool asset disclosure requirements of no earlier than the later of one year following the date of publication of the related final rules in the Federal Register and January 1, 2012.

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[48] We take notice, as the Commission has, that the CRE Finance Council (formerly Commercial Mortgage Securities Association) has developed some reporting standards for offerings of commercial mortgage-backed securities and residential mortgage-backed securities.

1. Residential Mortgage-Backed Securities

We commend the Commission on its historic proposal to require disclosure of loan-level information in connection with the offering of private-label RMBS and on a monthly basis thereafter for so long as the RMBS are subject to periodic reporting requirements of the Exchange Act. As the Commission noted in the Proposing Release, ASF has developed, through its RMBS Project RESTART, detailed sets of criteria for loan-level disclosures by issuers in connection with private-label RMBS transactions (the "ASF RMBS Disclosure Package") and for monthly reporting throughout the life of an RMBS transaction by RMBS servicers and master servicers (the "ASF RMBS Reporting Package" and, together with the ASF RMBS Disclosure Package, the "ASF RMBS Packages").

The ASF RMBS Packages were developed over a period of approximately 16 months by a working group comprised of issuers, servicers, master servicers, bond administrators, investors, dealers, rating agencies, ASF staff and outside counsel. In addition, a related technical committee comprised of members of the working group, their information systems colleagues and analytics firms, was established. That committee coordinated with the working group to create a set of data definitions, technical specifications and mutually acceptable coding conventions for the presentation of data in the ASF RMBS Packages.

As ASF noted in its Final Release, dated July 15, 2009, adopting the ASF RMBS Packages (the "ASF Final Release"), the purpose of the ASF RMBS Disclosure Package was to (1) standardize the presentation of all data to allow institutional investors to easily compare with analytical vigor loans and transactions across issuers, and (2) provide substantially more critical loan-level data than has traditionally been available to institutional investors, rating agencies and other eligible RMBS market participants relating to the underlying mortgage loans in private-label RMBS. ASF further stated that the purpose of the ASF RMBS Reporting Package was to provide enhanced and standardized monthly updating of critical loan-level information to enable investors to better value outstanding securities by better understanding the current performance of loans, as well as to provide critical insight into deterioration in borrower credit quality. Ultimately, the goal of both the ASF RMBS Disclosure Package and the ASF RMBS Reporting Package was to increase loan-level transparency for the purpose of restoring investor confidence and to facilitate resumption of a private-label RMBS market.

We appreciate the Commission's acknowledgement of the work of RMBS Project RESTART in the Proposing Release. We are also gratified that the asset-level data file containing the data fields described in Schedule L and proposed to be filed on Form 8-K in connection with each offering pursuant to Item 1111A of Regulation AB, as proposed to be revised (the "Offering Data File"), and the asset-level data file containing the data fields described in Schedule L-D proposed to be filed monthly on Form 10-D, pursuant to Item 1121A of Regulation AB, as proposed to be revised (the "Reporting Data File" and, together with the Offering Data File, the "Proposed Data Files"), substantially incorporate the spirit and substance of the ASF RMBS Packages.

A subcommittee of the ASF Reg AB II Taskforce, consisting of both RMBS Project RESTART participants and other members (the "RMBS Subcommittee"), has reviewed in detail the proposed Offering Data File and Disclosure Data File, as they pertain to RMBS transactions.

We agree that the vast majority of the fields specified in Items 1 and 2 of Schedule L and Schedule L-D are appropriate for RMBS transactions, and are consistent with, or even improve upon, the comparable data fields contained in the ASF RMBS Packages.

While we generally concur with the substance and format of the Offering Data File and Reporting Data File, the RMBS Subcommittee has the following general comments on both files, as well as more specific comments on the fields contained in the Offering Data File and the Reporting Data File. These comments have been reviewed and endorsed by the broader ASF membership. We note that certain additional comments relating to the use and filing of the Offering Data File, such as the scope of the information required to be included in connection with reporting of changes to an asset pool under Item 6.05 of Form 8-K, are addressed elsewhere in this letter.

a. General

i. Implementation Date

We request that the Commission adopt an implementation date for the use of the Proposed Data Files in securitization transactions of no earlier than the later of one year following the date of publication of the final rules with respect to the Proposed Data Files in the Federal Register and January 1, 2012.

The implementation of the Proposed Data Files will require a considerable investment and commitment of resources by various securitization participants, including originators, sponsors, servicers, master servicers and bond administrators. Much of the data required by the Proposed Data Files is not currently captured by origination or servicing systems. While we endorse the provision of comprehensive loan-level data to investors, we recognize that the process of capturing the necessary data will create considerable information systems challenges for market participants. This burden will fall equally on both small participants, who are less likely to have the internal resources to quickly build the needed systems, and on large participants who, despite having greater internal resources, have to cope with handling data on a much greater scale than their smaller counterparts. As noted above, the Offering Data File and the Reporting Data File are substantially similar in many respects to the ASF RMBS Disclosure Package, which ASF intended to be effective for transactions beginning in February 2010, and the ASF RMBS Reporting Package, which ASF intended to be fully effective in November 2010. However, in the absence of an active RMBS market since the publication of the ASF RMBS Packages in July 2009, industry participants have been understandably reluctant to undertake the considerable expense required to build the systems needed to capture the required data. This reluctance has been compounded by the expectation of market participants that the voluntary ASF RMBS Packages might be subsumed by a substantively similar, yet sufficiently distinct, legislative or regulatory mandate, necessitating the further expenditure to conform the systems developed to comply with the ASF standards to conform to superseding regulatory dictates. Indeed, given the numerous differences between the fields and format of the ASF RMBS Packages and those of the Proposed Data Files, such incremental outlay would now become necessary for anyone who had implemented the ASF RMBS Packages, notwithstanding the virtual absence of any new issue RMBS transactions since the ASF RMBS Packages were published.

Further, an extended implementation period for the Proposed Data Files is necessary in order for their requirements to be reasonably and carefully implemented throughout the residential mortgage market. Although the Offering Data File pertains only to securitization, the bulk of the information it calls for is origination data, which is generated or collected by originators of mortgage loans, many of whom are not directly involved in the securitization process. Indeed, small mortgage originators typically sell their production to larger financial institutions or aggregators under correspondent arrangements or in whole loan flow or bulk sales. To ensure that the required data is available for use in RMBS transactions, it will be necessary for purchasers of whole mortgage loans to negotiate changes to their contractual arrangements with loan sellers to provide for the production and delivery of the necessary data, together with appropriate protections for the use of such data in the capital markets. The RMBS industry faced similar challenges in 2005 following the adoption of Regulation AB, which required, among other things, the inclusion in prospectuses or on static pool websites of information not within the control of the sponsor, and the inclusion of additional parties who constitute "participants in the servicing function" in the periodic reporting process through the requirement to obtain assessments of compliance with the servicing criteria of Item 1122. Although the mechanics of obtaining required information and cooperation of parties outside the offering process were eventually worked through by market participants, the initial implementation process involved the development by ASF of its Model Provisions for Residential Mortgage Loan Purchase and Servicing Agreements, which provided an industry-standard template for gathering the required information from participants in whole loan transfers. We contemplate that a similar process will be required in order to establish market standards for data delivery between sellers and purchasers of residential mortgage loans in order to facilitate the ability of securitizers to prepare the required Offering Data Files. We anticipate that the process of educating smaller originators about the necessity of providing the required loan-level data and undertaking the substantial cost to do so, and of developing appropriate and market-accepted contractual standards, will require up to a year from the date that the data requirements of the Proposed Data Fields are finalized.

ii. Scope

Although the Proposed Rules are only applicable to offerings after their effective date, it is likely that, for some time after the effective date of the Proposed Rules, RMBS issuers will wish to include loans originated prior to the effective date in the related asset pools. RMBS is primarily a tool for the financing of newly originated mortgage loans through the capital markets. However, since March 2008, there has been little demand for private-label RMBS and almost no new issue RMBS transactions. As a consequence, residential mortgage origination has declined and most originators who have originated mortgages that are ineligible for sale to Fannie Mae or Freddie Mac have been forced to hold loans in portfolio, further constraining their lending capability. We expect that, as the RMBS market returns, there will be a desire by financial institutions to include portfolio loans that would have otherwise been securitized in a functioning market in new RMBS transactions. However, for the reasons discussed above under "Implementation Date," the ability to provide all of the required data will simply not exist until information systems are constructed to collect data that is currently not captured, and those systems cannot be practically constructed until the final data fields are known, adequate resources are brought to bear and mortgage loan originators who are not direct securitization parties are brought into the fold. Any such origination data that was not required to be captured at the time a loan was originated is simply not available. Accordingly, an absolute requirement to provide the Proposed Data Files will effectively render loans originated prior to the implementation date unsecuritizable in the public capital markets, or if the changes proposed by the Commission in connection with private offerings effected in reliance on safe harbors from registration are adopted, the Rule 144A market as well.

We believe it is essential that RMBS supported by legacy loans (*i.e.*, loans originated prior to the implementation date) be grandfathered and not be subject to the new and amended rules, at least to the extent that information called for under those rules with respect to legacy loans is unknown and not available to the issuer without unreasonable effort or expense (similar to the standard in Item 1105(f) of Regulation AB). We request that the Commission adopt a permissible code "U," or a numerical equivalent consistent with the technical recommendations made below, signifying "data unavailable" for use in any field in the Proposed Data Files where the required data is, in fact, not known, in order to permit securitizers to include loans originated prior to the implementation date of the Proposed Data Files in the asset pool.

The use of an unavailability code would permit securitizers to include loans originated prior to the implementation date of the Proposed Data Files in the asset pool and would signify clearly, and in a consistent fashion, to investors performing loan-level analysis that the information required by the field has not been captured. We would be comfortable with a notation in the Final Rules that the use of code "U" or a numerical equivalent, would generally be inappropriate for any mortgage loan originated after the implementation date of the Proposed Data Files, unless the data field specifically permits the use of a code to designate "unknown" data. However, if the Commission believes the use of such a code is unworkable or inadvisable, we request that the Commission instead make the data fields in the Offering Data File and the Reporting Data File applicable only to residential mortgage loans originated after the implementation date of the Proposed Data Files in order to minimize confusion among market participants about their obligations with respect to individual mortgage loans, while least burdening the public policy of restoring the RMBS market by eliminating a bar to the securitization of seasoned mortgage loans.

iii. Materiality

We request that the Commission confirm that the reporting of data in the Proposed Data Files does not create a presumption that any of the data is *per se* material.

We believe that the provision of granular asset-level data is essential to the restoration of investor confidence in the RMBS markets and a critical component in encouraging greater analysis by investors of RMBS transactions and reducing reliance on credit ratings. However, we also believe that, while the 165 data fields in the Offering Data File and the 197 data fields in the Reporting Data File represent a significant and desirable quantitative increase in available statistical information, the extent to which the data in any individual field or group of fields is material to a particular transaction should remain a factual matter, based on the facts and circumstances of a particular transaction, including, but not limited to, the underlying mortgage loans, the offered securities and the individual circumstances of the investor.

iv. Inapplicable Fields

We request that the Commission adopt a permissible code "I," or a numerical equivalent, signifying "field inapplicable," for use in any appropriate field in the Proposed Data Files, to convey that the requested data is not applicable to the particular loan.

Not all fields in the Proposed Data Files will be applicable to each loan in a securitization transaction. For example, fields relating to interest rate adjustment features will not be applicable to fixed rate loans, fields describing the features of manufactured housing loans will not be applicable to conventional residential dwellings and loans may or may not have prepayment penalties. In most cases, the Proposed Data Files contain "Yes/No" indicators to indicate whether a loan is the type to which additional fields would apply, such as, for example, Item 2(a)(2) of the Offering Data File with respect to prepayment penalties. In such circumstances, if the indicator is "No," presumably the related detailed fields are intended to be left blank. In cases where there is no indicator field, the Commission's proposal seems to imply that inapplicable fields also be left blank.

We believe it is desirable that no fields in the Proposed Data Files be left blank. A blank field creates some ambiguity as to whether it is being left intentionally open to signify that it is not applicable to the particular loan or represents an oversight by the party preparing the file. Therefore, we strongly recommend that the Commission adopt a consistent and intuitive code, such as "I" or "N/A," for the purpose of clearly conveying the inapplicability of appropriate fields in the Proposed Data Files.

v. Disclosing Derivable Information

Originators, sponsors, servicers, master servicers and bond administrators will, in many cases, have to change the way they capture information in order to comply with the loan-level data requirements of the Proposed Data Files. While this will involve significant changes in how information is gathered, processed and updated, with a commensurate increase in expense, we believe that expense is justified and desirable when it enhances transparency by making available important data that was not previously available to investors in RMBS. However, we ask the Commission to be judicious in requesting that expensive changes to data capture and reporting systems be instituted in order to provide information that can otherwise be derived from other data provided in the Proposed Data Files. ASF members have no objection to providing data that is easily derivable from other data fields if that information is already available to the preparer, but if it involves creating additional reporting processes to avoid a simple calculation that can be easily performed by the user, we will so note in our field-specific comments below and ask that the derived data field be removed.

vi. Technical Considerations in Preparing the Proposed Data Files

As mentioned above, the ASF technical committee devoted considerable time to develop standards relating to the presentation and dissemination of the proposed data fields included in the ASF RMBS Packages. The technical committee's goals were to (1) create a manner of presentation that facilitates an understanding of the meaning of the data being disclosed among all RMBS market participants, including both those participants involved in the preparation of the data and those who would be consumers of the data, and (2) provide information in a consistent manner, such that the data being disclosed by different participants for loans with identical characteristics would have the same value and would be in the same format. With these goals in mind, and based on our experience in creating the ASF RMBS Packages, we request that the Commission implement the following recommendations:

- The Commission should include a detailed glossary of terms to accompany the Proposed Data Files (similar to the Data Dictionary contained in the ASF Final Release). A detailed glossary would ensure that the meaning of any given data element is clear to all market participants.

- In order to enhance consistency, the Commission should keep the usage of fields that permit textual entry (referred to as “free-form text fields”) to a minimum and should instead, where practical, utilize mapping tables that contain standardized responses. For this reason, the ASF RMBS Packages refer to the use of a MERS identification number for several data fields because this number functions as a consistent and complete mapping table for these fields. Free-form text fields are difficult for consumers of the data to use because different providers of the data may disclose text using different abbreviations or spellings. Consumers of the data are often analyzing results both at a loan-level as well as across multiple loans. Analysis across securities, for example, is difficult if a field has different values for two loans where the underlying information is the same.

- The Commission should specify the format for each data field along with the data type. With respect to numerical fields, the prescribed format should indicate whether the number should be displayed as an integer or whether the number should be displayed in a decimal format (as well as specifying the appropriate number of digits that should be displayed to the right of the decimal). For data fields, the format should specify whether the date should be displayed as a month-year (YYYYMM) or month-day-year (YYYYMMDD). Since residential mortgages are primarily monthly-pay instruments, a month-year format is appropriate for some fields, while others require a month-day-year format. For fields where the appropriate response is “Yes” or “No,” the ASF RMBS Packages code these fields as 1 or 0 which is consistent with a binary mapping. If the value for a Yes/No field is unknown, the ASF RMBS Packages code this as 99. There should not be any confusion with a missing value being presented as null since 0 and null are different responses.

- The Commission should not mandate that a particular file format be utilized for the proposed data fields. The technical committee held various meetings and discussions on whether it should recommend a particular file format for the ASF RMBS Packages. After consideration of the benefits and detriments of the various formats within the context of the needs of the ASF RMBS Packages, we recommend that the proposed fields be provided as comma delimited files rather than XML formatted files. We believe that it is more important for market participants to focus staff and information technology resources on the substance of the enhanced disclosure to be provided that increases its availability or standardizes its presentation rather than on new file formats that facilitate only movement of data. We believe that an XML standard may cause delays in implementing the proposals due to lack of familiarity by both producers of the data (issuers and servicers), but also the consumers of the data (investors). More importantly, discussions of members of our investor committee (users of the information) indicated little, if any, demand for availability of data in a new format.

b. Offering Data Files

i. Items 1(a)(1) and 1(a)(2)

While it is understandable that the Commission does not wish to endorse any particular unique loan identifying system for purposes of the Proposed Data Files, we believe that investors would be better served by a single standard for obtaining uniform loan identification numbers, rather than a variety of different methods that may vary from transaction to transaction. A uniform system for providing unique asset identification numbers will be helpful to securitization participants in creating a common language and protocol for identifying assets prior to, during and after securitization, and will ultimately aid transparency while protecting borrower privacy. Therefore, we request that the Commission designate CUSIP numbers as the appropriate asset number for securitizations the underlying assets of which consist of securities, because CUSIP numbers are universally recognized by the securities industry and investors as the standard for identification of individual securities. Further, we request that the Commission designate the ASF Loan Identification Number Code ("ASF LINC™") as the appropriate asset identification number for securitizations backed by assets other than securities. ASF LINC™ is a unique asset identification number developed solely for use in connection with assets that may be pooled and sold in the capital markets. Unlike the MERS Mortgage Identification Number cited by the Commission, ASF LINC™ is available to originators and securitizers, without charge, and is designed for use with all asset classes, not just mortgages. In addition, the ASF LINC™ is more useful to market participants than a numbering system internal to a securitization, such as a CIK number coupled with a sequential asset number, because it can be obtained at origination or at securitization and can continue to be used to identify and measure the performance of a loan even if it is removed from a securitization by, for example, repurchase for breach of a representation or warranty or in connection with a clean-up call. The ASF LINC™ was created specifically for use in a flexible disclosure and investor reporting scheme, which is the intent of the Proposed Data Files, and ASF strongly believes that its membership, the largest constituency of which consists of investors, would be best served by the Commission's designation of this important tool as the preferred means of asset identification. Please see Attachment IV to this letter for more information on the ASF LINC™ and the reasons it is the ideal choice for the Commission's unique asset number.

ii. Item 1(a)(15)

This item provides for the option of including the MERS organization identification number of the primary servicer or the actual name of the primary servicer. We request that the Commission require that the MERS organization identification number be required in lieu of textual entry of the primary servicer's name, unless the primary servicer does not have a MERS organization identification number. It is the experience of ASF members that the names of servicing organizations are often misspelled or abbreviated by market participants, particularly when those servicers are part of large institutions with many affiliated entities whose names contain common elements. We believe that transparency and investor understanding will be aided by standardization through the use of MERS organization identification numbers whenever available. Further, we recommend that the Commission add additional fields to Item 2 of the Offering Data Fields requesting the MERS organization identification numbers or, if no such identification numbers exist, the names, of the master servicer and the special servicer, if any, with respect to the loan.

iii. Item 1(a)(19)

We request that the text under "Proposed title and definition" be revised to read as follows:

> "Defined underwriting indicator. Indicate yes or no whether the loan or asset made was an exception to the underwriting criteria described in the prospectus."

This change will cause the loan-level information in the Offering Data File to dovetail with the pool-level disclosure required by Item 1111(a)(3) of Regulation AB, as proposed to be revised. We acknowledge that Item 1111(a)(3) requires a thorough discussion of the material underwriting criteria used to originate the pool assets.

iv. Item 1(b)(5)

We request that this field be replaced with a string indicating the payment status per month over the most recent 12 months, as specified in field 97 of the ASF RMBS Reporting Package. Our investor members believe that a delinquency string, which is substantially similar to what the Commission has proposed for monthly reporting in Item 1(f)(15) of the Reporting Data File, with the addition of foreclosure and REO status, would provide considerably more useful information than the field as currently proposed and would subsume the current proposal.

v. Item 1(b)(6)

We request that this field be deleted. Servicers currently track delinquencies in 30-day buckets, measured on a monthly basis, rather than number of days past due at any given date, including the reporting date. Although such information could be provided in the future, it would require implementation of new processes that, in our view, are not cost-justified. As an alternative, the user of the Offering Data File can derive the number of days past due from the interest paid through date reported in proposed Item 2(a)(14) and the measurement date reported in Item 1(a)(20).

vi. Item 2(a)(6)

We believe that whether or not mortgage insurance was required at origination is not particularly relevant at the time of securitization and that the focus of this field should be on whether the loan currently is covered by mortgage insurance. Therefore, we request that the text under "Proposed title and definition" be revised to read as follows:

> "Mortgage insurance requirement indicator. Indicate yes or no as to whether the loan has mortgage insurance."

Further, we request that this field be moved to immediately precede the insurance fields beginning with Item 2(d)(1) for clarity of presentation.

vii. Item 2(a)(8)

We request that the Commission revise the proposed title and description of this field by adding the definition of "cash out amount" contained in field 12 of the ASF RMBS Disclosure Package. We believe that this definition, which is also used by Fannie Mae and Freddie Mac, is standard industry practice, and will create consistency in reporting across transactions.

viii. Item 2(a)(9)

We request that the words "originated or" be removed from the proposed field description, as mortgage brokers do not generally have their own underwriting criteria, and do not make the decision to extend credit to the borrower or otherwise act as originators, although they may take or advise borrowers on completing loan applications or otherwise assist in processing loan paperwork.

ix. Item 2(a)(11)

We suggest changing the references to "loan originator" in the proposed field title and description to "loan officer" to clearly indicate that this field requires the NMLS number of the individual who approved the loan, rather than of the entity that originated it, which appears to be addressed by Item 2(a)(12).

x. Item 2(a)(15)

We request that this field be deleted, as it describes a pool-level servicing methodology, which is not consistent with the loan-level data disclosure scheme embodied in the Offering Data File. The servicer's advancing obligation (which often is stated with relation to when a loan is foreclosed on or liquidated, rather than a specific number of days) is more properly disclosed in the prospectus, as required by Item 1108 of Regulation AB, and the status of advances should be reported on a loan-level basis, as contemplated in the Reporting Data File.

xi. Item 2(a)(16)

The comparable field in the ASF RMBS Disclosure Package requires the reporting of the combined balance of the subordinate liens "if known" in order to address the issuer concerns about whether originators would always have knowledge of or access to balance information on loans not originated by them, and we request that the Commission consider reinserting the knowledge qualification. In addition, in the ASF Final Release, we noted that this field was subject to obtaining clarification that the required disclosure could be made, consistent with the requirements of the Fair Credit Reporting Act. ASF was unable to obtain definitive qualification from the Federal Trade Commission on this point, and we therefore request that the SEC confirm that such disclosure would not violate the FCRA before finalizing this field.

xii. Item 2(a)(18)(iii)

We request that the Commission clarify the date as of which the disclosure is being requested, in order to avoid confusion as to whether it is as of the origination date or, more appropriately, the securitization cut-off date.

xiii. Item 2(a)(20)(iv)

We request that this field be deleted as unnecessary. The amount of negative amortization can be determined by subtracting the original asset balance reported in Item 1(a)(6) from the current balance reported in Item 1(b)(2).

xiv. Item 2(a)(21)(ii)

We request that this field be deleted as unnecessary. Issuers believe it will be difficult to properly code this field based on the options provided by the Commission, which describe only a limited universe of loan modifications. We believe that the more pertinent disclosure is the effect of any modification, which will be ascertainable from the pre- and post-modification characteristics of the loan, which are disclosed in other fields of the Offering Data File.

xv. Item 2(a)(21)(iii)

We request that this field be deleted. Loan modifications are effective on a mortgage loan's next due date after entry of the modification into a servicer's servicing system, and that effective date is captured by Item 2(a)(21)(vi). To the extent that the Commission believes that the date of entry of the modification on the servicer's servicing system is relevant in order to show possible implementation delay, that information is, in our view, more appropriately required in the Reporting Data File as it will be moot with respect to modifications which became effective prior to the securitization cut-off date, which are the only modifications covered by the Offering Data File.

xvi. Item 2(a)(21)(x)

We request that the field be revised by adding the words "or, if the servicer is no longer advancing principal and interest, the scheduled payment that would be in effect if the loan were current" to the end of the proposed description. This technical change would prevent the requested pre-modification payment data from being inadvertently misreported if the servicer had stopped advancing and recorded zero scheduled principal and interest for the month prior to modification as zero on its servicing system.

xvii. Item 2(b)(1)

ASF investor members strongly prefer reporting of five-digit zip codes, rather than OMB codes for Metropolitan Statistical Areas or Metropolitan Divisions. Five-digit zip codes provide finer detail, without being so precise as to compromise a borrower's identity, have historically been part of the more limited loan-level information made available in RMBS transactions and are used by many investors today to perform detailed housing price analysis for which MSA-level data would be less useful. ASF members feel that a substitute and less precise measure will be a backwards step in disclosure practice and strongly opposes doing so unless the Commission can more fully articulate its precise privacy concern.

xviii. Item 2(b)(7)

The purpose of disclosing the original property valuation date is to ensure that the loan-to-value ratio used in the underwriting process was current enough to not overstate the collateral value of the mortgaged property, particularly during periods of declining home prices. We endorse the need to ensure the integrity of property valuations, but recognizes that the precise date of the valuation may be difficult for some originators to track. Therefore, the ASF RMBS Disclosure Package permitted issuers to either provide the valuation date or, in the alternative, represent that the valuation was conducted not more than a specified number of days prior to the original closing of the loan. Such a representation would ensure that the issuer or originator is allocated the risk of stale valuation. We request that the Commission consider permitting a representation to that effect to be made in the relevant transaction agreement, in lieu of the disclosure of the valuation date. To assuage any concern that the Commission may have about the efficacy of a representation in lieu of disclosure, we propose that such alternative only be permitted in a transaction in which the transaction agreements provide for a robust third-party mechanism for evaluating and resolving breaches of representations, such as the mechanism described under Section I.A.3.b of this letter.

xix. Item 2(b)(17)

We request that this field be deleted. The date of calculation of loan-to-value ratio is irrelevant; the only significant related date is the date on which the value used in the calculation is determined, which date is already required to be disclosed by Item 2(b)(7).

xx. Item 2(c)(1)-2(c)(6)

The Offering Data File proposes a textual field for the entry of the type of credit score used, if not a FICO score, and for disclosure of FICO scores by ranges. We request that the presentation of scores in these fields be by the exact credit score used to underwrite the loan, rather than a range of scores. As with zip codes, individual credit scores have historically been provided on a loan-level basis. Our investor members are sensitive to even the small gradations reflected within the proposed credit score ranges and are concerned that moving from disclosing precise scores to score ranges would represent a significant step backwards in loan-level transparency. We believe that the use of a uniform loan identification number, particularly one such as ASF LINC™ would provide a sufficient firewall to protect the privacy of the borrower even though the precise credit score is disclosed. We request that the Commission consult with other regulators to the extent necessary to establish a view as to whether this disclosure scheme would be consistent with FCRA or other potentially applicable federal privacy laws.

xxi. Item 2(c)(15)

We request that the reference to "obligor" in the proposed description be changed to "obligors," because it is combined obligor debt that is used in calculating debt-to-income ratio. In addition, we request that the Commission insert the following language into the proposed description after the word "debt": "(excluding only installment loans with fewer than 10 payments remaining and other real estate loans used to compute net rental income which is disclosed in Items 2(c)(28) and 2(c)(29)).” The requested language would properly exclude from obligors’ debt (i) short term obligations that, under existing industry practice, are typically excluded by lenders when calculating debt-to-income ratios and (ii) real estate payments on rental property, to the extent those payments are already netted out in calculating net rental income for purposes of reporting other income under Items 2(c)(28) and 2(c)(29) of the Offering Data File, which, if not excluded, would then overstate the debt-to-income ratio.

xxii. Item 2(c)(13)

We request that the Commission add a note to the proposed description, consistent with the description in field 113 of the ASF RMBS Disclosure Package, to specify that remaining verified liquid assets should not include cash received by the obligor from proceeds of the mortgage loan. Cash-out amounts are not taken into account by lenders when assessing the credit quality of the borrower, and we believe that including cash-out amounts in this field may misleadingly overstate the capacity of the obligor to repay the loan.

xxiii. Items 2(c)(22) and 2(c)(23)

We request that the words “origination date” in each proposed description be replaced with the words “application date.” We believe that it is universal practice of mortgage lenders to ascertain the length of an obligor’s employment as of the date of the loan application, rather than the closing date of the loan.

xxiv. Item 2(c)(24)

As with property valuation dates, we believe that this information may be difficult or costly for many lenders to capture, and that a suitable substitute would consist of a representation designed to ensure that the obligor has not recently been discharged from bankruptcy. Therefore, we request that the Commission consider permitting a representation to be made in the relevant transaction agreement, in lieu of the disclosure of the number of months since the obligor was discharged from bankruptcy, to the effect that at least a specified number of years have passed since any obligor was discharged from bankruptcy. As with a representation in lieu of disclosure of the property valuation date, we propose that such alternative only be permitted in transactions in which the transaction agreements provide for a robust third-party mechanism for evaluating and resolving breaches of representations.

xxv. Item 2(c)(25)

We request that the proposed description be revised by inserting the word “sale” before the word “date.” The current description’s reference to a “foreclosure date” is not sufficiently precise, as it may imply the date on which foreclosure proceedings were commenced or some other date. The foreclosure sale date, if known, would also provide the most conservative measurement because it occurs at the very end of the foreclosure process.

In addition, as with months since discharge from bankruptcy, we believe that this information may be difficult or costly for many lenders to capture, and that a suitable substitute would consist of a representation designed to ensure that the obligor has not recently been obligated on a loan that resulted in a foreclosure sale. This is particularly true of loans on which the obligor was indirectly obligated. Therefore, we request that the Commission consider permitting a representation to be made in the relevant transaction agreement, in lieu of the disclosure of the number of months since the foreclosure date, to the effect that at least a specified number of years have passed since any loan on which the obligor was a direct or indirect obligor has resulted in a foreclosure sale. As with the representations we've proposed in lieu of disclosure regarding property valuation dates and months since discharge from bankruptcy, we propose that such alternative only be permitted in transactions in which the transaction agreements provide for a robust third-party mechanism for evaluating and resolving breaches of representations.

xxvi. Item 2(c)(26) through 2(c)(31)

It is unclear to us from the proposed titles and descriptions what income Items 2(c)(26), 2(c)(27) and 2(c)(31) is intended to disclose. We believe that these fields should all be limited to the base monthly salary of the obligor, the co-obligor or all obligors, respectively, as base salary is less subject to fluctuation than bonus, commission or other contingent income, and is therefore of greater interest to both investors and rating agencies. We believe that non-salary income from employment should be aggregated with other forms of income in Items 2(c)(28), 2(c)(29) and 2(c)(31), as applicable.

We request that the presentation of income in these fields be of actual income numbers, rather than ranges. Our investor members strongly prefer to analyze exact income because, among other things, it allows them to double check the issuer's debt-to-income calculations. As with zip codes and credit scores, we believe that the use of a uniform loan identification number would effectively preclude identification of the obligors whose precise income is disclosed. We request that the Commission consult with other regulators to the extent necessary to establish a view as to whether this disclosure scheme would be consistent with FCRA or other potentially applicable federal privacy laws. We also note that the proposed income ranges are too narrow to provide much useful privacy protection if that is the intent, while the "greater than $50,0000" range is much too broad to provide any useful information when evaluating the high balance or "jumbo" residential mortgage loans that frequently back RMBS.

xxvii. Items 2(d)(1) and 2(d)(2)

These fields provide for textual entry of insurer names. As we noted above with respect to servicer names, we believe transparency will be furthered by minimizing the possibility of inconsistent presentation of insurance company names in different reports. To achieve that goal, Appendix G to the ASF RMBS Reporting Package contained a list of codes for all known primary mortgage and pool insurance providers. We request that the Commission similarly designate a list of insurer codes and require use of the code unless the insurer is not coded, in which event a textual entry would be required.

xxviii. Item 2(d)(7)

We request that this field be deleted as unnecessary. The insurance types described in this field and the related codes are all types of pool-level insurance. Disclosure of these arrangements will be presented in the applicable prospectus in response to Item 1114 of Regulation AB and is not appropriate to or particularly useful in the context of the granular loan-level disclosures contemplated by the Offering Data File.

xxix. Additional Proposed Offering Data Fields (Step Interest Rate)

During the course of its review of the Offering Data File, the RMBS Subcommittee identified an additional field of data not included in either the Offering Data File or the ASF RMBS Disclosure Package that it deemed desirable to include in any market-wide protocol for loan-level disclosure. Specifically, we recommend that the Commission adopt an additional grouping of three sets of fields under Item 2(a)(21) of the Offering Data File, which deals with modification, for the purpose of disclosing information about interest rate step-ups on loans that are subject to temporary interest rate reductions. We recommend (i) that the title and description of the first new field be "Step interest rate. The interest rate in effect after the next scheduled step," (ii) that the title and description of the second new field be "Step date. The due date on which the next scheduled interest rate step goes into effect" and (iii) that the title and description of the third new field be "Step principal and interest. The obligor's monthly principal and interest payment after giving effect to the next scheduled step." We recommend providing for six groupings of this set of three fields, in order to allow investors to see the progression of the scheduled interest rate and payment steps throughout the remaining course of a temporary interest rate reduction.

c. Reporting Data File

Most of ASF's comments on the Reporting Data File relate to data fields under Item 1. Because Item 1 is intended to be of general applicability to all asset classes, but frequently fits awkwardly with residential mortgage loans, we suggest that the SEC consider adding the general data fields into the asset-specific portions of the Reporting Data File, with such revisions as are appropriate to the specific asset class or to, at a minimum, consider such approach solely with respect to residential mortgage loans.

i. Items 1(a) and 1(b)

We restate and reiterate our position set forth in Section II.A.1.b.i under "Offering Data Files" above, as to the appropriate asset identification numbers for use in the Proposed Data Fields. The use of a standardized loan identification number is especially important when tracking the performance of a loan from month to month. In this regard, we believe the ASF LINC™ number is the most suitable identifier, as it is designed to be permanently associated with a loan and will not change if ownership or servicing of the loan is transferred to another party.

ii. Item 1(d)

We request that this field be deleted. Servicer reporting systems do not typically capture the opening date of a reporting period, which is simply the business day following the end of the prior reporting period.

iii. Item 1(f)(2)

We request that the proposed title and description of this field be revised to read as follows:

> "Actual interest collected. Indicate the gross amount of interest collected during the reporting period, whether or not from borrower payments."

We believe, and the requested revision is intended to clarify, that this field should report all amounts collected by the servicer during the reporting period which are treated as interest, including, for example, the portion of liquidation or short sale proceeds which are applied to interest. The reference to the gross amount of interest is intended to clarify that the amount reported should be inclusive of the portion of interest payments that are applied to pay servicing and similar fees, which are reported separately.

iv. Item 1(f)(3)

We request that the proposed title and description of this field be revised to read as follows:

> "Actual principal collected. Indicate the amount of principal collected during the reporting period, whether or not from borrower payments."

We believe, and the requested revision is intended to clarify, that this field should report all amounts collected by the servicer during the reporting period which are applied to reduce the principal balance of the loan, including, for example, the portion of liquidation or short sale proceeds which are applied to principal.

v. Item 1(f)(4)

We request that the proposed title and description of this field be revised to read as follows:

> "Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period, whether or not from borrower payments."

We believe, and the requested revision is intended to clarify, that this field should report all amounts collected by the servicer during the reporting period which are not applied in reduction of accrued interest on, or the principal balance of, the loan, including, for example, any prepayment penalties.

vi. Items 1(f)(5) and 1(f)(6)

We request that the Commission clarify that these fields are intended to report non-cash adjustments to the interest due on or the principal balance of a loan during the reporting period, for example, as the result of a reduction resulting from a modification.

vii. Item 1(f)(8)

We request that the Commission insert the following parenthetical at the end of the proposed description: "(if principal is being remitted on a scheduled basis)". Principal in an RMBS transaction may be remitted to investors on either a "scheduled" basis, meaning that principal due to be paid by the borrower during the collection period in accordance with the amortization schedule of the mortgage loan, is remitted, whether or not actually paid by the borrower (in which event, the unpaid amount is required to be advanced by the servicer) or on an "actual" basis, meaning that only principal payments actually made by the borrower during the collection period are remitted. In the case of RMBS in which principal is remitted on an actual basis, the scheduled loan balance is not relevant to analyzing the transaction and is therefore not calculated by the transaction parties.

viii. Item 1(f)(9)

We request that the parenthetical be deleted from the proposed description. Fees (other than servicing and similar fees which are included in the interest portion of the scheduled payment and would still be captured by this field) and escrow deposits are not relevant to the calculation of amounts payable to investors and would render this field less useful to investors. If the Commission nevertheless believes that the amount of escrow deposits would constitute useful disclosure, we request that it designate an additional field solely for that purpose.

In addition, we request that the Commission insert an instruction in the proposed description to the effect that "for delinquent obligors of ARMs, the reported payment should be what the obligor's next scheduled principal and interest payment would have been if the obligor was current" in order to clarify that the amount required to be reported is the current payment due on the mortgage loan, based on the amortization schedule of the loan, and the interest rate then in effect, and therefore due to investors in the current period.

ix. Item 1(f)(12)

We request that the Commission confirm that this field is requesting the delinquency status of the loan, presented in 30- or 31-day buckets, as appropriate, consistent with normal servicing practice and the delinquency reporting methodology described in the prospectus.

x. Item 1(f)(13) and Item 1(f)(16)

We request that this field, which mirrors Item 1(b)(6) in the Offering Data File, be deleted for the reasons set forth in <u>Section II.A.1.b.iv</u> under "Offering Data Files" above. In this regard, we note that the Reporting Data File does not currently have a field for the interest paid-through date comparable to Item 2(a)(14) of the Offering Data File. Instead, Item 1(f)(16) requires disclosure of the next due date of outstanding loans. In servicing parlance, the term "next due date" means the due date following the interest paid through date and therefore the use of the term "next due date" in Item 1(f)(16) is potentially misleading, as it suggests the due date in the month following the reporting period, which would always be the same for every loan in the pool. We believe that transparency would be enhanced by requiring reporting of the interest paid-through date, which will vary based on delinquency status, from which users of the Reporting Data File can then calculate the correct next payment date by adding one month. Accordingly, we request that the proposed text and description of Item 1(f)(16) of the Reporting Data File be replaced in its entirety with the proposed title and description of Item 2(a)(14) of the Offering Data File.

xi. Item 1(f)(14)

We request that this field be deleted, as it is substantively redundant of Item 1(f)(12).

xii. Item 1(g)(1)

We request that the proposed title and description of this field be revised to read as follows:

> "Current primary servicing fee amount. Indicate the dollar amount of the loan-level fee collected by the current primary servicer for servicing the loan for this reporting period."

The requested revision would clarify that the servicing fee required in this field is only the loan-level fee collected by the primary servicer. We believe that fees collected by the primary servicer are more instructive to current cash flow on the RMBS than fees accrued. In addition, we believe that investors would benefit from separate, rather than aggregated, reporting of fees collected by the primary servicer, the master servicer, if any, and the special servicer, if any, and requests that the Commission add two additional fields to the Reporting Data File, requiring disclosure of loan-level fees paid to any current master servicer and special servicer, respectively, during the reporting period.

xiii. Item 1(g)(2)

For the reasons discussed in <u>Section II.A.1.b.ii</u> under "Offering Data File" above, we request that the Commission require that the MERS organization identification number be required in lieu of textual entry of the primary servicer's name, unless the primary servicer does not have a MERS organization identification number. In addition, we request, in light of the request to add fields for reporting of loan-level fees paid to any master servicer and special servicer during the reporting period, that the Commission add two additional fields to the Reporting Data File, requiring disclosure of the MERS organization identification number of any master servicer and any special servicer, or a textual entry of the organization name, if no MERS organization identification number exists.

xiv. Item 1(g)(4)

Advances with respect to residential mortgage loans in RMBS are generally of three types: (i) principal and interest ("<u>P&I</u>") advances, consisting of due but unpaid principal and/or interest on the loan for the period, as required by the methodology specified in the transaction agreements, (ii) tax and insurance ("<u>T&I</u>") advances, consisting of due but unpaid escrow amounts for payment of property taxes and insurance payments with respect to the mortgaged property and (iii) corporate advances, consisting of property inspection and preservation expenses with respect to defaulted loans.

This item appears to ask for the total of all advances. However, ASF members believe that advance amount information for the reporting period would be more useful if separated into distinct fields for P&I, T&I and corporate advances and requests that this field be divided into three separate fields for that purpose. In addition, with respect to P&I advances, we request that the words "by the servicer" be deleted from the field description. Because advancing is a form of liquidity and is not intended to provide credit support to the RMBS, many RMBS transaction agreements permit the servicer to advance P&I from amounts held in the transaction's collection account which are not required to be distributed to investors on the current distribution date, such as principal prepayments received after the end of the specified prepayment period, which are required to be distributed in the following month. Therefore, servicers do not necessarily track advances made by them on individual loans, as opposed to the total amount advanced on the loan.

xv. Item 1(i)(1)

We request that this field be deleted. RMBS transaction agreements do not typically require notices in connection with repurchases. The repurchase itself, which is reported in Item 1(g)(2), serves as notice to investors, rendering this field redundant. In the event that we have misconstrued the intent of this field, we request further clarification from the Commission and an opportunity to comment.

xvi. Item 1(i)(4)

We believe that consistency and transparency would be enhanced if this field required the use of standardized repurchase reason codes specified in the Reporting Data File, and permitted textual entry only if no specified code is applicable. We direct the Commission's attention to field 26 of the ASF RMBS Reporting Package for a list of recommended repurchase reason codes, although we suggest that the code for "other" not be included, since a textual entry would be required for known repurchase reasons not covered by specific codes.

xvii. Item 1(k)

We request that this item be deleted with respect to residential mortgage loans. Item 1(j) expressly, and in our view, properly, includes charge-offs within liquidation. Although charge-off, which is a relevant concept for some other asset classes and may merit a separate field in those instances, we believe a separate indicator for RMBS reporting would be at best redundant.

xviii. Items 1(i)(1) and 1(k)(2)

We request that the proposed description for each field be revised by adding the words "in connection with liquidation of the asset" to the end thereof. Because this grouping of fields is concerned with liquidation losses, ASF members believe it important that these items not inadvertently be construed as requiring the reporting of principal and/or interest amounts written off in connection with loan modifications, which are required to be reported elsewhere in the Reporting Data File. See, *e.g.*, Items 2(a)(29) through 2(a)(32).

xix. Item 2(e)(47)(viii)

We request that the word "current" in the proposed title and description of this field be replaced with the word "actual" in order not to create the implication that what is being requested is the scheduled balance, rather than the unpaid balance, of the loan. This would also minimize confusion between this field and Item 2(e)(47)(ix), which is, in fact, based on scheduled balance.

xx. Items 2(f)(1) and 2(f)(2)

We request that the proposed description for each field be revised by inserting the words "a payment change by the obligor pursuant to the most recent" before the words "forbearance plan" in each such description. This revision would place the emphasis on the most recent forbearance plan or trial modification, and allow investors to see the progress of multiple trial modifications on loans that have had an unsuccessful trial by reviewing this field across the monthly reports. In addition, it would clarify what we believe is the intent of the field, that the relevant date to investors is the date on which the modified payment begins, not the date of the trial modification agreement.

We request that the Commission add an additional field to the Reporting Data File, as Item 2(f)(3) in order to provide important parallel disclosure to that provided in Item 2(g)(3) with respect to repayment plans. We request that the title and description of the additional field read as follows:

> "Trial modification violated date. Provide the date on which the obligor ceased complying with the terms of a trial modification."

xxi. Items 2(f)(1) and 2(g)(1)

We request that the Commission add definitions of "forbearance plan," "trial modification" and "repayment plan" to the proposed descriptions in order to avoid user confusion among these rather technical concepts. In that regard, we recommend that the Commission employ the respective definitions used in fields 55 and 57 of the ASF RMBS Reporting Package.

xxii. Item 2(i)

We request that the first sentence of the proposed definition be replaced with the following:

> "If the type of loss mitigation is short sale, provide the amount accepted for a pending short sale, whether or not completed."

This revision would clarify that the field requires reporting of the short sale price agreed to between an obligor and a servicer in the reporting period when the agreement is reached, rather than the actual amount of proceeds of a short sale in the period in which the sale occurs, which will be reported in Items 1(f)(2) and 1(f)(3) in the period when the sale is completed. Investors feel that this information would be helpful to them in order to model expected near-term losses. If the Commission deems that reporting of the actual short sale proceeds in the month received as a separate line item is desirable, we recommend that it prescribe an additional field for that purpose.

xxiii. Item 2(m)(1)(xvi)

We request that the proposed definition be revised by adding the words "or similar activities" to the end thereof in order to ensure disclosure of any similar incentive fees.

d. Additional Data Fields

The ASF RMBS Disclosure Package and the ASF RMBS Reporting Package contain a number of data fields that have not been included in the Proposed Data Files. These data fields represent the consensus view of the various ASF member constituencies as to important loan-level data necessary to perform a robust analysis of RMBS and reduce reliance on credit ratings. In this regard, our investor members have identified the escrow indicator in field 18 of the ASF RMBS Disclosure Package and the credit line usage ratio in field 96 of the RMBS Disclosure Package as particularly useful data elements that are probative of potential loss severity upon default and excess obligor leverage, respectively. We also note that prepayment penalty hard term in field 69 of the ASF RMBS Disclosure Package is a necessary component to analyzing the significance of a hybrid prepayment penalty, to the extent report in Item 2(a)(19)(ii) of the Offering Data File.

In addition, many of these fields represent information required to be delivered between parties to the RMBS transaction in order to allow them to perform their contractual duties, such as the reporting from servicers of collection and liquidation information to trustees or bond administrators who require such component inputs, among others, to calculate distributions on the securities. To the extent these additional fields are not included in the Offering Data File or the Reporting Data File, as the case may be, the transaction parties will need to include additional mechanisms in the transaction documents to gather the required information, which will lead to a less standardized and less efficient approach to data gathering and communication across RMBS transactions. Accordingly, we request that the Commission consider adding the additional fields from the ASF RMBS Disclosure Package that are listed on Exhibit C to this letter and the additional fields from the ASF RMBS Reporting Package that are listed on Exhibit D to this letter to the Offering Data File and the Reporting Data File, respectively.

2. Credit and Charge Card ABS

a. General

The Commission proposes to exclude credit and charge card ABS from the requirement to provide asset-level data. Because many credit and charge card pools contain as many as 20 to 45 million accounts, we agree that asset-level data for credit and charge card ABS would result in issuers providing an overwhelming volume of data that would not be useful to investors. To address this concern, the Commission proposes to require that issuers of credit and charge card ABS provide "grouped account data." However, under the Commission's grouped account data proposal, credit and charge card ABS issuers would be required to disclose commercially-sensitive proprietary information about origination, underwriting and pricing models that are critical to the viability of their businesses. Investors and issuers alike are concerned that this would drive issuers away from the securitization markets, resulting in a significant decrease in the amount of high quality credit and charge card ABS. In light of these concerns and for the reasons described below, we propose an alternative disclosure and reporting package that builds upon the Commission's proposal with important modifications designed to provide extensive metrics on collateral performance without disclosing proprietary information.

Under the Commission's grouped account data proposal, credit and charge card ABS issuers would be required to disclose proprietary information that could potentially hinder the competitiveness of their credit card businesses. Because of the continuous re-extension of credit in a revolving credit card account or revolving charge card account, information that otherwise would not be proprietary or sensitive in the context of an amortizing asset securitization would reveal important, confidential information about the issuer's business. When an amortizing asset is securitized, the issuer discloses information about the pricing model in effect at origination - as of a prior point in time. Credit and charge cards, on the other hand, involve a dynamic process of re-extending credit. Providing current pricing information would describe the issuer's current pricing models and other decisions made in managing the accounts in a way that would reveal sensitive information and limit an issuer's ability to be competitive.

Compiling the extensive information and developing the required infrastructure to comply with the Commission's proposal would unduly increase the cost of securitization in a significant manner.

More importantly, if an issuer's access to the securitization market is conditioned on the disclosure of proprietary and sensitive information, issuers and investors alike are concerned that securitization would be eliminated as a viable funding source for credit and charge card assets. Over the years, credit and charge card securitization volumes have had a direct correlation to the general availability of consumer credit in the United States. A decrease in credit and charge card securitizations could further limit the availability of credit in an already fragile economy.

In addition to the proposal regarding grouped account data, the Commission also requests comment on proposed pool-level data for credit and charge cards. The proposed pool-level data is not a viable alternative because much of the requested information is proprietary, not collected by issuers or not material.[49]

In carefully considering the Commission's proposal and leveraging the work of Credit Card Project RESTART, for the reasons discussed above, we have developed an alternative disclosure and reporting package proposal for credit and charge card ABS that represents an industry-wide consensus supported by both the issuer and investor communities. Notably, this disclosure and reporting package builds on the Commission's proposal but with important modifications, including more expansive data relating to certain collateral performance metrics.

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[49] Examples of information that most credit card issuers do not track for their own business purposes include information relating to an obligor's status regarding homeownership, type of employment, level of education and debt-to-income ratio. Even in the rare instances in which this information is available, it is collected at origination and not updated on an ongoing basis.

b. Recommendation for Pool Asset Disclosure

Under our proposal for credit and charge card ABS, issuers would provide the following three reports: (i) Representative Line Data Report; (ii) Collateral Report; and (iii) Report on Charged-Off Accounts. Each of the proposed reports was developed to provide investors with more granular information about the underlying asset pool in order to perform better analysis of future payments on credit and charge card ABS.

The Representative Line Data Report is a modified version of the Commission's grouped account data proposal. The Collateral Report is a modified version of the pool-level information disclosure concept outlined in the Commission's request for comment to Item 1111. Information regarding charge-offs, a significant performance benchmark for credit and charge card securitization programs, is disclosed in the Report on Charged-Off Accounts. These reports are designed to give investors significantly more information about charge-offs and other data than has been provided historically while protecting issuers' interest in maintaining the confidentiality of proprietary information about their current underwriting and other credit extension processes.

Generally, the combined disclosure included in the proposed Representative Line Data Report, Collateral Report and Report on Charged-Off Accounts would provide information on more metrics than would be provided under either the Commission's grouped account data proposal or the pool-level information outlined in the Commission's request for comment to Item 1111.

Each of the three proposed reports is described in more detail below.

i. Representative Line Data Report

In a Representative Line Data Report, issuers would provide information about the underlying pool in the form of grouped account representative data lines. The Representative Line Data Report is a modified version of the Commission's grouped account data proposal. In this report, the data would be grouped by a combination of the following characteristics:

(a) *Credit Score*. If the credit score used is FICO, the groupings would be: (1) No score; (2) Less than 600; (3) 600-659; (4) 660-719; (5) 720-779; and (6) 780 and over. FICO may only be purchased on a statistically significant random sample of the underlying pool which may be used to populate this table. If the credit score used is not FICO, an issuer would designate similar groupings and provide explanatory disclosure.

(b) *Account age*. The groupings would be accounts that are: (1) less than 12 months; (2) 12 to 23 months; (3) 24 to 35 months; (4) 36 to 47 months; (5) 48 to 59 months; and (6) 60 or more months.

(c) *Geographic Region*.[50] The groupings for geographic regions would be: (1) Northeast; (2) Southeast; (3) Midwest; (4) South; and (5) West.

(d) *Adjustable Rate Index*. The groupings for the adjustable rate indexes would be: (1) Fixed; (2) LIBOR; and (3) Prime.

In order to create a grouped account data line, each group based on each of these characteristics would be combined with all groups for all other characteristics. For each grouped account data line in the Representative Line Data Report, issuers would provide the following information: (1) aggregate credit limit; (2) aggregate account balance; and (3) number of accounts.

An illustration of the Representative Line Data Report is included as Exhibit E to this letter.

ii. Collateral Report

In a Collateral Report, issuers would provide pool-level statistical information in prescribed distributional groups or incremental ranges. The Collateral Report is a modified version of the pool-level information disclosure concept outlined in the Commission's request for comment to Item 1111. In this Collateral Report, data would be grouped by a combination of the following characteristics:

(a) *Credit Score*. If the credit score used is FICO, the distributional groups would be: (1) No score; (2) Less than 600; (3) 600-629; (4) 630-659; (5) 660-689; (6) 690-719; (7) 720-779; and (8) 780 and over. FICO may only be purchased on a statistically significant random sample of the underlying pool which may be used to populate this table. If the credit score used is not FICO, an issuer would designate similar groupings and provide explanatory disclosure.

(b) *Delinquencies*. The distributional groups for number of days delinquent would be: (1) current to 29 days; (2) 30-59 days; (3) 60-89 days; (4) 90-119 days; (5) 120-149 days; (6) 150-179 days; and (7) 180 days and over. If an issuer uses different delinquency groups as a matter of internal policy, the issuer would designate those groupings and provide explanatory disclosure.

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[50] For purposes of the Representative Line Data Report, Collateral Report and Report on Charged-Off Accounts, states would be grouped into Geographic Regions as follows:
Northeast: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont
Southeast: Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, and West Virginia
Midwest: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin
South: Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Puerto Rico, Tennessee, Texas and Virgin Islands
West: Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, Northern Mariana Islands, Oregon, Trust Territory of the Pacific Islands, Utah, Washington and Wyoming

(c) *Credit Limit*. The distributional groups for credit limit would be: (1) less than \$1,000; (2) \$1,000-\$4,999.99; (3) \$5,000-\$9,999.99; (4) \$10,000-\$19,999.99; (5) \$20,000-\$29,999.99; (6) \$30,000-\$39,999.99; (7) \$40,000-\$49,999.99; (8) \$50,000 or greater; and (9) Other. If accounts are grouped into the "Other" category, the issuer must include a footnote explaining why the accounts did not fit into one of the prescribed groups.

(d) *Account Balance*. The distributional groups for account balance would be: (1) credit balance; (2) no balance; (3) less than \$1,000; (4) \$1,000-\$4,999.99; (5) \$5,000-\$9,999.99; (6) \$10,000-\$19,999.99; (7) \$20,000-\$29,999.99; (8) \$30,000-\$39,999.99; (9) \$40,000-\$49,999.99; and (10) \$50,000 or more.

(e) *Account Age*. The distributional groups for account age would be: (1) less than 12 months; (2) 12-23 months; (3) 24-35 months; (4) 36-47 months; (5) 48-59 months; (6) 60-83 months; (7) 84-119 months; and (8) 120 or more months.

(f) *Top 10 States by Account Balance*. The distributional groups would be the top 10 states by aggregate account balance. The remaining accounts would be grouped into the category "Other."

(g) *Geographic Region*. The distributional groups for geographic regions would be: (1) Northeast; (2) Southeast; (3) Midwest; (4) South; and (5) West.

For each data line in each distributional group in the Collateral Report, issuers would provide the following information: (1) number of accounts, (2) aggregate account balance; (3) percentage of aggregate account balance; (4) other than for the credit limit distributional group described in subsection ii.(c) above, average credit limit; (5) average utilization rate; (6) other than for the account age distributional group described in subsection ii.(e) above, average account age; (7) percentage of account obligors that are full payers; (8) percentage of account obligors that are minimum payers; (9) other than for the credit score distributional group described in subsection ii.(a) above, average credit score; and (10) other than for the delinquencies distributional group described in subsection ii.(b) above, (A) percentage of aggregate account balance that is 30-59 days delinquent; (B) percentage of aggregate account balance that is 60-89 days delinquent; and (C) percentage of aggregate account balance that is 90 days or more delinquent. For the information regarding average credit score described in clause (9) above, (i) FICO may only be purchased on a statistically significant random sample of the underlying pool which may be used to populate the credit score data lines; and (ii) if the credit score used is not FICO, an issuer would provide similar information and explanatory disclosure. If an issuer uses different delinquency distributional groups than those described in (10)(A), (B) and (C) above as a matter of internal policy, the issuer would designate those groupings and provide explanatory disclosure. Any data line in the Collateral Report containing an average may exclude zero- balance and inactive accounts so long as the issuer provides explanatory disclosure.

An illustration of the Collateral Report is included as Exhibit F to this letter.

iii. Report on Charged-Off Accounts

In a Report on Charged-Off Accounts, issuers would provide additional statistical information regarding the composition of charged-off accounts in prescribed distributional groups or incremental ranges. In this Report on Charged-Off Accounts, data on accounts that are charged-off during the relevant period would be grouped by a combination of the following characteristics:

(a) *Credit Score*. If the credit score used is FICO, the distributional groups would be: (1) No score; (2) Less than 600; (3) 600-629; (4) 630-659; (5) 660-689; (6) 690-719; (7) 720-779; and (8) 780 and over. FICO may only be purchased on a statistically significant random sample of the underlying pool which may be used to populate this table. Also, FICO scores are not purchased for charged-off accounts and, therefore, the information in this table would be based on the most recently refreshed FICO scores for the charged-off accounts, to the extent they are available. If the credit score used is not FICO, an issuer would designate similar groupings and provide explanatory disclosure.

(b) *Account Balance*. The distributional groups for account balance would be: (1) no balance; (2) less than $1,000; (3) $1,000-$4,999.99; (4) $5,000-$9,999.99; (5) $10,000-$19,999.99; (6) $20,000-$29,999.99; (7) $30,000-$39,999.99; (8) $40,000-$49,999.99; and (9) $50,000 or greater.

(c) *Credit Limit*. The distributional groups for credit limit would be: (1) less than $1,000; (2) $1,000-$4,999.99; (3) $5,000-$9,999.99; (4) $10,000-$19,999.99; (5) $20,000-$29,999.99; (6) $30,000-$39,999.99; (7) $40,000-$49,999.99; (8) $50,000 or greater; and (9) Other. If accounts are grouped into the "Other" category, the issuer must include a footnote explaining why the accounts did not fit into one of the prescribed groups.

(d) *Account Age*. The distributional groups for account age would be: (1) less than 12 months; (2) 12-23 months; (3) 24-35 months; (4) 36-47 months; (5) 48-59 months; (6) 60-83 months; (7) 84-119 months; and (8) 120 or more months.

(e) *Top 10 States by Account Balance*. The distributional groups would be the top 10 states by aggregate account balance at the time of charge-off. The remaining accounts would be grouped into the category "other."

(f) *Geographic Region*. The distributional groups for geographic regions would be: (1) Northeast; (2) Southeast; (3) Midwest; (4) South; and (5) West.

For each data line in each distributional group in the Report on Charged-Off Accounts, issuers would provide the following information: (1) number of accounts; (2) percentage of aggregate charged-off accounts; (3) aggregate account balance at time of charge-off; and (4) percentage of aggregate account balance of charged-off accounts.

An illustration of the Report on Charged-Off Accounts is included as <u>Exhibit G</u> to this letter.

c. When Credit and Charge Card Pool Information Would Be Required

Consistent with the Commission's proposal, the proposed disclosure package would be an integral part of the prospectus, and would be filed with the Rule 424(h) prospectus and at the time of the final prospectus under Rule 424(b).[51] In addition, we agree with the Commission that investors and market participants would benefit from receiving updated information about the underlying asset pool. However, given the size and seasoning of credit card portfolios and charge card portfolios, the portfolio characteristics do not change often enough to warrant monthly updates. Rather than filing updated disclosure reports with each report on Form 10-D, issuers and investors agree that a quarterly update is sufficient.[52]

3. Pool-Level Information

The Commission proposes revisions to the pool-level disclosure requirements in Item 1111 of Regulation AB to further detail and clarify the type of disclosure that is required regarding deviations from disclosed underwriting standards. The Commission also proposes revisions related to the originator's diligence regarding the information used to underwrite the assets and the remedies related to the pool assets that are available to investors as provided in the related transaction agreements.

We appreciate the Commission's concern that underwriting standards, and material deviations from those standards, be clearly disclosed in the prospectus, and we support the Commission's proposals in this area. We do, however, have two areas of comment where we believe the Commission's proposals should be revised prior to adoption.

First, the Commission proposes to revise Item 1111 to require disclosure regarding whether a representation was made in the transaction documents that no fraud has taken place in connection with the origination of the assets on the part of the originator or any party involved in the origination of the assets. We agree that information regarding representations and warranties, including those relating to matters of fraud in the origination of the assets, should be transparent and accessible to investors. In our discussions on this subject as an industry, however, it was apparent to both issuers and investors that the absence of fraud is an element of several representations and warranties concerning the pool assets, such as representations and warranties that the pool assets were originated in compliance with the requirements of law and applicable underwriting standards, and that the pool assets are legal, valid and binding payment obligations of the related obligors. Issuer and investors agree, therefore, that clause (i) of proposed Item 1111(e)(1), which requires an ABS issuer to summarize representations and warranties concerning the pool assets and remedies available if those representations and warranties are breached, is appropriate, but also agree that clause (ii), which singles out, and requires a description of, any representation and warranty relating to fraud in the origination of the assets,

[51] The most recent periodic increment for the data contained in the proposed disclosure package must be as of a date no later than 135 days of the date of first use of the prospectus.

[52] We note, however, that the requirement under Item 6.05 for Form 8-K will still apply, so updates to the collateral disclosure would be filed under the circumstances contemplated by Item 6.05 should a material change occur.

is duplicative and unnecessary. Instead, issuers and investors agree that this Item should require issuers to identify the location in the prospectus – by separate caption – where such representations, warranties and remedies are summarized and described.

Second, the Commission requests comment on changes that should be made to Regulation AB to clarify that existing Item 1111 requires disclosure of statistical information regarding an originator's "risk-layering practices" that demonstrates the manner and extent to which multiple non-traditional features of a loan are bundled into one instrument. Issuers believe that they are disclosing "risk-layering" in the presentation of Item 1111 statistical information about the pool by distributional groups and incremental ranges, and by relevant pool characteristics, but also agree that it would be useful for the Commission to include clarifying language in Item 1111 that gives issuers additional guidance regarding the required disclosure. Issuers note, however, that underwriting standards are inherently subjective and risk-layering is inherent in most ABS transactions, and so we encourage the Commission to adopt guidance in the form outlined in the Commission's commentary in the Proposing Release; specifically, guidance that issuers should disclose any unique risk-layering practices that demonstrate the manner and extent to which multiple non-traditional features of a loan are bundled into one instrument.

B. Transaction Parties

1. Obligation to Repurchase Assets

a. History of Asset Repurchases

The Commission proposes to revise Items 1104 and 1110 of Regulation AB to require disclosure on a pool by pool basis of the amount, if material, of the publicly securitized assets originated or sold by the sponsor and each 20% originator that were the subject, during the prior three years, of a demand to repurchase or replace for breach of a representation or warranty regarding the pool assets. In addition to disclosure of repurchase demands, disclosure would be required of the amount of assets which were not then repurchased or replaced and whether an opinion of an unaffiliated third party had been furnished to the trustee confirming that the asset did not violate a transaction representation or warranty.

This expanded disclosure requirement echoes the Commission's proposed third-party opinion requirement for shelf eligibility, although the disclosure requirements would apply to both shelf and non-shelf offerings. The operative principle appears to be the concern that representing parties in certain securitizations have in recent years failed to repurchase noncompliant assets because of the absence of strong third-party investigation and enforcement mechanisms in transaction agreements. We agree that enhanced disclosure of the repurchase history of sponsors and significant originators in a securitization may be probative of the likelihood that such parties will be inclined to fulfill their obligations if they are representing parties in the securitization. However, we request that the Commission revise the proposed new disclosure requirements, in the manner set forth in Exhibit H and Exhibit I to this letter, in order to reflect certain practical realities associated with such historical disclosure, as discussed below.

First, we request that the obligation to disclose repurchase demands extend only to publicly securitized assets *of the same asset class as the assets in the transaction*. Differences in the nature of assets of different classes are sufficiently great that the reasons for repurchase, or the bases for failure to repurchase an asset of one class may yield little insight into the thought processes or intentions of the repurchasing party when evaluating a transaction backed by assets of a different asset class. Further, the requirement to report three years worth of repurchase activity would potentially result in a flood of unhelpful disclosure about transactions involving unrelated asset classes, particularly with respect to sponsors or originators that are large, diversified financial institutions engaging in securitization and sales of multiple asset classes through affiliated but often separately managed business units.

Second, we request that the requirement to report the three elements of repurchase history described above be implemented prospectively (*i.e.*, that the disclosure relate to demands made during the prior three years or the period since the implementation date of the proposed revisions to Items 1104 and 1110, whichever is less). Although sponsors and originators will need to track and report repurchase demands received, repurchases not made and third-party opinions delivered, consistent with the new requirements, and to report these activities to other market participants who may need to provide the relevant disclosure, these requirements did not previously exist, and it is likely that the required information will often be unavailable with respect to loans originated or sold prior to the implementation date of the Proposed Rules. That is particularly the case with respect to assets acquired by a sponsor directly or indirectly from third-party originators who may no longer exist or with whom the sponsor may not be in privity.[53]

Third, we request that the Commission include in revised Items 1104 and 1110 language requiring disclosure of whether an opinion *or a certificate* had been furnished so that these Items conform to the "third party review" requirement for shelf registration.

b. Financial Information Regarding Party Obligated To Repurchase Assets

The Commission proposes to amend Items 1104 and 1110 of Regulation AB to require disclosure regarding the financial condition of a party obligated to repurchase a pool asset for breach of a representation or warranty pursuant to the transaction agreements to the extent that: (a) in the case of a 20% originator, there is a material risk that the financial condition could have a material impact on the origination of the originator's assets in the pool or on its ability to comply with provisions relating to the repurchase obligations of those assets, or (b) in the case of a sponsor, there is a material risk that the financial condition could have a material impact on its ability to comply with the provisions relating to the repurchase obligations for those assets or otherwise materially impact the pool.

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[53] Our investor members acknowledge that disclosure of a sponsor's demands-of-repurchase history for periods prior to the implementation date of the proposed revisions to Items 1104 and 1110 would be largely irrelevant (and potentially misleading), as repurchase mechanics may not have been adequately specified in transaction agreements. Although investors agree with the legitimate concerns outlined in this section, they believe that a sponsor's repurchase history (including settlements to repurchase) during that time period would still be relevant information to the extent such information was available.

We appreciate the Commission's concern that there may be situations where financial information about the party obligated to repurchase pool assets upon breach of a representation or warranty may be relevant to investors, and we support the Commission's proposal. We do, however, believe that the standard for when such disclosure is required should be framed similarly to the requirement regarding financial information of certain servicers included in Item 1108(b)(4) of Regulation AB, with a focus on whether the sponsor's or originator's financial condition would have an effect on origination of the pool assets or on its ability to comply with any repurchase obligations in a manner that could have a material impact on pool performance or performance of the asset-backed securities. As currently proposed, Items 1104(f)(2) and 1110(c)(2) could be read to require disclosure of financial condition regardless of whether the sponsor's or originator's financial condition had a material impact on pool performance or performance of the asset-backed securities, which we strongly believe is an inappropriate standard. We have included as Exhibit J to this letter a proposed revised version of Items 1104(f)(2) and 1110(c)(2) that issuers and investors support.

We also request that the Commission amend Item 1100(c) of Regulation AB so that, where required, financial information for a sponsor, originator or servicer that is a publicly-registered company may be included in the prospectus through incorporation by reference, or merely by reference, as the circumstances warrant.

2. Economic Interest in the Transaction

The Commission proposes to amend Items 1104, 1108 and 1110 of Regulation AB to require disclosure regarding the amount and nature of a sponsor's, a servicer's or a 20% originator's interest retained in the securitization transaction. We understand that the Commission believes this information may be relevant to investors. As a practical matter, however, in some ABS offerings (particularly in the current distressed capital markets) it is not possible to determine the precise amount of these interests until at or about the time the transaction closes because all or a portion of one or more classes of ABS that are offered for sale to investors through one or more underwriters may initially be retained by the depositor or sold to one of more of its affiliates.

In light of these practical concerns, we request that the Commission revise these disclosure provisions to require that, in cases where the precise amount or nature of any interest to be retained is not known, that disclosure to that effect be included, together with a brief explanation of the reason why the actual amount or nature is not known. If any sponsor is retaining an interest pursuant to the Commission's proposed shelf eligibility requirements, the interest and its amount and scope would, of course, still need to be clearly delineated in the prospectus.

3. Servicer

The Commission requests comment regarding whether Item 1108(b)(2) of Regulation AB should be revised to clarify the Commission's belief that Item 1108(b)(2) requires disclosure of any material instances of noncompliance noted in the servicer's assessment of its compliance with specified criteria or the attestation report issued by a registered public accounting firm on compliance with the applicable servicing criteria that are required by Item 1122 or the servicer's compliance statement required by Item 1123.

We do not have a strong view on the question of whether Item 1108(b)(2) should be revised but, if it is revised, we request that the Commission clarify that disclosure is required only to the extent that material instances of noncompliance or material exceptions, as applicable, are noted in the *most recently-issued* Item 1122 assessment or attestation reports or Item 1123 servicer compliance statement.[54]

C. Prospectus Summary

The Commission proposes a new instruction to Item 1103(a)(2) of Regulation AB that would instruct issuers to provide in the prospectus summary statistical information regarding the types of underwriting or origination programs, exceptions to underwriting or origination criteria and, if applicable, modifications made to the pool assets after origination.

Our membership had no strong views on this proposal, but perhaps the most noteworthy view was that a proposal to require that more information, particularly specific statistical information, appear in the prospectus summary would have at least two negative consequences. First, it runs contrary to the Commission's plain English rules by repeating disclosure in different sections of the document, thereby increasing the size without enhancing the quality of the information. Second, it seems to encourage the practice of relying on the summary to convey information that, by its very nature, should be considered in the fuller context of the narrative in the body of the prospectus. In addition, our issuer members find it unusual that the Commission is proposing such a specific disclosure requirement as an instruction to an Item requirement that is otherwise by design very general. In short, issuers generally thought the proposal had negative consequences without corresponding positive ones and investors generally were indifferent to the proposal. For these reasons, we recommend that the Commission reconsider this proposal. In the alternative, the Commission could consider requiring that a cross-reference be included in the prospectus summary directing the reader to the location of this information in the body of the prospectus.

D. Static Pool Information

1. Disclosure Required

The Commission proposes to amend its static pool disclosure requirements in various ways to enhance clarity, transparency and comparability, including (i) to require narrative disclosure describing the static pool information presented, (ii) to require a description of the methodology used in determining or calculating the characteristics of the static pool, (iii) to require a description of how the assets in the static pool differ from the pool assets underlying the securities being offered, and (iv) in cases where no static pool information is included or where disclosure intended to serve as alternative static pool information is included, to require an explanation of those determinations.

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[54] This would be consistent with the current regulations, which require the filing of these assessment and attestation reports and the compliance statement as an exhibit to Form 10-K annually.

We appreciate and support the Commission's proposals and agree that they will advance the Commission's stated goals. Our investor members are especially supportive of any disclosure requirements that permit a better understanding of the static pool information presented for a transaction. Accordingly, our only comment relates to the proposal to require narrative disclosure describing the static pool information presented. We agree that the inclusion of explanatory information introducing the characteristics of the static pool would increase the clarity of the required static pool disclosure and have no comments to the proposed amendment. However, the Commission's illustration of the proposal's application in the Proposing Release indicates that an RMBS issuer would be required to disclose "the number of assets, types of mortgages (*e.g.*, conventional, home equity, Alt-A, etc.) *and the number of loans that were exceptions to standardized underwriting criteria.*" [Emphasis added.] The illustration – specifically, the highlighted item – introduces information that is qualitatively different from, and of a considerably more granular and detailed nature than, the other two items in the illustration, and is inconsistent with the content and tenor of the proposed rule and the Commission's other commentary to the effect that the disclosure should provide a "brief snapshot of the static pool presented." Moreover, the illustration leaves an issuer that seeks to apply the disclosure standard to actual static pool information to question how it should be applied, since there is no principled way to distinguish the particular credit characteristic used in the Commission's illustration from other credit characteristics of any given pool. We understand the Commission's proposal to require a brief overview of the static pool based on key characteristics of the pool, but not to require isolated, more granular details concerning the pool. We request that the Commission confirm this in connection with any final rules adopted.

2. Amortizing Asset Pools

a. Presentation of Static Pool Delinquency and Loss Information in Accordance with Standards in Item 1100(b)

The Commission proposes to add an instruction to Item 1105(a)(3)(ii) to require that static pool information for amortizing asset pools related to delinquencies and losses be presented in accordance with the guidelines outlined in Item 1100(b) for amortizing asset pools. The Commission makes a similar proposal relating to the presentation of delinquency and loss information in Form 10-D reports. We have the same concerns, views and requests on both proposals and, accordingly, provide comment on both proposals later in this letter in connection with our comment on the Commission's Exchange Act reporting proposals.

b. Graphical Presentation of Delinquency, Losses and Prepayments

The Commission proposes to amend Item 1105(a)(3)(iv) to require graphical presentation of static pool information relating to delinquencies, losses and prepayments for amortizing asset pools. While we agree with the Commission that tables and graphs often serve as a valuable aid in understanding data, we do not believe that it would be appropriate for the Commission to require graphical presentation of delinquencies, losses and prepayments in the context of static pool information for amortizing asset pools. Issuers in the asset-backed market have no aversion to presenting quantitative data in a graphical form where it aids an investor's understanding, but it is the very volume of data associated with a sponsor's prior securitized pools for the same asset class that, in some cases, makes graphical illustrations of the data unworkable. Some ABS issuers, particularly in the RMBS sector, literally have hundreds of prior securitized pools supported by the same asset class. In these cases, a graphical presentation of static pool information would be unintelligible and would, in fact, hinder (rather than aid) an investor's understanding of the information. In addition to the concerns expressed by issuers, our investor members are opposed to a rule that would require unnecessary graphical presentations that do not add to the substance of, or aid in understanding the disclosure.

In the Proposing Release, the Commission cites several provisions of Regulation AB where issuers are encouraged to present information in tables or graphs *if doing so would aid in the understanding of the data*. We would strongly support this articulation of the proposed disclosure standard, which would encourage (and, in effect, require) graphical presentations in those cases where such presentations were both feasible and meaningful.

3. Filing Static Pool Data

The Commission proposes to repeal its temporary filing accommodation, which currently permits asset-backed issuers to post static pool information required by Item 1105 on an internet website rather than file the information with the prospectus on EDGAR. Under the Commission's proposed changes to Rule 312 of Regulation S-T, issuers would be required to file static pool information with the prospectus on EDGAR, but would be allowed to make these filings in PDF format.

We have previously set out our views on this subject in letters to the Commission dated August 4, 2009 and November 22, 2009 (included as, respectively, Attachment V and Attachment VI to this letter). Our investor members continue to express that they do not believe that EDGAR in its current form will facilitate the usability of static pool data and support, at a minimum, an extension of the temporary filing accommodation. Rule 312 of Regulation S-T in its current form and the availability of an internet-based disclosure option for static pool information represent a milestone in the Commission's regulation of offering communications practices and we encourage the Commission to amend current Rule 312 of Regulation S-T to remove its sunset provision and make it a permanent rule under Regulation AB.

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III. Definition of An Asset-Backed Security – Exceptions to the "Discrete" Pool Requirement

The Commission proposes revisions to the Regulation AB definition of an "asset-backed security," which functions as a gateway to the ABS offering regime in its entirety, including applicable disclosure standards and permitted communications practices, and to shelf registration on Form S-3 (or, under the Commission's current proposals, Form SF-3).

The core definition of an "asset-backed security" – set forth in Item 1101(c)(1) of Regulation AB – remains largely the same as it has since 1992, when the term was defined solely for purposes of Form S-3 qualification: "a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period…." The Commission staff has for many years interpreted the definitional requirement that asset-backed securities be supported by a "discrete" pool of assets to mean a pool that is identified and fixed as of the issuance date for the related ABS. At the same time, in the years following 1992, the Commission staff had allowed certain exceptions to the discrete pool requirement relating to master trusts, revolving periods and prefunding and, in 2004, the Commission codified and expanded those exceptions to make them applicable to *all* asset types.

The Commission now proposes to carve back the availability of these exceptions, citing concerns that pools that are not sufficiently developed at the time of an offering to fit within the ABS disclosure regime may nonetheless qualify as ABS, which the Commission is concerned may result in investors not receiving appropriate information about the securities being offered.

Under the current definition of an "asset-backed security":

(i) a master trust, whether comprised of assets arising in revolving or non-revolving accounts, may add additional assets to the asset pool without limitation: (a) in connection with future issuances of ABS backed by the same pool; and (b) in connection with maintaining minimum pool balances in accordance with the transaction agreements;

(ii) transactions may include a revolving period during which cash flows from the pool assets may be used to acquire additional pool assets, provided, that for securities backed by non-revolving assets, the revolving period does not extend for more than three years and the additional pool assets are of the same general character as the original pool assets; and

(iii) transactions may include a prefunding account where a portion of the proceeds of the offering are held for the future acquisition of additional pool assets, so long as the prefunding period is one year or less and the portion of the proceeds held for prefunding does not exceed fifty percent of the offering proceeds or, in the case of master trusts, fifty percent of the principal balance of the total asset pool.

The Commission now proposes to amend (i) the master trust exception to exclude securities that are backed by assets that arise in non-revolving accounts, (ii) the revolving period exception to reduce the permissible duration of the revolving period for securities backed by non-revolving assets from three years to one year, and (iii) the prefunding exception to decrease the prefunding limit from fifty percent to ten percent of the offering proceeds or, in the case of master trusts, from fifty percent to ten percent of the principal balance of the total asset pool.

We appreciate the Commission's concern that asset pools be sufficiently developed at the time of an offering. However, issuers and investors agree that the current exceptions to the discrete pool requirement – particularly those for master trusts and revolving periods – merely "level the playing field" so that transactions supported by revolving and non-revolving assets are treated similarly under the regulations and, as a result, make it possible to better match investor preferences by offering a broader range of investment products and options that both issuers and investors desire.

Master trusts: Master trusts allow issuers to issue ABS that contemplate future issuances of ABS backed by the same, but expanded, asset pool. The previously-issued ABS would, therefore, be backed by the same expanded asset pool. The advent of the master trust offers issuers increased efficiencies by employing a single issuing vehicle to issue ABS in series supported by a single, albeit expanding, asset pool, and offers investors the option to invest in an investment vehicle that, as the underlying asset pool expands, is expected to benefit from increased diversification.

Issuers and investors agree that these benefits accrue regardless of whether the securities are backed by revolving or non-revolving assets. They also agree that, in applying the master trust exception, efforts to distinguish securities backed by revolving versus non-revolving assets are unwarranted and that the proposed carve back to exclude securities backed by non-revolving assets will impose artificial limits on which asset classes may use the master trust structure, thereby eliminating an investment product and an investment option that both issuers and investors desire.

Revolving periods: Revolving periods allow issuers to create ABS with longer maturities and weighted average lives than would otherwise be possible because principal collections are reinvested in additional receivables or other financial assets rather than paid to investors on a periodic basis. Without the use of revolving periods, the maturities of any given ABS would be entirely dependent upon the maturity characteristics of the underlying pool assets.

Assets with naturally shorter maturities, such as insurance premium finance loans (which are one-year loans) and trade receivables (which are often payable in 10, 30 or 60 days) have been securitized in public offerings. Under the Commission's proposal, the maturities of ABS backed by shorter maturity assets would be restricted to shorter maturities. As a result, because the revolving period would be limited to a year under the Commission's proposals, a company originating trade receivables that pay in ten days would be prohibited from ever issuing an ABS with a maturity longer than a year and ten days. As noted above, the Commission permits the use of revolving periods on an unrestricted basis for receivables or other financial assets that by their nature revolve, thereby allowing issuers to structure some ABS with more flexible maturities to satisfy investor preferences and promoting portfolio diversification. However, investors also have a significant interest in purchasing ABS supported by non-revolving assets (*e.g.*, auto loans and equipment loans) with longer maturities than are possible without the use of revolving periods. The current three-year limitation on the use of revolving periods for non-revolving assets already limits the ability of issuers to issue publicly-registered ABS matching investor preferences. The proposed reduction to a one-year limitation would effectively eliminate the ability of issuers to satisfy such investor demand.

Moreover, if the Commission were to proceed to adopt its disclosure proposals relating to the private placement market, the two proposals taken together would effectively prohibit issuers from issuing these products in the capital markets altogether, since these transactions would no longer meet the definition of an asset-backed security and, as a consequence, could not apply the disclosure standards of Regulation AB in order to satisfy the Commission's prescribed information delivery requirements.[55]

Prefunding: Prefunding allows originators to finance pools of loans without having to wait until all of the loans have been originated, which in turn allows the originators to finance their lending operations more efficiently by eliminating the carrying costs associated with more expensive warehousing or similar interim financing alternatives. This, in turn, allows originators to make credit available to consumers and small businesses at lower borrowing rates. The greater the limits on prefunding, the more expensive the carrying costs for originators and, potentially, the higher the borrowing rates for consumers and small businesses.

Issuers and investors also believe that the ABS disclosure regime is already well suited to ABS that involve master trusts, revolving periods and prefunding, whether backed by revolving or non-revolving assets, because it requires information in prospectuses and ongoing periodic reports about (i) the circumstances under which assets may be added, substituted or removed from the asset pool, including the acquisition and underwriting criteria for additional pool assets, (ii) the additional series or classes of securities that have been or may be issued, (iii) any material pool asset changes and any material changes in the solicitation, credit-granting, underwriting, origination, acquisition or pool selection criteria or procedures used to originate, acquire or select the new pool assets, and (iv) material changes in pool composition information resulting from the issuance of additional series or classes of securities by a master trust or where revolving or prefunding periods are used.[56]

In short, the Commission's proposed carve back to exclude securities backed by non-revolving assets from being issued through the master trust structure, and to significantly limit or even eliminate the ability to create ABS with flexible maturities backed by non-revolving assets, will impose artificial limits on the products and asset classes that issuers and investors desire.

With regard to prefunding, issuers and some investors believe that a more measured approach, which would address the Commission's concerns, would be to adopt a graduated scale whereby

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[55] As discussed later in this letter, the Commission proposes that products that fall outside the Regulation AB definition of an asset-backed security, however technical the reason might be, would be subject to the corporate disclosure regime, thereby effectively prohibiting issuers from issuing these products in the capital markets altogether. We raise separate, significant comment on the Commission's proposals relating to the private placement market later in this letter.

[56] *See*, *e.g.*, Items 1111(g), 1113(e), 1121(a)(14) and 1121(b) of Regulation AB.

the permitted prefunded amount would be smaller where the prefunding period is longer. For example, permitting prefunding not in excess of 10% where a prefunding period may last up to one year, prefunding not in excess of 25% where a prefunding period may last up to nine months, and prefunding not in excess of 50% where a prefunding period may last up to six months. In the alternative, the Commission could decrease the prefunding limit from fifty percent to twenty-five percent (but retain a prefunding period of up to one year), which would make the standard consistent with the prefunding standards under ERISA. On the other hand, certain other investors are supportive of the Commission's proposal to reduce the prefunding limit from fifty percent to ten percent, and thereby limit the portion of the asset pool that may be identified subsequent to the issuance of the ABS.

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IV. EXCHANGE ACT REPORTING PROPOSALS

A. Distribution Reports on Form 10-D

1. Proposed Regulation AB Item 1121(c); Disclosure re Amount of Repurchase Demands

The Commission proposes to add a new requirement to Item 1121 of Regulation AB, to require that the distribution report contain disclosure relating to the amount of repurchase demands made of the party obligated to repurchase assets for breach of representation or warranty during the period covered by each report on Form 10-D. The proposed disclosure would include the percentage of the amount of the repurchase demands that were not then repurchased or replaced by the obligated party and, as to the assets that were not repurchased or replaced, whether an opinion of a third party not affiliated with the obligated party had been furnished to the trustee that confirms that the assets did not violate a representation or warranty.

This requirement, which is generally consistent with the proposed revisions to Items 1104 and 1110 of Regulation AB, extends the paradigm of historical reporting of repurchase demands, non-repurchases and third-party opinion deliveries with respect thereto, to the specific securitization that is the subject of the report. We have no objection to the principle that repurchase demands be disclosed, but we point out that it is generally not practical to report the disposition of the repurchase demand in the same monthly reporting cycle in which it is made. Pooling and servicing agreements or other securitization transaction agreements typically provide a period of 60 to 90 days following a demand for repurchase for breach of representation or warranty in which the representing party is entitled to cure the breach. Accordingly, at the end of the reporting period the trustee or master servicer preparing the related Form 10-D will not be in a position to know what percentage of demands made in the period did not result in repurchase, and no third-party opinion would be "ripe" at that point.

As an alternative to the Commission's proposal, we suggest that Item 1121(c) of Regulation AB be revised as set forth in Exhibit K to this letter. Our proposed revision would require monthly reporting of the amount, if material, of pool assets that were the subject of a demand for repurchase, but would require quarterly reporting of properly authorized and unrescinded repurchase demands made under the transaction agreement during the second preceding calendar quarter, together with the percentage of such amount not repurchased or replaced and disclosure of whether a third-party opinion was provided to the effect that the assets not repurchased or replaced did not violate transaction representations and warranties. Under our proposal, a quarterly reporting cycle would allow any transactional cure period to expire, even if a repurchase demand was made on the final day of the preceding calendar quarter, resulting in meaningful disclosure to investors regarding non-repurchases. While it is possible to report repurchase demands received monthly, simply on the basis of actual notices to the representing party, given the purpose of the report, which is to assess the representing party's compliance with its obligations under the transaction agreements, we think it important that the quarterly report of non-repurchases correlate to legitimate demands for repurchase, rather than specious or "shotgun" repurchase requests that are rejected by the trustee as not properly made or which are rescinded by the demanding party after consultation with the obligated party, presumably because the obligated party has provided satisfactory evidence that the asset is compliant. In addition, we request that the Commission include in Item 1121(c) language requiring disclosure of whether an opinion *or a certificate* had been furnished so that this Item conforms to the "third party review" requirement for shelf registration.

2. Regulation AB Item 1100(b) and the Presentation of Delinquency Information in Form 10-D Reports and in Static Pool Information

Item 1100(b) of Regulation AB outlines the minimum requirements for presenting historical delinquency and loss information, including a requirement that delinquency experience be presented in 30- or 31-day increments through the point that assets are written-off or charged-off as uncollectible. Item 1100(b) currently is most relevant in relation to Item 1111(c) of Regulation AB, which requires disclosure of delinquency and loss information for the asset pool being securitized in a prospectus.[57] In the 2004 ABS Adopting Release, however, the Commission stated that delinquency and loss information for the Form 10-D reporting period, like the other listed items in Item 1121(a) of Regulation AB, is based on materiality, and not on Item 1100(b). Similarly, Item 1105 of Regulation AB states that static pool information is required unless it is not material. As a result, the Commission staff has previously concluded that the presentation of static pool information, including static pool information regarding delinquencies, is governed by general principles of materiality and the requirements of Item 1105, and not the requirements of Item 1100(b).[58]

The Commission now proposes to reverse its positions by requiring the presentation of delinquency information in Form 10-D reports and, in the case of amortizing asset pools, in static pool information to be based on Item 1100(b) of Regulation AB instead of materiality.

Item 1100(b) – and, in particular, Item 1100(b)(1) – has been a source of significant concern for ABS issuers from the time it was first proposed in 2004 because its one-size-fits-all approach across different asset classes and for different disclosure purposes is too rigid and, for various asset classes, calls for the presentation of delinquency information for considerably longer periods of time, or in more granular increments, than would be required under general principles of materiality. Indeed, it was these very concerns that caused ABS issuers to request that the Commission adopt a more flexible standard at the time Item 1100(b) was initially proposed, and to reach out to the Commission staff shortly after the adoption of Regulation AB to seek relief from some of the requirements of Item 1100(b) that were particularly burdensome to issuers without corresponding benefits to investors. The Commission staff provided that relief through

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[57] Item 1111(c) is most relevant in the context of revolving asset master trusts, where ABS that are issued from time to time are supported by an existing asset pool for which historical delinquency and loss information exists. In most other cases, the asset pool being securitized is newly-formed and, consequently, no historical delinquency and loss information for the pool itself exists. In these cases, issuers will typically present historical delinquency information for the sponsor's or servicer's managed portfolio. In the case of newly-formed pools of seasoned assets, if material, issuers may also provide historical delinquency information for the pool assets themselves, such as the number of pool assets that (a) have been delinquent one or more times in the past 12-24 months for more than 60 days or (b) have been delinquent two or more times in the past 12-24 months for more than 30 days. In each of these cases, the additional information is not presented in response to a specific Item requirement of Regulation AB but instead under general principles of materiality. *See* Regulation AB Interpretation No. 1.01 in SEC Division of Corporation Finance Manual of Publicly Available Telephone Interpretations.

[58] *See* Proposing Release at note 378.

several interpretations of Item requirements of Regulation AB, some of which the Commission now seeks to reverse.[59]

Compliance with Item 1100(b)(1) is particularly burdensome in the context of ABS supported by residential and commercial mortgage loans, where the loans continue to be carried as assets and are not written off until the underlying collateral is liquidated. The period of time within which the underlying collateral may be liquidated can become protracted and, in many cases, depends on state foreclosure law. As a result, following the adoption of Regulation AB, the standard practice in the mortgage industry has been to present delinquency information in Form 10-D reports and in static pool information in 30- or 31-day increments through the point that the loans are 179 or 180 days delinquent, followed by an additional 180 day increment (*i.e.*, through the point that the loans are 359 or 360 days delinquent) and a final increment of 359 or 360 days or more, with this latter period typically including the status of foreclosures, bankruptcies and real estate owned.[60]

Compliance with Item 1100(b)(1) is also burdensome in the context of ABS supported, directly or indirectly, by motor vehicles, equipment and other similar, physical assets that have finite lives over which their value depreciates. Here again, the loans or leases may continue to be carried as assets and may not be written off until the underlying collateral is liquidated. Unlike mortgage loans, however, the period of time within which the underlying collateral is repossessed and liquidated (by auction or otherwise) is extraordinarily short, because the servicer seeks to maximize its recovery on an asset whose value decreases the longer the servicer holds it.[61] An extremely small amount of this underlying collateral can, however, take longer to liquidate and charge-off, but the amounts are so small and immaterial that it does not make sense for issuers or servicers to incur the time and cost to track and present that information in prescribed increments.[62] As a result, following the adoption of Regulation AB, the standard practice in the auto and equipment finance industries has been to present delinquency information in Form 10-D reports and in static pool information in 30- or 31-day increments through the point that the loans are 119 or 120 days delinquent, followed by a final increment of 119 or 120 days or more.

Issuers and investors have reviewed these disclosure practices in connection with our review of the Commission's current rule proposals and agree that these variations in the presentation of delinquency information across asset classes are meaningful and appropriate, and that issuers and

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[59] *See* Regulation AB Interpretation Nos. 1.01, 5.03 and 9.01 in SEC Division of Corporation Finance Manual of Publicly Available Telephone Interpretations.

[60] Information regarding the status of foreclosures, bankruptcies and real estate owned is important to investors and is provided in response to Item 1100(b)(6) of Regulation AB (and, therefore, is provided independent of the requirements of Item 1100(b)(1)).

[61] For example, for retail auto loan and lease products, vehicles are repossessed typically at between 60 to 90 days delinquent and sold at auction typically within 15 to 45 days of repossession. Vehicle auctions for standard cars and light trucks are held frequently, as often as twice per week. The used vehicle auction market is robust and deep, processing nearly 10 million units a year.

[62] Delays in the liquidation and charge-off of accounts arise primarily with obligors in Chapter 13 bankruptcy and the amounts in question rarely, if ever, aggregate over the life of a transaction to more than one percent of the initial pool balance, and typically remain well below that amount.

servicers should not be required to incur the additional time and cost to track and present delinquency information in additional prescribed increments beyond those outlined above.

As a result, issuers and investors support revisions to Item 1100(b)(1) that would provide for the consistent presentation of delinquency information across issuers within the same asset class - one of the Commission's articulated goals – but at the same time would recognize that some variation across asset classes is meaningful and appropriate. We have included as Exhibit L to this letter a proposed revised version of Item 1100(b)(1) that issuers and investors agree achieves the dual objectives outlined immediately above. We respectfully request that the Commission adopt these revisions in connection with its current rule-making proposals.[63]

B. Servicer's Assessment of Compliance with Servicing Criteria

The Commission proposes to expand the disclosure required in the body of the Form 10-K report regarding instances of noncompliance with the servicing criteria set forth in Item 1122(d) of Regulation AB as it relates to the ABS transaction to which the report relates, including steps taken to address the noncompliance, and to codify certain Commission staff positions with respect to the servicer's assessment.

We appreciate the Commission's interest in fulsome disclosure regarding a servicer's assessment of compliance with servicing criteria and support the Commission's proposal to require that the body of the annual report discuss steps taken to remedy a material instance of noncompliance, as well as the Commission's proposal to codify certain Commission staff positions relating to the servicer's assessment requirement. We do, however, have significant concerns with the Commission's proposal to require that the body of the annual report disclose whether any identified instance of noncompliance involved the servicing of the assets backing the ABS covered by the particular Form 10-K report.

As noted by the Commission, the servicer's assessment is required to be made at the platform level, which means that the assessment is to be made with respect to all ABS transactions involving the asserting party that are backed by assets of the type backing the ABS covered by the Form 10-K report. This platform level assessment is intended to provide investors with insights into a servicer's compliance with servicing criteria across the servicer's entire platform of transactions backed by similar collateral rather than the servicer's compliance with those servicing criteria with respect to any particular transaction. By its very nature and design, therefore, the servicer's assessment is not intended to identify instances of noncompliance with servicing criteria for individual transactions.

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[63] We note that, because the static pool disclosure requirement for master trusts is different from amortizing pools, the Commission is not proposing changes to require that static pool information for revolving asset master trusts be provided in accordance with Item 1100(b) of Regulation AB. We strongly agree with this conclusion. In addition, if the Commission adopts our proposed revisions to Item 1100(b), all issuers, including revolving asset master trusts, would have to present delinquency and loss information in accordance with Item 1100(b) to satisfy the proposed periodic reporting requirement. As a result, as noted by the Commission, investors would receive continuing performance data on the master trust pool because revolving asset master trust registrants would continuously report delinquency and loss information on the pool assets through periodic reporting on Form 10-D.

More particularly, a reported instance of noncompliance with a servicing criterion means that, based on a sampling of transactions where the asserting party performed the activity that is the subject of that servicing criterion, noncompliance was found to have arisen at a reportable level. Conversely, because the platform level report is based on only a sampling of transactions, a reported instance of noncompliance does not purport to, nor by its nature could it, identify all transactions where noncompliance may have occurred. It is not possible, therefore, for the servicer (much less an ABS issuer) to identify each transaction impacted by the instance of noncompliance and we strongly believe that it would be inappropriate and arbitrary for an ABS issuer to identify only those transactions within the test sample that were impacted by the instance of noncompliance. In addition, if an ABS issuer were required to disclose whether a reported instance of noncompliance involved assets backing the ABS covered in a particular 10-K report, we are very concerned that investors may readily draw the incorrect inference that, in the absence of such disclosure, the reported instance of noncompliance did not involve the servicing of assets backing its ABS.

The Commission’s proposal also focuses on the very subject matter that is addressed by Item 1123 of Regulation AB – specifically, whether, in the context of each transaction, a servicer has fulfilled its obligations under the servicing agreement in all material respects throughout the reporting period. While it is the case that the definition of servicer between Item 1122 and Item 1123 has differences, Item 1123 does apply to master servicers, each affiliated servicer and each unaffiliated servicer servicing 10% or more of the pool assets, which is largely coterminous with Item 1122 and, in any event, covers each material servicer in an ABS transaction.

Finally, our investor members indicate that their primary concern in this area has been that they have access to the reports contemplated by Item 1122 and Item 1123 throughout the life of an ABS transaction, and this concern has been addressed by the amendments to Exchange Act Section 15(d) adopted pursuant to the Financial Reform Act.

For all of these reasons, we respectfully request that the Commission reconsider adoption of this proposal.

C. Form 8-K

1. Item 6.05

Item 6.05 Form 8-K reports are required to be filed if any material pool characteristic of the actual asset pool at the time of issuance of the ABS differs by five percent or more (other than as a result of the pool assets converting into cash in accordance with their terms) from the description of the asset pool in the final prospectus. In those cases, all of the information required by Items 1111 [Pool Assets] and 1112 [Significant Obligors of Pool Assets] of Regulation AB regarding the characteristics of the actual asset pool is required to be filed by Form 8-K. In addition, if applicable, information required by Items 1108 [Servicers] and 1110 [Originators] of Regulation AB, regarding any new servicers or originators is required. An Item 6.05 Form 8-K report is required to be filed with the Commission within four business days after occurrence of the event, which we understand to be the issuance of the ABS.

The Commission proposes to lower the threshold that would trigger a filing requirement for Item 6.05 Form 8-K reports from a five percent change in any material pool characteristic to a one percent change, and to require a description of the changes that were made to the asset pool, including the number of assets substituted or added to the asset pool. The Commission also proposes to require that asset data files be included as an exhibit on the same date of the filing of an Item 6.05 Form 8-K report.

Both our investor and issuer members appreciate the significance of the composition of the assets comprising the actual asset pool backing the ABS, but investors and issuers have different views on the extent to which changes in the asset pool should be permitted and, where permitted, what the consequences of those changes should be.

Our investor members believe that the Commission's proposal to lower the threshold that would trigger a filing requirement for Item 6.05 Form 8-K reports from a five percent change in any material pool characteristic to a one percent change is an improvement, but fails to address a key investor concern. In the wake of the financial crisis, investors are wary of issuers making changes to "discrete" pools in the period after an investor makes an investment decision and commits to purchase the ABS. Investors wholly agree with the Commission's statement that "except for the assets acquired through prefunding, the assets of the pool underlying the securities should be set and described in the prospectus."[64] If, in fact, the Commission intends asset pools to remain static after filing the prospectus, investors believe that a reduction of the percentage change from five percent to one percent does little to achieve that goal.

Investors believe it is very difficult to quantify the percentage change that an investor would care to be notified of, and equally difficult to determine when this change would amount to a material change to the pool. In fact, investors generally disagree with the Commission's statement that "changes below one percent are likely de minimis changes,"[65] as investors believe that conclusion depends upon the characteristic being changed and the tranche in which the investor purchases. For example, investors in the most subordinate securities or the first loss piece of a securitization will likely be interested in any change to the pool, especially if changes in pool characteristics are measured based upon all or substantially all of the pool.[66] For example, a 0.99% reduction in the weighted average FICO of the pool would not trigger the requirement for an issuer to file a report on Form 8-K, but investors believe that most buyers of subordinate securities would be interested in that change and in certain situations, such as in a pool with significant risk layering, such a change may cause an investor to reconsider his original investment decision.

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64 *See* Proposing Release at 23392.

65 *Id*.

66 There has been uncertainty within our membership about how the five percent change in any material pool characteristic (proposed to be lowered to a one percent change) is supposed to be measured. Investors are more concerned if the percentage change is measured in absolute terms (*e.g.*, where a material pool characteristic must change by 500 basis points to trigger a reporting requirement). Issuers have generally measured the percentage change in relative terms (*e.g.*, where a material pool characteristic has to change by five percent, measured against the figure disclosed in the final prospectus, to trigger a reporting requirement). We think it would be helpful if the Commission clarified how the percentage change in any material pool characteristic is to be measured.

Investors do acknowledge, however, that issuers may have to remove loans after filing the prospectus from time to time, including when loans are affected by fire, flood or other natural disasters. But for the foregoing reasons, investors do not believe that a mere report of the change is helpful, as their analysis of the assets has already occurred and an investment decision has been made. As an alternative, certain investors believe that it would be more appropriate to allow loans to be removed from the pool without introduction of replacement loans. These investors believe that replacement loans, which were not subject to investor due diligence, are the fundamental concern. Instead of a report, these investors believe that loans being removed from the pool after filing the final prospectus and prior to issuance of the securities should be repurchased out of the pool and a corresponding payment should be remitted on a pro rata basis to all investors on the first distribution date.

As noted above, our issuer members also appreciate the significance of the composition of the assets comprising the actual asset pool backing the ABS, but emphasize that issuers do not have the unfettered ability to change the pool composition from the asset pool described in the final prospectus. To the contrary, an issuer's discretion is narrowly circumscribed by its disclosure in the prospectus and, ultimately, by the terms of the underlying transaction documents, which typically provide that an asset may be removed only if it fails to satisfy the securitization eligibility criteria and an asset may be substituted in its place only if the substituted asset is of the same general character and tenor as the removed asset.[67]

The issuer's ability to remove or substitute assets is also clearly disclosed in the prospectus and, in contrast to the view of certain investors as outlined above, issuers understand that many investors would prefer that new assets of comparable character and tenor be substituted for removed assets, to preserve as near as possible the economics of the transaction for each tranche of securities offered (*i.e.*, so that each tranche has substantially the same weighted average life, weighted average coupon, etc. as described in the final prospectus).[68]

Issuers agree that, as a general matter, the question of when a change in a pool characteristic would be material to investors should be assessed case by case, based on the surrounding facts and circumstances. But issuers believe that changes below the current five percent threshold are so likely to represent a de minimis change that Item 6.05 is not in need of revision.[69] Similarly,

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[67] The prospectus describes the limited circumstances in which the issuer may add, remove or substitute assets and, therefore, an issuer's discretion is circumscribed by principles of materiality and by the liability framework under the federal securities laws, which impose Section 11 strict liability based on the content of the final prospectus and, as the Commission notes, Section 12(a)(2) liability based on the information conveyed to investors at the time of sale.

[68] Issuers understand that the Commission staff has long recognized that the ability to substitute assets under these circumstances and on these conditions does not undercut the concept of a "discrete" pool of assets and, instead, is properly viewed as a "right…designed to assure the servicing or timely distributions of proceeds to the security holders" because, again, the substitution is conditioned on adding new assets of comparable character and tenor to the removed assets, thereby ensuring as near as possible that each tranche of securities offered has the same weighted average life, weighted average coupon, etc. as described in the prospectus.

[69] Exchange Act Rules 15d-18 and 13a-18 provide that a report on assessment of compliance with the servicing criteria specified in Item 1122(d) of Regulation AB must be included in an ABS issuer's Form 10-K report for each party participating in the servicing function, unless such entity's activities relate only to five percent or less of the pool assets, which the Commission staff has also recognized as a de minimis exception. *See*

issuers believe that a requirement to update disclosure based on a one percent change would operate as a hair trigger, so delicately adjusted that the slightest of changes in a pool characteristic would trigger a filing requirement. However, if the Commission continues to believe that a threshold lower than five percent is warranted, issuers believe that changes below three percent would be a more reasonable proposal that balances what a reasonable investor would consider important against the burdens imposed on issuers that will be required to update all of the information required by Items 1111 and 1112 of Regulation AB and, potentially, information required by Items 1108 and 1110 of Regulation AB.

In addition to the views of investors and issuers outlined above, we have the following comments on the Commission's proposal.

First, we request that the Commission clarify – by adding a note to Item 6.05 or by commentary in the adopting release – that the filing of an Item 6.05 Form 8-K report should not, in and of itself, be construed as meaning that the actual pool supporting the ABS differs materially from the asset pool described in the final prospectus. As noted above, investors and issuers agree that the question of when a change in a pool characteristic would be material to investors should be assessed case by case, based on the surrounding facts and circumstances. Accordingly, we think the Commission should take steps to counteract any presumption as to materiality that might otherwise arise by virtue of the filing of an Item 6.05 Form 8-K report.

Second, the Commission makes a distinction in Item 6.05 of Form 8-K between changes in pool characteristics that result from "the pool assets converting into cash in accordance with their terms" versus changes that result from other causes. In essence, this distinction is intended to distinguish changes in the asset pool that result from "organic" changes in pool composition as compared with changes that result from external administration of the pool. In the context of asset pools comprised of revolving assets, however, organic changes in pool composition arise not only as a result of the assets converting into cash in accordance with their terms, but also as a result of fluctuating account balances based on credit line usage (*e.g.,* in the case of a credit or charge card trust, fluctuating account balances resulting from cardholder purchases, returns, refunds, etc.). As such, we respectfully request that the Commission revise Item 6.05 to clarify that a reporting obligation arises "if any material pool characteristic of the actual asset pool at the time of issuance of the asset-backed securities differs by [5]% or more (other than as a result of the pool assets converting into cash in accordance with their terms *or, in the case of revolving pool assets, other than as a result of fluctuating account balances based on credit line usage)*…." [Emphasis added]. For the same reasons, we request that the Commission make a similar change in Item 1121(a)(14) of Regulation AB.

Third, we respectfully submit that the filing due date for Item 6.05 Form 8-K reports should be extended to 15 calendar days after the occurrence of the event, to allow registrants sufficient time to compile and verify the updated pool data before they file it with the Commission. The current four business day filing deadline has always been a potential concern for asset-backed issuers but the concern becomes elevated to the extent the Commission adopts its proposal to lower the

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Regulation AB Interpretation No. 17.02 in SEC Division of Corporation Finance Manual of Publicly Available Telephone Interpretations.

threshold that would trigger a filing requirement from a five percent change in any material pool characteristic to a lower percentage change.[70]

Fourth, we respectfully request that the Commission add an Instruction to Item 6.05 of Form 8-K comparable to Instruction 2 to Item 6.03 of Form 8-K, to account for the fact that, through no fault on the part of the registrant, certain information called for by Item 6.05 regarding significant obligors, servicers or originators may not be possible to determine or may be unavailable at the time of the required Form 8-K filing.[71]

Fifth, the Commission observes that, in some transactions, the pooling and servicing agreement may provide for investments of cash collections and amounts on deposit in reserve funds in "eligible" or "permitted" investments and the Commission indicates that such investments may themselves be a material change to the asset pool triggering disclosure of the change under Item 6.05 of Form 8-K. We do not understand the position that the Commission has articulated or the policy concerns that may underlie the position. As a result, we are unable to comment fully on this matter. Nevertheless, we have significant concerns with what we believe to be the implications of the Commission's statements and do not believe that the deployment of cash collections or amounts on deposit in reserve funds (or other trust accounts) should themselves be viewed as changes to the asset pool that might trigger an Item 6.05 Form 8-K report, as these aspects of an ABS transaction pertain to ancillary rights and assets (*i.e.*, "rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders," as set forth in the definition of an asset-backed security) that are fully described in the final prospectus. Moreover, assuming Item 6.05 of Form 8-K were to apply in this situation, it is not clear under what circumstances, or how, an issuer would be expected to apply the Item.

2. Change in Sponsor's Interest in the Securities

The Commission proposes to add a new Item to Form 8-K to require that the ABS issuer describe any material change in the sponsor's interest in the securities, including the amount of the change and a description of the sponsor's resulting interest in the transaction after the change.

Our investor members are supportive of the Commission's proposal. However, investors believe that this information should be disclosed for each reporting period on Form 10-D rather than only in the case of a material change on Form 8-K. Investors believe that the amount of risk retained by the sponsor in connection with shelf eligibility requirements or for other reasons is important information that should be disclosed on an ongoing basis. Investors believe that if the

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[70] As noted earlier in this letter, an asset-backed issuer rarely makes pool asset changes that would cause a five percent change in any material pool characteristic. However, a requirement to update disclosure based on a lower percentage change in a material pool characteristic is more in the nature of a hair trigger that could significantly increase the likelihood that an Item 6.05 Form 8-K report would be required and makes concerns about a four business-day filing deadline much more relevant.

[71] Instruction 2 to Item 6.03 of Form 8-K provides that "[t]o the extent that any information called for by this Item regarding the enhancement or support is not determined or is unavailable at the time of the required filing, the registrant shall include a statement to this effect in the filing and then must file an amendment to its Form 8-K filing under this Item 6.03 containing such information within four business days after the information is determined or becomes available."

sponsor of a securitization retains exposure to the risks of the assets, the sponsor will likely have greater incentives to include higher quality assets. The ongoing retention of this exposure also helps to align the interests of the sponsor and investors in the servicing of the securitization. In addition, investors believe that the sponsor is akin to an “insider” and its decision to hold or sell its retained interest may be triggered based upon a negative or positive view of the securitization and may influence an investor’s decision to hold or sell its own securities. Investors also believe that this requirement should be extended to affiliates of the sponsor, particularly in light of the Commission’s proposed shelf eligibility requirement that the sponsor or an affiliate of the sponsor retain a net economic interest in each securitization. This ongoing reporting requirement would also enable investors and the Commission to monitor the sponsor’s (or its affiliates) retention of risk in connection with the proposed shelf eligibility requirement.

Our issuer members have significant concerns with the Commission’s proposal. The proposal would require an ABS issuer to disclose details regarding the extent of the sponsor’s interest in the securities and changes in the sponsor’s interest, based on nothing more than a conclusory statement to the effect that “such disclosure would assist an investor in monitoring the sponsor’s interest in the securities.”[72] As noted earlier in this letter, issuers support efforts to align the economic interests of sponsors with investors and, in cases where the sponsor is an affiliate of the ABS issuer, would support a disclosure standard that sought merely to confirm that any required interest in the securities was, in fact, being maintained, but the proposed standard goes well beyond that objective without any evidence as to why this more detailed information is material.

Issuers also believe that investors draw an entirely inappropriate and groundless comparison when they liken a sponsor to an “insider” and indicate that a sponsor’s decision to hold or sell any portion of its interest in the securities may serve as an indicator of the future prospects for the securitization. In many deals, the sponsor is not an affiliate of the servicer and may not even be an affiliate of the depositor. And, in any event, a sponsor’s affiliation with an issuer or servicer does not begin to involve the same level of relationship as the relationship of an officer, director or other control person to a corporation. Issuers are extremely concerned that the Commission’s risk retention proposal, which has as its goal a better alignment of the economic interests of sponsors with investors, is effectively being broadened and extended by proposed Item 6.09 of Form 8-K, by suggesting (without support) that investors also need to know considerably more detail about changes in the sponsor’s interest in the transaction.

Issuers also have serious practical concerns with the request by investors that the Commission’s reporting proposal be extended to changes in the interests of affiliates of the sponsor in the securities, as this would require new and extraordinarily difficult monitoring processes that the sponsor may never be able to administer with reliable results.

Finally, issuers have significant privacy concerns with disclosing this type of information and believe that no such reporting standard should be adopted absent tangible and compelling evidence that such information is material to investors.

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[72] *See* Proposing Release at 23393.

For all of the reasons set forth above, issuers respectfully request that the Commission abandon its proposal to report changes in the sponsor's interest in securities. If the Commission decides to proceed with this proposal, we have the following additional comments.

First, the regulation should make clear that no reporting requirement arises as a result of organic changes in the sponsor's interest in securities, such as those arising as a result of organic increases or decreases in the size of the asset pool (*e.g.*, as a result of the pool assets converting into cash in accordance with their terms or, in the case of revolving pool assets, as a result of fluctuating account balances based on credit line usage) or those arising as a result of payments made on other securities issued by the issuing entity (*e.g.*, as a result of the amortization of a tranche or class in a master trust, which, in the case of a revolving asset master trust, would cause a corresponding increase in the seller's interest), unless any such change causes the sponsor's interest to fall below any required interest in the securities.

Second, the regulation should make clear that no reporting requirement arises as a result of the sponsor's pledge of the securities in the ordinary course of business for on balance sheet funding purposes (*e.g.*, pursuant to a repurchase agreement).

Third, as noted above, in many transactions, the sponsor is not an affiliate of the servicer and may not even be an affiliate of the depositor. As a result, issuers have serious practical concerns about their ability to monitor and report on changes in the sponsor's interest in the securities. As a result, we request that the Commission add an Instruction to proposed Item 6.09 of Form 8-K comparable to Instruction 2 to Item 6.03 of Form 8-K, to account for the fact that, through no fault on the part of the registrant, the information called for by Item 6.09 may not be known or available at the time of the required Form 8-K filing. We also request that, in cases where the sponsor is not an affiliate of the ABS issuer, the Commission except Item 6.09 Form 8-K reports from the Exchange Act filing requirements for Form SF-3 eligibility purposes. Unlike other cases where the content or completeness of an Exchange Act report is dependent on the timely receipt of reports or other information from unaffiliated third parties, an ABS issuer would have no way of even knowing whether and when a change in a sponsor's interest in the securities had occurred. As a result, we think it would be wholly inappropriate and unfair for a registrant to lose its eligibility to use Form SF-3.

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V. PRIVATELY-ISSUED STRUCTURED FINANCE PRODUCTS

A. Proposed Information Requirements for Structured Finance Products

The Commission proposes to condition the availability of the safe harbors for privately-issued structured finance products on an issuer's undertaking to provide to investors, in connection with initial offers or sales and on an ongoing basis, the same information as would be required in a registered transaction. These new disclosure requirements are intended to address concerns about the amount and quality of information available to sophisticated investors about structured finance products purchased in these private transactions.

We recognize that CDOs and other structured securities in the private markets are complex financial instruments and we support the Commission's goal of revising the safe harbors to ensure that sophisticated investors are able to consider and understand the risks of their investments. We have, however, a number of significant concerns with a proposal to require issuers in private transactions to stand ready to deliver the same information as would be required in registered transactions. We believe that the more appropriate course of action to achieve that goal – a course that is consistent with the historical treatment of institutions and institutional sales under the federal securities laws – is to base the availability of the safe harbors on private transactions with a class of institutional investors that possess a level of knowledge and experience in the purchase and surveillance of structured finance products such that they are able to identify and request the information that they need to make informed investment decisions relating to those products without the protections mandated by the registration provisions of the Securities Act.

The U.S. private placement market is one of the world's largest securities markets and functions as a vital means of efficient capital formation, which in turn is vital to support economic recovery, job creation and long-term economic growth in the U.S. But the size and stature of the private placement market is due, in large part, to a statutory scheme that offers an alternative to the more heavily-regulated public offering process. The Commission's proposed information requirements for structured finance products would effectively eliminate the regulatory distinction between public and private offerings and risks compromising the essential function of the private placement market as a means of efficient capital formation. More to the point, these information requirements, if adopted, would be tantamount to a determination by the Commission that a class of investors that are able to fend for themselves in the purchase of structured finance products does not exist and, therefore, that issuers must be regulated to the "lowest common denominator." This is a notion that we flatly reject.

The Commission's proposed information requirements also fail to recognize that an array of structured finance products that are offered and sold in the private placement market operate in that market because the disclosure framework for registered transactions is too rigid and, therefore, ill-suited to the structure and terms of those products and transactions. The disclosure framework for registered transactions (and, under the Commission's proposal, the framework that by extension would apply to unregistered transactions) contemplates that structured finance products fall into one of two disclosure regimes:

(i) products that meet the Regulation AB definition of an asset-backed security, which are subject to the ABS disclosure regime; and

(ii) products that fall outside the Regulation AB definition, however technical the reason might be, which by default are subject to the corporate disclosure regime, together with some elements of the ABS disclosure regime.

As a consequence of this bright-line approach, an array of structured finance products have no choice but to operate in the private placement market, and others operating in the private placement market have been impeded from migrating to the registered market, because they don't meet the technical requirements of the Regulation AB definition of an asset-backed security and would be relegated to the Commission's ill-suited corporate regime if they were offered and sold publicly.

Our issuer members also operate in the private placement market for a number of other valid and important reasons. An issuer may not have access to all of the information required for a registered transaction or the underlying assets or transaction structure may not lend themselves to the delivery of the information required for registered transactions, or the issuer's issuances may not be on a sufficient scale or the market for a particular product may be sufficiently limited that the costs and difficulties of compliance with the disclosure standards for a registered transaction make the private placement market the only viable alternative. In each of these cases, the private placement market is a vital source of capital, and the private placement safe harbors should be available to issuers without prescribed disclosure requirements as long as the issuer is offering its securities to investors that possess a level of knowledge and experience in the purchase and surveillance of structured finance products such that they are able to identify and request the information that they need to make informed investment decisions relating to those products without the protections mandated by the registration provisions of the Securities Act.[73]

By requiring issuers in private placements of structured finance products to stand ready to deliver the same information as would be required in a registered transaction, the Commission will

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[73] A non-exhaustive but illustrative list of products or underlying collateral that are offered and sold predominantly or exclusively in the private market for one or more of the reasons detailed above includes the products and underlying collateral listed below. The purpose of this list is solely to illustrate the depth and range of products in the private markets and does not represent any view on whether or not a particular product would be a structured finance product under the Commission's proposed definition.

- Asset-Backed Commercial Paper
- Equipment-related assets:
  - Micro/Small Ticket Leases
  - Mid-Ticket Leases
- Future Flow Contracts
- Insurance-related assets:
  - Catastrophe (CAT) Insurance
  - Insurance Premium Loans
  - Life Insurance Premiums
  - Structured Settlements
  - XXX
- Intellectual Property:
  - Film Receivables
  - Franchise Royalties
  - Music Publishing Royalties
  - Patent Licensing Royalties
  - Pharmaceutical Royalties
  - Trademark Licensing Fees
- Middle Market Loans
- Municipal Bonds
- Mutual Fund Fees
- Non-Traditional Real Estate Assets:
  - Church Loans
  - CRE Net Lease
  - Mobile Home Parks
  - Servicing Advances
  - Timber
- Pay Day Loans
- Rental Cars
- Security Alarm Payment Streams
- Storm Cost Recovery Bonds/Transition Bonds
- Tax Liens
- Telecommunication Assets:
  - Cell Towers
- Time Share Receivables
- Transportation Assets:
  - Corporate and Truck Fleet Leases
  - Railcars
  - Shipping Containers
  - Shipping Vessels
- Whole Business

effectively restrict the private markets to the same issuers that participate in, and the same products that are available in, the registered markets. As a consequence, the array of structured finance products that, until now, had a place in the unregistered market but no corresponding place in the registered markets will simply no longer have a place in the capital markets.[74]

As the Commission is well aware, securitization plays an important role in the financing needs of businesses. As the economy begins to recover and businesses again begin to grow, there will be an increased need for financing for both expanding and newly-created businesses. Expansion and growth will produce a need for the full panoply of capital markets products to obtain the most cost-effective financing in a recovering economy. Many of these financing needs have been best met over the years through issuance in the private market in reliance on the safe harbors. Furthermore, expansion and growth inevitably will lead to the creation of new asset types and a need for innovative asset-backed financings. The private market has historically been the market in which new financing products have first developed because, in the absence of a prescribed disclosure framework, issuers and investors can tailor the characteristics of the securities, and the disclosure and information that the investors will require, before investors commit to buying those securities. Promoting a robust private structured finance product market and an environment conducive to innovative structured finance product development, of course, must be tempered with the need for laws and regulations that protect investors. We understand that the enhanced disclosure requirements set forth in the Proposing Release are intended to permit the continued issuance and development of structured finance products while providing protections against the undue risks and lack of transparency that are perceived to exist in that marketplace. However, we believe that the application of the Proposing Release's disclosure requirements to private transactions will effectively extinguish the market for certain types of products and will severely constrain the development of new, innovative financing techniques. We also firmly believe that these deleterious consequences can be averted by our alternative proposal outlined below.

In our view, if the Commission establishes appropriate criteria for identifying sophisticated investors of structured finance products, then those investors will be in the best position to help shape the post-recovery development of the private structured finance product market by demanding transaction structures and related disclosure and reporting that they feel necessary to make informed investment decisions.

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[74] Assuming for argument's sake that the Commission were to adopt these information requirements in the form proposed, it is important to note that they create an unworkable safe harbor in the case of structured finance products that fall outside the current Regulation AB definition, since those products would be subject to the corporate disclosure regime together with some elements of the ABS disclosure regime or, possibly, a twilight disclosure regime of sorts that blends aspects of the corporate disclosure regime with aspects of the ABS disclosure regime, but without detailing the specific aspects that would apply in either case. *See* Proposing Release at n.469 and related text (citing Section III.A.2.a of the 2004 ABS Adopting Release (discussing structured securities that do not meet the Regulation AB definition of an asset-backed security and noting "[d]epending on the structure of the transaction and the terms of the securities, some disclosure aspects of Regulation AB may be applicable, but aspects from the traditional disclosure regime also may be applicable. In some instances, a third approach might be more appropriate")). The uncertainty surrounding compliance with that information requirement effectively negates the very purpose of the safe harbor in the first instance.

Many of our members also question the extent to which sophisticated investors have been unable to obtain access to information relevant to their investment decision and believe that, in fact, investors in the private market for structured finance products have insisted upon and received, or have otherwise had access to, robust disclosure, particularly at the time of issuance of the product. At the same time, we believe there is room for improvement and, as noted above, we support the Commission's goal of revising the safe harbors to ensure that sophisticated investors are able to consider and understand the risks of their investments. To that end, we believe that the recommended approach outlined below represents a more balanced approach toward ensuring that only sophisticated investors participate in the private market for structured finance products and creates incentives for those investors to consider and understand the risks of their investments before they invest. Our investor members support the idea of basing the safe harbors on private transactions with sophisticated institutional investors but, as discussed in greater detail later in this section, they question whether this will adequately address their concern that issuers might seek to arbitrage the differing information delivery standards between the registered and private markets.

Perhaps most significant among our concerns with a proposal to require issuers in private placements to stand ready to deliver the same information as would be required in a registered transaction is that it runs contrary to the historical treatment of institutions and institutional sales under the federal securities laws and, as noted above, if adopted, would be tantamount to a determination by the Commission that a class of investors that are able to fend for themselves in the purchase of structured finance products does not exist.

For nearly 80 years – beginning with the legislative history of the Securities Act – the Congress, Supreme Court and Commission have consistently recognized the ability of institutional investors to make investment decisions without the protections mandated by the registration requirements of the Securities Act. James Landis, a principal draftsman of the Securities Act and the second Chairman of the Commission observed that the draftsmen believed that "[t]he sale of an issue of securities to insurance companies or to a limited group of experienced investors, was certainly not a matter of concern to the federal government"[75] and Manuel Cohen, Chairman of the Commission from 1964 to 1969, perhaps stated it best when he wrote:

> Private placements had their beginnings and early development in the negotiated sale of specially tailored debt securities to a limited number of large institutional investors *who were in a position to insist upon and to receive more information than that provided by registration* and to require such protective covenants and restrictions which, together with their ability to supervise constantly and to take appropriate action instantly, supported the view that such offerings were non-public in character for which the registration provisions were probably unnecessary. [Emphasis added.][76]

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[75] *See* Release No. 33-6806 (Oct. 25, 1988) [53 FR 44016] (the "Rule 144A Proposing Release") at 44023 (citing Landis, *The Legislative History of the Securities Act of 1933*, 28 Geo. Wash. L. Rev. 29, 37 (1959)).

[76] *See* Rule 144A Proposing Release at 44024 (citing Cohen, *Federal Legislation Affecting the Public Offering of Securities*, 28 Geo. Wash. . Rev. 119, 142 n.64 (1959)).

The Supreme Court affirmed this principle in *SEC v. Ralston Purina Co.*, the seminal case construing the private placement exemption, where the Court reasoned as follows:

> Since exempt transactions are those as to which "there is no practical need for [the registration provisions'] application," the applicability of section 4(2) should turn on whether the particular class of persons affected needs the protection of the [Securities] Act. An offering to those who are shown to be able to fend for themselves is a transaction "not involving any public offering."[77]

And the Commission formally addressed the difference between the institutional and public resale markets when it proposed and then adopted Rule 144A under the Securities Act, noting that "[t]he key to the analysis of…Rule 144A is that certain institutions can fend for themselves…."[78]

Accordingly, to the extent the Commission now has concerns that these institutional investors lack the sophistication to appropriately consider and understand the risks of an investment in structured finance products, we believe that the appropriate course of action – consistent with the historical treatment of institutions and institutional sales under the federal securities laws by the Congress, Supreme Court and Commission – is to identify a class of institutional investors that possess a level of knowledge and experience in the purchase and surveillance of structured finance products such that they are able to make investment decisions relating to those products without the protections mandated by the registration provisions of the Securities Act, and to base the availability of the safe harbors on private transactions with those investors.

B. Alternative Proposal: Recommended Changes to Rule 144A

1. Overview

We have included as Exhibit M to this letter a copy of Securities Act Rule 144A, marked to show our recommended changes to the definition of "qualified institutional buyer" and related provisions for purposes of the purchase of structured finance products. As discussed in greater detail below, a "qualified institutional buyer of structured finance products" would be required to satisfy a quantitative invested-assets test, based on the amount of structured finance products it owns and invests on a discretionary basis, and to satisfy certain qualitative standards relating to

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[77] 346 U.S. 119, 125 (1953). Subsequently, lower courts have implemented the Supreme Court's directive, including in the case of resales of privately-placed securities to institutional investors, ruling that an offering is private where all of the offerees are sophisticated, knowledgeable, experienced institutional investors with great resources, and are plainly "able to fend for themselves." *See, e.g., The Value Line Fund, Inc. v. Marcus*, (1964-1966 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶¶ 91,523, 94,970 (S.D.N.Y. 1956) (MacMahon, J.). Access to information about the issuer is an important factor in the courts' analyses of private offerings: "Marcus clearly gave Value Line access to whatever information it wished, and it is plain that any of the other offerees would have been in a position to insist on complete access to information." *Id*.

[78] Notably, Rule 144A requires an issuer undertaking to provide only basic, material information to qualified institutional buyers ("QIBs"). In fact, the Commission considered deleting the information condition in its entirety, on the basis that QIBs are sophisticated investors that are able to adequately assess their need for information and to determine when to proceed with an investment. Similarly, Rule 506 of Regulation D does not require any undertaking to provide information to accredited investors.

the investor's knowledge and experience in the purchase and surveillance of structured finance products and compliance with investment approval procedures in connection with those purchases.

2. Review of Specific Changes

Rule 144A would be amended to permit resales of any structured finance products of any issuer to "qualified institutional buyers of structured finance products" ("SQIBs"), or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believe is a SQIB.[79]

A SQIB would be required to satisfy a quantitative invested-assets test, similar to the test for a QIB, except that a SQIB would have to own and invest on a discretionary basis at least $150 million in structured finance products. In defining a SQIB, we have attempted to establish a level at which we (and the Commission) can be confident that participating investors have extensive experience in the resale market for structured finance products. In doing so, we believe we have identified a class of investors that can be assumed to be sophisticated and without need of the protection afforded by the Securities Act's registration provisions.[80] The definition would include all of the categories of institutions included in the definition of QIB, including all of the categories of entities identified in paragraph (a)(1)(i)(A) through (I) of current Rule 144A.

In determining whether a prospective purchaser is a SQIB, the seller and any person acting on its behalf would be permitted to rely on the same non-exclusive methods of establishing the prospective purchaser's ownership and discretionary investments of structured finance products as are currently available to a seller and its agents in determining whether a prospective purchaser is a QIB.

Unlike a QIB, a SQIB would also be required to satisfy certain qualitative standards relating to the investor's knowledge and experience in the purchase and surveillance of structured finance products and compliance with investment approval procedures in connection with those purchases. In determining whether a prospective purchaser satisfies these standards, the seller and any person acting on its behalf would be required to obtain a certification, as of a date no more than one year prior to the subject purchase, by the chief financial officer or another executive officer of the purchaser, on which the seller and its agent may reasonably rely, to the

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[79] *See* paragraph (a)(1)(y) of our proposed changes to Rule 144A.

[80] An institution that owns and invests on a discretionary basis a sufficient amount of structured finance products can be expected to have (i) personnel dedicated to evaluating for purchase, and monitoring the performance of, structured finance products; (ii) an understanding of, and access to, such modeling and other analytical tools as may be relevant to the purchase and monitoring of its investments in structured finance products; and (iii) investment approval procedures in connection with the purchase of structured finance products.
There is broad consensus in our membership that the criteria outlined in clauses (i) through (iii) above are the most meaningful measures of investor sophistication in the structured finance market. Member views on the level of invested assets at which an investor can be assumed to satisfy these measures varied both within and across constituencies. While some members believed the level should be lower and others higher, the predominant view was a level between $100 and $200 million in structured finance products, and so we have used the mid-point figure of $150 million for purposes of this letter.

effect that the purchaser has such knowledge and experience in the purchase and surveillance of structured finance products that it is capable of evaluating the merits and risk (including for tax, legal, regulatory, accounting and other financial purposes) of its prospective purchase and has investment approval procedures, and will comply with those procedures, in connection with the purchase of structured finance products.[81]

If the securities offered or sold are structured finance products that, by their terms, may be offered or sold only to SQIBs, or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believe is a SQIB, an issuer undertaking comparable to that required today – to provide, upon request, only basic, material information – would continue to be required, on the basis that SQIBs are sophisticated investors that are able to adequately assess their need for information and to determine when to proceed with an investment.[82]

If, on the other hand, the securities offered or sold are structured finance products that, by their terms, may be offered or sold to both SQIBs and QIBs, then an issuer undertaking comparable to that proposed by the Commission – to provide, upon request, substantially the same information as would be required in a registered transaction – would be required.[83]

3. Conforming Changes to Rule 506 of Regulation D and Rule 144

We recognize that the Commission's proposed information requirements would also apply to Rule 506 of Regulation D and Rule 144. Accordingly, we request and recommend that the Commission conform the requirements of Rule 506 of Regulation D and Rule 144 to our recommended changes to Rule 144A as described in Section V.B.1 and Section V.B.2 above.

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[81] We have recommended that two notes be added to our recommended Rule 144A(d)(1)(y):
(i) a note to make clear that the question of whether reliance on this certification was reasonable will depend on the facts and circumstances of a given situation and to identify a non-exclusive list of factors relevant to this analysis; and
(ii) a note to make clear that, in determining whether a prospective purchaser has sufficient knowledge and experience in the purchase of structured finance products, the purchaser shall take into account the experience of the purchaser's personnel in evaluating for purchase, and monitoring the performance of, a particular type or range of types of structured finance products and the characteristics of those structured finance products, including the sector of the asset-backed market, the type of underlying assets, the level of the capital structure, and such other factors as the purchaser determines to be relevant.

[82] We have recommended that a note be added to Rule 144A(d)(4)(i) to make clear within the rule itself that, with respect to structured finance products, paragraph (d)(4)(i) requires that the issuer (or the servicer or the trustee, on behalf of the issuer) provide, upon request of the holder or upon a prospective purchaser's request to the holder or the issuer, basic, material information concerning the structure of the securities and distributions thereon, the nature, performance and servicing of the assets supporting the securities, any credit enhancement mechanism associated with the securities, and copies of all transaction documentation relating to the securities in their then-current form. We added the last item in that list – copies of transaction documentation – in response to the request of our investor members.

[83] This approach is substantially similar to the approach taken by the Commission in current Rule 506 of Regulation D, which does not require any undertaking to provide information to accredited investors but requires that information comparable to that required in a registered transaction be delivered to non-accredited investors.

4. Transition

As a matter of transition, we think it is imperative that the amendments to the safe harbors apply only prospectively, to issuances of structured finance products, and to resales of structured finance products initially issued, on and after a specified effective date for the amendments. Conversely, structured finance products that are initially issued before the specified effective date, and resales of those products at any time, should be grandfathered in their entirety from the amendments and such transactions should continue to be exempt from the registration provisions of the Securities Act so long as they are undertaken in compliance with the exemptive framework as in effect at the time those products were initially issued. Otherwise, investors in the secondary market for products that were issued before the effective date for the amendments and that remain outstanding after the effective date could experience a decrease in the value of their investment simply as a result of the amendments themselves.

C. Additional ASF Member Views on Alternative Proposal

Our investor members are supportive of the SQIB concept, but they question whether it will adequately address their concern that issuers might seek to arbitrage the differing information delivery standards between the registered and private markets and thereby undercut the effectiveness of the Commission's proposals for enhanced disclosure and reporting. This concern stems largely from the fact that, at the height of the market, registered and Rule 144A term ABS priced at approximately the same levels, and so they question whether, in a similarly robust market, issuers that have historically operated in the registered market will have the necessary incentives to remain in that market and produce the information required for a registered transaction. Investors are also concerned that certain of the Commission's proposals for the registered market, such as the waiting period and loan-level disclosures, will create more incentive for issuers to use the private market to avoid the requirements for registered ABS transactions.

Investors believe that the Commission should take steps to inhibit potential migration between markets. They believe that imposing limits on the maximum size of transactions (*e.g.*, $250 million) and on maximum transaction volume on a rolling twelve-month basis (*e.g.*, $500 million), or limiting the size of the issuer that may rely on a safe harbor to access the private market are two potential ways to alleviate this concern. Investors also believe that requirements such as these would permit certain issuers who do not have the resources to access the public markets or who deal in products that cannot meet prescribed disclosure requirements to continue to access the private markets. However, a smaller group of our investor members who primarily invest in the private markets believe that if issue size limits are imposed, such limits would have to be considerably higher in order to support a meaningful private market that could accommodate small issuers and those asset types that do not fit, or cannot meet, the disclosure requirements prescribed for registered transactions.

At the same time, investors acknowledge that many of the less traditional products described above do not lend themselves to delivery of the information required for a registered transaction, and so recognize the tension that exists between creating incentives for some issuers to produce the information required for a registered transaction and permitting other issuers to operate under market-driven disclosure standards.[84]

Our issuer members feel that investor concerns about information arbitrage are overstated and unwarranted. Issuers point out that, for as long as the safe harbors have been available and before then, issuers have had the option of choosing between the more heavily-regulated registered market and the private market and are not aware of any issues of information arbitrage between the two markets, even after the adoption of Regulation AB with its enhanced disclosure and reporting requirements relating to static pool information and servicer assessment and attestation reports. Issuers observe that they have ample incentives to produce fulsome disclosure for a number of reasons, including the liability framework of the federal securities laws, the disclosure standards applicable in the registered markets (which operate as a benchmark for materiality), and the opportunities to access a deeper and more liquid market when selling securities in the registered market or, under our proposed revisions to Rule 144A, when selling to SQIBs and QIBs under Rule 144A.

Issuers are also very concerned with the idea of introducing transaction or issuer size limits in the safe harbors. Issuers point out that restrictions of this kind, at any level, are artificial and would produce arbitrary results – defining a category of investors that can fend for themselves but then imposing different information-delivery requirements based on the size of the issuer or offering. More fundamentally, issuers believe that proposals of this kind miscast the central issue by trying to use the safe harbors as a substitute for market discipline. They point out that, just as issuers have duties in the course of securities transactions, sophisticated investors also have duties to conduct appropriate due diligence and to consider and understand the risks of their investment decision in private transactions, and issuers strongly believe that conditions of the type proposed by the Commission, and those suggested by investors, operate to disincentivize investors from considering and understanding the risks of their investment decision by shifting that duty to issuers through prescribed information delivery requirements.

D. Proposed Securities Act Rule 192

The Commission proposes to adopt new Securities Act Rule 192 to require an issuer of privately-issued structured finance products to provide, upon the investors' request, information as would be required if the transaction were registered. Under our alternative proposal, proposed new Rule 192 would apply only if the securities offered or sold are structured finance products that, by their terms, may be offered or sold to a qualified institutional buyer that is not a SQIB.

Our only other request in connection with proposed new Rule 192 is that the Commission clarify that the question of whether the failure to provide the required information upon request constituted a fraud would depend on the facts and circumstances surrounding such failure and, as a result, would not constitute a fraud *per se*.

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[84] In addition, investors believe that resecuritizations of legacy RMBS and CMBS should be exempted from the Commission's proposed disclosure requirements for private placement transactions. Investors acknowledge that it would be difficult, if not impossible, for transactions involving RMBS and CMBS issued prior to the implementation of the proposals to meet the requirements and that it is important for these transactions to remain a viable option for issuers.

E. Proposed Form 144A-SF and Revisions to Form D

The Commission proposes to require a notice of an offering to be filed with the Commission on proposed Form 144A-SF for the initial placement of structured finance products that are represented as eligible for resale under Rule 144A. The notice would include specified information about the securitization and would be required to be filed in XML tagged format.[85] It would be signed by the issuer and filed with the Commission no later than 15 calendar days after the first sale of securities in the offering.

Similar to Form D, the Form 144A-SF notice requirement is not proposed to be a condition to the availability of the Rule 144A safe harbor, but the Commission is proposing to provide that if an issuer has failed to file a Form 144A-SF, then Rule 144A would not be available for subsequent resales of newly-issued structured finance products of the issuer or affiliates of the issuer until the notice that was required to be filed has been filed with the Commission.

We recognize and support the Commission's interest in improving transparency in the private market and in facilitating access to more information about sales of structured finance products in the private markets. However, we have concerns relating to the proposed consequences of a failure to file a Form 144A-SF.

We respectfully submit that, in light of the serious consequences that could be triggered by operation of this provision (namely, one or more resale transactions for which the safe harbor protections of Rule 144A would not be available), including serious consequences to any number of affiliates engaged in Rule 144A private placements of structured finance securities that have no knowledge of the subject issuer's failure to file the Form 144A-SF, the Commission revise this proposed rule to provide as follows:

> If the issuer fails to file Form 144A-SF as required under paragraph (f)(1) of this section, then the exemption under this section will not be available for subsequent resales of structured finance products that are newly issued by the issuer or any affiliate of the issuer *at any time after the second business day following the day on which the issuer becomes aware of such failure,* until the notice that was required to be filed has been filed with the Commission. [Emphasis added.]

We submit that this standard will not diminish an issuer's incentive to timely comply with its notice requirement but will provide an issuer with an opportunity to cure an inadvertent failure to file and, at the same time, afford a measure of equity for affiliates of the issuer engaged in Rule 144A private placements that have no knowledge of the issuer's failure to file.

* * *

[85] The Commission is also proposing to amend Form D to collect the same information that it is proposing to require to be provided in proposed Form 144A-SF.

VI. TRANSITION PERIOD

As has been noted in this letter, many of the proposed regulations represent a major change in registration, disclosure and ongoing reporting. Market participants have developed their businesses, practices and contractual arrangements around the existing offering and disclosure framework. Implementing policies, processes and procedures to adjust to changes of this magnitude, including changes to how information relating to the pool assets is collected and disseminated to other parties, will initially impose significant burdens on market participants and will take time.

- **Effective Date.** We strongly believe that compliance with several of the proposed rules will be a long and difficult process for many in the ABS industry. As the Commission notes, the pool-asset and data-tagging requirements will present particular challenges for the industry and, beyond that, compliance will in many cases involve unaffiliated parties (many of whom have no contractual obligation to cooperate), changes in systems, changes in operating procedures, amendments to existing documents and a list of other undertakings we have not even started to compile. In addition, as noted earlier in this letter, it is of paramount importance that any pool asset disclosure ultimately required be both beneficial to investors and feasible and appropriate for issuers to provide, and so we again encourage the Commission to phase in pool asset disclosure requirements in stages by asset sector, beginning with the private-label residential mortgage and credit and charge card asset sectors.

  As a result, our strong inclination would be to propose a very long transition period. However, we also recognize the Commission's interest in seeking implementation at the soonest practical time and our intent is to be reasonable in our requests. As a result, with the exception of the risk retention proposals (which we address below) and the proposed waterfall computer program (which we will address in a supplemental letter), we propose that the effective date be no earlier than the later of one year following the date of publication of the related final rules in the Federal Register and January 1, 2012.

  As noted earlier in this letter, we strongly believe that any action taken by the Commission to impose risk retention requirements should be undertaken through a coordinated approach, in accordance with the legislative mandate that such regulations be developed on an interagency basis. Accordingly, we believe the effective date for any risk retention requirements should align with those mandated under the Financial Reform Act – in the case of RMBS, one year after publication of the final risk retention rules in the Federal Register and, in the case of all other classes of ABS, two years after such publication.

- **Granting of Relief.** We request, however, that the Commission recognize that, notwithstanding the diligent efforts on the part of the ABS industry to comply, there almost certainly will be cases where compliance cannot be accomplished within this period of time. In those cases, we request an ability to apply for a hardship exemption and to be granted additional time to comply as needed on a case-by-case basis, or on a "class of transactions" basis, where the class might be defined by any number of common characteristics (*e.g.*, common depositor, sponsor or other transaction party, asset type or transaction structure).

- **Prospective Application; Treatment of Legacy Assets.** We note that the Commission currently anticipates that the new and amended rules would apply to ABS that are issued after the effective date of the new requirements, and that, as a consequence, resecuritizations after the effective date would be subject to the new requirements, regardless of whether issuance of underlying securities predates the effective date.

  We strongly agree that the new and amended rules should apply only prospectively and, conversely, that ABS issued prior to the effective date, or relevant effective dates, should be grandfathered and not be subject to the new and amended rules. However, we strongly disagree with the Commission's view on resecuritizations conducted after the effective date where issuance of the underlying securities predates the effective date. We believe it is essential that ABS supported by legacy assets (*i.e.*, assets originated prior to the effective date), including resecuritizations supported by legacy underlying securities, be grandfathered and not be subject to the new and amended rules, at least to the extent that information called for under those rules with respect to legacy assets is unknown and not available to the issuer without unreasonable effort or expense (similar to the standard in Item 1105(f) of Regulation AB). In addition to the complete absence of such disclosure in prospectuses and ongoing reports historically, in many cases ABS issuers and other transaction parties will not have maintained such information and, in any event, issuers may have no contractual entitlement to such information.

- **Registration.** In connection with the transition, we expect that most shelf registration statements will need to be pre-effectively or post-effectively amended to convert to the proposed new Form SF-3, to make the prospectus included in the registration statement compliant and to make any other required changes in the registration statement. We believe the Commission should adopt transition provisions similar to those applied at the time Regulation AB was initially adopted, to provide for a three or more-month grace period extending beyond the effective date of the new and amended rules within which to update registration statements in the case of registrants filing shelf registration statements with the Commission more than three months prior to the effective date.

- **Disclosure.** As stated above, with the exception of the risk retention proposals and the proposed waterfall computer program, we propose that the effective date be no earlier than the later of one year following the date of publication of the related final rules in the Federal Register and January 1, 2012. We propose that, if a prospectus is included in a new registration statement filed on or after the effective date, the new disclosure rules apply to that prospectus. With respect to any shelf registration statement filed prior to the effective date, we propose that the new disclosure rules apply to any prospectus filed pursuant to Securities Act Rule 424(b) or proposed Rule 424(h) after the effective date.

- **Ongoing Reporting.** As stated above, we propose that all ABS issued prior to the effective date, or relevant effective dates, should be grandfathered and not be subject to the new and amended rules, and that issuers of such ABS would continue to report under the current reporting framework and rules until such ABS are retired.

ASF very much appreciates the opportunity to provide the foregoing comments in response to the Commission's Proposing Release. Should you have any questions or desire any clarification concerning the matters addressed in this letter, please do not hesitate to contact me via telephone at 212-412-7107 or via e-mail at tdeutsch@americansecuritization.com, or ASF's outside counsel on these matters, Michael Mitchell of Orrick, Herrington & Sutcliffe LLP, via telephone at 202-339-8479 or via e-mail at mhmitchell@orrick.com, and Jordan Schwartz of Cadwalader, Wickersham & Taft LLP, via telephone at 212-504-6136 or via e-mail at jordan.schwartz@cwt.com.

Sincerely,

Tom Deutsch

Tom Deutsch
Executive Director
American Securitization Forum

cc: Via Hand Delivery

The Honorable Mary L. Schapiro, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Kathleen L. Casey, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Elisse B. Walter, Commissioner
Meredith B. Cross, Director, Division of Corporation Finance
Paula Dubberly, Deputy Director, Division of Corporation Finance
Katherine W. Hsu, Senior Special Counsel, Office of Rulemaking
Rolaine S. Bancroft, Special Counsel, Office of Structured Finance, Transportation and Leisure

EXHIBITS

Exhibit A
Proposed Revisions to General Instruction I.B.1(b) of Form SF-3

(b) *Third Party Determination or Opinion Provision in Transaction Agreement.* With respect to each offering of securities that is registered on this form, the pooling and servicing agreement or other transaction agreement, which shall be filed, contains a provision either (i)(A) requiring a independent third party to review pool assets upon the occurrence of one or more trigger events specified in the agreement [(which trigger events may include either the occurrence of a delinquency for the duration and during the period specified in the agreement or a bona fide and reasonably substantiated allegation of a breach)][1] for compliance with representations and warranties contained in the agreement and to recommend to the trustee whether or not to request that any party that has provided representations and warranties relating to the pool assets and that is obligated to repurchase any noncompliant pool asset or substitute for any noncompliant pool asset repurchase or substitute for such pool asset and (B) if the party that has provided representations and warranties relating to the pool assets disputes such independent third party's findings, requiring a binding determination of the representing party's obligation by a second independent third party or (ii) requiring any party that has provided representations and warranties relating to the pool assets and that is obligated to repurchase any noncompliant pool asset or substitute any noncompliant pool asset to furnish an opinion or certificate, furnished to the trustee at least each quarter, from ~~a non-affiliated~~an independent third party relating to any asset for which the trustee has asserted a breach of a representation or warranty and for which the asset was not repurchased or replaced by the obligated party on the basis of an assertion that the asset did not violate a representation or warranty contained in the pooling and servicing agreement or other transaction agreement.

[1] Our members have not come to consensus on defining what would trigger the initial review by the independent third party. Our investor members believe that the triggering event must be a quantitative test, such as the occurrence of a delinquency of a specified duration. Investors believe that such an objective test would ensure that the review and repurchase process remained truly independent. Our issuer members do not believe it is appropriate to limit the triggering event to one type of test and that flexibility should be included for a subjective component, such as a bona fide and substantiated allegation of breach by a securityholder. Such a qualitative test could be set forth in the transaction agreement and interpreted appropriately by the independent third party.

Exhibit B
Proposed Replacement to Item 601(b)(36) of Regulation S-K

(b) * * *

(36) *Depositor certification for shelf offerings of asset-backed securities.* For any offering of asset-backed securities (as defined in § 229.1101) made on a delayed basis under § 230.415(a)(1)(vii), provide the certification required by General Instruction I.B.iii. of Form SF-3 (referenced in § 239.45) exactly as set forth below:

Certification

I, [identify the certifying individual,] certify that:

1. I have reviewed the prospectus relating to [title of securities]; and

2. To my knowledge, the prospectus, and other information included in the registration statement, fairly present in all material respects the characteristics of the securitized assets backing the issue and the risks of ownership of the asset-backed securities, including all credit enhancements and all risk factors relating to the assets described therein that would affect the cash flows necessary to service payments of the securities as described in the prospectus.

Date: ______________________________

____
[Signature]

____
[Title]

The certification should be signed by the senior officer in charge of securitization of the depositor, as required by General Instruction I.B.1(c) of Form SF-3.

Exhibit C
Additional Fields to be Added from ASF RMBS Project RESTART Disclosure Package

ASF Field No.	Proposed Title and Definition	Proposed Response	Proposed Category of Information
n/a	**Master Servicer Name.** Please provide this information if MERS organization identification number is not provided for Item 1(a)(15) "Primary servicer."	Text	General information about the residential mortgage
n/a	**Special Servicer Name (if any).** Please provide this information if MERS organization identification number is not provided for Item 1(a)(15) "Primary servicer."	Text	General information about the residential mortgage
13	**Total Origination and Discount Points (in dollars)**. Amount paid to the lender to increase the lender's effective yield and, in the case of discount points, to reduce the interest rate paid by the borrower.	Number	General information about the residential mortgage
14	**Covered/High Cost Loan Indicator.** Indicates whether the loan is categorized as "high cost" or "covered" according to state or federal statutes or regulations.	0 = No 1 = Yes 99 = Unknown	General information about the residential mortgage
15	**Relocation Loan Indicator.** Indicates whether the loan is part of a corporate relocation program.	0 = No 1 = Yes 99 = Unknown	General information about the residential mortgage

ASF Field No.	Proposed Title and Definition	Proposed Response	Proposed Category of Information
18	**Escrow Indicator.** Indicates whether various Homeownership expenses are paid by the borrower directly or through an escrow account (as of securitization cut-off date).	0 = No Escrows 1 = Taxes 2 = Insurance 3 = HOA dues 4 = Taxes and Insurance 5 = All 99 =Unknown	General information about the residential mortgage
69	**Prepayment Penalty Hard Term.** For hybrid prepayment penalties, the number of months during which a "hard" prepayment penalty applies.	Number	Prepayment penalties
70	**Primary Borrower ID.** A lender-generated ID number for the primary borrower on the mortgage.	Number	General information about the residential mortgage
77	**Years in Home.** Length of time that the borrower has been at current address.	Number	General information about the obligor
78	**FICO Model Used.** Indicates whether the FICO score was calculated using the Classic, Classic 08, or Next Generation model.	1 = Classic 2 = Classic 08 3 = Next Generation 99 = Unknown	General information about the obligor
79	**Most Recent FICO Date.** Specifies the date on which the most recent FICO score was obtained	Date	General information about the obligor
93	**Credit Report: Longest Trade Line.** The length of time in months that the oldest active trade line, installment or revolving, has been outstanding. For a loan with more than one borrower, populate field based on status for the primary borrower.	Number	General information about the obligor

ASF Field No.	Proposed Title and Definition	Proposed Response	Proposed Category of Information
94	**Credit Report: Maximum Trade Line.** The dollar amount for the trade line, installment or revolving, with the largest unpaid balance. For revolving lines of credit, e.g. credit card, the dollar amount reported should reflect the maximum amount of credit available under the credit line whether used or not. For a loan with more than one borrower, populate field based on status for the primary borrower.	Number	General information about the obligor
95	**Credit Report: Number of Trade Lines.** A count of nonderogatory, currently open and active, consumer trade lines (installment or revolving) for the borrower. For a loan with more than one borrower, populate field based on status for the primary borrower.	Number	General information about the obligor
96	**Credit Line Usage Ratio.** Sum of credit balances divided by sum of total open credit available.	Number	General information about the obligor
106	**4506-T Indicator.** A yes/no indicator of whether a Transcript of Tax Return (received pursuant to the filing of IRS Form 4506-T) was obtained and considered.	0 = No 1 = Yes 99 = Unknown	General information about the obligor
151	**Pre-Modification Initial Interest Rate Change Downward Cap.** Maximum amount the rate can adjust downward on the first interest rate adjustment date (prior to modification) – Only provide if the rate floor is modified.	Number	Modification

ASF Field No.	Proposed Title and Definition	Proposed Response	Proposed Category of Information
152	**Pre-Modification Subsequent Interest Rate Cap.** Maximum increment the rate can adjust upward AFTER the initial rate adjustment (prior to modification) – Only provide if the Cap is modified.	Number	Modification
153	**Pre-Modification Next Interest Rate Change Date.** Next Interest Reset Date Under The Original Terms Of The Loan (one month prior to new payment due date).	Date	Modification
154	**Pre-Modification I/O Term.** Interest Only Term (in months) preceding The Modification Effective Payment Date.	Number	Modification
n/a	**Step Interest Rate.** The interest rate in effect after the next scheduled step.	Number	Modification
n/a	**Step Date.** The due date on which the next scheduled interest rate step goes into effect.	Number	Modification
n/a	**Step Principal and Interest.** The obligor's monthly principal and interest payment after giving effect to the next scheduled step.	Number	Modification

Exhibit D
Additional Fields to be Added from ASF RMBS Project RESTART Reporting Package

ASF Field No.	Proposed Title and Definition	Proposed Response	Proposed Category of Information
14	**Curtailment Amount**. The curtailment amount scheduled to be applied in the current reporting cycle.	Number	General information about the residential mortgage
15	**Curtailment Adjustment.** The curtailment interest applied to the curtailment amount, if applicable.	Number	General information about the residential mortgage
19	**Advancing Method.** A code indicating a servicer's responsibility for advancing principal or interest on delinquent loans.	1 = No Advancing 2 = Interest only 3 = Principal only 4 = Principal and Interest 99=Unavailable	General information about the residential mortgage
22	**Servicer-Placed Hazard Insurance.** A yes/no field indicating whether the hazard insurance on the property is servicer-placed.	0 = No 1 = Yes 99 = Unknown	General information about the residential mortgage
24	**Zero Balance Effective Date.** Date on which the loan balance was reduced to zero.	Date	Zero-balance loans

ASF Field No.	Proposed Title and Definition	Proposed Response	Proposed Category of Information
25	**Zero Balance Code.** A code indicating the reason the loan's balance was reduced to zero.	1 = Prepaid or Matured 2 = Third-party Sale 3 = Short sale (if no FC date) or Short Payoff 4 = Deed-in-Lieu 5 = Note Sale 6 = Repurchased 7 = Charged-off 8 = REO Liquidation 9 = Servicing Transfer 99=Unavailable	Zero-balance loans
27	**Make-Whole Indicator.** A Yes/No indicator identifying liquidated loans for which reimbursement has been made as a remedy for some manner of servicing or reps/warrants breach (had the breach been identified while the loan was active it would have been repurchased).	0 = No 1 = Yes 99 = Unknown	Liquidated loans
31	**Primary Servicer ID.** Unique identifier for the servicer (not the loan).	Number (Use MERS Org ID)	General information about the residential mortgage
32	**Master Servicer ID.** Unique identifier for the master servicer (not the loan), if applicable.	Number (Use MERS Org ID)	General information about the residential mortgage
33	**Special Servicer ID.** Unique identifier for the special servicer (not the loan), if applicable.	Number (Use MERS Org ID)	General information about the residential mortgage

ASF Field No.	Proposed Title and Definition	Proposed Response	Proposed Category of Information
34	**Subservicer ID.** Unique identifier for the subservicer (not the loan), if applicable.	Number (Use MERS Org ID)	General information about the residential mortgage
35	**Fraud Loss Amount.** A loss as a result of intentional misstatement, misrepresentation, or omission by an applicant or other interested parties, relied on by a lender or underwriter to provide funding for, to purchase, or to insure a mortgage loan.	Number	General information about the residential mortgage
38	**Paid-in-Full Amount.** The scheduled loan "paid in full" amount (principal) as reported by the Servicer (not including current month scheduled principal). Applies to all liquidations and loan payoffs.	Number	Liquidated and paid-off loans (including third-party sales and charge-offs)
40	**SCRA Code.** A code indicating the manner in which the servicer deals with loans subject to the Servicemembers Civil Relief Act.	Number	SCRA loans only
41	**SCRA Adjustment Amount.** For cases where servicemember interest relief is handled via subsidy, as opposed to changing the rate to 6% in the system, the amount of the SCRA subsidy.	Number	SCRA loans only
42	**Primary Servicing Fee.** The fee earned by the primary servicer for administering the loan, if applicable.	Number (>=0 and <=1)	General information about the residential mortgage
43	**Special Servicer Fee.** The fee earned by the special servicer for administering the loan, if applicable.	Number (>=0 and <=1)	General information about the residential mortgage

ASF Field No.	Proposed Title and Definition	Proposed Response	Proposed Category of Information
n/a	**Master Servicer Fee.** The fee earned by the master servicer for administering the loan, if applicable.	Number (>=0 and <=1)	General information about the residential mortgage
45	**Other Loan-level Fees.** Gross interest minus primary servicing fee (ASF field 42) minus special servicing fee (ASF field 43) minus master servicer fee (additional ASF proposed field) minus other servicing fees (ASF field 44) minus net passthrough rate.	Number (>=0 and <=1)	General information about the residential mortgage
46	**Delinquency Reporting Style — (MBA vs. OTS).** Indicates whether delinquency status is reported using the OTS/FFIEC rule or the MBA rule.	1 = MBA 2 = OTS 99 = Unknown	General information about the residential mortgage
52	**Senior lien Balance.** Where the subject loan is a junior lien (and where possible), the balance of the corresponding senior lien.	Number	General information about the residential mortgage
53	**Junior lien Balances.** Where the subject loan is a senior lien/ and where possible, the balances of all junior liens.	Number	General information about the residential mortgage
166	**Property Value.** The value of the subject property according to the most recently obtained property valuation, if an updated property value has been obtained (since original disclosure)	Number	General information about the residential mortgage
167	**Most Recent Property Valuation Type.** The type of valuation used to obtain the most recent value of the subject property, if an updated property value has been obtained (since original disclosure).	1 = AVM 2 = BPO 3 = Full Appraisal 99 = Unknown	General information about the residential mortgage

ASF Field No.	Proposed Title and Definition	Proposed Response	Proposed Category of Information
168	**Most Recent Property Valuation Date.** The date of the most recent subject property valuation, if an updated property value has been obtained (since original disclosure).	Date	General information about the residential mortgage
169	**Vacancy Type.** The reason the property is vacant.	1 = Deed-in-lieu 2 = Abandoned 3 = Eviction 4 = Cash for Keys 5 = Keys for Rental 99 = Unknown	Property is vacant
170	**Vacancy Date.** The date on which the subject property was found to be vacant or was vacated.	Date	Property is vacant
171	**Property Condition Code.** A code that indicates the condition of the property, if a property inspection has been performed	1 = Poor 2 = Fair 3 = Good 4 = Excellent 5 = Demolished 99 = Unknown	General information about the residential mortgage
172	**Property Inspection Date.** The date the most recent property inspection was performed, if a property inspection has been performed.	Date	General information about the residential mortgage

ASF Field No.	Proposed Title and Definition	Proposed Response	Proposed Category of Information
173	**Occupancy Code.** A code classifying the manner in which the property is occupied, if a property inspection has been performed.	1 = Owner- Occupied 2 = Transfer Owner-Occupied (Loan has been assumed) Assumed Owner-Occupied 3 = Non-owner Occupied (Tenant) 4 = Vacant (not secure) 5 = Vacant (secure) 6 = Adverse Occupant 7 = Occupied by Unknown Party 9 = Partially Vacant 99 = Unknown	General information about the residential mortgage
174	**Most Recent FICO Score.** The most recently obtained FICO score.	Number	General information about the obligor
175	**Most Recent FICO Score Date.** The date of the most recently obtained FICO score (if the servicer has acquired one).	Date	General information about the obligor
176	**Most Recent VantageScore Score.** The most recently obtained VantageScore score (if the servicer has acquired one).	Number	General information about the obligor
177	**Most Recent VantageScore Date.** The date of the most recently obtained VantageScore score (if the servicer has acquired one).	Date	General information about the obligor
179	**Postal Code.** The postal code (zip code in the US) where the subject property is located.	Text	General information about the residential mortgage
199	**Rental Receipts.** Rental receipts collected by the servicer.	Number	Liquidated loans

ASF Field No.	Proposed Title and Definition	Proposed Response	Proposed Category of Information
205	**Misc. Credits.** Any credit that does not have a line item on the loss claim spreadsheet.	Number	Liquidated loans
n/a (The ASF proposes that this field be added as Item 2(f)(3))	**Trial Modification Violated Date**. Provide the date on which the obligor ceased complying with the terms of the trial modification.	Date	Loss mitigation—Forbearance.

Exhibit E
Illustration of Representative Line Data Report for Credit and Charge Card Pools

Grouped Account Data Line Number	Credit Score[1]	Account Age	Geographic Region	Adjustable Rate Index	Aggregate Credit Limit	Aggregate Account Balance	Number of Accounts
1	No score	Less than 12 months	NE	Fixed			
2	Less than 600	12-23 months	SE	LIBOR			
3	600-659	24-35 months	MW	Prime			
4	660-719	36-47 months	S	Fixed			
5	720-779	48-59 months	W	LIBOR			
6	780 and over	60 or more months	NE	Prime			
7	No score	12-23 months	SE	Fixed			
8	Less than 600	24-35 months	MW	LIBOR			
9	600-659	36-47 months	S	Prime			
10	660-719	48-59 months	W	Fixed			
11	720-779	60 or more months	NE	LIBOR			
12	780 and over	Less than 12 months	SE	Prime			

[1] FICO may only be purchased on a statistically significant random sample of the underlying pool which may be used to populate this table. If the credit score used is not FICO, an issuer would designate similar groupings and provide explanatory disclosure.

Exhibit F
Form of Collateral Report for Credit and Charge Card Pools

Collateral Report - Credit Score[2]

Credit Score	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Credit Limit	Average Utilization Rate	Average Account Age	Percentage of Full Payers	Percentage of Minimum Payers	30-59 Days Deq.[3]	60-89 Days Deq.	90 + Days Deq.
No score											
Less than 600											
600-629											
630-659											
660-689											
690-719											
720-779											
780 and over											

[2] FICO may only be purchased on a statistically significant random sample of the underlying pool which may be used to populate this table. If the credit score used is not FICO, an issuer would designate similar groupings and provide explanatory disclosure.

[3] For each of the tables in the Collateral Report, if an issuer uses different delinquency groups as a matter of internal policy, the issuer would designate those groupings and provide explanatory disclosure.

Collateral Report - Delinquencies[4]

Delinquency	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Credit Limit	Average Utilization Rate	Average Account Age	Percentage of Full Payers	Percentage of Minimum Payers	Average Credit Score
Current-29 days									
30-59 days									
60-89 days									
90-119 days									
120-149 days									
150-179 days									
180 or more days									

[4] If an issuer uses different delinquency groups as a matter of internal policy, the issuer would designate those groupings and provide explanatory disclosure.

Collateral Report - Credit Limit

Credit Limit	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Utilization Rate	Average Account Age	Percentage of Full Payers	Percentage of Min. Payers	Average Credit Score	30-59 Days Deq.	60-89 Days Deq.	90 + Days Deq.
Less than $1000											
$1,000-$4,999.99											
$5,000-$9,999.99											
$10,000-$19,999.99											
$20,000-$29,999.99											
$30,000-$39,999.99											
$40,000-$49,999.99											
$50,000 or more											
Other[5]											

[5] If accounts are grouped into the "Other" category, the issuer must include a footnote explaining why the accounts did not fit into one of the prescribed groups.

Collateral Report - Account Balance

Account Balance	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Credit Limit	Average Utilization Rate	Average Account Age	Percentage of Full Payers	Percentage of Min. Payers	Average Credit Score	30-59 Days Deq.	60-89 Days Deq.	90 + Days Deq.
Credit Balance												
No Balance												
Less than $1000												
$1,000-$4,999.99												
$5,000-$9,999.99												
$10,000-$19,999.99												
$20,000-$29,999.99												
$30,000-$39,999.99												
$40,000-$49,999.99												
$50,000 or more												

Collateral Report - Account Age

Account Age	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Credit Limit	Average Utilization Rate	Percentage of Full Payers	Percentage of Min. Payers	Average Credit Score	30-59 Days Delinquent	60-89 Days Delinquent	90 + Days Delinquent
Less than 12 months											
12-23 months											
24-35 months											
36-47 months											
48-59 months											
60-83 months											
84-119 months											
120 or more months											

Collateral Report - Top 10 States

State	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Credit Limit	Average Utilization Rate	Average Account Age	Percentage of Full Payers	Percentage of Min. Payers	Average Credit Score	30-59 Days Delinquent	60-89 Days Delinquent	90 + Days Delinquent
[State 1]												
[State 2]												
[State 3]												
[State 4]												
[State 5]												
[State 6]												
[State 7]												
[State 8]												
[State 9]												
[State 10]												
Other												

Collateral Report - Geographic Region

Geographic Region	Number of Accounts	Aggregate Account Balance	Percentage of Aggregate Account Balance	Average Credit Limit	Average Utilization Rate	Average Account Age	Percentage of Full Payers	Percentage of Min. Payers	Average Credit Score	30-59 Days Deq.	60-89 Days Deq.	90 + Days Deq.
Northeast												
Southeast												
Midwest												
South												
West												

Exhibit G
Form of Report on Charged-Off Accounts for Credit and Charge Card Pools

Composition of Charged-Off Accounts by Credit Score
For the [3 months ended XXXX, 20XX]

Credit Score[6]	Number of Charged-Off Accounts	Percentage of Total Charged-Off Accounts	Aggregate Account Balance at Time of Charge-Off	Percentage of Total Account Balance at Time of Charge-Off
No score				
Less than 600				
600-629				
630-659				
660-689				
690-719				
720-779				
780 and Over				
Total				

[6] FICO may only be purchased on a statistically significant random sample of the underlying pool which may be used to populate this table. Also, FICO credit scores are not purchased for charged-off accounts and, therefore, the information in this table would be based on the most recently refreshed FICO scores for the charged-off accounts, to the extent they are available. If the credit score used is not FICO, an issuer would designate similar groupings and provide explanatory disclosure.

Composition of Charged-Off Accounts by Account Balance at Time of Charge-Off
For the [3 months ended XXXX, 20XX]

Account Balance	Number of Charged-Off Accounts	Percentage of Total Charged-Off Accounts	Aggregate Account Balance at Time of Charge-Off	Percentage of Total Account Balance at Time of Charge-Off
Credit Balance				
No Balance				
Less than $1,000				
$1,000-$4,999.99				
$5,000-$9,999.99				
$10,000-$19,999.99				
$20,000-$29,999.99				
$30,000-$39,999.99				
$40,000-$49,999.99				
$50,000 or more				
Total				

Composition of Charged-Off Accounts by Credit Limit at Time of Charge-Off
For the [3 months ended XXXX, 20XX]

Credit Limit	Number of Charged-Off Accounts	Percentage of Total Charged-Off Accounts	Aggregate Account Balance at Time of Charge-Off	Percentage of Total Account Balance at Time of Charge-Off
Less than $1,000				
$1,000-$4,999.99				
$5,000-$9,999.99				
$10,000-$19,999.99				
$20,000-$29,999.99				
$30,000-$39,999.99				
$40,000-$49,999.99				
$50,000 or more				
Other[7]				
Total				

[7] If accounts are grouped into the "Other" category, the issuer must include a footnote explaining why the accounts did not fit into one of the prescribed groups.

Composition of Charged-Off Accounts by Account Age at Time of Charge-Off
For the [3 months ended XXXX, 20XX]

Account Age	Number of Charged-Off Accounts	Percentage of Total Charged-Off Accounts	Aggregate Account Balance at Time of Charge-Off	Percentage of Total Account Balance at Time of Charge-Off
Less than 12 months				
12-23 months				
24-35 months				
36-47 months				
48-59 months				
60-83 months				
84-119 months				
120 or more months				
Total				

Composition of Charged-Off Accounts by State at Time of Charge-Off
For the [3 months ended XXXX, 20XX]

State	Number of Charged-Off Accounts	Percentage of Total Charged-Off Accounts	Aggregate Account Balance at Time of Charge-Off	Percentage of Total Account Balance at Time of Charge-Off
[State 1]				
[State 2]				
[State 3]				
[State 4]				
[State 5]				
[State 6]				
[State 7]				
[State 8]				
[State 9]				
[State 10]				
Other				
Total				

Composition of Charged-Off Accounts by Geographic Region at Time of Charge-Off
For the [3 months ended XXXX, 20XX]

Geographic Region	Number of Charged-Off Accounts	Percentage of Total Charged-Off Accounts	Aggregate Account Balance at Time of Charge-Off	Percentage of Total Account Balance at Time of Charge-Off
Northeast				
Southeast				
Midwest				
South				
West				
Total				

Exhibit H
Proposed Revisions to Item 1104(f)(1) of Regulation AB

§ 229.1104 (Item 1104) Sponsors.

* * * * *

(e) Describe any interest that the sponsor has retained in the transaction, including amount and nature of that interest. If the offering is registered on Form SF–1 (§ 239.44), provide disclosure (if applicable) that the sponsor is not required by law to retain any interest in the securities and may sell any interest initially retained at any time.

(f) If the sponsor is required to repurchase or replace any asset for breach of a representation and warranty pursuant to the transaction agreements, provide the following information:

(1) On a pool by pool basis, the amount, if material, of the publicly securitized assets <u>of the same asset class as the assets in the transaction</u> originated or sold by the sponsor that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets that has been made ~~in the prior three years~~ pursuant to the transaction agreements <u>during the lesser of the period since [implementation date of revised Item 1104] and the prior three years</u>. Provide the percentage of that amount that were not then repurchased or replaced by the sponsor. Of those assets that were not then repurchased or replaced, disclose whether an opinion <u>or certificate</u> of a third party not affiliated with the sponsor had been furnished to the trustee that confirms that the assets did not violate a representation or warranty.

Exhibit I
Proposed Revisions to Item 1110(c)(1) of Regulation AB

§ 229.1110 (Item 1110) Originators.

(a) Identify any originator or group of affiliated originators, apart from the sponsor or its affiliates, provided, however, identification of an originator is not required if such originator has originated, or is expected to originate, less than 10% of the pool assets and the cumulative amount of originated assets by parties other than the sponsor (or its affiliates) comprises less than 10% of the total pool assets.

(b) * * *

(3) Describe any interest that the originator has retained in the transaction, including amount and nature of that interest.

(c) For any originator identified under paragraph (b) of this section, if such originator is required to repurchase or replace a pool asset for breach of a representation and warranty pursuant to the transaction agreements, provide the following information:

(1) On a pool by pool basis, the amount, if material, of the publicly securitized assets of the same asset class as the assets in the transaction originated or sold by the originator that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets that has been made ~~in the prior three years~~ pursuant to the transaction agreements during the lesser of the period since [implementation date of revised Item 1104] and the prior three years. Provide the percentage of that amount that were not then repurchased or replaced by the originator. Of those assets that were not then repurchased or replaced, disclose whether an opinion or certificate of a third party not affiliated with the originator had been furnished to the trustee that confirms that the assets did not violate ~~the representations and warranties~~ a representation or warranty.

Exhibit J
Proposed Revisions to Items 1104(f)(2) and 1110(c)(2) of Regulation AB

§ 229.1104 (Item 1104) Sponsors.

*** * * * ***

(f) *** * ***

(2) The sponsor's financial condition to the extent that there is a material risk that the ~~financial condition could have a material impact~~effect on its ability to comply with the provisions relating to the repurchase obligations for those assets ~~or otherwise materially impact the pool~~resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities.

§ 229.1110 (Item 1110) Originators.

*** * * * ***

(c) *** * ***

(2) The originator's financial condition to the extent that there is a material risk that the ~~financial condition could have a material impact~~effect on the origination of the originator's assets in the pool or on its ability to comply with the provisions relating to the repurchase obligations for those assets resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities.

Exhibit K
Proposed Revisions to Item 1121(c) of Regulation AB

§ 229.1121 (Item 1121) Distribution and pool performance information.

(a) * * *

(9) Delinquency and loss information for the period. Refer to Item 1100(b) of this Regulation AB for presentation of historical delinquency and loss information.

* * * * *

(c) If the sponsor or an originator is required to repurchase or replace any of the pool assets for breach of a representation and warranty pursuant to the transaction agreements, provide the amount, if material, of the publicly securitized assets originated or sold by the obligor (i.e., the sponsor or the originator) that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets that has been made in the period covered by the report pursuant to the transaction agreements. ~~Also provide~~In addition, on the first report filed after the end of each calendar quarter, disclose (i) the total number of properly authorized demands made under the transaction agreements during the second preceding calendar quarter (and not rescinded) to repurchase or replace assets for breach of the representations and warranties, (ii) the percentage of that amount that were not then repurchased or replaced by the obligor~~. Of~~ and (iii) of those assets that were not then repurchased or replaced, ~~disclose~~ whether an opinion or certificate of a third party not affiliated with the obligor had been furnished to the trustee that confirms that the assets did not violate the representations and warranties.

Exhibit L
Proposed Revisions to Item 1100(b) of Regulation AB

§ 229.1100 (Item 1100) General.

(b) *Presentation of historical delinquency and loss information.* Several Items in Regulation AB call for the presentation of historical information and data on delinquencies and loss information. In providing such information:

(1) Present delinquency experience in 30 or 31 day increments, as applicable, beginning at least with assets that are 30 or 31 days delinquent, as applicable, through the earlier of:

(i) the point that assets are written off or charged off as uncollectable~~.~~; and

(ii) (A) in the case of asset-backed securities supported by receivables or other financial assets that are themselves supported, directly or indirectly, by physical assets that have finite lives over which their value depreciates (such as motor vehicles or equipment), the point that assets are 119 or 120 days delinquent; and

(B) in all other cases, the point that assets are 179 or 180 days delinquent;

provided, *however*, that, in the case of clause (ii)(B) above, delinquency experience should be presented in an additional 180 day increment (*i.e.*, through the point that assets are 359 or 360 days delinquent) and, in the case of clauses (ii)(A) and (B) above, delinquency experience should be presented for such additional periods, and in such additional increments, as may be material to investors and, in any event, delinquency experience should be presented in a final increment through the point that assets are written off or charged off as uncollectable. At a minimum, present such information by number of accounts and dollar amount. Present statistical information in a tabular or graphical format, if such presentation will aid understanding.

Exhibit M
Proposed Revisions to Rule 144A of the Securities Act of 1933

§ 230.144A Private resales of securities to institutions.

Preliminary Notes: 1. This section relates solely to the application of section 5 of the Act and not to antifraud or other provisions of the federal securities laws.

2. Attempted compliance with this section does not act as an exclusive election; any seller hereunder may also claim the availability of any other applicable exemption from the registration requirements of the Act.

3. In view of the objective of this section and the policies underlying the Act, this section is not available with respect to any transaction or series of transactions that, although in technical compliance with this section, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

4. Nothing in this section obviates the need for any issuer or any other person to comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act of 1934 (the *Exchange Act*), whenever such requirements are applicable.

5. Nothing in this section obviates the need for any person to comply with any applicable state law relating to the offer or sale of securities.

6. Securities acquired in a transaction made pursuant to the provisions of this section are deemed to be *restricted securities* within the meaning of §230.144(a)(3) of this chapter.

7. The fact that purchasers of securities from the issuer thereof may purchase such securities with a view to reselling such securities pursuant to this section will not affect the availability to such issuer of an exemption under section 4(2) of the Act, or Regulation D under the Act, from the registration requirements of the Act.

(a) *Definitions.* (1) For purposes of this section, *qualified institutional buyer* shall mean:

(x) For purposes of the purchase of securities, other than structured finance products:

(i) Any of the following entities, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least $100 million in securities of issuers that are not affiliated with the entity:

(A) Any *insurance company* as defined in section 2(13) of the Act;

Note: A purchase by an insurance company for one or more of its separate accounts, as defined by section 2(a)(37) of the Investment Company Act of 1940 (the “Investment Company Act”), which are neither registered under section 8 of the Investment Company Act nor required to be so registered, shall be deemed to be a purchase for the account of such insurance company.

(B) Any *investment company* registered under the Investment Company Act or any *business development company* as defined in section 2(a)(48) of that Act;

(C) Any *Small Business Investment Company* licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;

(D) Any *plan* established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;

(E) Any *employee benefit plan* within the meaning of title I of the Employee Retirement Income Security Act of 1974;

(F) Any trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in paragraph (a)(1)(i) (D) or (E) of this section, except trust funds that include as participants individual retirement accounts or H.R. 10 plans.

(G) Any *business development company* as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(H) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation (other than a bank as defined in section 3(a)(2) of the Act or a savings and loan association or other institution referenced in section 3(a)(5)(A) of the Act or a foreign bank or savings and loan association or equivalent institution), partnership, or Massachusetts or similar business trust; and

(I) Any *investment adviser* registered under the Investment Advisers Act.

(ii) Any *dealer* registered pursuant to section 15 of the Exchange Act, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least $10 million of securities of issuers that are not affiliated with the dealer, *Provided,* That securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer;

(iii) Any *dealer* registered pursuant to section 15 of the Exchange Act acting in a riskless principal transaction on behalf of a qualified institutional buyer;

Note: A registered dealer may act as agent, on a non-discretionary basis, in a transaction with a qualified institutional buyer without itself having to be a qualified institutional buyer.

(iv) Any investment company registered under the Investment Company Act, acting for its own account or for the accounts of other qualified institutional buyers, that is part of a family of investment companies which own in the aggregate at least $100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. *Family of investment companies* means any two or more investment companies registered under the Investment Company Act, except for a unit investment trust whose assets consist solely of shares of one or more registered investment companies, that have the same investment adviser (or, in the case of unit investment trusts, the same depositor), Provided That, for purposes of this section:

(A) Each series of a series company (as defined in Rule 18f–2 under the Investment Company Act [17 CFR 270.18f–2]) shall be deemed to be a separate investment company; and

(B) Investment companies shall be deemed to have the same adviser (or depositor) if their advisers (or depositors) are majority-owned subsidiaries of the same parent, or if one investment company's adviser (or depositor) is a majority-owned subsidiary of the other investment company's adviser (or depositor);

(v) Any entity, all of the equity owners of which are qualified institutional buyers, acting for its own account or the accounts of other qualified institutional buyers; and

(vi) Any *bank* as defined in section 3(a)(2) of the Act, any savings and loan association or other institution as referenced in section 3(a)(5)(A) of the Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least $100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least $25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale under the Rule in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution.

<u>(y) For purposes of the purchase of structured finance products:</u>

<u>(i) Any of the following entities:</u>

<u>(A) Any of the entities identified in paragraph (a)(1)(x)(i)(A) through (I) of this section, acting for its own account or the accounts of other qualified institutional buyers of structured finance products, that in the aggregate owns and invests on a discretionary basis at least $150 million in structured finance products of issuers that are not affiliated with the entity;</u>

<u>(B) Any dealer identified in paragraph (a)(1)(x)(ii) of this section, acting for its own account or the accounts of other qualified institutional buyers of structured finance products, that in the aggregate owns and invests on a discretionary</u>

basis at least $10 million in structured finance products of issuers that are not affiliated with the dealer, *Provided*, That securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer;

(C) Any dealer identified in paragraph (a)(1)(x)(iii) of this section acting in a riskless principal transaction on behalf of a qualified institutional buyer of structured finance products;

Note: A registered dealer may act as agent, on a non-discretionary basis, in a transaction with a qualified institutional buyer of structured finance products without itself having to be a qualified institutional buyer of structured finance products.

(D) Any investment company identified in paragraph (a)(1)(x)(iv) of this section, acting for its own account or for the accounts of other qualified institutional buyers of structured finance products, that is part of a family of investment companies which own in the aggregate at least $150 million in structured finance products of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. *Family of investment companies* has the meaning specified in paragraph (a)(1)(x)(iv) of this section;

(E) Any entity, all of the equity owners of which are qualified institutional buyers of structured finance products, acting for its own account or the accounts of other qualified institutional buyers of structured finance products; and

(F) Any bank, savings and loan association, foreign bank or savings and loan association, or other institution identified in paragraph (a)(1)(x)(vi) of this section, acting for its own account or the accounts of other qualified institutional buyers of structured finance products, that in the aggregate owns and invests on a discretionary basis at least $150 million in structured finance products of issuers that are not affiliated with it and that has an audited net worth of at least $25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale under the Rule in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution.

(ii) where such entity has such knowledge and experience in the purchase and surveillance of structured finance products that it is capable of evaluating the merits and risks (including for tax, legal, regulatory, accounting and other financial purposes) of its prospective purchase; and

(iii) where such entity has investment approval procedures, and will comply with those procedures, in connection with the purchase of structured finance products.

(2) In determining the aggregate amount of securities owned and invested on a discretionary basis by an entity, the following instruments and interests shall be excluded: bank deposit notes and certificates of deposit; loan participations; repurchase agreements; securities owned but subject to a repurchase agreement; and currency, interest rate and commodity swaps.

(3) The aggregate value of securities owned and invested on a discretionary basis by an entity shall be the cost of such securities, except where the entity reports its securities holdings in its financial statements on the basis of their market value, and no current information with respect to the cost of those securities has been published. In the latter event, the securities may be valued at market for purposes of this section.

(4) In determining the aggregate amount of securities owned by an entity and invested on a discretionary basis, securities owned by subsidiaries of the entity that are consolidated with the entity in its financial statements prepared in accordance with generally accepted accounting principles may be included if the investments of such subsidiaries are managed under the direction of the entity, except that, unless the entity is a reporting company under section 13 or 15(d) of the Exchange Act, securities owned by such subsidiaries may not be included if the entity itself is a majority-owned subsidiary that would be included in the consolidated financial statements of another enterprise.

(5) For purposes of this section, *riskless principal transaction* means a transaction in which a dealer buys a security from any person and makes a simultaneous offsetting sale of such security to a qualified institutional buyer, including another dealer acting as riskless principal for a qualified institutional buyer.

(6) For purposes of this section, *effective conversion premium* means the amount, expressed as a percentage of the security's conversion value, by which the price at issuance of a convertible security exceeds its conversion value.

(7) For purposes of this section, *effective exercise premium* means the amount, expressed as a percentage of the warrant's exercise value, by which the sum of the price at issuance and the exercise price of a warrant exceeds its exercise value.

(8) For purposes of this section, a ''structured finance product'' means:

[placeholder for definition as adopted by the Commission after considering market commentary]

(9) For the avoidance of doubt, the term "securities" as used in this section includes structured finance products.

(b) *Sales by persons other than issuers or dealers.* Any person, other than the issuer or a dealer, who offers or sells securities in compliance with the conditions set forth in paragraph (d) of this section shall be deemed not to be engaged in a distribution of such securities and therefore not to be an underwriter of such securities within the meaning of sections 2(11) and 4(1) of the Act.

(c) *Sales by dealers.* Any dealer who offers or sells securities in compliance with the conditions set forth in paragraph (d) of this section shall be deemed not to be a participant in a distribution of such securities within the meaning of section 4(3)(C) of the Act and not to be an underwriter of such securities within the meaning of section 2(11) of the Act, and such securities shall be deemed not to have been offered to the public within the meaning of section 4(3)(A) of the Act.

(d) *Conditions to be met.* To qualify for exemption under this section, an offer or sale must meet the following conditions:

(1) The securities are offered or sold only to a qualified institutional buyer or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believe is a qualified institutional buyer.

(x) In determining whether a prospective purchaser is a qualified institutional buye**r** for purposes of the purchase of any security (including any structured finance product), the seller and any person acting on its behalf shall be entitled to rely upon the following non-exclusive methods of establishing the prospective purchaser's ownership and discretionary investments of securities or, for purposes of the purchase of any structured finance product, the prospective purchaser's ownership and discretionary investments of structured finance products:

(i) The prospective purchaser's most recent publicly available financial statements, *Provided* That such statements present the information as of a date within 16 months preceding the date of sale of securities under this section in the case of a U.S. purchaser and within 18 months preceding such date of sale for a foreign purchaser;

(ii) The most recent publicly available information appearing in documents filed by the prospective purchaser with the Commission or another United States federal, state, or local governmental agency or self-regulatory organization, or with a foreign governmental agency or self-regulatory organization, *Provided* That any such information is as of a date within 16 months preceding the date of sale of securities under this section in the case of a U.S. purchaser and within 18 months preceding such date of sale for a foreign purchaser;

(iii) The most recent publicly available information appearing in a recognized securities manual, *Provided* That such information is as of a date within 16 months preceding the date of sale of securities under this section in the case of a U.S. purchaser and within 18 months preceding such date of sale for a foreign purchaser; or

(iv) A certification by the chief financial officer, a person fulfilling an equivalent function, or other executive officer of the purchaser, specifying the amount of securities owned and invested on a discretionary basis (or, for purposes of the purchase of any structured finance product, specifying the amount of structured finance products owned and invested on a discretionary basis) by the purchaser as of a specific date on or since the close of the purchaser's most recent fiscal year, or, in the case of a purchaser that is a member of a family of investment companies, a certification by an executive officer of the investment adviser specifying the amount of securities owned (or, for purposes of the purchase of any structured finance product, specifying the amount of structured finance products owned) by the family of investment companies as of a specific date on or since the close of the purchaser's most recent fiscal year;

(y) In determining whether a prospective purchaser is a qualified institutional buyer for purposes of the purchase of any structured finance product, the seller and any person acting on its behalf shall be required to obtain a certification, as of a date no more than one year prior to such purchase, by the chief financial officer, a person fulfilling an equivalent function, or other executive officer of the purchaser (or, in the case of a purchaser that is a member of a family of investment companies, a certification by an executive officer of the investment adviser), on which the seller and any person acting on its behalf may reasonably rely, to the effect that the purchaser has such knowledge and experience in the purchase and surveillance of structured finance products that it is capable of evaluating the merits and risks (including for tax, legal, regulatory, accounting and other financial purposes) of its prospective purchase and has investment approval procedures, and will comply with those procedures, in connection with the purchase of structured finance products.

Notes: 1. The question of whether reliance on the certification described in paragraph (d)(1)(y) of this section was reasonable will depend on the facts and circumstances of a given situation. Factors relevant to this analysis would include, but not be limited to, an awareness of: (1) ongoing or prior breaches by the purchaser (or investment adviser) of its certifications delivered to such seller; or (2) a pattern of conduct by the purchaser (or investment adviser) where it fails to promptly address such breaches. Neither the seller nor any person acting on behalf of the seller is required to enforce compliance with a purchaser's (or investment adviser's) certifications; however, if, for example, a seller or any person acting on behalf of the seller had knowledge that a purchaser (or investment adviser) had not complied with its certifications, the seller or person acting on behalf of the seller would be on notice that future reliance on that purchaser's (or investment adviser's) certifications might not be reasonable.

2. In determining whether a prospective purchaser has sufficient knowledge and experience in the purchase of structured finance products, the purchaser (or investment adviser) shall take into account the experience of the purchaser's (or investment adviser's) personnel in evaluating for purchase, and monitoring the performance of, a particular type or range of types of structured finance products and the characteristics of those structured finance products, including the sector of the asset-backed market, the type of underlying assets, the level of the capital structure, and such other factors as the purchaser (or investment adviser) determines to be relevant.

(2) The seller and any person acting on its behalf takes reasonable steps to ensure that the purchaser is aware that the seller may rely on the exemption from the provisions of section 5 of the Act provided by this section;

(3) The securities offered or sold:

(i) Were not, when issued, of the same class as securities listed on a national securities exchange registered under section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system; *Provided,* That securities that are convertible or exchangeable into securities so listed or quoted at the time of issuance and that had an effective conversion premium of less than 10 percent, shall be treated as securities of the class into which they are convertible or exchangeable; and that warrants that may be exercised for securities so listed or quoted at the time of issuance, for a period of less than 3 years from the date of issuance, or that had an effective exercise premium of less than 10 percent, shall be treated as securities of the class to be issued upon exercise; and *Provided further,* That the Commission may from time to time, taking into account then-existing market practices, designate additional securities and classes of securities that will not be deemed of the same class as securities listed on a national securities exchange or quoted in a U.S. automated inter-dealer quotation system; and

(ii) Are not securities of an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under section 8 of the Investment Company Act; and

(4)(i) In the case of securities of an issuer that is neither subject to section 13 or 15(d) of the Exchange Act, nor exempt from reporting pursuant to Rule 12g3–2(b) (§240.12g3–2(b) of this chapter) under the Exchange Act, nor a foreign government as defined in Rule 405 (§230.405 of this chapter) eligible to register securities under Schedule B of the Act, the holder and a prospective purchaser designated by the holder have the right to obtain from the issuer, upon request of the holder, and the prospective purchaser has received from the issuer, the seller, or a person acting on either of their behalf, at or prior to the time of sale, upon such prospective purchaser's request to the holder or the issuer, the following information (which shall be reasonably current in relation to the date of resale under this section): a very brief statement of the nature of the business of the issuer and the products and services it offers; and the issuer's most recent balance sheet and profit and loss and retained earnings statements, and similar financial statements for such part of the two preceding fiscal years as the issuer has been in operation (the financial statements should be audited to the extent reasonably available)**;**

Note: With respect to structured finance products that, by their terms, may be offered and sold only to qualified institutional buyers identified in paragraph (a)(1)(y) of this section, instead of the financial statements and other information required about issuers of more traditional structure, paragraph (d)(4)(i) of this section requires that the issuer (or the servicer or the trustee, on behalf of the issuer) provide, upon request of the holder or upon the prospective purchaser's request to the holder or the issuer, basic, material information concerning the structure of the securities and distributions thereon, the nature, performance and servicing of the assets supporting the securities, any credit enhancement mechanism associated with the securities, and copies of all transaction documentation relating to the securities in their then-current form**.**

(ii) The requirement that the information be *reasonably current* will be presumed to be satisfied if:

(A) The balance sheet is as of a date less than 16 months before the date of resale, the statements of profit and loss and retained earnings are for the 12 months preceding the date of such balance sheet, and if such balance sheet is not as of a date less than 6 months before the date of resale, it shall be accompanied by additional statements of profit and loss and retained earnings for the period from the date of such balance sheet to a date less than 6 months before the date of resale; and

(B) The statement of the nature of the issuer's business and its products and services offered is as of a date within 12 months prior to the date of resale; or

(C) With regard to foreign private issuers, the required information meets the timing requirements of the issuer's home country or principal trading markets.

(iii) If the securities offered or sold are structured finance products that, by their terms, may be offered or sold to a qualified institutional buyer that is not identified in paragraph (a)(1)(y) of this section, then the requirements of paragraph (d)(4)(i) of this section shall be satisfied if:

(A) An underlying transaction agreement grants any initial purchaser, any security holder and a prospective purchaser designated by a security holder the right to obtain from the issuer promptly, upon request of the purchaser or holder, information as would be required if the offering were registered on Form S–1 or Form SF–1 under the Securities Act and any ongoing information regarding the securities that would be required by Section 15(d) of the Exchange Act if the issuer were required to report under that section; and

(B) The issuer represents that it will provide such information that is required by paragraph (d)(4)(iii)(A) of this section, upon request of the purchaser or holder.

(e) Offers and sales of securities pursuant to this section shall be deemed not to affect the availability of any exemption or safe harbor relating to any previous or subsequent offer or sale of such securities by the issuer or any prior or subsequent holder thereof.

(f)(1) If the securities offered or sold are structured finance products, the issuer shall file with the Commission a notice of the initial placement of securities that are represented as eligible for resale in reliance on this rule containing the information required by Form 144A–SF (17 CFR 239.144A). The notice shall be signed by the issuer and filed no later than 15 calendar days after the first sale of securities in the offering, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date shall be the first business day following such period.

(2) If the issuer fails to file Form 144A–SF as required under paragraph (f)(1) of this section, then the exemption under this section will not be available for subsequent resales of structured finance products that are newly issued by the issuer or any affiliate of the issuer at any time after the second business day following the day on which the issuer becomes aware of such failure, until the notice that was required to be filed has been filed with the Commission.

ATTACHMENTS

ATTACHMENT I

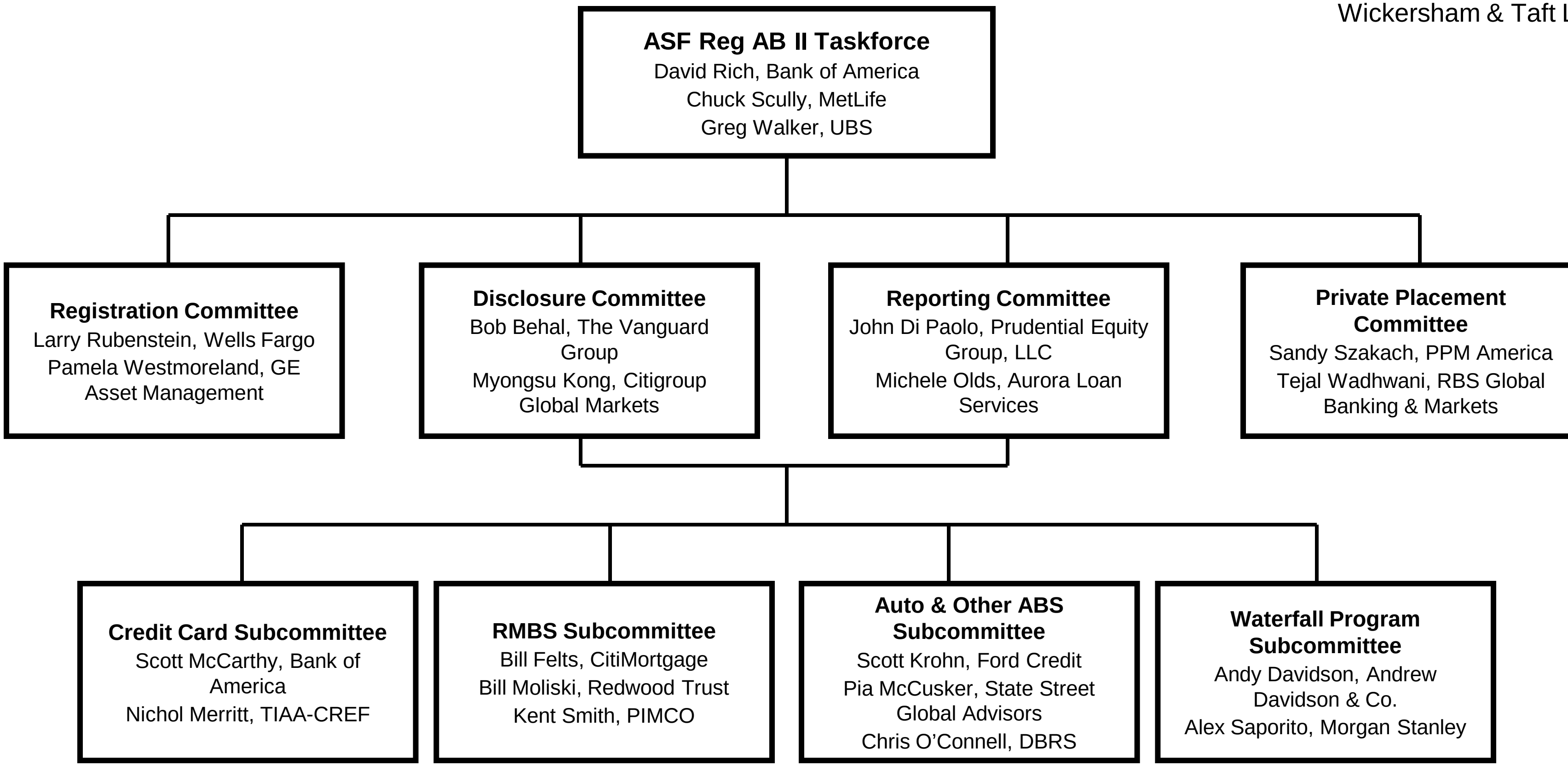
ASF Reg AB II Taskforce Chart

ASF Reg AB II Taskforce Chart

ASF Outside Counsel:

Michael Mitchell, Orrick, Herrington & Sutcliffe LLP

Jordan Schwartz, Cadwalader, Wickersham & Taft LLP



*Standing ASF subforums will meet to discuss any/all aspects of proposals and report to chairs of relevant committees or subcommittees.

If you would like to join any of the ASF Reg AB II Taskforce Committees or Subcommittees, please contact Evan Siegert, ASF Associate Director, at esiegert@americansecuritization.com. To join the ASF, please contact Tom Deutsch, ASF Executive Director, at tdeutsch@americansecuritization.com.
For more information about ASF, its members and activities, please go to www.americansecuritization.com.

ATTACHMENT II

The Role and Importance of Securitization to the Financial System and U.S. Economy

THE ROLE AND IMPORTANCE OF SECURITIZATION TO THE FINANCIAL SYSTEM AND U.S. ECONOMY

Securitization generally refers to the process by which consumer and business assets are pooled and securities, the payment of which depends primarily on the performance of those underlying assets, are issued in the capital markets. Securitization enables businesses to obtain funding at more favorable rates than they could obtain through other financing methods and to access a broader base of investors. This in turn enables finance companies and financial institutions to extend more credit, at more favorable rates, to home owners and other consumers as well as to corporate borrowers.

Securitization plays an essential role in the financial system and the broader U.S. economy. Over the past 25 years, securitization has grown from a relatively small and unknown segment of the financial markets to a mainstream source of credit and financing for individuals and businesses, representing a vital sector of today's financial markets. The first collateralized mortgage obligations (the predecessor securities to today's mortgage-backed securities) were issued in June 1983 by Freddie Mac and were rapidly replicated by the private industry as investors recognized the flexible nature of the obligations and demanded increased issuance thereof. Between 1990 and 2006, issuance of mortgage-backed securities grew at an annually compounded rate of 13%, from $259 billion to $2 trillion a year.[1] In 2006, just before the downturn, nearly $2.9 trillion in mortgage- and asset-backed securities were issued. The importance of securitization becomes even more evident by observing the significant proportion of consumer credit it has financed in the U.S. It is estimated that securitization has funded between 30% and 75% of lending in various markets; at the end of 2008, an estimated 59% of outstanding home mortgages were funded through securitization.[2] Securitization plays a critical role in non-mortgage consumer credit as well. Historically, most banks have securitized 50-60% of their credit card assets.[3] Meanwhile, in the auto industry, a substantial portion of new and used automobile sales are financed through auto ABS.[4] Overall, recent data collected by the Board of Governors of the Federal Reserve System (the "Federal Reserve Board") show that securitization has provided over 25% of outstanding U.S. consumer credit in recent years.[5] Securitization also provides an important source of commercial mortgage loan financing throughout the U.S., through the issuance of commercial mortgage-backed securities ("CMBS").

Benefits of Securitization

Over the years, securitization has grown in large measure because of the benefits and value it delivers to transaction participants and to the financial system. Among these benefits and value are the following:

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[1] National Economic Research Associates, Inc. (NERA), "Study of the Impact of Securitization on Consumers, Investors, Financial Institutions and the Capital Markets," pg. 16 (June 2009), www.americansecuritization.com/uploadedFiles/ASF_NERA_Report.pdf.

[2] Citigroup, "Does the World Need Securitization?" pg. 10-11 (Dec. 2008), www.americansecuritization.com/uploadedFiles/Citi121208_restart_securitization.pdf.

[3] Ibid., pg. 10.

[4] Ibid., pg. 10.

[5] Board of Governors of the Federal Reserve System, "G19: Consumer Credit," (September 2009), www.federalreserve.gov/releases/g19/current/g19.htm.

- **Efficiency and Cost of Financing.** By linking financing terms to the performance of a discrete asset or pool of assets, rather than to the future profitability or claims-paying potential of an operating company, securitization often provides a cheaper and more efficient form of financing than other types of equity or debt financing.

- **Incremental Credit Creation.** By enabling capital to be recycled via securitization, lenders can obtain additional funding from the capital markets that can be used to support incremental credit creation. In contrast, loans that are made and held in a financial institution's portfolio occupy that capital until the loans are repaid.

- **Credit Cost Reduction.** The economic efficiencies and increased liquidity available from securitization can serve to lower the cost of credit to consumers. Several academic studies have demonstrated this result. A recent study by National Economic Research Associates, Inc., concluded that securitization lowers the cost of consumer credit, reducing yield spreads across a range of products including residential mortgages, credit card receivables and automobile loans.[6]

- **Liquidity Creation.** Securitization often offers issuers an alternative and cheaper form of financing than is available from traditional bank lending, or debt or equity financing. As a result, securitization serves as an alternative and complementary form of liquidity creation within the capital markets and primary lending markets.

- **Risk Transfer.** Securitization allows entities that originate credit risk to transfer that risk to other parties throughout the financial markets, thereby allocating that risk to parties willing to assume it.

- **Customized Financing and Investment Products.** Securitization technology allows for precise and customized creation of financing and investment products tailored to the specific needs of issuers and investors. For example, issuers can tailor securitization structures to meet their capital needs and preferences and diversify their sources of financing and liquidity. Investors can tailor securitized products to meet their specific credit, duration, diversification and other investment objectives.[7]

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[6] National Economic Research Associates, Inc. (NERA), "Study of the Impact of Securitization on Consumers, Investors, Financial Institutions and the Capital Markets," (June 2009), pg. 16, www.americansecuritization.com/uploadedFiles/ASF_NERA_Report.pdf.

[7] The vast majority of investors in the securitization market are institutional investors, including banks, insurance companies, mutual funds, money market funds, pension funds, hedge funds and other large pools of capital. Although these direct market participants are institutions, many of them—pension funds, mutual funds and insurance companies, in particular—invest on behalf of individuals, in addition to other account holders.

Government Recognition of the Importance of Securitization

Recognizing these and other benefits, policymakers globally have taken steps to help encourage and facilitate the recovery of securitization activity. The G-7 finance ministers, representing the world's largest economies, declared that "the current situation calls for urgent and exceptional action…to restart the secondary markets for mortgages and other securitized assets."[8] The U.S. Department of the Treasury (the "Treasury Department") stated in March of 2009 that "while the intricacies of secondary markets and securitization…may be complex, these loans account for almost half of the credit going to Main Street,"[9] underscoring the critical nature of securitization in today's economy. In 2008, the Chairman of the Federal Reserve Board noted that securitization "provides originators much wider sources of funding than they could obtain through conventional sources, such as retail deposits" and also that "it substantially reduces the originator's exposure to interest rate, credit, prepayment, and other risks."[10] Echoing that statement, Federal Reserve Board Governor Elizabeth Duke stated in September 2009 that the "financial system has become dependent upon securitization as an important intermediation tool,"[11] and the International Monetary Fund (the "IMF") noted in its *Global Financial Stability Report* issued in October 2009 that "restarting private-label securitization markets, especially in the United States, is critical to limiting the fallout from the credit crisis and to the withdrawal of central bank and government interventions."[12] There is clear recognition in the official sector of the importance of the securitization process and the access to financing that it provides lenders, and of its importance to the availability of credit that ultimately flows to consumers, businesses and the real economy.

Restoration of function and confidence to the securitization markets is a particularly urgent need, in light of capital and liquidity constraints currently confronting financial institutions and markets globally. With the process of bank de-leveraging and balance sheet reduction still underway, and with increased bank capital requirements on the horizon, the funding capacity previously provided by securitization cannot be replaced with deposit-based financing alone in the current or foreseeable economic environment. Moreover, non-bank finance companies, which have played an important role in providing financing to consumers and small businesses, are particularly reliant on securitization to fund their lending activities, since they do not have access to deposit-based funding. Small businesses, which employ approximately 50% of the nation's workforce, depend on securitization to supply credit that is used to pay employees, finance inventory and investment, and fund other business purposes. The lack of a private mortgage securitization market puts strain on the GSEs and the government to provide housing

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[8] G-7 Finance Ministers and Central Bank Governors Plan of Action (Oct. 10, 2008), www.treas.gov/press/releases/hp1195.htm.

[9] U.S. Department of the Treasury, "Road to Stability: Consumer & Business Lending Initiative," (March 2009), www.financialstability.gov/roadtostability/lendinginitiative.html.

[10] Bernanke, Ben S., "Speech at the UC Berkeley/UCLA Symposium: The Mortgage Meltdown, the Economy, and Public Policy, Berkeley, California." *Board of Governors of the Federal Reserve System* (Oct. 2008), www.federalreserve.gov/newsevents/speech/bernanke20081031a.htm.

[11] Duke, Elizabeth A., "Speech at the AICPA National Conference on Banks and Savings Institutions, Washington, D.C." *Board of Governors of the Federal Reserve System* (Sept. 2009), www.federalreserve.gov/newsevents/speech/duke20090914a.htm.

[12] International Monetary Fund, "Restarting Securitization Markets: Policy Proposals and Pitfalls." *Global Financial Stability Report: Navigating the Financial Challenges Ahead* (Oct. 2009), pg.33, www.imf.org/external/pubs/ft/gfsr/2009/02/pdf/text.pdf.

finance. A constriction of trade receivable financing can adversely affect employment opportunities in the manufacturing sector. Simply put, the absence of a properly functioning securitization market, and the funding and liquidity this market has historically provided, adversely impacts consumers, businesses, financial markets and the broader economy. The recovery and restoration of confidence in securitization is therefore a necessary ingredient for economic growth to resume, and for that growth to continue on a sustained basis into the future.

ATTACHMENT III

Industry Improvements to the Securitization Market Infrastructure

INDUSTRY IMPROVEMENTS TO THE SECURITIZATION MARKET INFRASTRUCTURE

The ASF has been a strong and vocal advocate for targeted securitization market reforms and we continue to work constructively with policymakers to identify and implement them. We believe that any reforms to the securitization market need to be considered and implemented on an interagency basis to ensure that there is a level playing field for all market participants. The ASF is also actively identifying, designing and implementing numerous industry-driven market standards and practice improvements to rebuild and strengthen the securitization infrastructure. It is important that any reform of the securitization market impose mechanisms to encourage appropriate extension of credit to deserving borrowers while not going so far as to inhibit the many benefits of securitization.

ASF Project RESTART

In early 2008, the ASF launched its Project on Residential Securitization Transparency and Reporting ("Project RESTART" or the "Project")[13], which is a broad-based, industry-developed initiative to help rebuild investor confidence in mortgage and asset-backed securities, restore capital flows to the securitization markets, enhance market lending discipline and, ultimately, increase the availability of affordable credit to all Americans. The Project has sought to identify areas of improvement in the process of securitization and refashion, in a comprehensive and integrated format, the critical aspects of securitization with market-based solutions and expectations. It has been recognized by senior policymakers and market participants as a necessary industry initiative to improve the securitization process by developing commonly accepted and detailed standards for transparency, disclosure and diligence that each appropriate market participant will be recommended to implement.

The origins of Project RESTART begin in the fall of 2007, when a number of RMBS market participants began meeting to explore market challenges and identify potential areas of improvement. In early 2008 at ASF's annual industry conference, a broad-based group of ASF members comprised of critical transaction parties came together to develop the core concepts and objectives of the Project. Subsequently, in its March 2008 Policy Statement on Financial Market Developments, the President's Working Group (the "PWG") on the Financial Markets recommended that the ASF develop templates for disclosure in securitization that support efforts to improve market discipline.[14] The Project's objectives were further accelerated by and are directly responsive to the PWG's request. On June 24, 2008, Acting Under Secretary for Domestic Finance Anthony W. Ryan announced that the PWG had engaged the ASF as the private sector group to develop best practices regarding disclosure to investors in securitized credits.[15] Since its inception, ASF members participating actively in the Project include institutional investors, issuers, originators, financial intermediaries, servicers, rating agencies, due diligence professionals, trustees, outside counsel, outside consultants, data modelers and vendors, as well as ASF's professional staff.

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[13] For more information on Project RESTART, see www.americansecuritization.com/restart.

[14] "Policy Statement on Financial Market Developments," The President's Working Group on Financial Markets (March 2008), page 13. See www.ustreas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf.

[15] Assistant Secretary Anthony W. Ryan, Remarks at Euromoney's Global Borrowers Investors Forum (June 24, 2008). See www.treas.gov/press/releases/hp1053.htm.

ASF RMBS Disclosure and Reporting Packages

On July 15, 2009, the ASF released final versions of the first two deliverables of the Project, a disclosure package of loan-level information to be provided by issuers prior to the sale of private-label RMBS transactions (the "ASF RMBS Disclosure Package" or the "Disclosure Package") and a reporting package of loan-level information to be updated on a monthly basis by RMBS servicers throughout the life of an RMBS transaction (the "ASF RMBS Reporting Package" or the "Reporting Package").[16] Both of these packages increase and standardize critical data at issuance and throughout the life of a transaction, which will enable investors to better perform deal and loan-level analysis on the basis of the credit quality of the underlying mortgage loans. By increasing data and standardizing available information, institutional investors will be able to better distinguish pools of high quality loans from lesser quality pools. The resulting differentiation will produce greater market discipline, as market forces will serve to reward originators who deliver higher quality packages of mortgage loans, while penalizing those who do not. In addition, by giving owners of outstanding RMBS and potential purchasers of outstanding RMBS more expansive and robust information on the performance of the loans in existing pools, this new transparency should appreciably aid in moving distressed assets from troubled institutions to purchasers better able to bear the credit risk of those assets and generate much needed secondary market liquidity.

The release of the Disclosure and Reporting Packages was timely given the Administration's proposals for regulating financial markets. On June 17, 2009, the Treasury Department released a proposal titled "Financial Regulatory Reform," which states that the "SEC should continue its efforts to increase the transparency and standardization of securitization markets and be given clear authority to require robust reporting by issuers of asset backed securities (ABS)" and that "[i]nvestors and credit rating agencies should have access to the information necessary to assess the credit quality of the assets underlying a securitization transaction at inception and over the life of the transaction, as well as the information necessary to assess the credit, market, liquidity, and other risks of ABS."[17] About a month later, the Administration followed its Financial Regulatory Reform proposal with proposed legislation that sought to implement the recommendations contained in the broader proposal.[18] In the year that has followed, the U.S. House of Representatives and Senate considered various iterations of this legislation until, just last month, the Administration's proposals for data disclosure and reporting were ultimately codified into law in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). The Dodd-Frank Act specifically calls for issuers of ABS to disclose "asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence."[19] Not long before the passage of the Dodd-Frank Act, the Commission issued the Proposing Release, which includes loan-level RMBS disclosure and reporting proposals as originally contemplated by Project RESTART. The ASF appreciates that the Commission

[16] For more information on the Disclosure and Reporting Packages, see www.americansecuritization.com/uploadedFiles/ASF_Project_RESTART_Final_Release_7_15_09.pdf.

[17] "Financial Regulatory Reform, A New Foundation: Rebuilding Financial Regulation and Supervision," U.S. Department of the Treasury, pages 44-45. See www.financialstability.gov/docs/regs/FinalReport_web.pdf.

[18] The provisions of the proposed legislation can be found at www.treasury.gov/press/releases/reports/title%20ix%20subt%20e%20securitization%207222009%20fnl.pdf.

[19] See Title IX, Subtitle D "Improvements to the Asset-Backed Securitization Process" at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf.

considered the great work of our members when putting its template together and we hope that the Commission will also consider the comments provided in this letter as to that template.

ASF LINC™

In connection with the development of the Disclosure and Reporting Packages, the ASF also created a unique loan identification number, known as the ASF LINC™, for securitization reporting purposes to facilitate the monitoring of assets from origination through the securitization process. One of the problems in the securitization market has been the inconsistent fashion in which assets have been identified. In a typical mortgage securitization, the originator, primary servicer, master servicer and trustee could all assign different numbers to identify the loan on each particular system. Implementation of the ASF LINC™ remedies this problem by assigning numbers that will be standard across the entire industry, enabling market participants to track an asset throughout its life regardless of who holds legal title to or services it at any particular time. The ASF LINC™ would enable market participants from across the globe to access information about assets, regardless of where or when they were securitized. For more information on the ASF LINC™, see Attachment [IV] to our response letter.

ASF Model RMBS Representations and Warranties

The ASF also believes that one of the drivers of future success of the RMBS market will be an increase in the standardization of the agreements governing transactions. Capital commitment decisions by loan originators, financial intermediaries and fixed-income investors, as well as risk assessments by rating agencies, are more easily and efficiently made when contractual provisions are relatively consistent across issuers. Increased standardization in a securitization transaction creates additional liquidity in the market because the due diligence process required to make an investment decision becomes more efficient. For example, the type and form of representations and warranties in past transactions varied greatly, and investors have often complained about a lack of transparency of the representations and warranties given across issuers. Representations and warranties are used to allocate the risk of defective mortgage loans among the mortgage originators, issuers of securities and investors who purchase them.

A broad-based working group, consisting of issuers, originators, rating agencies, financial guarantors, primary mortgage insurance companies and investors, met extensively to address those concerns with existing representations and warranties by providing a baseline set of representations and warranties for RMBS transactions and a more transparent process for determining whether departures from that baseline have occurred in a given transaction. After releasing a broad request for comment in the summer of 2009, the ASF released on December 15, 2009 the final version of a model set of representations and warranties for RMBS transactions (collectively, the "ASF Model RMBS Representations and Warranties" or the "Model Reps").[20]

The Model Reps have been developed to more clearly allocate origination risks between issuers and investors and provide enhanced investor protections over what had been previously provided in "pre-crisis" transactions. The Model Reps seek to allocate these risks in light of the

[20] For more information on the ASF RMBS Model Representations and Warranties, see www.americansecuritization.com/uploadedFiles/ASF_Project_RESTART_Reps_and_Warranties_121509.pdf.

originator's ability to monitor, process and verify critical borrower and loan information. The Model Reps provide enhancements to the traditional representations and warranties provided in RMBS transactions while also enabling investors to more easily and better assess the allocation of origination risk in a given transaction by making the provision of representations and warranties more transparent. Given the importance of enhancement and standardization of representations and warranties to restoring investor confidence in the RMBS markets, the development of the Model Reps is an important phase of the Project and vital to drawing investor capital back to the residential securitization industry.

ASF Model RMBS Repurchase Provisions

The ASF is aware that a standardized set of representations and warranties is only half of the equation. For these Model Reps to be effective, the repurchase process in place for breaches would need to be reformulated. In most existing transactions, pooling and servicing agreements ("PSAs") call for the trustee or another specified party to demand repurchase when defects have been discovered. Throughout the development of the Model Reps, many deficiencies in the current repurchase process were raised by investors, who believe that most PSAs do not provide a strong enforcement mechanism for the party making the repurchase demand and also do not clearly provide sufficient means and guidance needed to enable the party enforcing a repurchase obligation to pursue such matters. In a benign economy, these inadequacies are far less significant because the loans in a pool generally perform well and repurchase demands are minimal. However, the current economic situation has caused a significant increase in loan defaults, and the ensuing increase in repurchase demands has required depositors and loan sellers to contest repurchase demands where appropriate. In light of these issues, members of Project RESTART have begun discussing a uniform set of procedures (the "ASF Model RMBS Repurchase Provisions" or the "Model Repurchase Provisions") to enforce the Model Reps by, among other things, clearly delineating the roles and responsibilities of transaction parties in the repurchase process and allowing greater access[21] into the mortgage loan files so that breaches can be discovered.

Other Initiatives

On November 10, 2009, the ASF released for comment the proposed ASF RMBS Bond-Level Reporting Package (the "Bond-Level Reporting Package").[22] The proposed package consists of 28 data fields that provide enhanced and standardized reporting of bond-level information throughout the life of an RMBS transaction. Standardization of trustee reports would provide investors and rating agencies with consistent fields of information across issuers and enable them to efficiently review bond performance information. In addition, it is expected that the bond information contained in the Bond-Level Reporting Package will be integrated with the loan information contained in the ASF RMBS Disclosure and Reporting Packages through a link created between the CUSIP for each bond and the industry-wide loan identifier, the ASF LINC™. This linkage will enable investors and rating agencies to easily acquire information

[21] Providing greater access to the mortgage loan files will create many challenges including, among other things, how to balance the need to discover and remedy breaches with concerns relating to cost and certain privacy and legal issues.
[22] For more information on the ASF RMBS Bond-Level Reporting Package, see www.americansecuritization.com/uploadedFiles/ASFProjectRESTART_RMBSTrusteeRFC_Nov2009.pdf.

about the specific loans underlying a particular bond. The ASF will also be producing model servicing provisions for PSAs which will create more standardized documentation provisions and work rules in key areas, such as loss mitigation procedures that servicers may employ in dealing with delinquent or defaulting loans, and will release standards for pre-securitization due diligence, including originator reviews, in order to create market confidence in the adequacy of the mortgage origination and underwriting process and the data provided to market participants through the Disclosure Package.

ATTACHMENT IV

The ASF LINC™ is the Appropriate Unique Asset Number

<u>The ASF LINC™ is the Appropriate Unique Asset Number</u>

The ASF strongly supports the Commission's proposed disclosure of a unique asset number, both at the time of issuance and on an ongoing basis, as a required step toward fostering market transparency. As part of Project RESTART, which was initiated in early 2008, we realized that a unique asset number would be essential to any asset-level disclosure or reporting scheme, as it enables investors to track an asset throughout the life of a transaction. We very much appreciate the Commission recognizing that the ASF LINC™ would satisfy its requirement for a unique asset number to identify the assets within a securitized pool, but we request that the Commission consider recommending a standard number both within and across asset classes so that investors can more efficiently track assets. For the foregoing reasons, we believe the ASF LINC™ to be the Commission's ideal choice.

One of the problems in the securitization market has been the inconsistent fashion with which assets have been identified. In a typical securitization, the originator, primary servicer, master servicer and trustee could all assign different numbers to identify the asset on each particular system. Historically, this has created a problem for market participants who try to locate and research an asset. Implementation of a unique asset number remedies this problem by assigning identifiers that will remain constant during each stage of the securitization process, enabling market participants to track an individual asset from origination to maturity. Additionally, implementation of a standardized system would permit investors to access additional sources of information through independent third-party databases, without concern that the asset has been separately identified or mistaken for another asset.

The ASF believes that a unique asset number that is standardized within and across asset classes will better facilitate the monitoring of loans, receivables, leases and other assets within securitizations. Unfortunately, the Commission proposal as it currently stands does not require that a specific standardized asset number be used industry-wide.[1] The Commission's proposed revisions to Regulation AB offer a key opportunity for the Commission to address problem areas in the securitization markets by promoting standardization of market practices. Although we unequivocally support the Commission's proposal to include an asset number as part of initial and ongoing disclosure requirements, in order to promote increased standardization and transparency of asset information for market participants, we believe that the Commission should require or recommend that all securitizers adopt the ASF LINC™ as the single, industry-standard unique asset number.

The ASF LINC™ is an asset identification number system that can be applied to all types of assets in a standardized fashion. The ASF LINC™ is the only asset identification system developed by securitization market participants for the securitization market. The

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[1] "We do not propose a specific naming or numbering convention; however, we are proposing an instruction to clarify what type of asset numbers would satisfy this requirement…." *See* Proposing Release at 23358.

ASF has partnered with Standard & Poor's (S&P) Valuation and Risk Strategies[2] to produce and implement the ASF LINC™, which will be assigned at no charge. S&P Valuation and Risk Strategies has already assigned a loan identification number to millions of residential mortgage loans contained in outstanding RMBS deals, which gives the ASF LINC™ a tremendous head start on the assignation process and would expedite implementation of the Commission's proposed unique asset number. The ASF LINC™ would also be tied to the CUSIP and/or ISIN number of the security, which will allow investors to track assets associated with a particular security throughout the life of a transaction.

The ASF LINC™ identification number is a semi-intelligent 16-digit code that is structured to capture, on its face, information such as asset type, origination date, and country of origin. The contents of the ASF LINC™ make it immediately recognizable to a user of the number so there will be no confusion as to the type of asset or the purpose of the number. The ASF LINC™ has been specifically designed to apply to a variety of asset classes, such as mortgages and student loans, which makes it an ideal choice as the unique asset number for the Commission. Finally, because the ASF LINC™ includes country of origin, it would enable market participants from across the globe to access information about assets underlying securitizations regardless of where or when they were securitized.

We believe that a failure to encourage the market to adopt one industry-standard identifier within and across asset classes could inhibit the Commission's goals of increased transparency and standardization of disclosure and reporting. During the development of ASF's RMBS Disclosure and Reporting Packages through Project RESTART, it became clear to market participants (including, but not limited to, issuers, investors and data and analytics providers) that the implementation of a single, asset-level identification system was critical for all asset classes. We believe the Commission should support the implementation of a single asset number within and across asset classes, instead of multiple numbers, for the following reasons:

I. A Standardized Identifier Promotes Comparability/Transparency Within A Given Asset Class

Investors have historically experienced difficulty locating and researching the assets that underlie an ABS due to tremendous variation in identification and reporting systems used by securitization parties, including originators, primary servicers, master servicers and trustees. Members of ASF Project RESTART and other market participants believe that the use of a unique asset number to track critical information during the life of a securitization generally resolves this inconsistency. However, a single securitization may contain assets from several originators, which means that even a single securitization may contain assets that have been identified at one time or another using a different

[2] S&P Valuation and Risk Strategies is an analytics unit within S&P which is separate and distinct from S&P's credit ratings business.

numbering system.[3] Similar to the problems presented by inconsistent identification of assets by various securitization parties, inconsistencies in identification systems may expose investors to the same difficulties in locating and monitoring the performance of assets. Further, different asset numbering systems would likely utilize varying conventions for identifying assets which could cause confusion for investors attempting to monitor deals within the same asset class. Ultimately, if market participants use different numbering systems, the value of assigning and disclosing unique asset numbers for monitoring assets will be greatly diminished.

II. Fund Managers Invest in Multiple Asset Classes of ABS

Investors in ABS are often responsible for coverage of multiple asset classes at once. For example, a typical portfolio manager might invest in ABS backed by mortgage loans and ABS backed by leases or equipment loans. Thus, ABS investment decisions often hinge on the analytics that are run across assets within a portfolio, and consistency of data, particularly with respect to identification of that data, is critical to that task. For this reason, ABS investors would benefit from having a single, standardized mechanism across asset classes for monitoring asset characteristics and performance. Likewise, a standardized asset number would also benefit risk management professionals responsible for measuring risk at a firm level across collateral types.

III. Assets Underlying Resecuritized ABS

Resecuritizations are comprised of one or more asset-backed securities. Each of the underlying asset-backed securities, in turn, contains its own pool of underlying assets. The Commission has proposed that issuers of resecuritized ABS provide asset-level disclosures for the assets underlying each resecuritized security. We believe that with potentially tens of thousands of assets underlying a given resecuritization, the need for a consistent numbering system is critical to avoiding confusion within a particular transaction. A resecuritization may consist of assets from different originators and may also consist of assets of varying asset classes. In order to best permit investors to diligence and track these assets, we believe that the SEC should support the implementation of the ASF LINC™ as the single numbering system within and across asset classes.

IV. Transcription Errors Could Mislead Investors

In the absence of a single numbering system, investors may be forced to implement systems designed to achieve consistency in asset numbers for a given ABS or portfolio of ABS through transcription. Transcription would cost money and resources and may cause errors that would negatively impact the ability of investors to accurately diligence assets.

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[3] Note that the Commission only proposes "an instruction to clarify that the same asset number should be used to identify the asset for all reports required *of an issuer* under Section 13(a) or 15(d) of the Exchange Act." See the Proposing Release at 23358. [Emphasis added.]

Please see below for more information on the ASF LINC™.

A 16-digit smart code, which contains a combination of specific and randomized alphanumeric characters, the ASF LINC™ captures the following information for each asset:

i. **Underlying Asset Type**: The first two characters in the code depict specific asset type, making each asset instantly recognizable by asset class (i.e. a Residential Mortgage is represented as “RM”).

ii. **Asset Origination Date**: The next six characters in the code indicate the asset origination date in a MMYYYY format.

iii. **Country Code**: The next two characters in the code are used to indicate where the asset was originated, utilizing International Organization for Standardization (ISO) country codes.

iv. **Random Element**: The next five characters in the code are an alphanumeric sequence designed to prevent duplicates, with scalability to 40 million different permutations. Letters “I” or “O” will not be used in the assignment. Each character will have 34 possibilities – [0-9] and [A-H], [J-N], [P-Z].

v. **Check Digit**: The final character in the code is an algorithmic check-digit which is used to confirm that all other digits in the code are correct.

Accordingly, a RMBS loan might have a valid ASF LINC™ of RM052007USD403P6.

ATTACHMENT V

ASF Comment Letter to SEC re Regulation S-T (August 4, 2009)

August 4, 2009

VIA E-MAIL

Ms. Paula Dubberly, Esq.
Associate Director (Legal)
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Item 1105 of Regulation AB and Rule 312 of Regulation S-T

Dear Ms. Dubberly:

The American Securitization Forum (the "ASF")[3] submits this letter with respect to Item 1105 of Regulation AB and Rule 312 of Regulation S-T, part of a series of rule and form changes adopted by the Securities and Exchange Commission (the "SEC") that address the registration, disclosure and reporting requirements for asset-backed securities ("ABS") (SEC Rel. Nos. 33-8518; 34-50905 (Dec. 22, 2004) [70 FR 1506 et seq.] (the "Adopting Release")).

As you know, Item 1105 of Regulation AB requires, to the extent material, the disclosure in prospectuses of static pool information in periodic increments regarding certain performance metrics, such as delinquencies, losses and prepayments, as applicable. The final regulations provide issuers with alternatives for presenting static pool information, including an alternative set forth in Rule 312 of Regulation S-T that permits, under specified conditions, the posting of the information on an Internet Web site for incorporation by reference in the

[3] The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 350 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com. ASF is an independent affiliate of the Securities Industry and Financial Markets Association (SIFMA).

prospectus, in lieu of reproducing the information in the electronically-filed version of the prospectus. By its terms, however, this filing accommodation is subject to a "sunset" provision such that, without further SEC action, the accommodation will expire for filings made after December 31, 2009.[4]

In affording this filing accommodation, the SEC recognized that the process of compiling and maintaining static pool information required in prospectuses in many cases involves significant amounts of data with features that would be difficult or impossible to file electronically on EDGAR, and difficult for investors to use in that format. In addition, the SEC recognized that the Web-based approach provides greater dynamic functionality and utility both for issuers in presenting the information and for investors in accessing and analyzing the information, including interactive facilities for organizing and viewing the information. Moreover, given that much of the information for prior securitized pools or the sponsor's portfolio would be similar from one transaction to the next, the Web-based approach provides flexibility to allow the information to be presented in one place for multiple prospectuses, thereby significantly reducing the burdens of repeating the data for each prospectus and offering efficiencies for keeping the data updated and current for future transactions. All of the benefits of the Web-based approach and all of the burdens and limitations of a filing-based approach described above continue to exist today. The continued availability of this filing accommodation would, therefore, operate to encourage the continued use of the Web-based presentation option for static pool information.[5] In short, both issuer and investor members of the ASF continue to have a clear and strong preference for Web-based presentation of static pool information and the filing accommodation promotes use of that presentation option.

For all of these reasons, we respectfully request that the SEC amend Rule 312 of Regulation S-T to remove its sunset provision and, therefore, to make it a permanent rule under Regulation AB or, in the alternative, to extend its sunset provision for an additional five years, to afford the SEC additional time to consider if static pool information can be filed with the SEC in a cost-effective manner and with a functionality and utility that equals or exceeds that available through Web-based presentation.

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4 Rule 312 of Regulation S-T (17 CFR 232.312) provides, in relevant part: "(a) [f]or filings with respect to asset-backed securities filed on or before December 31, 2009, the information provided in response to Item 1105 of Regulation AB (17 CFR 229.1105) may be provided under the following conditions on an Internet Web site for inclusion in the prospectus for the asset-backed securities, and will be deemed to be included in the prospectus included in the registration statement, in lieu of reproducing the information in the electronically filed version of that document…."

5 Many issuers and sponsors have dedicated, and continue to dedicate, significant time, money and personnel to the design, functionality and administration of their Internet Web sites containing static pool information in reliance, in large part, on the availability of this filing accommodation.

Should you have any questions concerning our views and recommendations, please do not hesitate to contact me at 212.313.1135 or at tdeutsch@americansecuritization.com or our outside counsel on this matter, Michael Mitchell of Orrick, Herrington and Sutcliffe LLP, at 202.339.8479 or at mhmitchell@orrick.com.

Sincerely,

Tom Deutsch

Tom Deutsch
Deputy Executive Director
American Securitization Forum

ATTACHMENT VI

ASF Comment Letter to SEC re Regulation S-T (November 22, 2009)

November 22, 2009

VIA E-MAIL: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attn: Elizabeth M. Murphy, Secretary

Re: File No. S7-23-09; Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities

Ladies and Gentlemen:

The American Securitization Forum (the "ASF")[1] submits this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments regarding its release (the "Release") entitled "Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities" (Release No. 33-9074). Our comments set forth herein are consistent with those contained in our prior letter to the Commission dated August 4, 2009 (attached as Attachment I), in which we requested that Rule 312 of Regulation S-T be amended either to make permanent or to extend the filing accommodation for static pool information. The ASF greatly appreciates the Commission's consideration of that letter and its decision to request industry comment on this important issue. We have set forth below our responses to the specific questions posed by the Commission in the Release, which are based on feedback received from our broad membership, including our issuer and investor members.

[1] The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 340 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com. ASF is an independent affiliate of the Securities Industry and Financial Markets Association (SIFMA).

- **Is an extension of the filing accommodation appropriate? What would be the consequences if the accommodation lapsed on December 31, 2009 and static pool information was required in an EDGAR filing beginning January 1, 2010?**

Our issuer and investor members believe that an extension of the filing accommodation is highly appropriate given the utility and effectiveness of the Web-based presentation option and the current lack of an adequate alternative. In affording this filing accommodation, the Commission recognized that the process of compiling and maintaining static pool information required in prospectuses in many cases involves significant amounts of data with features that would be difficult or impossible to file electronically on EDGAR, and difficult for investors to use in that format. In addition, the Commission recognized that the Web-based approach provides greater dynamic functionality and utility both for issuers in presenting the information and for investors in accessing and analyzing the information, including interactive facilities for organizing and viewing the information.[2] Moreover, given that much of the information for prior securitized pools or the sponsor's portfolio would be similar from one transaction to the next, the Web-based approach provides flexibility to allow the information to be presented in one place for multiple prospectuses, thereby significantly reducing the burdens of repeating the data for each prospectus and offering efficiencies for keeping the data updated and current for future transactions. All of the benefits of the Web-based approach and all of the burdens and limitations of a filing-based approach described above continue to exist today. The continued availability of this filing accommodation on a long-term or permanent basis would, therefore, operate to encourage the continued use of the Web-based presentation option for static pool information. In short, both issuer and investor members of the ASF continue to have a clear and strong preference for Web-based presentation of static pool information and an extension of the filing accommodation promotes use of that presentation option.

If the filing accommodation lapsed on December 31, 2009, issuers, sponsors and other market participants would be forced to convert their presentation of static pool information to an EDGAR-compatible format that is largely ineffective for investors' review and evaluation, and that carries with it substantial costs and other burdens that do not arise under the Web-based approach.

In addition, many issuers, sponsors and other market participants have dedicated, and continue to dedicate, significant time, money and personnel to the design, functionality and administration of their Internet Web sites containing static pool information in reliance, in large part, on the availability of this filing accommodation and the associated cost savings. If the filing accommodation lapses, these market participants will have devoted substantial

[2] For example, some issuers offer interactive tools that allow investors to graph loss experience and prepayment performance for selected pools or groups of pools against each other. In addition, this information is often posted in a format that allows investors to download it for use in their own analytical tools and applications.

resources to the Web-based presentation option without the opportunity to fully realize the corresponding cost savings.

- **How could static pool information be filed with the Commission in a cost-effective manner that continues to allow the information to be provided in a format that promotes utility and functionality? Are there alternative filing mechanisms that could replace or supplement Rule 312?**

The ASF does not believe that an adequate alternative to Web-based presentation of static pool information exists at this time. Based on discussions with our members, the posting of static pool information on Web sites is currently the most cost-effective, efficient and reliable means for issuers to compile and maintain such information and the most cost-effective and user-friendly means for investors to access and analyze such information.

- **Have investors or other market participants had any difficulties with locating, accessing, viewing or analyzing static pool information posted on an Internet Web site pursuant to the filing accommodation provided by Rule 312 of Regulation S–T? Has the information remained on the Web site for the required duration and have updates and changes been appropriately reflected?**

In the course of our internal member review, neither ASF investor members nor members more broadly expressed any significant concerns with locating, accessing, viewing or analyzing static pool information posted on a Web site or with the maintenance and updating of such information as required by Rule 312 of Regulation S-T. To the contrary, our members indicate that Web-based resources provide an overall functionality and utility that far exceeds that available on EDGAR and, as discussed above, both issuer and investor members continue to express a strong preference for Web-based presentation of static pool information.

- **Have issuers found that the Internet Web site posting accommodation provided by Rule 312 has enabled them to provide the required static pool information in a cost-effective, efficient and useful manner? Have issuers encountered any issues or problems with Internet Web site posting pursuant to Rule 312? How should we address those issues or problems?**

Our issuer members indicate that the Web-based approach provides a cost-effective, efficient and reliable means for disclosing static pool information and, conversely, that a filing-based approach would in many cases introduce substantial costs and burdens and other limitations discussed earlier in this letter without corresponding benefits. Our issuer members have not reported any significant issues or problems with the Web-based presentation option.

- **Would the proposed one-year extension present particular problems for investors? Would a shorter or more narrowly tailored extension ameliorate those concerns?**

- **Should the filing accommodation be extended for longer than one year, for example, two, three or five years, or made permanent? If so, are there any revisions to the rule that should be made?**

Our members believe that the availability of a Web-based disclosure option for static pool information represents a milestone in the Commission's regulation of offering communications practices under the Securities Act of 1933 and they applaud the Commission for adopting a rule that is both practical and effective. As noted above, our issuer and investor members indicate that Internet Web sites provide the most useful and effective means for presenting static pool information and they have no objection to the proposed extension of the filing accommodation. In fact, there is a broadly-held view that the filing accommodation should be made permanent or, in the alternative, that it should be extended for an additional five years, to encourage the continued use of the Web-based presentation option and to afford the Commission adequate additional time to consider if static pool information can be filed with the Commission in a cost-effective manner and with a functionality and utility that equals or exceeds that available through Web-based presentation.

As noted earlier in this letter, many issuers, sponsors and other market participants have dedicated significant time, money and personnel to the design, functionality and administration of their Internet Web sites containing static pool information in reliance, in large part, on the availability of this filing accommodation. If the filing accommodation is extended for only one year, issuers and other market participants will have considerably less incentive to explore further innovations in the design and functionality of their Web sites. In addition, some issuers have only recently compiled three complete years of historical static pool information and are considering only now whether to make the substantial investment of time, money and personnel in establishing a Web site for their static pool information. These issuers may decide against making such an investment if the filing accommodation may be available for only a limited period of time.

- **Are there any other changes we should consider making to Rule 312 of Regulation S–T?**

The ASF does not have any additional proposed changes to Rule 312 at this time.

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For all of the reasons set forth in this letter and in our August 4, 2009 letter, we respectfully request that the Commission amend Rule 312 of Regulation S-T to remove its sunset provision and, therefore, to make it a permanent rule under Regulation AB or, in the alternative, to extend its sunset provision for an additional five years, to encourage the continued use of the Web-based presentation option and to afford the Commission adequate additional time to consider if static pool information can be filed with the Commission in a cost-effective manner and with a functionality and utility that equals or exceeds that available through Web-based presentation.

Should you have any questions concerning our views and recommendations, please do not hesitate to contact me at 212.313.1135 or at tdeutsch@americansecuritization.com, or our outside counsel on this matter, Michael Mitchell of Orrick, Herrington and Sutcliffe LLP, at 202.339.8479 or at mhmitchell@orrick.com.

Sincerely,

Tom Deutsch

Tom Deutsch
Deputy Executive Director
American Securitization Forum

Attachment

ATTACHMENT I

American SECURITIZATION FORUM®

August 4, 2009

VIA E-MAIL

Ms. Paula Dubberly, Esq.
Associate Director (Legal)
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Item 1105 of Regulation AB and Rule 312 of Regulation S-T

Dear Ms. Dubberly:

The American Securitization Forum (the "ASF")[3] submits this letter with respect to Item 1105 of Regulation AB and Rule 312 of Regulation S-T, part of a series of rule and form changes adopted by the Securities and Exchange Commission (the "SEC") that address the registration, disclosure and reporting requirements for asset-backed securities ("ABS") (SEC Rel. Nos. 33-8518; 34-50905 (Dec. 22, 2004) [70 FR 1506 et seq.] (the "Adopting Release")).

As you know, Item 1105 of Regulation AB requires, to the extent material, the disclosure in prospectuses of static pool information in periodic increments regarding certain performance metrics, such as delinquencies, losses and prepayments, as applicable. The final regulations provide issuers with alternatives for presenting static pool information, including an alternative set forth in Rule 312 of Regulation S-T that permits, under specified conditions, the posting of the information on an Internet Web site for incorporation by reference in the

[3] The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 350 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com. ASF is an independent affiliate of the Securities Industry and Financial Markets Association (SIFMA).

prospectus, in lieu of reproducing the information in the electronically-filed version of the prospectus. By its terms, however, this filing accommodation is subject to a “sunset” provision such that, without further SEC action, the accommodation will expire for filings made after December 31, 2009.[4]

In affording this filing accommodation, the SEC recognized that the process of compiling and maintaining static pool information required in prospectuses in many cases involves significant amounts of data with features that would be difficult or impossible to file electronically on EDGAR, and difficult for investors to use in that format. In addition, the SEC recognized that the Web-based approach provides greater dynamic functionality and utility both for issuers in presenting the information and for investors in accessing and analyzing the information, including interactive facilities for organizing and viewing the information. Moreover, given that much of the information for prior securitized pools or the sponsor’s portfolio would be similar from one transaction to the next, the Web-based approach provides flexibility to allow the information to be presented in one place for multiple prospectuses, thereby significantly reducing the burdens of repeating the data for each prospectus and offering efficiencies for keeping the data updated and current for future transactions. All of the benefits of the Web-based approach and all of the burdens and limitations of a filing-based approach described above continue to exist today. The continued availability of this filing accommodation would, therefore, operate to encourage the continued use of the Web-based presentation option for static pool information.[5] In short, both issuer and investor members of the ASF continue to have a clear and strong preference for Web-based presentation of static pool information and the filing accommodation promotes use of that presentation option.

For all of these reasons, we respectfully request that the SEC amend Rule 312 of Regulation S-T to remove its sunset provision and, therefore, to make it a permanent rule under Regulation AB or, in the alternative, to extend its sunset provision for an additional five years, to afford the SEC additional time to consider if static pool information can be filed with the SEC in a cost-effective manner and with a functionality and utility that equals or exceeds that available through Web-based presentation.

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[4] Rule 312 of Regulation S-T (17 CFR 232.312) provides, in relevant part: “(a) [f]or filings with respect to asset-backed securities filed on or before December 31, 2009, the information provided in response to Item 1105 of Regulation AB (17 CFR 229.1105) may be provided under the following conditions on an Internet Web site for inclusion in the prospectus for the asset-backed securities, and will be deemed to be included in the prospectus included in the registration statement, in lieu of reproducing the information in the electronically filed version of that document….”

[5] Many issuers and sponsors have dedicated, and continue to dedicate, significant time, money and personnel to the design, functionality and administration of their Internet Web sites containing static pool information in reliance, in large part, on the availability of this filing accommodation.

Should you have any questions concerning our views and recommendations, please do not hesitate to contact me at 212.313.1135 or at tdeutsch@americansecuritization.com or our outside counsel on this matter, Michael Mitchell of Orrick, Herrington and Sutcliffe LLP, at 202.339.8479 or at mhmitchell@orrick.com.

Sincerely,

Tom Deutsch
Deputy Executive Director
American Securitization Forum