August 2, 2010

Via E-Mail: rule-comments@SEC.gov

Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
Attention: Elizabeth M. Murphy, Secretary

Re: Asset Backed Securities
Release Nos. 33-9117 and 34-61858 (File No. S7-08-10)

Ladies and Gentlemen:

CNH Capital America LLC ("CNH") submits this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments on the Asset Backed Securities ("ABS") proposal Release Nos. 33-9117 and 34-61858, dated April 7, 2010 (the "Proposing Release").

CNH, a non-bank captive finance company, is a large securitizer of equipment ABS, predominately backed by loans to farmers and our dealers for the purchase of agricultural equipment manufactured by our parent, CNH Global N.V., a NYSE listed company. Through our legacy companies, we began securitizing in 1992 and have issued over $35 billion of ABS securities in the U.S. public and private markets.

CNH commends the Commission for its efforts in recognizing that changes are necessary in the regulation of the ABS market, especially for the frequently mentioned mortgage related products. We appreciate the Commission's focus on enhancing investor protection and avoiding a repeat of the recent financial crisis while striking an appropriate balance with the promotion of efficiency, competition and capital formation. While we agree with several of the recommended changes, we are concerned that many of the proposed revisions are inappropriate for all asset classes.

Although a stated goal of the Proposing Release is to address shortcomings in the ABS market as highlighted by the recent financial crisis, we believe an across-the-board application to every asset class is too broad. We do not believe there is any data indicating a correlation between practices in the agricultural equipment ABS sector and causes for the financial crisis. The credit ratings for these securities have not been significantly downgraded notwithstanding the slowdown in the economy. S&P reports that during 2009 the percentage downgrades of equipment ABS (which includes all equipment types) was 3% vs. RMBS at 72%.[1] During the financial crisis from 2007-2009, the average annual net losses in CNH's retail loan portfolio were 0.77% and for our dealer floorplan loans, the average annual net losses were 0.09%. Further, the equipment ABS sector does not (and

[1] Standard & Poor's Default Study: Global Structured Finance Default Study - 1978-2009, March 22, 2010.

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never will) have the volume or standardization necessary to create derivative-type structures such as CDOs that heavily contributed to the financial crisis.

However if applied to all asset types, the proposed revisions, including especially risk retention requirements and loan level data requirements, would increase our costs, which would then be borne by the American farmers in the form of higher financing costs. Congress has long recognized that a "prosperous, productive agriculture sector is essential to a free nation."[2] Increased costs of credit to farmers result in economic harm to the agricultural sector, and weighs on the overall economy. The equipment manufacturing companies would also see slowdowns in sales, which would suppress needed job growth. Just as governmental sponsored entities, such as Farm Credit, are not subject to these proposed requirements, securitizations backed by agricultural equipment loans to farmers and dealers should be exempt as well. In summary, we do not agree that American farmers should bear the costs of problems brought on by other sectors of the ABS market.

The discussion below sets out the reasons for our concerns and recommendations for changes to the Proposing Release.

I. Registration and Disclosure Proposals.

A. Risk retention. As stated in the Proposing Release, the theory underlying a risk retention requirement is that if a sponsor retains exposure to the risks of the assets, the sponsor is more likely to have greater incentives to include higher quality assets in the pool. We believe that a "first-loss" exposure provides a greater incentive to sponsors than the proposed "vertical slice" and that other existing incentives also need to be considered.

Risk retention requirements, if any, should allow horizontal ("first-loss"), not vertical (a portion of each sold security), retention. Placing the issuer in the position of absorbing the first losses on any assets provides a stronger incentive to align the interests of the issuer with investors. Poor quality loans would result in higher losses to the issuer if they were in a first loss position than owning a 5% vertical slice of each security. Agricultural equipment ABS transactions are, and will continue to be, structured with a cash reserve account (provided by the issuer) and in most cases, an interest-only seller interest (excess spread), both of which are used to cover the first losses experienced on the underlying assets. Our average required cash reserve per ABS loan transactions has been 2.50% from 2007-2009 and represents our minimum "skin in the game" before consideration of any excess spread. Investors have been very confident in our levels of credit support as evidenced by our ability to issue ABS in early 2009 even before the TALF program was available. The proposed addition of a 5% vertical slice would not take this current support into account, and we would end up providing even more than 5%.

[2] Farm Credit Act of 1971. § 1.1 [12. U.S.C. 2001].

In addition, 5% across every asset class may or may not be an appropriate incentive for certain sponsors given their respective asset performance. Losses on agricultural equipment loans used in ABS transactions have been significantly less than other asset classes, especially mortgages. A 5% risk retention would be considered excessive for agricultural equipment loans whereas it might be significantly inadequate for certain RMBS. Applying inappropriate rates would have a decisive consequence on the future of the ABS market. Issuers of high quality assets that can currently securitize with credit enhancement below 5% would not continue to issue because the cost would be too high. Issuers of lower quality assets that would typically be required to provide more than 5% in credit enhancement would benefit from a 5% minimum requirement and would be more likely to continue using securitization, perhaps to a greater extent. The overall ABS market would migrate towards a decline in quality, and investors would be harmed were this the case.

As a captive finance company of an agricultural equipment manufacturer, other financial and qualitative factors encourage a disciplined underwriting process apart from any risk retention requirements. We have no incentive to lower our standards in order to generate more lending business. Our lending function is part of a fully integrated business model designed to assist farmers with the purchase of our farm equipment. The amount of loans we originate is limited by the number of customers who purchase our equipment, and the potential customers, in turn, are limited to the number of farms in the US (currently around 2 million). This is a very small market compared to the large number of registered motor vehicles (approximately 247 million) or credit cards (1,493 million).[3] We have long lasting relationships with our borrowers, many of whom are repeat customers, which is very common in the agricultural equipment sector. Lowering our underwriting standards would result in increased customer defaults and higher repossessions, and the resulting downward spiral would be detrimental to our entire business model. This would have a twofold negative outcome of lowering sales of equipment and reducing equipment values. Both of these effects (in addition to our reputational risk) provide strong incentives to ensure that our loans are high quality. We believe our incentives to maintain a high quality portfolio are characterized by these other more critical factors than the level of economic interest we retain in the credit risk of the assets we securitize.

The Dodd-Frank Act has mandated that risk retention regulations be developed on an intra-agency basis and we believe this requires that risk retention rules await the findings of the various studies and analyses that have been directed to be performed by numerous agencies. Further we believe it is unlikely that such studies will conclude that "one size fits all" and thus it will be necessary to determine an optimal amount, if any, of retention for different transactions and asset classes. As we discuss above, there are other compelling factors that go to the quality of a loan

[3] http://www.census.gov/compendia/statab/cats/agriculture/farms_and_farmland.html (Table 800, 2008)
http://www.fhwa.dot.gov/policy/ohpi/hss/index.cfm, (Table 1060, 2007)
http://www.census.gov/compendia/statab/cats/banking_finance_insurance/payment_systems_consumer_credit_mortgage_debt.html (Table 1151, 2007)

portfolio apart from risk retention, and we believe these warrant consideration for exemption from an across-the-board risk retention requirement.

Our recommended change to the Proposing Release is an exclusion from any required risk retention for ABS backed by predominately (over 75%) agricultural equipment loans or dealer floorplan financing.

B. Loan level data. Certain requested upfront and ongoing data is proprietary and creates privacy concerns. With the limited market size of agricultural borrowers and dealers, the disclosure of items such as loan size, type of equipment, or geographic location could in some cases be used to identify the specific underlying borrower or dealer. Unlike auto or credit card borrowers, purchasers of farm equipment are fairly easily identified because there are far fewer of them, especially if we are forced to identify locales or type of equipment. From 2007-2009, the industry average number of agricultural loans per ABS transaction was approximately 18,000[4] and the number of dealer accounts was much smaller. Even modifying the list of required data into larger categories would not alleviate the risk of disclosure of confidential information.

In addition to this significant privacy concern, loan level data could also allow our competitors to identify the borrower or dealer and our loan terms, just the same as if we gave our customer list directly to our competitors to our immediate disadvantage. Release of this competitively sensitive information would allow the derivation of proprietary pricing information and confidential business strategy. We believe the level of information we currently provide does not create these concerns.

As stated in the Proposing Release, the purpose of requiring loan level data is to permit investors to perform better credit analysis of the underlying assets. As suggested, this could be done by comparing an individual loan with various industry standards or peer groups. However for agricultural equipment ABS, this additional loan level data does not add any benefit to investors' credit analysis over the analysis that can be performed with currently provided pool information. Agricultural loans are made to farmers for the purchase of vital income-producing equipment. The quality of these borrowers and their incentives to repay their loans are unique to our industry and not comparable to any industry standard. As the ABS agricultural sector is limited to only one other issuer, John Deere, it would be statistically irrelevant to compare our loans against a peer group. Comparing against other consumer related standards, such as autos or residential, would not only be erroneous, but could potentially mislead investors about the credit risks. For example, we have found that FICO scores deliver less realistic risk determination than CNH's proprietary scorecard. Items such as a borrower's payment history on previous loans with CNH (which we have because of the large number of repeat customers) are very important characteristics in our underwriting model. It would not be possible to provide investors with this previous loan history of each repeat customer.

[4] www.investors.cnh.com
www.deere.com

The investors in our ABS recognize these various unique factors (both quantitative and qualitative) that must be evaluated in order to determine the appropriate risk level. We have had face-to-face meetings with most of our ABS investors and many of them have visited our facilities to conduct due diligence with our senior management and operations leaders. To date, none of our investors have asked for loan-by-loan data. In light of this proposal, however, we contacted some of our larger investors to ask specifically if they felt this would be helpful to them. All answered that it would not benefit them in their upfront analysis or ongoing monitoring. These investors did feel that the summary pool characteristics we currently provide in our prospectus are very helpful and are necessary to use in their evaluation of the credit quality of the pool. They stated that they are comfortable with the information they are currently getting. We believe the summary pool data currently disclosed facilitates an informed investment decision and provides a full picture of the composition and characteristics of the pool assets in a comprehensive and transparent fashion. We do not believe that the proposed additional disclosures provide any further benefit to the investor community.

Certain requested loan level information is not available or cannot be obtained without unreasonable expense, such as credit score, underwriting indicator, obligor industry, and servicing advance methodology. To begin reporting all the factors listed in the Proposing Release on an upfront and ongoing basis would require massive changes to our reporting and servicing systems. In summary, we believe that if loan level data were required either upfront or on an ongoing basis for agricultural equipment ABS, then we would have significant privacy issues, that there would not be any added benefit to investors, and the cost would be prohibitive.

Our recommended change to the Proposing Release is to exempt from any upfront or ongoing loan level reporting any ABS backed by predominately (over 75%) agricultural equipment loans or dealer floorplan financing.

C. We are members of the ASF and support many of the concerns and comments expressed by ASF and their members during various committee meetings. Without limiting our support, we have the following additional comments concerning certain elements of these ASF discussions to date:

- Shelf Registration. Continued availability of shelf registration is essential to our efficient access to the capital markets. Unlike corporate issuers, our shelf registration documents do not typically incorporate by reference any description of our business from our exchange act reports. Instead, for each offering we prepare an extensive preliminary prospectus supplement followed by a final prospectus supplement, both used together with a robust base prospectus. While we recognize there should be some stated time period to allow investors to review the documents, such time period should be consistent, and predictable, unlike the uncertainty we would face were we required to file a new registration statement and wait for staff response and effectiveness for each offering. The staff also should recognize that while investors

undertake their analysis, issuers are exposed to market risk from changing interest rates and market conditions. Except for the requirement to undertake to continue Exchange Act reporting (which, given the Dodd-Frank Act will happen in any event), we do not support for all asset types the other conditions the Commission has proposed as replacements for the current investment grade status required for shelf eligibility.

- CEO certification. We do not believe the CEO certification is warranted. Unlike the responsibility to see that disclosure is adequate, this certification includes a forward prediction without referencing any of the risk factors and other disclosures that would protect the registrant if the securities did not perform. Notwithstanding the knowledge qualifiers, the CEO is being asked to assume responsibility for the performance of the assets in the future in addition to the existing requirement to ensure adequacy of disclosure and is qualitatively different from any other required officer certification.

- Combining base and supplement. Investors have indicated to us that there is no need to combine these two documents, and that having the supplement provides a quicker summary and less chance of oversight of the changes than reviewing a combined document. The cost of establishing an ABS program is substantial, consequently most programs use the same basic structure (described in the base) for recurring deals.

- Waterfall. The contractual waterfall that describes the cash flows or priority of payments provides instructions to all parties as to how cash received is to be allocated. The Proposing Release elevates the waterfall to a computer program with predictive features, allowing investors the opportunity to input their own assumptions regarding future performance. We do not believe that our role as an ABS issuer is to provide software or build analytic models for investors. Our investors are sophisticated institutional investors with sufficient means to build their own models; in fact, many already have proprietary models that they would use instead of one that we would provide. We currently present the waterfall in the actual documents as well as in the prospectus.

- Floorplan. ASF discussions have taken place on the need to revise the proposed disclosure of loan data for floorplan ABS. These discussions have primarily focused on the needs and concerns of auto dealer floorplan ABS. We believe any changes to the proposal should consider the other asset sectors that utilize floorplan ABS and have different views on the proposed requirements. For example, CNH has concerns about disclosing any information about the loan size, our internal risk ratings, and any geographic information (which may lead to identification of specific dealers).

- Speed bumps. Investors in agricultural equipment ABS recognize the unique nature of the assets and typically will pre-approve the asset class and originator prior to a review

of a particular transaction. As such, we believe a two day period is sufficient for marketing, and any modifications should result in a one day addition.

II. Private Placement Market. We view the private market as a complement to our public issuances that provides flexibility in meeting the needs of our investors and our goal to diversify our funding sources. We access the private market for cost reasons for smaller transactions and for assets where we wish to maintain confidentiality of sensitive information. The proposed requirement under Rule 144A and Regulation D that issuers covenant to provide the same information that would be required if the ABS were offered publicly is a fundamental change in the securities laws and will impose a significant burden on all market participants. The safe harbors are intended to allow issuers to engage in transactions that are not distributions to the public. These transactions are limited to investors for whom the protection of registration is not necessary due to their sophistication and ability to make sound investment decisions.

Our Rule 144A transactions have always provided significant amounts of disclosure in the form of an extensive offering document. Our private investors have the necessary knowledge to determine the information they need to conduct appropriate risk analysis. We do not believe that mandating that type of disclosure to sophisticated investors will improve their ability to access risk. We respectfully request that the Commission reconsider this proposal.

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We appreciate the opportunity to comment on these proposals and are available to discuss in further detail or respond to any questions. We sincerely hope these comments have been helpful and that the Commission will take the comments expressed into consideration in finalizing the ABS rules.

Very truly yours,

CNH Capital America LLC

Steven C. Bierman
Chairman and President

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