



March 28, 2014

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Re-Opening of Comment Period for Asset-Backed Securities Release [File Number S7-08-10; Release Numbers 33-9552; 34-71611; RIN 3235-AK37]

Dear Ms. Murphy:

The American Financial Services Association (“AFSA”) appreciates the re-opening of the comment period on the Securities and Exchange Commission’s (“Commission”) proposed rules (Asset-Backed Securities, Securities Act Release No. 33-9117 and Re-Proposal of Shelf Eligibility Conditions for Asset-Backed Securities, Securities Act Release No. 33-9244, herein afterwards referred to as the “Proposal”) on asset-backed securities (“ABS”).

AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers. Many of AFSA’s members use securitization transactions as a significant source of funding for their consumer finance businesses. Over the last two and a half decades, securitizations have generated billions of dollars of funds used by consumer finance companies to provide affordable credit for consumers in the United States.

AFSA asks that the Commission recognize that ABS performance varies by industry. For example, while residential mortgage-backed securities (“RMBS”) has experienced poor performance for a variety of reasons, auto and equipment ABS have continuously performed well, even during the financial crisis. Thus, further regulation, particularly mandating the disclosure of asset-level data, is unnecessary. Additionally, such disclosure raises significant privacy concerns. The Commission suggests that the privacy concerns may be allayed by posting asset-level data on a Web site. AFSA disagrees – as long as the data are publicized, public and privacy concerns remain. We therefore ask that the Commission revisit its Proposal and refrain from implementing the proposed disclosure requirements.

I. ABS performance varies by industry.

Securitization is important to many AFSA members. Actions by the Commission and other regulators that increase the cost of effecting securitizations unnecessarily will reduce, and even possibly eliminate, the incentive for our members to utilize securitizations. We understand that the performance of some securitized asset classes during the financial crisis was abysmal, and we

know that some regulatory changes are appropriate as a response. We also understand that the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the Commission and other regulators to propose regulations.

However, we ask the Commission to recognize that problems did not occur across the board in securitizations. For example, auto ABS transactions have historically performed extremely well, even during the recent economic crisis. Despite high unemployment, the worst auto industry sales in recent history, bankruptcy of major auto manufacturers, and record high gasoline prices that led to the decline of used car prices, auto ABS still sustained their positive performance.

As noted in the Report to Congress on Risk Retention¹ from the Board of Governors of the Federal Reserve System (the “Fed Report”), many asset classes performed well during the financial crisis. For example, the Fed Report pointed out that “few, if any, triple-A tranches of auto ABS have experienced a principal write-down in the nearly 25 years of issuance”² and “[e]quipment loan and lease ABS in general, and the triple-A rated securities, in particular, have displayed strong performance during the financial crisis.”³ The Fed Report contained statistics indicating that the prevalence of downgrades was far, far lower for asset classes such as credit cards, auto loans, equipment loans and leases and floorplan than it was for residential mortgage-backed securities [“RMBS”].⁴

With the exception of RMBS, ABS securitizations of every tier and maturity have largely performed as predicted. For example, investors have never lost money on an auto or equipment ABS issuance. According to Standard & Poor’s, the sector has experienced predominantly positive trends. For example, from 2001 through November 30, 2011, U.S. auto ABS received 742 upgrades and only 39 downgrades.⁵ All of these transactions have since paid off, and did not pass on any losses to investors.

Auto and equipment ABS issuers originate, sponsor, service and hold equity in their transactions. These issuers use securitization to provide affordable funding for their customers. Auto and equipment ABS issuers hold significant amounts of secured retail loans on their balance sheets and have incentives for long-term relationships with investors, rating agencies, customers and underwriters. Vehicle and equipment finance companies use prudent underwriting and a clean and transparent offering process. Additionally, it is important to note that auto and equipment loans are not exotic products, but “plain vanilla” loans with simple interest rates. All disclosures, excluding pricing, are contained in a preliminary prospectus and no changes are made between offering and settlement.

Auto and equipment ABS differs from RMBS in large part because vehicle and equipment loan underwriting assumes the collateral will depreciate and speculation on these types of assets simply does not exist. Cars, light trucks, and heavy machinery are reliable collateral, and

¹ 75 Fed. Reg. 62718 (October 13, 2010)

² Fed Report at 57.

³ *Ibid.* at 63.

⁴ *Ibid.* at 52, 53, 57, 59, 65.

⁵ Standard & Poor’s Ratings Services. “Special Report on Auto ABS.” January 2012. p. 25. Available at: http://www.standardandpoors.com/spf/swf/auto_abs/index.html#/26

efficient secondary markets make them extremely liquid assets. Furthermore, auto and equipment ABS originators oftentimes perform as servicers, so their interests often are aligned with investors in the ABS transaction.

The importance of the ABS market for these industries cannot be emphasized enough. For example, in 2013, over \$87.5 billion of auto ABS and \$35.6 billion of credit card ABS were issued.⁶ The availability of affordable consumer credit depends upon access to a liquid, affordable secondary market, – in the case of vehicle financing, the ABS market. When the ABS market seized up in late 2008, the effects were felt by corporations, dealers, and customers. The inability of domestic auto finance companies to get funding for floorplanning created systemic risk for the entire auto finance market, given that many dealerships sell a variety of car brands. When a dealer was unable to obtain credit to buy needed inventory, it affected the overall health of the dealership and its ability to sell all of its brands, both domestic and non-domestic. The resulting domino effect ultimately impacted all creditors and dealers, as well as their customers.

II. Proposed asset-level disclosure is unnecessary and raises privacy and competitive concerns.

The Commission’s proposal to require asset-level disclosure with the data points identified in the rules is not appropriate. To AFSA’s knowledge, investors have not requested the level of data that the Commission is proposing. Increased reporting requirements create undue hardship on ABS issuers by imposing significant and disproportionate compliance costs, both at the outset and over time.

The increase in disclosures also raises privacy concerns for consumers and proprietary information concerns for businesses. Some consumers have voiced these concerns in responding to the Proposal. On May 12, 2010, Daniel Edstrom submitted comments opposing the publication of borrower data within the Commission and in prospectuses. His comments expressed his concern with the use of “my personally identifiable information and the personally identifiable information for millions of others.”⁷

In addition to privacy concerns, certain issuers could also be subject to risks related to the release of sensitive data that could be used by competitors. For example, certain equipment issuers are subsidiaries of manufacturers that have direct competitors that would have access to such information. Gaining access to information such as equipment prices or loan terms could cause harm to the manufacturer, its dealers, and the captive finance companies.

A different approach to asset-level data, such as requiring it generally, but relying on industry to set standards or requirements, is preferable. For example, many investors have already requested that issuers provide loan-to-value ratios, a request with which many issuers have complied. Issuers also often disclose credit scores. The requirements in the Proposal would impose undue burdens on ABS issuers. The Commission should amend their current requirements regarding

⁶ SIFMA, available at <https://www.sifma.org/uploadedFiles/Research/Statistics/StatisticsFiles/SF-US-ABS-SIFMA.xls?n=82784>

⁷ Letter from Daniel Edstrom dated May 12, 2010 submitted in response to the 2010 ABS Proposing Release.

pool-level disclosures by requiring issuers to present certain pool-level tables in a standardized manner.

The Proposal also requires additional data points for several asset classes which are not appropriate. For example, auto loans are very homogeneous. The level of data that the Commission has proposed that issuers provide is unnecessary to evaluate these very similar loans. Auto lenders already disclose whether loans are for new or used vehicles, the vehicle manufacturer, the vehicle type, and stratifications by these categories of data. Adding the geographic location for obligors and vehicle dealers, the model, or the model year will not help the investor. These data points are not necessary to make an investment decision. Furthermore, the combination of these items, plus sales price, could show sales and pricing trends for issuers. These sales and pricing trends are proprietary aspects of the issuer's business model. Many AFSA members have spent a significant amount of time and money building complex proprietary models. Mandating that issuers disclose this amount of asset-level data will allow competitors to relatively easily replicate these proprietary models.

III. Requiring issuers to make asset-level information available to investors through a Web site would not address privacy and competitive concerns and would be costly to implement.

The memorandum from the Commission's Division of Corporate Finance on the disclosure of asset-level data ("Memo"),⁸ outlines the privacy concerns with publicly disclosing asset-level data. As the Memo states, "In particular, the Commission noted that requirements to disclose the geographic location of the obligor or the obligor's collateralized property, credit score, income and debt could raise privacy concerns."⁹ An obligor's personal financial status could be determined by disclosure of the proposed asset-level data. This disclosure could also conflict with and/or undermine the consumer privacy protections provided by law.

The Memo suggests that these privacy concerns could be solved if issuers provide asset-level disclosures to investors and potential investors through a Web site, as opposed to disseminating the potentially sensitive information on EDGAR. The Memo claims that, "...issuers are better situated to identify persons that should be able to access the potentially sensitive information in a cost-effective manner in accordance with the privacy laws."¹⁰

AFSA disagrees with the Commission that disclosing asset-level data through an issuer Web site removes privacy concerns. Even though the data on a Web site would be password protected, a large number of investors and potential investors would have access to the data, which means that the data is still public. Moreover, once the data is released on a Web site, it would be impossible for an issuer to control what happens to the data.

In addition, the Web sites and the personal information posted on them, would be at risk of a data breach. In light of the recent high profile data breaches at major retailers, the Commission should

⁸ Memorandum from the Commission's Division of Corporation Finance (dated February 25, 2014). A at <http://sec.gov/comments/s7-08-10/s70810.shtml>.

⁹ *Ibid.* at 2.

¹⁰ *Ibid.* at 8-9.

not require issuers to post personally identifiable information, especially information that is not needed by investors, on Web sites. Of course, issuers would work hard to secure any data they were required to post. However, the Commission has yet to clarify how providing asset-level data in the manner proposed would be consistent with issuers' regulatory and legal obligations with respect to addressing data and privacy breaches. As we have seen in recent weeks, data breaches hurt consumers as well as companies. The retailers who suffered from the recent data breaches lost millions of dollars, as well as valued customers. Since the only sure-fire way to protect the information is to not release it in the first place, we ask that the Commission decline from mandating asset-level disclosures on public-facing Web sites.

Furthermore, we believe that the asset-level disclosures proposed by the Commission do not conform to the White House's Consumer Privacy Bill of Rights.¹¹ The first tenet in the proposed bill of rights states, "Consumers have a right to exercise control over what personal data companies collect from them and how they use it. Companies should provide consumers appropriate control over the personal data that consumers share with others and over how companies collect, use, or disclose personal data."¹² The Commission's proposed issuer Web sites do not give any control or choice to consumers.

We also ask that the Commission examine how such Web sites might work. How would investors log in? What legal issues are involved?

Lastly, the Memo states that, "...it has been a longstanding market practice for issuers to post certain information about an ABS (e.g. transaction agreements and asset pool information) on Web sites."¹³ Some issuers may post the prospectus for each securitization on their own investor relations Web sites. Some issuers may also post monthly servicer/distribution reports showing the performance of each transaction, collateral data, or other metrics on their Web sites. None of these items are particularly difficult to compile, nor do they present any privacy concerns. Posting asset-level data is completely different. Compiling that amount of data would be complicated and expensive. More importantly, as mentioned above, it raises ongoing unresolved concerns over the privacy of consumers' personal information resulting in a complete lack of legal certainty in a highly litigated area of law.

¹¹ The White House. *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy*. February 2012. Available at <http://www.whitehouse.gov/sites/default/files/privacy-final.pdf>

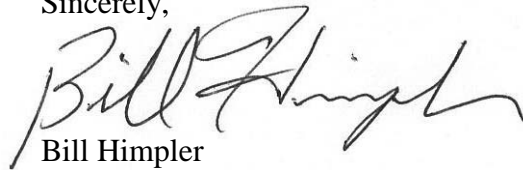
¹² *Ibid* at 47.

¹³ Memo at 11.

IV. Conclusion

AFSA respectfully requests that the Commission substantially revise the Proposal to account for the legal questions, public policy concerns, and business implications associated with asset-level disclosures. We maintain that the approach outlined in the Commission Staff Memorandum, dated February 25, 2014, remains flawed and exposes consumers and issuers to unnecessary and unwarranted risks. Asset-level disclosure is unnecessary and raises significant privacy and competitive concerns, even with the Web site disclosure method proposed by the Commission. We look forward to working with the Commission on the ABS releases. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive style with a large, prominent "B" and "H".

Bill Himpler
Executive Vice President
American Financial Services Association