Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities

Final Report

TECHNICAL COMMITTEE
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

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Chapter 1. Introduction

In May 2008, the International Organization of Securities Commissions (IOSCO) published the *Final Report of the Task Force on the Subprime Crisis* (*IOSCO Subprime Report*)[1]. In this report, the IOSCO Task Force analyzed the recent turmoil in the subprime market and its effects on the public capital markets, and made certain recommendations for work that could be undertaken by IOSCO in response to regulatory concerns. In particular, the Task Force recommended that IOSCO develop international principles regarding the disclosure requirements for public offerings of asset-backed securities (ABS) if the Technical Committee concluded that IOSCO's currently existing disclosure standards and principles did not apply to such offerings.

Although IOSCO has published a number of disclosure principles and standards, most notably the *International Debt Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers*[2] (*International Debt Disclosure Principles*) and the *International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers*[3] (*International Equity Disclosure Standards*), which have been accepted internationally as disclosure benchmarks, these disclosure principles and standards are not wholly applicable to public offerings and listings of ABS. This is largely due to the unique nature of both ABS and ABS issuers. There are several distinguishing characteristics of ABS compared to other fixed income securities. For example, the issuing entity is designed to be a solely passive entity without management, so that some of the information that would be viewed as important for a corporate issuer would not be relevant to an ABS issuer. In addition, ABS investors are more interested in the characteristics and quality of the underlying assets, the standards for the servicing of the assets, the timing and receipt of cash flows from those assets, and the structure for the distribution of those cash flows. In many cases, the types of disclosure that would be deemed most material to ABS investors are not captured by the existing IOSCO disclosure standards and principles. As a result, the Technical Committee has developed these *Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities* (*ABS Disclosure Principles* or *Principles*) to provide guidance to securities regulators who are developing or reviewing their regulatory disclosure regimes for public offerings and listings of asset-backed securities.

In developing these *ABS Disclosure Principles*, IOSCO used as the starting point of its analysis the *International Debt Disclosure Principles* in the expectation that some of those principles are universally applicable to investors in all fixed income securities. The objective of these *Principles* is to enhance investor protection by facilitating a better understanding of the issues that should be considered by regulators

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1 *Report on the Subprime Crisis - Final Report*, Report of the Technical Committee of IOSCO, M*ay 2008,* available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD273.pdf.

2 *International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers,* Final Report, Report of the Technical Committee of IOSCO, March 2007, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD242.pdf.

3 *International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers,* Report of IOSCO, September 1998, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD81.pdf.

when developing or reviewing their disclosure regimes for ABS. Occasionally, the *Principles* refer to the *International Debt Disclosure Principles* as a source of additional guidance on certain disclosure items that are highlighted in the *ABS Disclosure Principles*.

The disclosure topics highlighted in the *ABS Disclosure Principles* are intended as a starting point for consideration and analysis by securities regulators. Some regulators may find it useful to incorporate all of the disclosure topics into their ABS disclosure requirements. Others may conclude that the relevance of specific disclosure topics in their jurisdictions may vary according to the characteristics of the issuing entity or the securities involved, and may wish to incorporate the *Principles* on a more selective basis. The principles-based format of these *Principles* allows for a wide range of application and adaptation by securities regulators. Within each section, general principles are set forth along with examples of different ways to implement the principles.

Scope of the Principles

The *ABS Disclosure Principles* apply to listings and public offerings of ABS, defined for this project as those securities that are primarily serviced by the cash flows of a discrete pool of receivables or other financial assets that by their terms convert into cash within a finite period of time, such as RMBS (residential mortgage-backed securities) and CMBS (commercial mortgage-backed securities), among others. The *Principles* would not apply to securities backed by assets pools that are actively managed (such as some securities issued by investment companies), or that contain assets that do not by their terms convert to cash (such as collateralized debt obligations). In most jurisdictions, securities regulators regulate the ABS covered by these *Principles* under a different regulatory framework than securities issued by investment companies, while in other jurisdictions, securities regulators regulate both types of securities under the same regulatory regime. To facilitate applicability across all jurisdictions, these *Principles* are aimed at the more narrowly defined ABS described above, but the *Principles* may also provide a useful starting point for disclosures about other types of securities backed by asset pools.

The *ABS Disclosure Principles* would also apply if a Document, as defined in the Glossary, is required:

a) when a financial intermediary that has participated in a public offering of securities later sells to the public the securities that were unsold in the original public offering; or
b) when the issuer has sold securities in a private placement to any party who then resells those securities to the public.

The *ABS Disclosure Principles* assume that the issuing entity will prepare a Document used for a public offering or listing of ABS that will contain all information necessary for full and fair disclosure of the character of the securities being offered or listed in order to assist investors in making their investment decision. The *Principles* do not address the suitability criteria that stock exchanges and some securities regulators may impose in connection with listings of certain types of

securities. These criteria can include the minimum denomination, for example. The *ABS Disclosure Principles* also do not address continuous reporting disclosure mandates, requirements to disclose material developments or antifraud prohibitions.

Materiality

In addition to specific disclosures, most countries rely on an overriding principle that, in connection with a listing of securities or a public offering of securities, an issuing entity should disclose all information that would be material to an investor's investment decision and that is necessary for full and fair disclosure. As a result, information called for by specific disclosures may need to be expanded under this general principle, where supplemental information is deemed to be material to investors and necessary to keep the mandated disclosure from being misleading.

Presentation

Information that is disclosed in a Document used in connection with a public offering or listing of ABS should be presented in a clear and concise manner without reliance on boilerplate language. A table of contents and summary provided at the beginning of the Document would enhance its accessibility to investors.

In addition to requiring certain disclosures to be made in the Document, the securities and company laws and regulations of many countries require issuers that are offering and/or listing securities in those jurisdictions to file additional documents as documents on display or exhibits. These documents could include, for example, the pooling and servicing agreement or the trust agreement and indenture. The issuing entity is usually not required to distribute these documents directly to investors or the general public, although it may be required to provide copies upon request. However, these documents may be available to the public through the facilities of the regulatory authority or the stock exchange on which the ABS are listed, or kept on file at the issuer's offices. The Document should indicate where these additional documents may be inspected and whether copies may be obtained.

Supplementary Information

Any significant change or any inaccuracy in the contents of the Document which may materially affect the issuing entity, the assets or the ABS that occurs between the date of publication of the Document and the date of listing or closing of the public offering must be adequately disclosed and made public.

Chapter 2 – Glossary of Defined Terms

ABS transactions can follow a variety of structures. In some jurisdictions, the issuing entity is organized as a limited liability company, while in others, the issuing entity is a trust. The following terms attempt to describe some of the functions that are performed by different entities within an ABS transaction. In some cases, some of the functions described are performed by the same party. Unless the context indicates otherwise, the following definitions apply to certain terms used hereinafter in the *ABS Disclosure Principles:*

Affiliate: A person or entity who, directly or indirectly, either controls, is controlled by or is under common control with, a specified person or entity.

Arranger: Entity that organizes and arranges a securitization transaction, but does not sell or transfer the assets to the Issuing Entity. It also structures the transaction and may act as an underwriter for the deal.

Asset-Backed Securities: As used in the *Principles*, asset-backed securities are securities that are 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 period of time, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders. In an ABS transaction, the financial assets are transferred to a passive entity that issues securities to investors that are backed by the assets transferred to it. The *Principles* would not apply to covered bonds, such as mortgage bonds, which are regulated by different laws and regulations in some jurisdictions.

Credit Enhancement: Rights or other assets designed to assure the servicing or timely distribution of proceeds to ABS holders. External credit enhancements may include, among other things, insurance or other guarantees, swap or hedging arrangements, liquidity facilities, and lending facilities. Internal credit enhancements may also be structured into the securitization transaction to increase the likelihood that one or more classes of ABS will pay in accordance with their terms. Examples of these include subordination provisions, overcollateralization, reserve accounts, and cash collateral accounts.

Depositor: In some jurisdictions, an intermediate entity is created by the Sponsor, and sells or transfers a group of assets from the Sponsor to the Issuing Entity for a securitization program. If the Sponsor does not use an intermediate entity to act as Depositor in a transaction, the Sponsor itself would be considered the Depositor.

Directors and Senior Management: This term includes (a) an entity's directors, (b) its executive officers, and (c) members of its administrative, supervisory or management bodies.

Document: Prospectus or other types of offering document used in connection with a public offering of ABS, and registration statements or prospectuses used in connection with the listing of ABS or admission to trading on a regulated market.

Expert: A person who is named in a Document as having prepared or certified any part of such Document, or as having prepared or certified any report or valuation for use in connection with that Document.

Issuing Entity: Passive special purpose entity that issues ABS to investors that are either backed by or represent interests in the assets transferred to it. In some jurisdictions, the Issuing Entity is typically a trust with an independent trustee. The Issuing Entity is created at the direction of another entity, described in some jurisdictions as an Arranger, or as a Sponsor, that owns or holds the pool assets. The Issuing Entity is the entity in whose name the ABS supported or serviced by the pool assets are issued.

Originator: Entity that creates the receivables, loans or other financial assets that will be included in the asset pool.

Servicer: Entity responsible for the administrative management or collection for the pool assets, or for making allocations or distributions to holders of the ABS. The Servicer is responsible for carrying out the functions involved in administering the assets and calculates the amounts (net of fees) due to the ABS investors, and is often an affiliate of the Originator or Sponsor. In some jurisdictions, some of these functions are carried out by separate and independent entities that carry out custodial and administrative functions for the Issuing Entity.

Sponsor: Entity that organizes and arranges a securitization transaction by selling or transferring assets, either entirely or indirectly, including through an Affiliate, to the Issuing Entity. The assets are either originated by the Sponsor or its affiliate, or are purchased by the Sponsor from the originators of the receivables, or in the secondary market.

Static Pool: Information regarding delinquencies, cumulative losses and prepayments for prior securitized pools organized or arranged by the Arranger/Sponsor for the same type of assets involved in the transaction described in the Document.

Chapter 3 – Asset Backed Securities Disclosure Principles

I. Parties Responsible For The Document

Purpose: *Investors and other interested parties need to know who is responsible for the information provided in the Document. The applicable laws and regulations establish which parties have such responsibility.*

Item I (*Identity of Parties Responsible for the Document*) of the *International Debt Disclosure Principles* may be referred to for general guidance.

II. Identity of Parties Involved in the Transaction

Purpose: *Investors and other interested parties need to know who is involved in the offering or listing of the securities.*

A. Relevant Parties Involved in the Securitization Transaction

The Document should identify the relevant parties in the securitization transaction. This would often include the Sponsor, the Arranger, the Depositor (if applicable), the Issuing Entity, significant Originator(s) and the Servicer. If the Issuing Entity is organized as a trust, information about the trustee should be provided. Information about their respective roles in the transaction would also be helpful to investors.

B. Advisers or Other Parties

The nature of the advisers or other parties who are involved may vary from jurisdiction to jurisdiction. Depending on the applicable legal requirements, the advisers could include the lead or managing underwriter, or the legal advisers to the extent they were involved with the public offering.

III. Functions and Responsibilities of Significant Parties Involved in the Securitization Transaction

Purpose: *Disclosure about parties that have a material role in the securitization transaction would provide investors with a context within which to analyze the ABS offered and the characteristics and quality of the asset pool. The functions listed below may not occur in all transactions. For example, based on the definitions used in the ABS Disclosure Principles, an ABS transaction may involve an Arranger, but not a Sponsor, and vice-versa.*[4]

A. Arranger

The Document should identify the party acting as the Arranger, its form of organization and its role and responsibilities in the securitization transaction.

B. Sponsor

1. General Information about the Sponsor and its Business

The Document should disclose the Sponsor's name and its form of organization. The general character of the Sponsor's business should also be described as it provides important background information to investors. These entities are typically banks, mortgage companies, finance companies or investment banks.

In addition, the Document should describe the Sponsor's material roles and responsibilities in its securitization program, including whether the Sponsor or an Affiliate is responsible for originating, acquiring, pooling or servicing the pool assets. Relevant information would also include the Sponsor's participation in structuring the transaction.

2. Sponsor's Securitization Experience

Disclosure about the Sponsor's securitization experience and the period of time that the Sponsor has been engaged in the securitization of assets would provide investors with relevant information that could help them evaluate the securitization transaction. To the extent material and in appropriate context, the Document should contain a general discussion of the Sponsor's experience in securitizing assets of any type. A more detailed discussion of the Sponsor's experience in and overall procedures for originating or acquiring and securitizing assets of the type included in the current securitization transaction may be appropriate in some cases. It would be useful if the disclosure included, to the extent material, information regarding the size, type and

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4 Some of the terms used in the *Principles* may be defined and used differently in various jurisdictions. For example, in some jurisdictions the terms Arranger and Sponsor are used interchangeably, and may have meanings that vary significantly from the way these terms are defined in the *ABS Principles*.

growth of the Sponsor's portfolio of assets of the type to be securitized and information or factors related to the Sponsor that may be material to an analysis of the origination or performance of the pool assets. This includes whether any prior securitizations organized by the Sponsor have defaulted or experienced an early amortization triggering event.

C. Depositor

In some securitization transactions, the Depositor receives or purchases the pool assets from the Sponsor, and then transfers or sells the pool assets to the Issuing Entity. In this situation, the same types of information provided about the Sponsor should be provided separately for the Depositor in the Document to provide a context for analyzing the ABS and the quality of the asset pool.

The Document should indicate the Depositor's name, its form of organization (including ownership structure), the general character of its business and its activities, and the time period during which it has engaged in those activities. Material information about the Depositor's securitization program, experience, and roles and responsibilities in the securitization program should also be disclosed if materially different from the Sponsor's. This may include disclosure of why a Depositor is being used in the securitization transaction. If the Depositor has any continuing duties after issuance of the ABS regarding the securities or the pool assets, this should be disclosed.

D. Issuing Entity

1. General Information about the Issuing Entity

Basic information about the Issuing Entity includes its legal name and the address and telephone number of its registered office (or principal executive office, if this is different from its registered office). Other basic information includes the Issuing Entity’s form of organization, and the jurisdiction under whose laws the Issuing Entity is organized. In some jurisdictions, the Issuing Entity's governing documents may also be filed as an exhibit to the Document, or may be filed with the regulator or another authority.

Other relevant information about the Issuing Entity would include the terms of any management or administration agreement regarding the Issuing Entity. Any such agreements should be described in the Document. In some jurisdictions, these agreements are filed as exhibits. In addition, the capitalization of the Issuing Entity; the amount or nature of any equity or financial contribution to the Issuing Entity by the Arranger/Sponsor, Depositor or other party; and the fiscal year end of the Issuing Entity would be important information for investors.

Reference should be made to Item VIII (Information about the Issuer), Item XI (Major Shareholders) and Item XIII (Financial Information) of the *International Debt Disclosure Principles* for additional disclosures that could be provided to the extent applicable.

2. Permissible Activities and Restrictions

The Document should describe the permissible activities and restrictions on the activities of the Issuing Entity under its governing documents, including any restrictions on the ability to issue or invest in additional securities, to borrow money or to make loans to other persons. The Document should also describe any provisions in the Issuing Entity's governing documents (including material contracts) that would permit modification of its governing documents, including with respect to permissible activities and covenants. If any person(s) are authorized to exercise discretion with respect to any specific activities regarding the administration of the asset pool or the ABS, they should be identified. In addition, the Document should describe any assets owned or to be owned by the Issuing Entity, apart from the pool assets, as well as any of its liabilities, apart from the ABS.

3. Directors and Senior Management.

The Issuing Entity may be organized as a trust, a limited liability company, limited partnership, or corporation. If the Issuing Entity has a board of directors and executive officers, disclosure should be provided about the Directors and Senior Management. The relevant disclosures are described further in Items X and XI.B of the *IOSCO International Debt Disclosure Principles*.

4. Transfer of Assets

The manner and timing by which legal rights to the assets are transferred to the Issuing Entity may vary. The Document should describe the manner and timing by which the sale or transfer of the pool assets to the Issuing Entity occurs, as well as the creation, perfection and priority[5] status of any security interest in the assets in favor of the Issuing Entity, the trustee (if applicable), the ABS holders or others, including the material terms of any agreement providing for such sale, transfer or creation of a security interest. In some jurisdictions, these agreements are also filed as an exhibit to the Document. A supplemental flow chart that provides this information graphically would facilitate comprehension.

If expenses incurred in connection with the selection and acquisition of the pool assets will be paid out of the offering proceeds, the amount of such expenses should be disclosed. In addition, if such expenses are to be paid to the Arranger/Sponsor, Servicer, Depositor (if applicable), Issuing Entity,

[5] As used in these *Principles*, the perfection of a security interest refers to the steps that must be taken to ensure that the security interest in an asset is enforceable against third parties and in the event of a default. Perfection in an asset assists in determining the priority (e.g., first or second lien) in which secured creditors will receive proceeds from the same collateral.

originator of a significant portion of the pool assets, underwriter, or any of their Affiliates, the Document could separately identify the type and amount of expenses paid to each of these parties.

5. Security Interest and Bankruptcy

To provide transparency to investors regarding the legal and structural complexities of an ABS transaction, the Document should describe any material provisions or arrangements that address whether any security interests granted in connection with the transaction are perfected, maintained and enforced; and whether declaration of bankruptcy, receivership or similar proceeding with respect to the Issuing Entity can occur. In addition, disclosure should be provided if there is a possibility that the securitized assets could become part of the bankruptcy estate of the Sponsor, Depositor, or another entity.

E. Servicers

The Servicer is typically the party (or parties) primarily responsible for the administrative functions involved in an ABS transaction, such as calculating the flow of funds for the transaction, preparing distribution reports, dealing with delinquencies and losses, and disbursing funds directly or indirectly to the ABS holders. In some jurisdictions, some of these functions may be carried out by separate entities. If the Issuing Entity is structured as a trust, the Servicer may disburse funds to the trustee, who then uses the allocations to distribute funds to the ABS holders. In many ABS transactions, more than one entity may perform different servicing functions. To understand how servicing may impact the expected performance of the securities, investors need to understand material aspects of how the ABS will be serviced.

1. Multiple Servicers

Where multiple Servicers service the pool assets, the Document should provide a clear introductory description of the roles, responsibilities and oversight requirements of the entire servicing structure and the parties involved. There may be a wide variety of Servicers in a given securitization transaction. Each Servicer, including affiliated Servicers and any unaffiliated Servicers that service a significant portion of the pool assets should also be identified. In addition, the Document should identify any other material Servicer responsible for calculating or making distributions to holders of the ABS or performing other aspects of the servicing of the pool assets or the ABS upon which the performance of the pool assets or the ABS is materially dependent.

2. Identifying information and experience

For each material Servicer, including both affiliated Servicers and any unaffiliated Servicers that service a significant portion of the pool assets, the Document should provide general background information about the Servicer. This would include the Servicer's form of organization, and how long it has been servicing assets. To the extent material, a general discussion of the Servicer's experience in servicing

assets of any type, as well as a more detailed discussion of the Servicer's experience in, and procedures for, servicing assets of the type included the securitization transaction, should be provided. Material information regarding the size, type and growth of the Servicer's portfolio of serviced assets of the type to be securitized in the transaction, and information on the factors related to the Servicer that may be material to an analysis of the servicing of the assets of the ABS and disclosure could be useful. In addition, information regarding the Servicer's financial condition may be required to the extent that there is a material risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the ABS.

3. Servicing agreements and servicing practices

For each identified Servicer, the Document should disclose the material terms of the servicing agreement and the Servicer's duties regarding the securitization transaction. Because the servicing agreement is a critical element of the securitization transaction, in some jurisdictions it is included in the Document as an exhibit. If there are any special factors involved in servicing the particular type of assets included in the securitization transaction, such as subprime assets, partially state-subsidized loans and loans with deferred payments, it would be useful if this was disclosed in the Document, as well as the Servicer's processes and procedures designed to address such factors.

Other disclosures about the servicing agreements and servicing practices may be material. This would include the manner in which collections on the assets will be maintained, including the extent of commingling of funds, and the Servicer's process for handling delinquencies and losses. The terms or arrangements with respect to advances of funds regarding cash flows, including interest or other fees charged and terms of recovery, may also be material information that should be disclosed to investors. It would also be helpful to disclose any material trigger clauses related to the Servicer, such as a requirement that a Servicer must fulfill to avoid termination. In addition, disclosure about custodial requirements (or information about the entity that performed the custodian activity and its responsibility) regarding the assets, and any material ability by the Servicer to waive or modify any terms, fees, penalties or payments on the assets may be highly relevant. Also relevant would be disclosure of any limitations on the Servicer's liability under the transaction agreements regarding the ABS transaction.

In some circumstances, the Servicer may subcontract or delegate some or all of its functions to another party. The material terms of this relationship would be important to investors.

4. Back-up servicing

The role of Servicer transition arrangements, or back-up servicing, is an important aspect of a securitization transaction. To prevent portfolio deterioration and possible losses, an efficient transition from one Servicer to another can be

essential. For each identified Servicer, the Document should describe the material terms, including the procedures, regarding the Servicer's removal, replacement, resignation or transfer, including arrangements regarding, and any qualifications required for, a successor Servicer. Material information on the process for transferring servicing should be disclosed, as well as any provisions for the payment of expenses associated with a servicing transfer or any additional fees that may be charged by a successor Servicer.

5. Loan Modification

The Document should disclose whether or not, and on what basis, the Servicer may be able to modify the terms of any of the loans backing the ABS. The disclosure should include a discussion of which loans would be eligible for modifications. For example, in some cases modification may be permissible if the loans are either in default, or if default is either imminent or reasonably foreseeable. The Document should disclose any provisions that specify certain types of permitted modifications and/or impose certain limitations or qualifications on the ability to modify loans. For example, some servicing agreement provisions limit the frequency with which any given loan may be modified, or there may be a minimum interest rate below which a loan's interest rate cannot be modified. The Document should describe how the criteria would impact particular classes of ABS holders.

F. Trustees

If the Issuing Entity is structured as a trust, disclosure about the trustee and its duties and responsibilities regarding the ABS under the governing transaction documents and the applicable law would provide important information about the trustee's level of oversight regarding the transaction. In particular, any limitation on such oversight should be noted. A single ABS transaction may involve one or more trustees.

1. Trustee's Background and Responsibilities

The Document should disclose the trustee's name, and its form or organization. It should also contain a description of the trustee's prior experience in ABS transactions involving similar pool assets, if applicable. The trustee's duties and responsibilities regarding the ABS under the governing documents and under applicable law should also be disclosed as highly relevant to investors. In addition, the Document should provide clear disclosure of any actions that would be required by the trustee upon an event of default, potential event of default, or other breach of a transaction covenant. For example, the trustee may be required to provide certain notices to investors, rating agencies or other third parties, among other things. The Document should also disclose how potential events of default are defined in the Document, as well as the required percentage of a class or classes of ABS that is needed to require the trustee to take action.

2. Limitations on the Trustee's Liability

The Document should describe any limitations on the trustee's liability under the transaction agreements regarding the ABS transaction. Investors would also find it highly relevant to know any indemnification provisions that entitle the trustee to be indemnified from the cash flow that otherwise would be used to pay the ABS.

3. Trustee's Removal or Resignation

Any contractual provisions or understandings regarding the trustee's removal, replacement or resignation, as well as how the expenses associated with changing from one trustee to another trustee will be paid, should be disclosed in the Document.

G. Originators

In some ABS transactions, the pool assets are not originated by the Sponsor. The pool assets may have been acquired from a separate originator, or through one or more intermediaries in the secondary market before securitizing them. If the pool of assets acquired from a single originator or group of affiliated originators reaches a certain concentration threshold, information about that originator and its origination program would be highly relevant to investors. In particular, disclosure about the originators of the assets would provide information material to an analysis of the pool assets, including the credit quality of the pool assets.

The Document should identify any originator or group of affiliated originators, apart from the Sponsor or its Affiliates, that originated, or is expected to originate, a significant portion of the pool assets. If any originator or group of affiliated originators, apart from the Sponsor or its Affiliates, originated or is expected to originate a very significant portion of the pool assets, the Document should disclose the originator's form of organization and its main business activities. In addition, it would be helpful, to the extent material, to disclose the originator's origination experience and how long the originator has been engaged in originating assets. This description could include a discussion of the originator's experience in originating assets of the type included in the current transaction. In some jurisdictions, information about the originator’s delinquency and loss experience generally, as well as with respect to the same type of assets, is viewed as useful. If material, disclosure regarding the size and composition of the originator's origination portfolio, as well as information material to an analysis of the performance of the pool assets, such as the originator's credit-granting or underwriting criteria for the asset types being securitized could provide useful information. In some jurisdictions, relevant information would also include the financial statements of these originators and disclosure of whether the audited financial statements have qualified or unqualified opinions.

H. Other Transaction Participants

ABS transactions may involve additional or intermediate parties other than the typical ones identified earlier, such as custodians, intermediate transferors, or liquidity providers in the secondary markets. Information about the material parties to the transaction would be highly relevant to investors.

If the ABS transaction involves additional or intermediate parties, information in the Document, to the extent material, regarding that party and its role, function and experience in relation to the ABS and the asset pool would be useful. In addition, the material terms of any agreement with that party regarding the ABS transaction would be important disclosure. In some jurisdictions, the agreement is filed as an exhibit to the Document to facilitate investor comprehension.

IV. Static Pool Information

Purpose: *Static Pool data indicates how different pools of assets, originated at different intervals, are performing over time. This information helps investors detect patterns that may not be evident from overall portfolio numbers, and may reveal more fully the material elements of portfolio performance and risk. For example, the delinquency statistic for a pool of assets would not indicate potential changes in the performance of the pool. However, Static Pool data can provide more detailed information such as whether more recent originations in a pool are experiencing higher delinquencies than older originations. This would suggest a declining quality in the obligor pool or a possible relaxation of credit standards. The Static Pool data would enable investors to consider the possibility that the performance of the pool may decline over time as the older originations with a lower delinquency profile mature and exit the asset pool. This information would be most useful to investors if the information is accompanied by a clear and concise narrative explanation of material trends.*

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A. Amortizing Asset Pools

It would be useful to investors if the Document contained Static Pool information regarding delinquencies, cumulative losses and prepayments for prior securitized pools of the Sponsor for the same type of asset with similar characteristics for the past several years. For a Sponsor with less experience securitizing assets of the type to be included in the offered asset pool, the Document may instead include Static Pool information regarding delinquencies, cumulative losses and prepayments by vintage origination years (i.e., assets originated during the same year) with respect to originations or purchases by the Sponsor, as applicable, for that asset type. The data should be provided for the period of time that the Sponsor has been making originations or purchases of assets of the same asset type. In addition, such information could be disclosed in periodic increments for the prior securitized pool or vintage origination year. This information should be considered in light of periodic requirements applicable in each jurisdiction. In any case, to ensure that the

information is up-to-date, the most recent periodic increment for the data must be recent enough to give an accurate picture.

To facilitate review and assist comparability of the Static Pool data, the Document may also provide, subject to jurisdictional requirements, summary information for the original characteristics of the prior securitized pools or vintage origination years, as applicable and material. While the material summary characteristics may vary, these characteristics may include, for example, delinquency; losses; debt-to-income ratio; number of pool assets; original pool balance; weighted average initial loan balance; weighted average interest or note rate; weighted average original term; weighted average remaining term; product type; loan purpose; loan-to-value information; distribution of assets by loan or note rate; and geographic distribution information.

A. Revolving Asset Master Trusts

For revolving asset master trusts (such as master trusts involving credit card receivables, bridge loans for developers, and company receivables), investors may find it useful to receive material information regarding delinquencies, cumulative losses, prepayments, payment rate, yield, average payment term, and level of obligor concentration in separate increments based on the date of origination of the pool assets. The data should be presented in periodic increments that provide meaningful information.

B. Alternative Disclosure

If the disclosures outlined in Items IV.A and B above would not be material with regard to the Sponsor, asset pool and transaction involved, but alternative Static Pool information (such as prior pools, portfolio vintage or asset pool) would provide material disclosure, the alternative information could be provided instead. In addition, the Document may also include other explanatory information, including an explanation if no Static Pool information is provided. The Document may also provide Static Pool information regarding a party or parties other than the Sponsor in addition to, or instead of, information regarding the Sponsor if appropriate to provide material disclosure.

V. Pool Assets

Purpose: *Information about the composition and characteristics of the asset pool is a critical element of the disclosure needed by investors to make an informed investment decision regarding an ABS. To be useful, the disclosure must be tailored to the asset type involved for the particular offering and resulting determination as to the materiality of the information. In providing information regarding pool assets, the disclosure should be made in a manner that is most meaningful to investors. To the extent loan level information is standardized, such information may be the most meaningful. In addition to a narrative discussion, supplemental statistical information about the pool assets can be provided in the Document to facilitate investor comprehension of the data.*

A. General information regarding pool asset types and selection criteria

The Document should briefly describe the type or types of pool assets that will be securitized, and include a general description of the material terms of the pool assets. In addition, a description of the criteria used by the originator to originate the assets in the pool, or by the Sponsor to select assets to be purchased for the pool should be included in the Document. Any exceptions to these criteria for the assets in the pool should be disclosed and quantified. Information about the origination channel and origination process for the pool asset, such as information about how the originator acquired the assets and the level of origination documents that was required, could also be highly relevant, as could the cut-off date or similar date for establishing pool composition. Disclosure of any specific due diligence performed on the selection of the assets would also be highly relevant to investors. The Document should also disclose the jurisdiction(s) whose laws and regulations govern the pool of assets, and the effects of any legal or regulatory provisions, such as bankruptcy, consumer protection, predatory lending, privacy, property rights or foreclosure laws or regulations, that may materially affect pool asset performance or payments or expected payments on the ABS. In addition, if the pool assets have been reviewed for compliance with the selection criteria or are otherwise the subject of a special purpose report to verify the accuracy of the loan information disclosed in the Document by a third party, it would be helpful to investors to know if the scope of the review and the result will be disclosed to investors.

B. Pool characteristics

The Document should describe the material characteristics of the asset pool, which most likely would include statistical information. To facilitate investor comprehension of the data, the information should be presented as clearly as possible. This may well include the use of a tabular or graphical format for presenting the data. The disclosure should include appropriate introductory and explanatory information to introduce the pool characteristics, the methodology used in determining or calculating the characteristics and any terms or abbreviations used. This would include, for example, explaining the definitions and methodologies for the various categories of assets, the components and method of calculating variables (such as loan-to-value or debt-to-income ratios), and the date used for determining statistical

data. Historical data should also be presented on the pool assets to enable investors to evaluate the pool data.

The characteristics that are material for a given pool of assets will vary depending on the nature of the pool assets. For example, material characteristics that could be disclosed include: the legal nature of the asset (e.g., loan, receivable); the number of each type of pool asset; the asset size (e.g., original balance and outstanding balance as of designated cut-off date); interest rate or rate of return; the existence of caps/floors on interest rates; any significant installments at loan maturity; the existence of increased installment rates; capitalized or uncapitalized accrued interest; age, maturity, expiry date, remaining term, average life, current payment/prepayment speed, any applicable payment grace periods and pools factors; and service distribution, if different servicers service different pool assets. Additional information could include the amortization period; the loan purpose; loan status; and its priority (rank) on the collateral in event of default.

With respect to receivables, the average payment rate could also be disclosed. If a receivable or other financial asset arises under a revolving account, such as a credit card receivable, other types of disclosures could be provided. Disclosures could include information about the monthly payment rate, maximum credit lines, average account balance, yield percentage and type of assets, among other things.

Other material disclosures may also be relevant and useful to investors. For example, disclosure could be provided of whether the pool assets are secured or unsecured, and if secured, the type of collateral. Information about the collateral underlying the loans in the pool could include the type and/or use of the underlying property, product or collateral; loan-to-value ratio; the existence of residential/vacation/state subsidized loans as collateral; and the existence of insurance for the real estate. If a valuation has been performed on the collateral underlying the assets, disclosure about who performed the valuation, when it was performed or updated, and the standard used in measuring the valuation would be useful to investors.

The credit score of obligors and other information regarding obligor credit quality could be a very useful indicator of the potential performance of the pool assets. In addition, disclosure about the geographic distribution of the pool assets may be useful. In particular, if a significant portion of the pool assets are or will be located in any jurisdiction or other geographic region or particular industry, disclosure about any economic or other factors specific to that jurisdiction, region or sector that may materially impact the pool assets or cash flows from the pool assets would be important to investors and should be disclosed.

C. Delinquency and loss information

Information about the delinquency and loss information, including statistical information, for the asset pool would be highly relevant to investors. If information is disclosed on a pool basis, the statistical information may be most useful to investors to the extent it is presented in periodic increments, as applicable (e.g., such as beginning with assets that are 30 or 31 days delinquent) through the point that assets are written off or charged off as uncollectible. Investors would also find highly

relevant disclosure of the total amount of delinquent assets as a percentage of the aggregate asset pool, as well as other loss and cumulative loss information. In addition, the Document should categorize all delinquency and loss information by pool asset type. It would be useful to investors if the Document described any other material information regarding delinquencies and losses particular to the pool asset type(s), such as how delinquencies are defined or determined and if consistent with market practice, repossession information, foreclosure information and real estate owned or similar information.

D. Sources of pool cash flow

In some ABS transactions, the cash flows that support the ABS may come from more than one source, such as the assets themselves, or the cash flows from lease payments and the sale of the residual asset at the end of a lease. In that case, the Document should disclose the specific sources of funds and their uses, including the relative amount and percentage of funds that will be derived from each source. The Document should also describe any assumptions, data, models and methodology used to derive these amounts.

E. Representations and warranties and repurchase obligations regarding pool assets.

When pool assets are transferred to the Issuing Entity, the Sponsor, or other party typically makes certain representations and warranties regarding the pool assets, such as regarding their principal balance and status at the time of transfer. If an asset fails to meet the requirements of these representations or warranties, the Sponsor may be obliged to repurchase or substitute assets that comply with the representations and warranties. The Document should contain a summary of any representations and warranties made concerning the pool assets by the Sponsor, transferor, originator or other party to the transaction, as well as a brief description of the remedies available if those representations and warranties are breached, such as repurchase obligations. Disclosure about the parties' performance of such repurchases in other transactions could also be useful. For open ABS transactions with revolving periods, if the revolving period assets have different or additional representations or warranties, this should be disclosed. The Document should also provide information about a party's financial condition to the extent it may impact such party's ability to repurchase assets. These disclosures would be highly relevant to investors.

F. Claims on pool assets

If parties other than the ABS holders have a material direct or contingent claim on any pool assets, these claims should be disclosed. The Document should also describe any material cross-collateralization or cross-default provisions relating to the pool assets, as this would also be very relevant to investors.

G. Revolving periods, prefunding accounts and other changes to the asset pool

In some ABS transactions, the composition of an asset pool may change, such as through a prefunding or revolving period. If the offering contemplates a prefunding account in which a portion of the offering proceeds will be used for the future acquisition of additional pool assets, information about the prefunding account would be relevant to investors. In addition, if the offering contemplates a revolving period in which cash flows from the pool assets may be used to acquire additional pool assets, certain disclosures about the revolving period would also be important to investors. In those situations, disclosure about when and how the composition of an asset pool may change should be provided in the Document.

Relevant disclosure would include information about the term or duration of any prefunding or revolving period, the aggregate amounts and percentages involved in the prefunding or revolving period, and the triggers that would limit or terminate such period (such as when the assets included in the asset pool do not pay enough to cover the ABS issued) should be disclosed. The Document should also disclose when and how new pool assets may be added, removed or substituted, and the acquisition or underwriting criteria for additional pool assets, and the party that makes determinations on such changes. In addition, information about any minimum requirements to add or remove pool assets, the procedures and standards for the temporary investment of funds pending use, and whether (and if so, how) investors would be notified of any changes to the asset pool would be relevant to investors.

VI. Significant Obligors of Pool Assets

Purpose: *A securitized asset pool typically represents obligations of a large number of separate obligors such that information on any individual obligor may not be material. However, if the pool assets of a particular obligor or group of affiliated obligors represent a significant portion of the asset pool, or if a single property or group of related properties secure a pool asset and the pool asset represents a significant portion of the asset pool, disclosures with respect to that obligor or group of related obligors become highly relevant. In order to show the nature of the concentration of the pool assets, the stratified concentration with a specific number of obligors would be useful disclosure (e.g., the specific percentage of the loans/debtors that make up a specific percentage of the outstanding amount of the pool of assets).*

A. Descriptive information

Investors would find highly relevant information about significant obligors, such as their organizational form, the general character of their business, their history and development, and any adverse changes since the date of their most recent financial statements. In addition, the nature of the concentration of the pool assets with the obligor, and the material terms of the pool assets and the agreements with the obligor involving the pool assets would be relevant to investors.

B. Financial information

Depending on the level of concentration, financial information with respect to the significant obligor would be relevant to investors. If pool assets relating to a significant obligor represent a substantial portion of the asset pool, the Document should include the audited financial statements of the significant obligor and its consolidated subsidiaries. Item XIII (Financial Information) of the *International Debt Disclosure Principles* provides more guidance on the financial statement disclosures.

The information described in paragraphs (A) and (B), above, should be disclosed in a manner that does not violate national legal requirements, such as those relating to confidentiality and related civil liabilities, *but confidentiality should not be used to avoid disclosure of material risks related to an obligor.*

VII. Description of the Asset Backed Securities

Purpose: *Investors need to have information about the terms and conditions of the securities that are being offered or listed. ABS are typically issued in the form of debt as notes, although they can also be issued as pass-through certificates*[6]*. Disclosure about the ABS enables investors to determine whether the securities are being offered on terms and conditions that are acceptable to them, and to compare the securities offered with other available investment options.*

A. General Information

The Document should disclose the types or categories of securities that will be offered, such as interest-weighted or principal-weighted classes (including interest only or principal only securities), planned amortization or companion classes,[7] or residual[8] or subordinated interests. Relevant information also includes how principal and interest on each class of securities is calculated and payable, amortization, performance or similar triggers or effects, and their effects on the transaction if triggered. In addition, the Document should disclose overcollateralization information, cross-default or cross-collateralization provisions, voting requirements to amend the transaction documents, and any minimum standards, restrictions or suitability requirements regarding ownership of the ABS. Disclosure about whether the sponsor or originator retains a portion of a tranche or tranches, including, for example, information about the amount and tranches affected, could also be useful to investors.

B. Credit Rating

Credit ratings are often used in securitization transactions to provide an indication of the likelihood that the Issuing Entity will be able to fulfill its obligations on the offered securities. Disclosure in the Documents about whether the issuance or sale of any class of offered securities is conditioned on the assignment of a credit rating by one or more rating agencies would be useful information to investors. If there is such a condition, the Document should identify each rating agency that will be used and the minimum rating that must be assigned as a condition of the transaction. In addition, information about any arrangements to have that rating monitored while the ABS are outstanding should be disclosed. Additional disclosure that could be useful

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6 In a pass-through certificate offering of ABS, the Originator transfers the assets to a trustee of a trust in exchange for certificates that represent 100% beneficial ownership of the receivables. The Sponsor sells the pass-through certificates into the market. The trustee has legal title to the assets, and passes the payments on those assets through to the holders of the certificates.

7 In general, a companion class (or support class) is a tranche or class that absorbs a higher level of the impact of prepayment variability of the assets in order to stabilize the principal payment schedule for another tranche or class in the same offering.

8 In general, the residual interest is the tranche or class that is entitled to any cash flow from the collateral that remains after the obligations to all the other tranches have been met.

includes information about market risks that may have an impact on the credit rating, such as changes in interest rates or from prepayments of the underlying asset pool, if the credit rating agency has undertaken this type of analysis.

If the Document discloses any rating(s) assigned to a class of ABS, it should also note the name of each rating organization whose rating is disclosed, as well as each rating organization's definition or description of the category in which it rated the class of securities. If a Sponsor/Arranger has obtained a preliminary credit rating for a class of ABS, disclosure of all of these credit ratings should be included. Other relevant information includes the relative rank of each rating within the assigning rating organization's overall classification system and all material scope limitations of the rating and any related designation (or other published evaluation) of non-credit payment risks assigned by the rating agency. In addition, the Document should include a statement explaining that the rating is not a recommendation to buy, sell or hold securities; that it may be subject to revision or withdrawal at any time by the assigning rating organization; and that each rating should be evaluated independently of any other rating. If any rating agency has refused to assign a credit rating to a class of ABS, disclosure of this in the Document would provide meaningful information to investors. If the reasons for refusal are related to the structure or the financial viability of the transaction, those reasons should be disclosed.

VIII. Structure of the Transaction

Purpose: *Information about the transaction structure of the offering is highly relevant to investors and would help them evaluate whether to invest in the securities. Material disclosure would include information about the flow of funds of the transaction, and the frequency of distribution dates for the ABS and collection periods for the pool assets, among other things. A clear and concise narrative analysis of this information would greatly enhance investor comprehension.*

A. Flow of Funds

The Document should contain a description of the material features and assumptions of the flow of funds for the transaction. This would include information about payment allocations, rights and distribution priorities among all classes of the Issuing Entity's securities, and within each class, with respect to cash flows, credit enhancement and any other structural features in the transaction. The Document should also describe any requirements directing cash flows, such as reserve accounts or cash collateral accounts, and include a description of the purpose and operation of those requirements. A graphic presentation of the flow of funds that supplements the narrative disclosure would facilitate investor understanding.

B. Distribution frequency and cash maintenance

The Document should disclose the frequency of the distribution dates for the ABS and the collection periods for the pool assets. In addition, disclosure should be provided about any arrangements for cash held pending use, including the length of time that cash will be held pending distributions to ABS holders. Relevant information would also include the identity of the parties with access to cash balances and the authority to make decisions regarding their investment and use. In some jurisdictions, the Issuing Entity must confirm that the securitized assets backing the issue have characteristics that demonstrate the capacity to produce sufficient funds to service any payments due and payable on the securities.

C. Fees and expenses

The level of fees and expenses involved in an ABS transaction is highly relevant to investors. The Document should disclose the total amount of fees, direct and indirect, and the parties to be paid. In some jurisdictions, a separate table with an itemized list of all fees and expenses to be paid or payable out of the cash flows from the pool assets is viewed as providing enhanced transparency. The fee and expense table indicates for each item the amount of the fee or expense, its general purpose, the party receiving the fees or expenses, the source of funds for the fees or expense (if different from other fees or expenses, or if such fees or expenses are to be paid from a specified portion of the cash flows) and the distribution priority of such expenses. If the amount of a fee or expense is not fixed, the formula or method of calculating the fee or expense should be provided. Investors may find it useful if the fee and expense table is accompanied by footnotes or other narrative disclosure to the extent necessary to help investors understand the timing or amount of the fees or expenses, such as any

restrictions or limits on fees or whether the estimate may change in certain instances. For example, in an event of default, the relevant disclosure would include a discussion of how the fees could change, or the factors that would affect the change. In addition, the Document could disclose, either through footnote or narrative disclosure, whether, and if so how, any fees or expenses could be changed without notice to, or approval by, ABS holders, as well as any restrictions on the ability to change a fee or expense amount, such as due to a change in a transaction party.

D. Excess cash flow

The Document should describe the disposition of residual or excess cash flows, as well as identify anyone who owns any residual or retained interests to the cash flows and is affiliated with any material transaction party or has rights that may alter the transaction structure beyond receipt of residual or excess cash flows. Disclosure should also be provided of any requirements to maintain a minimum amount of excess cash flow or spread from, or retained interest in, the transaction and the effects on the transaction if the requirements were not met. In addition, material information about any arrangements to facilitate a securitization of the excess cash flow or retained interest from the transaction, including whether any material changes to the transaction structure may be made without the consent of ABS holders in connection with these securitizations, should be disclosed. If there are any conditions on the payment of excess cash flows, such as priority in payment to certain tranches, disclosure of this would be useful. In addition, disclosure about any investment policies and restrictions would be meaningful to investors.

E. Master trusts.

Some ABS transactions involve a master trust, in which one or more additional series or classes have been or may be issued that are backed by the same asset pool. In that case, the Document should provide information regarding the additional securities to the extent material to an understanding of their effect on the ABS being offered. This would include disclosure about the relative priority of those additional securities to the securities being offered and their respective rights to the underlying pool assets and their cash flows. Relevant disclosure would also include information about the allocations of cash flow from the asset pool and any expenses or losses among the various series or classes, as well as the terms under which such additional series or classes may be issued and pool assets increased or changed. The Document should also disclose the terms of any security holder approval or notification of such additional securities. In addition, disclosure should be provided about which party has the authority to determine whether additional securities may be issued, and if there are conditions to this additional issuance. If conditions exist, disclosure should be made of whether or not there will be an independent verification of the person's exercise of authority or determinations.

F. Optional or mandatory redemption or termination

If any class of the ABS includes an optional or mandatory redemption or termination feature, the Document should disclose the terms for triggering the redemption or termination. Relevant disclosure would also include the identity of the party that

holds the redemption or termination option or obligation, as well as whether such party is affiliated with a material transaction party. In addition, disclosure should be provided of the amount of the redemption or repurchase price, and the redemption or termination procedures (including any notices to ABS holders).

G. Prepayment, maturity and yield considerations

The Document should describe any material models, including material assumptions and limitations, used as a means to identify cash flow patterns with respect to the pool assets. These assumptions and limitations used should be realistic and consistent. To the extent material, disclosure should be provided of the degree to which each class of securities is sensitive to changes in the rate of payment on the pool assets and the consequences of such changing rate of payment. To facilitate investor comprehension, the Document should provide statistical information about such effects, such as the effect of prepayments on yield and weighted average life. In addition, disclosure should be provided of any special allocations of prepayment risks among the classes of securities, and whether any class protects other classes from the effects of the uncertain timing of cash flow.

IX. Credit Enhancement and Other Support, Excluding Certain Derivative Instruments

Purpose: *Credit enhancement or other support for ABS can be provided through features internally structured into the transaction to provide support, as well as externally provided enhancement, such as insurance or guarantees. Because credit enhancements may support payment on the pool assets or payments on the ABS themselves, disclosure about these enhancements and how they are designed to affect or ensure payment of the ABS would be very relevant to investors.*

A. Descriptive information

The Document should provide material disclosure about any external credit enhancement designed to ensure that the ABS or pool assets will pay in accordance with their terms. These enhancements would include bond insurance, letters of credit or guarantees. This would also include disclosure about any mechanisms aimed at ensuring that payments on the ABS are timely, such as liquidity facilities, lending facilities, guaranteed investment contracts and minimum principal payment agreements.

Other credit enhancements that should be disclosed include any derivatives that provide insurance against losses on the assets in the pool and thus whose primary purpose is to provide credit enhancement related to pool assets or the ABS. In addition, any internal credit enhancement as a result of the structure of the transaction that increases the likelihood that payments will be made on one or more classes of the asset-backed securities in accordance with their terms should be disclosed. This includes subordination provisions, overcollateralization, reserve accounts, cash collateral accounts or spread accounts, or transactions in which receivables may be purchased at a discount or on a deferred basis. This disclosure should include any limits on the timing or amount of the enhancement or support, or any conditions that must be met before the enhancement or support can be used. In some jurisdictions, the enhancement or support agreement is filed as an exhibit to the Document to facilitate investors' understanding of the enhancement. Also, if there are provisions regarding the substitution of the enhancement or support, they should be described in the Document.

B. Information regarding significant enhancement providers.

1. Descriptive information

   The Document should identify any significant enhancement provider, its organizational form and the general character of its business.

2. Financial information

   Investors may find financial information about significant enhancement providers relevant. In some jurisdictions, if any entity or group of affiliated entities that provides enhancement, or other support,

is liable or contingently liable to provide payments representing a significant portion of the cash flow supporting any offered class of the ABS, the Document must include audited financial statements for such entity or group of affiliated entities and its consolidated subsidiaries. Item XIII (Financial Information) of the *International Debt Disclosure Principles* provides more guidance on the information that should be provided in such financial statements.

X. Certain Derivative Instruments

Purpose: *Certain derivative instruments, such as interest rate and currency swap agreements, are used to alter the payment characteristics of the cash flows from the Issuing Entity and their primary purpose is not to provide credit enhancement related to the pool assets or the ABS. Because of the impact that these instruments may have on the timing and form of payment on the ABS, disclosure about these derivative instruments would be highly relevant to investors.*

A. Descriptive information

The Document should identify the name of the derivative counterparty, and describe its organizational form and the general character of its business. In addition, the Document should describe the operation and material terms of the derivative instrument, including any limits on the timing or amount of payments or any conditions to payments, as well as minimum requirements regarding the counterparty and any material provisions regarding substitution of the derivative instrument. In some jurisdictions, the agreement relating to the instrument is filed as an exhibit with the Document to facilitate investor understanding.

B. Financial information

Financial information about the entity or group of affiliated entities that provide derivative instruments may be relevant to investors. In some jurisdictions, the measurement of the financial significance of the derivative instrument is determined based on a reasonable good faith estimate of the maximum probable exposure of a counterparty, made in substantially the same manner as that used in the Sponsor's internal risk management process in respect of similar instruments. The resulting significance estimate is measured against the aggregate principal balance of the pool assets (when measured as a percentage, referred to as *significance percentage*). However, if the derivative only relates to certain ABS classes, the significance estimate is measured against the aggregate principal balance of those classes. For each derivative counterparty, the Document discloses the significance percentage.

In these jurisdictions, if the aggregate significance percentage related to any entity or group of affiliated entities that provides derivative instruments is significant, the Document includes the audited financial statements of such entity or group of affiliated entities and its consolidated subsidiaries consolidated. Item XIII (Financial Information) of the *International Debt Disclosure Principles* may provide general guidance on the financial information that should be disclosed.

XI. Risk Factors

Purpose: *In order to make an investment decision about securities that are being offered or listed, investors need information about the most significant risk factors material to the offering.*

A description of risk factors that are specific to the Issuing Entity, specific to the class(es) of ABS to be offered or listed, to the pool of assets, or to the ownership rights attached to those assets, is valuable information that may affect an investor's investment decision. The discussion should identify any risks that may be different for investors with respect to any specific class(es) of ABS being offered or listed. For example, if multiple classes of ABS are being offered or listed with different risk profiles, the discussion should identify the classes and describe the different risks involved. Relevant disclosure may also include risks related to any swap counterparties. However, the Document should not identify so many risk factors that the value of the disclosure would be undermined, but rather include information that is useful to investors in assessing the riskiness of the investment. Legal boilerplate should also be avoided, since this does not provide investors with concrete information about the specific risks applicable to the particular class of securities being offered or listed. This section may contain cross-references to more detailed discussion contained elsewhere in the Document.

This disclosure is particularly useful to investors if it is provided in a separate section, which is distinctively titled *Risk Factors*, to bring it to the investors' attention. Separating different types of risk factors into different subsections may also be helpful to investors. In addition, for unusually risky issuances, it may be useful to investors if the riskiness of the securities is highlighted on the cover page of the Document with a cross-reference to the full risk factors discussion in the Document.

XII. Markets

Purpose: *Disclosure of all the exchanges or regulated markets on which the ABS are or are intended to be traded may provide an indication of possible liquidity in the ABS. If there are several markets available, this could enhance the ability of investors to resell their securities.*

A. Identity of exchanges and regulated markets

Identification of all the exchanges and/or regulated markets on which the securities are listed and/or admitted to trading, or are intended to be listed or admitted to trading, is highly relevant information for investors. In the latter case, the dates on which the securities will be listed and/or admitted to trading are also important.

B. Entities providing liquidity

If any entities have made a firm commitment to act as intermediaries for the ABS in secondary market trading, such as market makers providing liquidity, disclosure of the names and addresses of these entities and the main terms of their commitment would provide investors with useful information about the potential secondary market liquidity of the ABS.

XIII. Information about the Public Offering

Purpose: *The types of disclosures contained in this section are relevant when the Document is used for a public offering of ABS. When ABS are publicly offered, key information about the manner in which the offering will be conducted, such as the total amount of the issue and the offering period, is important for investors. All of this information enables investors to determine whether the ABS are being offered on terms that are acceptable to them.*

Item V (Information about the Public Offering) of the *International Debt Disclosure Principles* provides useful guidance on the types of disclosures that should be provided in connection with a public offering of fixed income securities. In particular, the disclosure guidance relating to the offer statistics, pricing, method and expected timetable of the offering, underwriting arrangements and expenses of the issue may be relevant to public offerings of ABS.

XIV. Taxation

Purpose: *The purpose of this disclosure is to provide information about tax provisions that ABS holders may be subject to and that may materially affect investors' decision whether or not to invest in the securities.*

The Document should contain a brief, clear and understandable summary of the tax treatment of the ABS transaction under applicable income tax laws. In addition, the material income tax consequences of purchasing, owning and selling the ABS should be disclosed. In particular, if any of the material income tax consequences are not expected to be the same for investors in all classes offered by the Document, a description of the material differences should be provided. A summary of the substantive points made in the tax opinion provided by legal counsel should also be disclosed, and identify any material consequences of the transaction upon which the counsel has not been able to provide an opinion or has not been asked to opine upon.

XV. Legal Proceedings

Purpose: *Information about material legal proceedings that are pending against the participants in the securitization program provides ABS holders with an indication of whether the Issuing Entity and other participants in the securitization program will be able to fulfill their obligations on the securities. To be useful to investors, the disclosure should provide investors with sufficient information to assess the significance of the action and its potential impact on the financial viability of any of the participants, or on the ability of these participants to adequately perform their obligations.*

Information about any legal proceedings pending against the material parties to the ABS transaction (such as the Arranger, Sponsor, Depositor, trustee, Issuing Entity, any significant Servicer, or any Originator of a significant portion of the pool assets), or of which any property of the foregoing is subject, should be disclosed if it would be material to ABS holders. Any governmental proceedings pending or known to be contemplated, including investigations, should also be disclosed.

XVI. Reports

Purpose: *The transaction agreements for a securitization program may specify that certain reports should be provided to security holders. In addition, regulators may require that certain periodic and other reports be filed or furnished with them. The types of reports that will be provided, and the information contained in those reports, would be important to ABS holders and should be identified in the Document, along with information about how the materials may be obtained by ABS holders.*

A. Reports required under the transaction documents

The Document should describe the reports or other documents provided to security holders that are required under the transaction agreements, including the information that will be contained in the reports, the schedule and manner of distribution or other availability, and the entity or entities that will prepare and provide the reports.

1. Reports to be filed with the relevant authority and/or made available to the public.

   The Document should specify the names of the entity or entities under which reports about the ABS will be filed with the relevant securities regulator and/or made available to the public. The reports and other information filed should also be identified. This may include annual reports, distribution reports, material developments reports and any other interim periodic reports. If the public will be able to access materials filed with the relevant securities regulator, information about how to obtain the information should be provided.

2. Web site access to reports.

   The Issuing Entity should also indicate whether its annual reports, distribution reports, or other ongoing reports will be available to the public on the Web site of a specified transaction party (such as the Arranger/Sponsor, Depositor, Servicer, Issuing Entity or trustee, as applicable) as soon as reasonably practicable after such material is provided to the relevant securities regulator. If other reports to ABS holders or information about the securities will be accessible through a Web site, this should be disclosed. In addition, the Web site address where these filings and reports may be accessed should be disclosed to facilitate the access of ABS holders and investors to this information. If these materials will not be available through a Web site, it would be useful for investors if the Document indicates whether a transaction party will provide electronic or paper copies of those materials without charge upon request.

XVII. Affiliations and Certain Relationships and Related Transactions

Purpose: *Disclosure about the relationships among the participants in the securitization transaction, including affiliations among the participants, relationships outside the ordinary course of business, and relationships related to the securitization transaction itself would provide information material to an investor's understanding of the ABS. In addition, disclosure of the general character of these relationships would help investors more fully understand the structure of the securitization transaction and the potential benefits to various participants in the program.*

A. Affiliations among Participants in the Securitization Transaction

The Document should include a description of if, and how, significant transaction parties or any other material parties related to the ABS, including a significant Servicer or Credit Enhancement provider, are affiliated to each other. To the extent known and material, the Document should also contain a discussion of if, and how, the significant Servicer, the trustee, an originator of a significant portion of the pool assets, a significant Obligor, and a Credit Enhancement or support provider are Affiliates of each other.

B. Relationships Outside the Ordinary Course of Business Among Participants in the Securitization Transaction

The Document could disclose the general character of any business relationship, agreement or understanding that is entered into outside the ordinary course of business, or on terms other than would be obtained in an arm's length transaction with an unrelated third party, apart from the securitization transaction, between the significant transaction participants and any other material parties related to the ABS, or any of their Affiliates, that currently exists or that existed during the past few years and that is material to an investor's understanding of the asset-backed securities.

C. Relationships Related to the Securitization Transaction or Pool Assets

To the extent material, any specific relationships involving or relating to the securitization transaction or the pool assets, including the material terms and approximate amount involved, between the Arranger/Sponsor, Depositor or Issuing Entity and a significant Servicer, the trustee, an originator of a significant portion of the pool assets, a significant obligor, underwriter, a Credit Enhancement or support provider, or any other material parties related to the ABS, or any of their Affiliates, that currently exists or that existed during the past few years should be disclosed in the Document. The types of arrangements that should be disclosed include, for example, loan agreements or repurchase agreements to finance the acquisition or origination of pool assets, and servicing agreements.

XVIII. Interests of Experts and Counsel

Purpose: *The purpose of this disclosure is to indicate whether Experts and counsel, who play an influential advisory role in an offering or listing, can be impartial in performing their functions.*

If any of the Experts or counsels named in the Document has a material direct or indirect economic interest in the Issuing Entity, Arranger/Sponsor, Depositor or their Affiliates, or an interest that depends on the success of the offering or listing, or otherwise has a material conflict of interest in rendering its advice or opinion, the nature and terms of that interest or conflict of interest would be highly relevant to investors.

XIX. Additional Information

Purpose: *In addition to the disclosure topics outlined above, regulators should consider whether to include the following disclosure topics in their debt disclosure regime.*

A. Material Contracts

When the Issuing Entity or any of its Affiliates enters into a material contract that is outside its ordinary course of business, the terms of that contract can have a significant impact on the operations and profitability of the business. In the context of public offerings and listings of ABS, this information is especially relevant if it has an impact on the Issuing Entity's ability to fulfill its obligations on the ABS. As a result, some regulators require that a brief summary of the material contracts be included in the Document and that the contracts themselves be made available to investors.

B. Statement by Experts

Issuing Entities often rely on Experts to provide critical advice or information that is used in connection with the offering and listing. An Expert can be an accountant, engineer, or any person whose profession gives authority to a statement made by him/her. If the Document indicates that a statement or report included in it can be attributed to such an Expert, the person's name, business address and qualifications would be highly relevant to investors. In some cases, the Expert may be an organization, rather than an individual. Additionally, in some jurisdictions the consent of the Expert to be named is required for liability purposes and must be disclosed. In those cases, disclosure in the Document that the statement or report, in the form and context in which it is included, has been included with the consent of that person, who has authorized the contents of that portion of the Document is important.

Appendix 1

Feedback Statement on the Public Comments Received by the Technical Committee on the *Consultation Report – Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities*

Non-confidential responses were submitted by the following organisations to IOSCO Technical Committee (TC) consultation entitled *Consultation Report: Disclosure Principles for Public Offerings and Listings of Asset Backed Securities*. The deadline for comments was 10 August 2009.

American Securitization Forum
Bundesverband Investment und Asset Management e.V.
European Fund and Asset Management Association
Gesamtverband der Deutschen Versicherungswirtschaft e.V.
International Banking Federation
Investment Company Institute
Irish Stock Exchange
Moody's Investors Services
Securities Industry and Financial Markets Association/European Securitisation Forum (jointly)
Securitization Forum of Japan
Standard & Poor's Ratings Services
SVS Chile
TYI LLC
Zentraler Kreditausschuss

These responses can be viewed in Appendix 2 of this document.

The Technical Committee took these responses into consideration when preparing this final report. The rest of this section reports on the main points raised during the consultation.

The IOSCO Technical Committee (TC) published a final report on *Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities* (*ABS Disclosure Principles or Principles*) after a public consultation process. These *Principles* recommend disclosures for those securities that are 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 period of time. Their objective is to enhance investor protection by facilitating a better understanding of the issues that should be considered by regulators in developing or reviewing their disclosure regimes for asset-backed securities (ABS).

This feedback statement describes the background of the publication of the *ABS Disclosure Principles*, discusses the comments received by IOSCO from the international financial community, and the TC's responses to those comments.

I. Background

In May 2008, IOSCO published the *Final Report of the Task Force on the Subprime Crisis* (*IOSCO Subprime Report*). In this report, the IOSCO Task Force analyzed the recent turmoil in the subprime market and its effects on the public capital markets, and made certain recommendations for work that could be undertaken by IOSCO in response to regulatory concerns. In particular, the Task Force recommended that IOSCO develop international principles regarding the disclosure requirements for public offerings of ABS if the TC concluded that IOSCO's currently existing disclosure standards and principles did not apply to such offerings.

Although IOSCO has published a number of disclosure principles and standards, most notably the *International Debt Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers* (*International Debt Disclosure Principles*) and the *International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers (International Equity Standards)*, which have been accepted internationally as disclosure benchmarks, these disclosure principles and standards are not wholly applicable to public offerings and listings of ABS. This is largely due to the unique nature of both ABS and ABS issuers. There are several distinguishing characteristics of ABS compared to other fixed income securities. For example, the issuing entity is designed to be a solely passive entity without management, so that some of the information that would be viewed as important for a corporate issuer would not be relevant to an ABS issuer. In addition, ABS investors are more interested in the characteristics and quality of the underlying assets, the standards for the servicing of the assets, the timing and receipt of cash flows from those assets, and the structure for the distribution of those cash flows. In many cases, the types of disclosure that would be deemed most material to ABS investors are not captured by the existing IOSCO disclosure standards and principles. As a result, the Technical Committee developed these *ABS Disclosure Principles* to provide guidance to securities regulators who are developing or reviewing their regulatory disclosure regimes for public offerings and listings of asset-backed securities. In developing these *Principles*, IOSCO used as the starting point of its analysis the *International Debt Disclosure Principles* on the expectation that some of those principles are universally applicable in order to assist investors in making their investment decisions in all fixed income securities.

At its June 2009 meetings, the TC approved a draft of the *ABS Disclosure Principles* for public consultation, and published a Consultation Report later that month. After reviewing the public comments received, the TC's Standing Committee on Multinational Disclosure and Accounting revised the *Principles* to reflect the comments made on the Consultation Report. The TC approved the Principles in January 2010.

Fifteen organizations provided comments on the Consultation Report for the *ABS Disclosure Principles.* (A list of the parties who provided comments is included at the end of this Feedback Statement.) Most of the respondents addressed specific sections or disclosure items addressed in the *Principles* and expressed views on how they could be revised. Several respondents also recommended that the *Principles* be

revised to address broader areas that were not covered in the Consultation Report, such as synthetic ABS transactions or continuous reporting disclosure mandates.

The TC found all of the comments received from the public consultation to be helpful, particularly those that described differences in ABS market practice across different jurisdictions and those that brought to the attention of the TC specific areas of ABS market practice. The *Principles* have been revised to address some of the comments received. Other comments did not result in revision but did provide valuable topics for future consideration.

This Feedback Statement explains why certain comments raised by respondents were not incorporated into or addressed in the final version of the *Principles*, and also explains the reasons underlying significant revisions that were made to the *Principles*.

II. Comments Received and the Responses to those Comments

A. Scope of the Principles

The *ABS Disclosure Principles* apply to listings and public offerings of asset-backed securities, defined as those securities that are primarily serviced by the cash flows of a discrete pool of receivables or other financial assets that by their terms convert into cash within a finite period of time. The *Principles* would not apply to securities backed by assets pools that are actively managed (such as some securities issued by investment companies). Many respondents believed this scope should be broadened, with regard both to the definition of ABS and the context in which they are offered. For example, some respondents thought that the definition of ABS should be expanded to include synthetic ABS transactions such as RMBS (residential mortgage-backed securities), CMBS (commercial mortgage-backed securities), auto loans/leasing ABS, corporate leasing ABS, credit card and consumer ABS, with minimum standards for CDOs (collateralized debt obligations) as well. Other respondents felt that structured instruments that fall outside the given definition of ABS should be included. In contrast, another respondent recommended that the Principles be revised to expressly exclude CMBS from the ABS definition.

The TC has determined that the scope of the *Principles* should remain as indicated in the Consultation Report. Whether the TC should develop disclosure principles for other types of ABS could be a matter for future consideration. Because a wide range of securities might satisfy the definition of ABS, the TC has decided that it would be preferable and less ambiguous to provide some examples of securities to which the *Principles* would apply, rather than to attempt to list securities to which they would not apply. Because RMBS and CMBS fall within the scope of the *Principles*, they are listed as examples of asset-backed securities. The *Principles* would not apply to securities that contain assets that do not by their terms convert to cash (such as collateralized debt obligations).

One respondent highlighted that the content of an ABS prospectus may vary based on the offering context and investor needs. The TC notes that the *Principles* provide a starting point for consideration and analysis by securities regulators, but that circumstances, such as the definition of a public offer, may differ across jurisdictions.

Regulators may apply the *Principles* differently in their specific jurisdictions, and may require additional disclosures as they deem appropriate. That flexibility could extend to consideration of the needs of specific investors.

Some respondents believed the *Principles* should apply to the acquisition of ABS by collective investment undertakings (rather than only to ABS listings and public offerings). The *Principles* have not been revised in response to these comments. The TC believes that the disclosure appropriate to the acquisition of ABS by collective investment undertakings, while an important area for investor protection, is different from the disclosure required in the public offering and listing of ABS.

The Consultation Report expressly does not address continuous reporting disclosure mandates. Some respondents believed that continuous disclosure should be included. The TC has not revised the *Principles* in response to these comments, believing that continuous disclosure reporting requirements, while of great importance to investors, are distinct from disclosure for offering and listings. The TC notes that a similar approach of distinguishing listing and offering disclosure from continuous disclosure was taken with *International Equity Disclosure Standards*, which applied only to offerings and listings of equity. In this regard the TC believes that it could be a matter for future consideration whether any specific standardized continuous reporting requirements should be addressed.

One respondent believed that significant industry initiatives related to disclosure are relevant for the development of an appropriate disclosure framework and should be considered. The TC notes the initiatives of industry related to enhanced disclosure and recognizes their relevance to its work related to ABS, together with input from other stakeholders.

B. Materiality

Several respondents noted that the *Principles* should be mindful of the difference between retail and wholesale markets in determining regulatory requirements, some remarking that rules should be considered in the context of a product's characteristics and investor sophistication and recommending that the *ABS Disclosure Principles* be used as a *reference list*. The TC appreciates these comments, noting that the principles-based format of the *Principles* allows for a wide range of application and adaptation by securities regulators.

Respondents also provided feedback relating to the timing with which ABS disclosure should be provided to investors, some recommending provision of disclosure prior to the first pricing of an ABS transaction. While the TC recognizes the importance of providing investors with timely disclosure, it concluded that timing requirements are a matter of national implementation relating more specifically to the offering and/or listing procedures of ABS themselves.

C. Glossary of Defined Terms

Multiple respondents offered feedback on the terms used to describe functions performed as part of an ABS transaction, noting that various jurisdictions use

different terminology to describe the entity that fulfills a given role. For example, it was noted that the terms *originator* and *sponsor* are used in different jurisdictions to describe the same function of providing the assets. Revisions have been made in the Glossary with the aim of concentrating on the function to be performed by the entities involved regardless of the terms used to describe the entities across jurisdictions.

D. Sponsor

The *Principles* state that disclosure about the sponsor's securitization experience would be relevant to investors. Some respondents thought the sponsor's prior securitization experience would not be informative for investors who should essentially be informed about the assets themselves and not necessarily the sponsor's past experience. The TC recognizes that materiality of such information to investors may vary depending on the circumstances of a particular sponsor, but that regulation in some jurisdictions requires the disclosure of the sponsor's securitization experience. The *Principles* therefore have been revised to clarify that while a general discussion of sponsor's experience should be provided to the extent material, additional detail may be appropriate. As noted, useful disclosure would include, to the extent material, whether any prior securitizations organized by the Sponsor have defaulted or experienced any early amortization triggering event.

E. Issuing Entity

Among the general information about the issuing entity, the *Principles* indicate that reference should be made to the financial information items in the *International Debt Disclosure Principles*. One respondent considered disclosure of the issuing entity's financial information as not relevant to securitization transactions, in particular because generally the securities issuers are passive entities that only hold title to the underlying loans/assets for the benefit of the investors. This section has not been revised, as the TC has concluded that, because even if a passive entity the Issuing Entity is a relevant party to the ABS transaction, material information about it should be provided to investors.

Practices relating to the transfer or sale of the pool assets to the issuing entity vary across jurisdictions. Because the information about the legal rights to the assets underlying ABS is important information for investors, the *Principles* have been revised to recognize variations in how legal rights to the assets are transferred to the issuing entity, and to thus call for disclosure of the manner and timing through which that transfer occurs.

F. Servicers

The Consultation Report indicated that information about the servicing arrangements and servicing practices may be material, referring also to the custodial requirements regarding the assets and the ability of the Servicer to waive or modify any terms, fees, penalties or payments on the assets. In recognition of situations in which custodial requirements regarding the assets may be performed by a third-party, the *Principles* have been revised to refer also to information about the entity that performed the custodian activity.

Reference to information on the factors that may be material to an analysis of the servicing of the ABS assets has been revised to remove specific reference to disclosure of material changes to the Servicers' policies in servicing assets of the same type. Because information about such policy changes may be important to demonstrate recent trends involving the Servicer, the TC has concluded that they may be considered among the disclosures of material factors to analyzing the servicing of the assets and that specific reference to them is unnecessary.

G. Originators

In many ABS transactions the pool assets are originated by the sponsor. In other transactions, the assets may be acquired from a separate originator. Accordingly, the *Principles* have been revised to recognize the possibility of such a situation.

One respondent believed that financial statement disclosure of originators would be too burdensome and not relevant to investors. Noting that the *Principles* indicate that the financial statements of originators may be relevant in some jurisdictions, changes have not been incorporated in response to this comment.

H. Static Pool Information

Several respondents indicated that the data collection period for asset pools should cover more than one economic cycle, and others noted that the availability and disclosure of static pool data may vary across jurisdictions. The TC has concluded that static pool data is important to an investors' understanding of the performance of different pools of assets over time. However, the duration of the appropriate periodic increments and the definition of what constitutes an economic cycle are determinations better made within individual jurisdictions. Cognizant that the availability of static pool data may vary in different jurisdictions, the TC has retained examples of the type of disclosure that may be useful to investors.

I. Pool Assets

Some respondents indicated that more specific information relating to pool assets would be helpful. The TC notes that the *Principles* do not provide specific items for pool asset disclosure in order to allow for appropriate application by securities regulators in different jurisdictions.

J. Significant Obligors of Pool Assets

The *Principles* refer to disclosure relating to significant obligors, but do not provide a definition or criteria for measuring significance. One respondent noted that the identification of *significant obligors* can differ significantly across jurisdictions, and have suggested that the *Principles* indicate what level of concentration may give rise to any one obligor becoming *significant* for purposes of disclosure. The TC notes that, consistent with its principles-based approach, *significance* has not been defined in order to allow regulators in different jurisdictions to apply the principle for

significant obligor disclosure in a manner appropriate to their particular circumstances.

The *Principles* have been revised to indicate that information regarding the nature of obligor concentration of the pool assets would be useful for investors. The TC has concluded that this information would be useful because obligor concentration may create a risk within a pool of assets, for example, if default of one or more significant obligor may consume reserve accounts or the credit enhancement lines.

The TC received some comments expressing concern with legal liability issues in connection with disclosures relating to significant obligors, including potential breach of confidentiality obligations vis-à-vis the obligor, who may not be aware of the sale or assignment of their claim to the issuer. Concern was also expressed that the inclusion of obligor-related information could lead to the risk of liability for the arranger, who may not be able to provide verified obligor information in a prospectus due to the absence of a legal relationship between the two parties. The TC has concluded that significant obligor disclosure is highly relevant to investors and in some instances may be necessary for an ABS transaction. The TC recognizes, however, that disclosure of that information should be made in a manner that does not violate national legal requirements, such as those relating to confidentiality and related civil liabilities, but confidentiality should not be used to avoid disclosure of material risks related to an obligor.

K. Credit Ratings

The TC received many comments relating to the use or disclosure of credit ratings in securitization transactions. Some respondents believed that information about credit ratings was not warranted, while other respondents requested full transparency about credit ratings. If credit rating agency disclosure is provided, some respondents believed that disclosure of whether a rating agency has refused to assign a credit rating was not helpful to investors, one of which argued that extensive disclosure concerning rating agencies is unnecessary and is otherwise publicly available to investors. The TC has concluded that disclosure about credit ratings, including whether an Arranger/Sponsor has obtained preliminary ratings for a class of ABS or been refused a credit rating to a class of ABS, is useful information for investors as it may help prevent ratings shopping and provides an indication of the Issuing Entity's ability to fulfill its obligations.

L. Flow of Funds

The *Principles* indicate that detailed information about the flow of funds in an ABS transaction would be material to investors and should be disclosed. Some respondents indicated that the ABS transactions feature individual cash flow models on a case-by-case basis, and that disclosure of those models could reveal trade secrets of the arranger. The TC has concluded that disclosure about the material features and assumptions about the flow of funds is important to investors' understanding of the structure of an ABS transaction, but notes there is no explicit reference to disclosure of cash flow models.

Appendix 2

Public Comments Received by the Technical Committee on the *Consultation Report – Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities*

List of Respondents

American Securitization Forum

Bundesverband Investment und Asset Management e.V.

European Fund and Asset Management Association

Gesamtverband der Deutschen Versicherungswirtschaft e.V.

International Banking Federation

Investment Company Institute

Irish Stock Exchange

Moody´s Investors Service

Securities Industry and Financial Markets Association/European Securitisation Forum (jointly)

Securitization Forum of Japan

Standard & Poor's Ratings Services

SVS Chile

TYI LLC

Zentraler Kreditausschuss

August 10, 2009

VIA E-MAIL

Mr. Greg Tanzer
Secretary General
International Organization of Securities Commissions
C/Oquendo 12
28006 Madrid
SPAIN

Re: Public Comment on the Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities: Consultation Report

Dear Mr. Tanzer:

The American Securitization Forum (the "ASF")[1] submits this letter in response to the request for comment issued by the Technical Committee of the International Organization of Securities Commissions ("IOSCO") with respect to its consultation paper on *Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities* (the "ABS Disclosure Principles"). The ASF appreciates the opportunity to provide input in the consultation process and supports IOSCO's efforts to advance international coordination on this important topic. Disclosure is a key measure to facilitate effective risk identification, assessment and management in respect of securitizations by investors and other market participants and is in line with our ultimate goal of restoring confidence in the securitization market. In that respect, the ASF and its membership support facilitating a better understanding of the issues that should be considered by global regulators when developing or reviewing their asset-backed securities ("ABS") disclosure regimes.

In general, regulatory and other policy responses to perceived securitization market deficiencies should be aimed at facilitating the return of the securitization market as part of the exit strategy to the current crisis. Securitization is one of the few ways that banking institutions can continue

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[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 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).

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to lend without increasing leverage or using scarce capital and balance sheet resources. As such, disclosure principles for this market need to take account of the information which is meaningful and appropriate for investors and also the practical ability of market participants to efficiently produce such information. In order to assess the ABS Disclosure Principles, it would seem appropriate to include feedback from investors, servicers, originators, rating agencies and dealers in developing disclosure standards, as all incur either costs or benefits from enhanced disclosure. Furthermore, it is also important to take into account the recent implementation of securitization industry initiatives related to enhanced disclosure, notably the ASF's *Project RESTART*[2] and the European Securitisation Forum's *RMBS Issuer Principles for Transparency and Disclosure*.[3] These initiatives have been endorsed by member firms in addition to various national regulators and policymakers so it is critical that any proposals for regulatory reform take them into consideration.

For the most part, the ABS Disclosure Principles endorse disclosure requirements and market practices currently existing in the United States. In particular, these recommendations are encompassed in comparable provisions of the Securities Act of 1933 and the various rules and regulations adopted thereunder, including Regulation AB, Regulation S-K and Form S-3. As one would expect, the ASF supports, in theory, a global disclosure standard for securitizations based upon U.S. standards. However, it is important to note that there are challenges in respect of full globalization of ABS disclosure standards and it will be necessary to take into account the various existing local requirements and market practices in order to achieve it. Furthermore, it will be difficult to adopt a more prescriptive approach than that set forth in Regulation AB, given the wide variety of transaction structures used and the different roles played by key transaction parties in different structures. That said, it is important to note that the materiality threshold governing prospectus disclosure must continue to play an important role in ensuring that the prospectus includes the information needed by investors and that there is adequate flexibility such that the relevant requirement makes sense across transaction structures and varying party roles.

The ABS Disclosure Principles also include a few recommendations that, if adopted, would represent a significant departure from existing regulatory requirements and market practices in the U.S. The remainder of this letter focuses on those recommendations and provides our comments, including the ways in which those recommendations may be problematic for the securitization market and its participants.

Specific Comments to the ABS Disclosure Principles

In Section III.D.1, the ABS Disclosure Principles recommend disclosure, to the extent applicable, of financial information of the issuing entity in accordance with the requirements of Item XIII (Financial Information) of the *International Debt Disclosure Principles*. The ASF does not believe that this recommendation is relevant to the issuing entities traditionally used in securitization transactions. In the U.S., securitization issuers are passive entities who generally

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[2] More information regarding *ASF Project RESTART* is available at: www.americansecuritization.com/restart.

[3] More information on the *ESF Principles* is available at: www.europeansecuritisation.com/dynamic.aspx?id=1672.

only hold title to the underlying loans for the benefit of the investors and provide a means to "pass-through" payments made on the underlying loans to the investors. Securitization issuers have no employees and do not hold any assets other than those related to the securitization. It is for this reason that Form 10-K specifically exempts asset-backed issuers from providing financial statements in their annual report filings.

In Section III.G, the ABS Disclosure Principles state that relevant information with respect to originators would include "the financial statements of these originators and disclosure of whether the audited financial statements have qualified or unqualified opinions." The ASF believes that this information is far too burdensome to produce in a prospectus and that it is questionable whether such information would provide any benefit to investors. Securitization exists as a capital raising technique in which pools of loans are sold by originators directly or through other loan sellers into securitization trusts. In order to achieve "off balance sheet" treatment for the loans, originators must have a limited connection to the loans after they are sold. Other than the context of an ongoing repurchase obligation, which is addressed in another IOSCO recommendation discussed below, it is not entirely clear why the financial statements of an originator would be particularly relevant to investors. Even if such information were desired, it does not need to be disclosed in a prospectus as the vast majority of originators in the U.S. are, or are a part of, public companies that must publicly file financial statements on a quarterly and annual basis.

In Section V.E, the ABS Disclosure Principles recommend disclosure of the repurchase performance of any repurchasing party to the securitization. Repurchase performance has become a significant topic of discussion and consternation among market participants. The current economic situation has caused a significant increase in loan defaults, and the ensuing increase in repurchase demands has required loan sellers to begin contesting those demands where appropriate. Both the securitization industry and policymakers have already taken action to address this issue. Currently, initiatives are included in ASF's *Project RESTART* to resolve repurchase inadequacies that had existed in prior transactions. For example, the standard ASF RMBS Reporting Package includes repurchase information[4] so that investors can track repurchases at the loan level. In addition, the ASF is developing a uniform set of repurchase procedures aimed at determining when a breach is material and delineating the roles and responsibilities of transaction parties in that process. Finally, the Obama Administration recently proposed the "Investor Protection Act of 2009," which would require the Securities and Exchange Commission to "require disclosure on fulfilled repurchase requests across all trusts aggregated by originator."[5] To truly seek a global standard, IOSCO may want to consider these initiatives in its proposals.

Also in Section V.E, the ABS Disclosure Principles recommend disclosure about a repurchasing party's "financial condition to the extent it may impact such party's ability to repurchase assets."

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[4] Field #26 in the Reporting Package is entitled "Repurchase Reason Code" and it is populated with information that investors can use to track repurchase performance. The ASF RMBS Reporting Package can be found at www.americansecuritization.com/uploadedFiles/ASF_Project_RESTART_Final_Release_7_15_09.pdf.

[5] The "Investor Protection Act of 2009" can be viewed at www.financialstability.gov/docs/regulatoryreform/07222009/titleIX.pdf.

The ASF believes disclosing this type of information would certainly be considered for "materiality" to an investor's decision to purchase securities. However, we question whether this type of information belongs in a "rules based" disclosure standard. There are infinitely many items that could be material to an investor and the "principles based" materiality threshold will cause those items, including a repurchase party's deficient financial condition, to be disclosed in the prospectus. Furthermore, our investor members have indicated that instituting a clear mechanism for the repurchase process is more important at this point than singling out disclosure that would ultimately be covered by the materiality threshold in the first place. It is for this reason that the next phase of ASF's *Project RESTART* is to clearly define each party's role in that process. In addition, it is important to consider the action being taken by the rating agencies on this issue. As announced in a series of releases[6], the rating agencies have revised their RMBS ratings criteria to either incorporate the credit rating of the representation and warranty provider (or subject the provider to some other internal assessment) or, in the alternative, to require a third party due diligence firm to perform an analysis of the asset pool.

In Section VII.B, the ABS Disclosure Principles recommend certain disclosure concerning rating agencies including, "each rating organization's definition or description of the category in which it rated the class of securities....the relative rank of each rating within the assigning rating organization's overall classification system; and all material scope limitations of the rating and any related designation (or other published evaluation) of non-credit payment risks assigned by the rating agency." In the U.S., prospectus disclosure of ABS ratings has been largely market driven and it is not current practice to include full disclosure on these items, especially the "definition or description" of the rating. This type of disclosure is better left to the rating agencies, who produce the applicable information and already make it publicly available. For example, rating agencies' websites provide explanations of the rating definitions, links to the rating criteria papers and details of how the ratings process works. Requiring issuers to include a description of the hundreds of pages of disclosure already included on rating agency websites is overly burdensome and inefficient and in some respects, unfeasible. Most issuers do not have a complete understanding of the intricacies of assigning ratings to provide a complete description of how those ratings were assigned. Furthermore, an inaccurate or even insufficient description of such information in a prospectus would expose the issuer to unnecessary liability. Although the prospectus is a disclosure document, it should not be used to repeat all of the publicly available information that may be useful to investors, and, while we support better understanding of credit ratings for investors in general, this should not be done through prospectus disclosure.

Also in Section VII.B, the ABS Disclosure Principles recommend disclosure where a preliminary rating from another rating agency has been obtained or "if any rating agency has refused to assign a credit rating to a class of ABS." The ASF has concerns with this recommendation because it does not factor in the nature of structuring ABS transactions, which generally occurs over a period of time. During this period, the asset pool and the structure of the securities are

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[6] Please see "Moody's Criteria for Evaluating Representations and Warranties in U.S. Residential Mortgage Backed Securitizations (RMBS)," Moody's Investors Service, November 24, 2008, "U.S. Residential Mortgage Loan Representations and Warranties Criteria," Fitch Ratings, December 2, 2008, and "RMBS: Standard & Poor's Representations And Warranties Criteria For U.S. RMBS Transactions," Standard & Poor's Ratings Services, November 25, 2008.

constantly changing. Final ratings can only be assigned when the asset pool and the structure become final. As such, it may not be appropriate to disclose preliminary ratings or refusals to provide ratings, when such ratings or refusals were based on a different asset pool or structure or both. The ASF has previously expressed this view in a letter delivered to the Securities and Exchange Commission in response to its request for comments on proposed rules governing credit rating agencies.[7]

In Section VIII.B, the ABS Disclosure Principles note that "in some jurisdictions, the Issuing Entity must confirm that the securitized assets backing the issue have characteristics that demonstrate the capacity to produce sufficient funds to service any payments due and payable on the securities." The ASF would like to make clear that this is **not** the current U.S. market practice or the practice of any other jurisdiction that we are aware of. Our membership does not believe that this type of representation is appropriate or even feasible given the inherent risks related to ABS, including those related to credit, prepayment and interest rates, as well as the risks relating to housing market depreciation. In fact, this type of issuer representation would directly conflict with the various risk factors relating to cash flow set forth in the prospectus and any subordination provided to senior certificates to guard against the risk of insufficient cash flow. Furthermore, this type of representation would expose issuers to an unacceptably large potential for liability.

On behalf of the ASF, I would like to reiterate our support of IOSCO's efforts to advance international coordination on ABS disclosure standards. Thank you for your consideration of the ASF's comments to the ABS Disclosure Principles. For additional information or if you have any questions, please do not hesitate to contact me at 212.313.1135 or at tdeutsch@americansecuritization.com or George Miller at 212.313.1116 or gmiller@americansecuritization.com.

Sincerely,

Tom Deutsch
Deputy Executive Director
American Securitization Forum

[7] Please see pages 8 and 9 of the letter at www.americansecuritization.com/uploadedFiles/ASF_Final_SEC_CRA_Letter_9_5_08.pdf

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August 10th, 2009

Greg Tanzer
Secretary General
IOSCO International Organization
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SPAIN

IOSCO Consultation Report on Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities

Dear Mr. Tanzer,

BVI is grateful for the opportunity to comment on transparency deficiencies in terms of ABS and respective remedy possibilities suggested by IOSCO. In our view, the consultation at hand represents a necessary prerequisite for revitalization of ABS markets and enhancement of investor protection.

1. Scope of ABS disclosure

Limiting the scope of the proposed disclosure principles to ABS services by cash flows of pooled receivables or other cash-convertible assets appears not quite sufficient. Also synthetic ABS transactions such as RMBS, CMBS, Auto Loan/Leasing ABS, Corporate Leasing ABS, Credit Card ABS and other Consumer ABS should be covered. Minimum standards should also be given to managed CDOs, however taking into consideration the specifics of this kind of these instruments.

Moreover, it is reasonable to focus the disclosure principles on public offerings of ABS. In this context, however, it would be helpful if acquisition of ABS by collective investment undertakings by way of private placement were simultaneously considered as resale of ABS to the public (meaning

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fund unit holders), so that CIS investors could generally benefit from the disclosure principles in accordance with IOSCO's proposals on page 4.

We have taken note that the ABS Disclosure Principles abstain from addressing continuous reporting disclosure mandates. We feel, however, that a continuous investor reporting on the basis of equal quality standards would be desirable. Today, ongoing reporting often lacks continuity, punctuality or content. We therefore suggest to reconsider the Principle's scope in this respect.

In any case, BVI members very much hope that over time, the IOSCO disclosure principles will also prompt lead necessary improvements in terms of documentation available in the institutional markets.

2. Timing of disclosure

In order for the ABS transparency regime to be effective, all the information to be disclosed in relation to an ABS needs to be available before the first pricing of the ABS transaction. Timely public disclosure of the relevant information, including the characteristics and performance of the assets in the pool underlying structured finance products, the legal documentation setting forth the capital structure of the trust, payment priorities with respect to the tranches, and all applicable covenants regarding the activities of the trust, will considerably improve transparency surrounding the information and processes used by CRAs for rating structured finance products. It should also assist institutional investors and other market professionals to perform independent assessment of these products.

In addition, if the information is publicly available at the first pricing of a security, any resulting "unsolicited ratings" by other CRAs could be used by (less sophisticated) market participants to evaluate the ratings issued by the CRA appointed to rate the product. This is essential in order to enable all and not only regulated and sophisticated investors to rely stronger on proprietary risk analysis in their investments.

3. Content of ABS disclosure

The proposed disclosure requirements for cash ABS appear comprehensive and exhaustive. However, the value of information could be further enhanced by standardisation of its content with respect to the required mini-

mum data elements regarding identification, description and experience of all the relevant parties involved in the transaction (cf. sections I to IV, VI, XII B and XVIII of the consultation report). These elements should additionally include the currently missing disclosure of the investor relation contact details and where applicable, the treasurer/CFO details as well as the website link.

4. Disclosure on trustee's responsibilities (section III F No.1)

Description of the trustee's duties and responsibilities should also extend to the requirement to organize a bondholders meeting with the aim of resolving breaches of the trust deed.

5. Static Pool Information (section IV)

It appears noteworthy that the data collection period for the pool of assets in question should, whenever possible, be longer than a single economic cycle in order to provide for meaningful and sustainable information.

6. Documentation on ABS (section VII B and XVI)

The disclosure requirements on ABS should include additional provisions that any documentation on the transaction given to the CRAs for the purpose of rating the transaction and for the permanent surveillance and monitoring of a rated deal needs to be disclosed to investors, either directly as an exhibit or by means of a central database or website. Such initial deal and monitoring information would provide users of ratings with a more complete picture of a CRA's rating process and expose that process to greater scrutiny. This exposure, in turn, should promote the issuance of more accurate, high-quality ratings, and could prevent issuers and arrangers of ABS from unduly influencing CRAs by seeking higher than warranted ratings in exchange for future business. In this way a functioning independent market for ABS ratings and research can be progressively developed.

7. Full transparency of ratings

Finally, the issuer, arranger or other originating party to an ABS deal should be obliged to disclose as material important information all CRA ratings on all tranches of the ABS. This will help to discourage "rating shopping" and "cherry picking" by the issuer/arranging bank and improve information to the

market place. ABS and other structured finance ratings tend to be made available to the public by CRAs only on the highly rated senior tranches. Lower ratings on junior tranches will usually not be made public. This is the result of the issuer/arranging banks' pressure on the CRA to suppress the publication of ratings they do not deem necessary. Investors, however, would be much better equipped to assess the true risks of a specific deal if they were able to analyse all ratings assigned to a specific deal.

8. Application on national level

Given the global relevance of the Standards established by the IOSCO TC, we encourage IOSCO members to aim for maximum uniformity in the day-to-day application of the Standards on national level. National realities may limit the degree of possible harmonization in this respect, however it should be taken care of that key elements of the Standards, such as timely information and equal treatment of all parties including CRAs, should be applied in a uniform manner by all IOSCO members.

We hope that our remarks prove helpful for IOSCO members in establishing the necessary level of transparency in the ABS markets and remain at your disposal for any questions or further discussion.

Yours sincerely

BVI Bundesverband Investment und Asset Management e.V.

Signed:
Rudolf Siebel LL.M

Signed:
Marcus Mecklenburg

efama

European Fund and Asset Management Association

Greg Tanzer
Secretary General
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Ref. 09-4065
Sent via e-mail: ABSDisclosure@iosco.org

Brussels, 17 August 2009

EFAMA comments on IOSCO Consultation Report on Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities

Dear Mr. Tanzer,

EFAMA[1] welcomes the opportunity to comment on IOSCO's Consultation Report on Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities. We strongly support IOSCO's work on this topic and believe that improved disclosure regarding asset-backed securities is necessary to enhance investor protection and revive the securitization market.

1. Scope of ABS disclosure

EFAMA believes that the scope of the proposed disclosure principles should not be limited to ABS serviced by cash flows of pooled receivables or other cash-convertible assets. Synthetic ABS transactions such as RMBS, CMBS, Auto Loan/Leasing ABS, Corporate Leasing ABS, Credit Card ABS and other Consumer ABS should also be covered. Minimum standards should also be extended to managed CDOs, while taking into due consideration their characteristics.

We agree with the focus on public ABS offerings and listings. However, it would be helpful if the Disclosure Principles could also apply to the acquisition of ABS by collective investment undertakings by way of private placement, so that CIS investors could benefit as well from the disclosure.

[1] EFAMA is the representative association for the European investment management industry. EFAMA represents through its 26 member associations and 44 corporate members about EUR 11 trillion in assets under management of which EUR 6.1 trillion managed by around 54,000 investment funds at end 2008. For more information, please visit www.efama.org

2. Timing of disclosure

It is crucial that all disclosures in relation to an ABS issue be available before the first pricing of the ABS transaction.

Timely public disclosure of all relevant information, including the characteristics and performance of the assets in the underlying assets, the legal documentation describing the capital structure of the trust, payment priorities for the various tranches, as well as all applicable covenants regarding the activities of the trust, will help improve transparency regarding the processes used by CRAs to rate structured finance products. It will also greatly assist investment managers and other market participants in their due diligence and independent assessment of these products.

Furthermore, if the information is publicly available before the first pricing of a security, it could be used to produce "unsolicited ratings" by other CRAs, which in turn would help market participants evaluate the ratings issued by the CRA appointed to rate the product. This would be an essential step towards enabling all investors (also less sophisticated ones) to perform proprietary risk analysis and reducing reliance on credit ratings.

Furthermore, EFAMA believes that ongoing investor reporting at equally high levels is desirable, and the requirement should be included in IOSCO's Principles. Today, such reporting often lacks continuity and the content is sometimes inadequate.

3. Content of ABS disclosure

We agree with the proposed disclosure requirements for cash ABS. However, information could be further improved through standardisation with respect to the required minimum data elements regarding identification, description and experience of all the relevant parties involved in the transaction (cf. sections I to IV, VI, XII B and XVIII of the consultation report).

Disclosure of investor relation contact details and, where applicable, treasurer/CFO details as well as website link should also be added.

4. Disclosure on trustee's responsibilities (section III F No.1)

The description of the trustee's duties and responsibilities should include the requirement to organize a bondholders' meeting to resolve breaches of the trust deed.

5. Static Pool Information (section IV)

The data collection period for the pool of assets in question should, whenever possible, be longer than a single economic cycle in order to provide more meaningful information.

6. Documentation on ABS (section VII B and XVI)
The provisions should also require the disclosure to investors (either directly as an exhibit or by means of a central database or website) of any documentation on the transaction given to the CRAs for the initial rating and for the permanent monitoring of a rated issue. Such initial deal and ongoing monitoring information would provide users of ratings with a more complete picture and allow greater scrutiny of a CRA's rating process.

This transparency, in turn, should promote the issuance of more accurate, high-quality ratings and could help the progressive development of an independent market for ABS ratings and research.

7. Full transparency of ratings
The issuer, arranger or other originating party to an ABS deal should be required to disclose as material information all CRA ratings on all tranches of the ABS. This will prevent "rating shopping" and "cherry picking" by the issuer/arranger and will improve information to the marketplace. ABS and other structured finance ratings tend to be made available to the public by CRAs only on the highly rated senior tranches, while lower ratings on junior tranches are usually not published, at the request of the issuer/ arranger. Investors would be better able to assess the true risks of a specific deal if they were able to analyse all ratings.

8. Application on national level
In view of the global relevance of the Principles, EFAMA believes that a harmonized implementation by IOSCO members is very important, particularly with regard to the timeliness of information and equal treatment of all parties (including CRAs).

We remain at your disposal for any further clarification.

Yours sincerely,

Peter De Proft
Director General

GDV
DIE DEUTSCHEN VERSICHERER

Public Comment
of the German Insurance Association
on the Consultation Report
"Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities"

Introduction

German insurance companies are among the most important institutional investors in the capital markets. At present, German insurance companies hold investments amounting to approximately € 1.2 billion. Although they have invested only 1.7 % of their investments in asset-backed securities, they are nevertheless considerably affected by the proposals on "Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities".

The financial crisis has shown the need for more as well as transparent information, especially on highly complex products like ABS, that are one of the most important factors having caused the crises.

German insurance companies therefore welcome the approach made in the consultation paper to achieve a higher level of disclosure of information on ABS transactions. More detailed and at the same time standardised and transparent information will serve institutional investors and facilitate the analysis and monitoring of ABS products. While the offering circular already discloses most of the criteria addressed in the consultation paper, we would like to submit the following comments:

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I. Scope of ABS disclosure and general remarks

We have taken note that the ABS Disclosure Principles do not address continous reporting disclosure mandates. For investors information on ABS is not only important at the time of listing and public offering of ABS. With a view to continuous monitoring and risk management of investments like ABS in stock, continuous reporting on the basis of equal quality standards would also be desirable. Today ongoing reporting often lacks continuity, punctuality and content. We therefore suggest to reconsider the scope of the disclosure principles in this respect.

Limiting the scope of the proposed disclosure principles to ABS services by cash flows of pooled receivables or other cash-convertible assets appears not sufficient. Also synthetic ABS transactions should be covered.

In quite a number of statements the paper lacks clear and precise specifications. Especially the following wordings could be defined more precisely, in order to reach a certain degree of comparability:

- III. E.1. sentence 3 "significant portion of the pool assets",
- III. E.2. sentence 5 "past few years",
- III. G. sentence 2 "certain concentration threshold",
- III. G. sentence 4 "significant portion of the pool assets",
- V. B. sentence 6 "historical data",
- VI. sentence 2 "significant portion of the asset pool".

II. Section V. "Pool Assets", Section B "Pool Characteristics"

- Information on the allocation of the underlying assets

As to the statement made in paragraph 5, sentence 2, we would like to emphasize that the information about the allocation of the underlying assets as to the legal nature, rating, size, jurisdiction, region, sector etc. according to different criteria (e.g. number of debts, amount of debits) is one of the most important categories of information for the investor of all. Information on these aspects should be discussed in a more detailed form and should therefore be highlighted in this paper to a far greater extent.

- Information on loan levels

Information disclosed in the principles refers to the composition and the characteristics of the asset pool on the whole. In view of a better risk management of ABS it would be desirable if more detailed information could also be disclosed in respect of the of single loan levels contained in the pool.

III. Further important aspects

1. A certain minimum standard on regular reporting should be proposed. The volume of investor reports is at present entirely heterogeneous (one-pager, reports of a size of 100 pages).

2. Investors should receive the same information at the same time as rating agencies.

3. In the context of transparency, the topic of standardization of information should be given greater importance in the paper. The information on ABS transactions mentioned in this paper is basically already available (e.g. delinquencies, losses, prepayments). However, as the terms are differently defined, it is very difficult to compare this information within a sub-asset class of ABS. Standardization of the format could also be very helpful (e.g. investor reports are generally available in pdf files, only in very few cases reports are available in excel files which basically make monitoring a lot easier).

4. Access to investor reports should be facilitated. In a lot of cases investors have to give evidence that they have invested in the relevant transaction before they are granted access to investor reports. This is a considerable disadvantage when an investor wants to buy ABS on the secondary market. Therefore, it would be very helpful for investors to reach a certain degree of standardisation as to the source of the investor reports.

5. Investor reports should be disclosed on a regular basis. Currently reports are disclosed monthly, on a quarterly or half-yearly basis or only at the note payment date. Uniform monthly reporting (also between note payment dates) would be very helpful for investors.

6. With a view to price transparency, it would be helpful for investors if the lead arranger priced ABS bonds on a regular basis (ideally on a daily basis) and made them publicly available.

Berlin, 31 August 2009

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Public comment on the disclosure principles for public offering and listings of asset-backed securities: Consultation Report

General remarks

1. The International Banking Federation (IBFed) welcomes the opportunity to comment on IOSCO's thinking with regard to disclosure principles for public offerings and listings of asset-backed securities (ABS). Banks world-wide are involved in ABS offerings in a range of different functions, including loan origination, intermediary functions, and their own investments. Therefore, IBFed has a core interest in these markets functioning as effectively as possible.

2. Comprehensive, meaningful and high-quality information is a fundamental pre-condition to ensure this is the case. As IBFed underlined in its response to IOSCO's Consultation Report on Unregulated Financial Markets and Products, reducing as much as possible information asymmetries between buyers and sellers on the characteristics of the traded products is expected to be the most important measure to restore investor confidence. This is as opposed to potential retention requirements ("skin in the game") for loan originators, which are not favoured because of the efficiency loss that they would unavoidably imply.

3. Moreover, IBFed believes that international standards would be helpful to support the global nature of the securitisation markets. **The principles put forward by IOSCO therefore have the potential of providing important support to the reviving of the securitisation markets.**

4. However, the principles must be drawn up **bearing in mind the professional nature of ABS markets**. Regulatory authorities should be mindful not to undermine the distinction between retail markets and wholesale markets in terms of degree of protection and need for regulatory interference.

Scope and general set up of the principles

5. IBFed broadly agrees with the suggested scope of the principles, which would require the issuing entity to prepare the mandated disclosures for the purpose of offering or listing ABS, but enables scope for stock exchanges to determine additional, specific suitability criteria.

6. IBFed also supports the principle that **issuing entities should be required to disclose all information that would be material to an investor's investment decision and that is necessary for full and fair disclosure**. At the same time, IBFed welcomes IOSCO's statement that the principles-based format of the principles allows for a wide range of application and adaption by regulatory authorities. It is important to ensure the appropriate balance between international consistency and allowing regulatory authorities flexibility to take account of the specific legal and regulatory systems within their country. For example, flexibility is particularly relevant for those jurisdictions where **retail investors are given a fully understandable and useful representation of the products' main features by means of a summary of the full prospectus**.

7. Whilst IBFed further agrees that information should be disclosed in as **plain language** as possible, investors in professional markets should be relied upon to be highly sophisticated, and therefore able to understand technical financial market terms. Therefore, the proposed requirement for presentation of information in a "clear and concise" manner needs to be considered in terms of both the legal and practical implications of such a requirement. While it is important to ensure that investors are not overwhelmed with information, it is also important to be mindful that investors must in the first place be comfortable to have received all materially relevant information.

Specific comments on ABS disclosure principles

8. On the whole, IBFed would support the proposed disclosure principles. However, IBFed has some detailed views on a number of specific issues.

9. In sections III.B.2, III.E.2 and III.G, on the **functions and responsibilities of different parties involved in the securitisation transaction**, IBFed is hesitant that disclosing information on the previous experience of a Sponsor, a Services or an Originator in relation to securitisation transactions can provide potential investors with information that is relevant and material to their assessment of an investment products offered to them.

10. In section III.E.5 on the **servicers**, IOSCO suggests, among other things, that the documentation to be provided to investors should disclose how the criteria for permitted loan modifications would "impact particular classes of ABS holders". Such a differentiation between different classes of investors conflicts with legislation that has, for example, already been passed in the U.S., and where it was specifically stated that loan modifications apply to all investors, rather than particular tranches. Corresponding changes to ABS disclosure documents are already underway. It would

not be desirable that these are undermined by contradictory IOSCO guidance at this current point in time.

11. Furthermore, in section III.F on **trustees,** IOSCO suggests that "any limitation [on trustee's oversight regarding the transaction] should be noted". This implies that trustee's oversight would normally be far-reaching, which is not always the case. For example, in the U.S. trustee's oversight is extremely limited pre-default and reference to "limitations" in oversight would therefore be misleading.

12. In section V.A on **pool assets**, IBFed assumes that the reference to "due diligence" entails that the document should state whether or not a due diligence process has been performed.

13. In connection with section VI, IBFed notes that restrictions in national banking secrecy laws and personal data protection laws may prevent disclosure about **specific obligors** (items A and B).

14. In section VIII.C on disclosure of **fees and expenses**, IBFed, while noting that this item is highly relevant to investors, believes that the disclosures envisaged are overly broad, especially for issues offered to investors in professional markets.

15. In connection with section XIV, IBFed considers that the scope of the disclosure requirements on applicable **taxation rules** in relation to issues that are offered to investors in multiple jurisdictions should be further clarified.

16. In section XIV on **taxation**, IBFed notes that each ABS holder will have their own taxation circumstances, and therefore this may prevent disclosures being made about tax provisions that may materially affect an investors' decision whether or not to invest and being relevant to the **specific investor**.

17. In section XV on **legal proceedings**, IOSCO suggests that disclosure should be made of information about "material legal proceedings" against a participant in the securitisation program. IBFed considers that the term "material legal proceedings" should be clarified, so that it is limited to those proceedings involving the types of transactions or issues where the relevant party acts in the same capacity as in the subject transaction. For example, a **trustee** should disclose only material legal proceedings where it is involved in a trustee capacity. In turn, this would exclude all other proceedings against the bank or one of its affiliates, unless such a proceeding might put the viability of the relevant party at risk.

Concluding remarks

18. IBFed supports IOSCO's work on the development of international principles regarding the disclosure requirements for public offerings of ABS.

19. IBFed believes that the full, fair and material disclosures for ABS offerings enshrined in the IOSCO principles will play a key part in revitalising core securitisation markets.

20. Furthermore, IBFed is supportive of IOSCO's envisaged scope for its principles and welcome IOSCO's flexible approach on how its principles could be applied and adapted at national level, notably taking into account the necessary distinction between retail and wholesale markets.

21. IBFed looks forward to a continuous dialogue with IOSCO on the way its principles will be implemented.

Sally Scutt
Managing Director

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August 10, 2009

Mr. Greg Tanzer
Secretary General
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Re: Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities

Dear Mr. Tanzer:

The Investment Company Institute[1] supports IOSCO's efforts in its consultation report to examine the current disclosure requirements for public offerings of asset-backed securities ("ABS") through the issuance of preliminary recommendations for disclosure principles.[2] As significant investors in the global securities markets,[3] Institute members have a substantial stake in the quality and integrity of the disclosure regimes for publicly offered securities. This interest has increased with developments in the diversity and complexity of the capital markets and in response to concerns arising from recent market developments. Improving disclosure for ABS investors is a significant step in the protection of the integrity of the financial markets.

Transparency and disclosure also are essential factors to an efficient and liquid market. Many of the problems relating to recent events in the credit markets were associated with inadequate disclosure and transparency about certain securities products, including information about their

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $10.5 trillion and serve over 93 million shareholders.

[2] IOSCO Consultation Report: Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities (June 2009) ("Consultation Report"). The Consultation Report can be found on IOSCO's website at: http://www.iosco.org/library/index.cfm?section=pubdocs.

[3] As of year-end 2008, registered investment companies held 27% of outstanding U.S. issued stock, 44% of outstanding commercial paper, 33% of tax-exempt debt, 9% of U.S. corporate bonds and 15% of U.S. Treasury and government agency debt. In addition, according to ICI data as of year-end 2008, mutual funds and ETFs held approximately $1.1 trillion of foreign stocks and bonds. *See* 2009 Investment Company Fact Book, 49th Edition.

specific risks, their underlying assets, and assumptions underlying their credit ratings. For these reasons, it is critical that the regulatory framework require full and fair disclosure to permit investors to make informed investment decisions based on accurate and complete information. This is particularly true for complex products such as ABS.

Broaden Scope of ABS Principles to Other Structured Finance Products

The Institute has been active in the United States in promoting increased disclosure by issuers to investors. For example, earlier this year, the U.S. Securities and Exchange Commission ("SEC") proposed to modify the requirements for credit rating agencies in response to concerns about the integrity of the process by which those agencies rate structured finance products, particularly mortgage related securities.[4] In examining the SEC's proposal, the Institute stated that credit rating agencies and issuers have an important role to play in the dissemination of increased information about structured finance products.[5] As with the efforts undertaken by the SEC to improve disclosure of information related to ratings of structured finance products, we believe that the principles delineated in the Consultation Report provide a solid starting point for regulators worldwide regarding universally applicable disclosure for ABS to investors.

We recommend that IOSCO consider, however, exploring a wider range of application for its proposed ABS disclosure principles than is contemplated by the definition of ABS in the Consultation Report. IOSCO's definition of ABS is similar in scope to the definition of ABS used by the SEC in Regulation AB.[6] As we stated in our comment letter to the SEC, there is disparity in the U.S. disclosure requirements between ABS, as defined by the SEC in Regulation AB, and structured finance instruments that fall outside that definition.[7] We believe that enhanced disclosure results in improved

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[4] *See Re-Proposed Rules for Nationally Recognized Statistical Rating Organizations*, SEC Release No. 34-59343 (February 2, 2009), 74 FR 6485 (February 9, 2009).

[5] Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated March 26, 2009, available at http://www.ici.org/pdf/23359.pdf. *See also* Statement of Paul Schott Stevens, President and CEO, Investment Company Institute, at the SEC Roundtable on Oversight of Credit Rating Agencies (April 15, 2009), available at http://www.ici.org/pressroom/speeches/09_oversight_stevens_stmt.

[6] Regulation AB generally defines ABS as those supported by a discrete pool of self-liquidating assets that by their terms convert into cash within a finite period of time. This definition closely aligns with the Consultation Report definition – *i.e.,* securities that are 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 period of time, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders.

[7] Regulation AB sets forth the disclosure requirements for the registration of the sale of "asset-backed securities" under the Securities Act of 1933, as well as the disclosures pursuant to the reporting requirements imposed under the Securities Exchange Act of 1934 for those securities sold in public offerings. The disclosure for other structured finance products is not specifically addressed in SEC rules or regulations (other than to the extent that they are subject to general rules about

investor protection by facilitating a better understanding of the securities in question. We have recommended, therefore, that the SEC expand the scope of its disclosure regime for ABS to include the various collateralized and pooled products that fall within a broader definition of "structured finance product."[8] In particular, we believe there should be corresponding disclosure requirements for these securities so that investors receive, at a minimum, disclosure equivalent to that required of ABS under the SEC's Regulation AB. Likewise, we believe that, because of the utility and importance of such information to investors worldwide, IOSCO also should consider broadening the scope of its proposed ABS principles to other structured finance products.

Expand Disclosure Items in ABS Principles

The Consultation Report explains that an issuing entity will prepare a "Document"[9] used for the public offering or listing of ABS that will contain all information necessary for full and fair disclosure of the character of the securities being offered or listed in order to assist investors in making their investment decision. It further states that information called for by specific disclosures in the principles may need to be expanded where supplemental information is deemed to be material to investors and necessary to keep the mandated disclosure from being misleading. We support this proposed disclosure framework, including the individual disclosure data-points, such as information regarding the parties involved in the securitization transaction, static pool information, pool asset information, risk factors, details about the structure of the transaction, and so forth. It reflects the requirements for registered offerings of ABS securities in the United States under the Securities Act, echoing the prospectus disclosure regime.

As a next step, however, we recommend that IOSCO consider expanding the proposed principles to include disclosure of additional information on ABS. We have made this same recommendation to the SEC in the context of expanding the disclosure provided under Regulation AB.[10] This information should be standardized for each category of structured finance product and

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antifraud and material information) because the vast majority of those products are sold in transactions that are exempt from registration.

[8] In the credit rating agency context, for example, the SEC adopted the phrase "any security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction" to define the scope of structured finance products. Regulators may determine it is inappropriate to undertake a wholesale increase in the categories of structured finance products that satisfy this definition and are available for public sale. Nevertheless, there is a significant need for the SEC and other regulators to articulate and standardize the appropriate disclosure for a greater range of structured finance products than currently exists.

[9] A "Document" is defined as a prospectus or other type of offering document used in connection with a public offering of ABS, and registration statements or prospectuses used in connection with the listing of ABS or admission to trading on a regulated market.

[10] *See supra* note 5.

explained in a manner that provides sufficient specificity to be meaningful. This standardized information also would need to be regularly evaluated and updated to account for newly developed structured finance products that might raise new risks. Several initiatives have already been undertaken to develop and publish industry-developed recommendations with regard to additional disclosure that should be required by ABS issuers, and reporting standardization.[11] We believe that IOSCO and securities regulators could use the information identified in these proposals as a starting point for developing additional necessary disclosures.

To address concerns about the timing of the receipt by investors of information, IOSCO also should consider adopting an additional ABS principle recommending public disclosure to investors, in a reasonable time prior to an ABS sale being effected, of a subset of certain standardized items in the form of a term sheet or other summary document. We believe investors would benefit, through informed investment decision-making, from timely disclosure of such standardized, material information about an ABS offering prior to issuance of the final Document.

Recommend Continuous Disclosure under ABS Principles

As proposed, the IOSCO principles do not address continuous reporting disclosure mandates. We appreciate the limited purpose of the ABS principles – a starting point for regulators' review and analysis of ABS disclosure – but we urge IOSCO to consider the importance of continuing disclosure for these securities.[12] The recent credit crisis provides the clearest example of how quickly the credit quality of these securities can change and, thus, the added importance to investors of having continuous, fulsome disclosure to be able to analyze the implications of these changes to their investments.

* * * * *

We appreciate the opportunity to express our views on the Consultation Report and look forward to working with IOSCO as it continues to examine these issues. In the meantime, if you have

[11] *See, e.g., ASF Project RESTART Releases Disclosure and Reporting Packages, Representations and Warranties Request for Comment on July 15, 2009*, American Securitization Forum, Press Release, July 15, 2009.

[12] Section 15(d) of the Securities Exchange Act allows for the suspension of reporting obligations, and therefore disclosure, after one year, which occurs with many asset-backed securities sold in registered offerings. This is highly problematic to investors that suddenly, after one year, become privy only to limited disclosure through contract obligations with the issuer. Consequently, the Institute has recommended that the SEC require that disclosure under Regulation AB be ongoing. *See supra* note 5.

any questions, please feel free to contact me directly at (202) 326-5920 or Ari Burstein, Senior Counsel, at (202) 326-5408.

Sincerely,

/s/ Heather Traeger

Heather Traeger
Associate Counsel

cc: Meredith Cross, Director
Brian V. Breheny, Deputy Director
Paula Dubberly, Associate Director
Division of Corporation Finance

Andrew "Buddy" Donohue, Director
Division of Investment Management

U.S. Securities and Exchange Commission

Irish Stock Exchange

IRISH STOCK EXCHANGE

Response to the IOSCO Technical Committee Consultation Report on Disclosure Principles for Public Offerings and Listings of Asset Backed Securities

The Irish Stock Exchange welcomes the opportunity to comment on the Consultation Report from IOSCO on Disclosure Principles for Public Offerings and Listings of Asset Backed Securities of June 2009 (the "IOSCO proposals").

This follows the previous IOSCO path of seeking to base the proposed ABS principles on those which had previously been prepared in respect of debt securities, as was the case where the debt principles were in turn derived from those applicable to equity securities. This approach creates a fundamental problem. Unless Asset Backed Securities are dealt with in isolation as a separate class and analysed in the form, our fear would be that this process will not yield a satisfactory outcome.

In terms of analysis of an asset backed security, the current disclosure practice as derived from the debt principles – of a prospectus representing a snapshot of the issuer at the point of issuance is not strictly correct and does not provide prospective investors with all the information necessary to make a continued assessment of a security which have purchased.

The current credit crisis has in our view served to reinforce this view. The prospectus or offering document, in the case of an asset backed security, provides an outline of the transaction at the point of origination. An asset backed security is generally backed by a pool of assets which may change in composition and value throughout the lifetime of the security. Therefore, once the disclosure requirements have been correctly identified then the more pressing issue of what continuing obligations in terms of information requirements should be considered.

Market experience suggests that many investors historically purchased abs securities based on information which they derived from a pre sales rating report and a presentation provided by the arranger / originator. Investors subsequently claimed (and in some cases asserted through legal proceedings) that they were not provided with adequate information on a continuing basis to enable them to adequately monitor the real value of their investments. This proposition clearly points to an information deficit on the part of investors. The way to bridge this deficit is to create a regulatory scheme which provides for real, rigid and continuing information requirements.

Comments on the proposal

Firstly the document is somewhat US centric as much of the terminology used is reflective of conventions applied in the US Markets rather than the European markets.

Page 3 - Introduction Care needs to be taken with the application of a broad based principles approach. It is important that there is consistency of application on a global basis.

Scope of the principles – application The draft principles state that they apply only to discreet classes of assets. Many of the problems currently arising in ABS securities relate securities which are linked to indiscreet pools of assets; so called synthetic assets. Any principles which are developed need to cover this real and active market dynamic. It should be possible to agree generally applicable principles covering discreet assets at first instance and then extrapolate principles to cover indiscreet assets from such principles.

Hopefully this is possible with some additional work on the principles applicable to discreet assets.

Scope of the Principles The final sentence" the ABS Disclosure Principles also do not address continuous reporting, disclosure mandates, requirements to disclose material development or anti fraud prohibitions" is very important and needs to be addressed. The assets which back ABS securities are continuously changing in value. The IOSCO proposals need to reflect the true nature of an asset backed security as an ever changing instrument with valuations changing across a portfolio of assets and the need to pass information in relation such changes in a timely fashion to investors. Any set of principles to be universally adopted, must reflect this reality and the need to achieve true transparency through a requirement for provision of periodic and timely information to investors and the market.

ABS Disclosure Principles

Identity of parties involved

Sponsor – is a US term and is not commonly used in the European markets. Generally the Sponsor is the originator of the assets. Current market practice does not create a clear linkage to sponsor; as such a linkage would be inconsistent with current accounting practice and treatment of securitised deals.

The proposals suggest that Sponsor has a material role in the securitisation transaction – clearly the Sponsor has a significant role in the <u>pre transaction process</u>. Once the security has been issued, the Sponsor has no further role. .

Sponsor's Securitisation Experience – This proposal would represent a significant departure from current practice. Ultimately, investors should only be concerned about the assets, their quality and the information to be provided on a continuing basis in relation to valuations of such assets.

Depositor – This a US centric term rarely used in European arena. Usually the function detailed here is carried out by a warehouse facility. One point of importance in relation to such a function would be the need to disclose any potential conflicts of interest. Little attention has been paid in relation to securitised deals about potential conflicts of interest and how they should be managed.

The Issuing Entity – the principle concern relating to the issuing entity is that such entity be "clean" and have no residual obligations or liabilities. This is why the issuing entity in an ABS deal is usually a newly incorporated SPV. The issuing entity need not necessarily be an SPV, it may for example be a partnership – so long as the partnership is established solely for the purpose of the transaction and cannot act for any other purpose. The main point is that the issuing entity is "ring fenced" thereby

rendering the assets contained within the transaction incapable of being interfered with from outside forces.

Permissible activities and restrictions

One important point here which needs to be covered and is becoming more important in the context of the current crisis is that there should not be the capacity to change how the issuing entity operates without consultation with investors. It is alleged that in many instances in the current crisis investors were disadvantaged because the indenture permitted the changes in process to be made without requiring their consent. The second last sentence on this paragraph "In addition, the document should describe …." In most instances it should not be possible for the Issuing Entity to own assets – apart from the pool assets. The pool assets and assets relating to the transaction are the only assets which should be owned by the issuing entity.

Transfer of the assets – one of the main problems which investors have with securitisation documentation is the absence of standardisation of terminology. This is particularly apparent in the area of transfer of assets. In the European arena this process is governed for the most part by local law considerations. There certainly would be considerable value in requiring a degree of standardisation of definition of the main terms; so that investors could develop a common understanding of the how the terms are applied.

Servicers

The role of the Servicer is not as well established in the European arena as it is in the US. Servicers play an important role in the area of CMBS, but not in many other forms of ABS in the European arena.

The distinction between Master and other servicers is largely one which applies in the USA – this paragraph would have to be significantly amended to reflect European practices. In many cases the role of the servicer is carried our by a trustee in the European arena.
It is important to emphasise that servicing as function is relatively new in the European arena. Where reference is made to "back up servicer" – this is largely expressed to be a special servicer.

Trustees

Current litigation relating to ABS suggest that there is a strong case to be made for the inclusion of the transaction documents relating top the trustee function. The detailed operation of the trust function is of considerable interest and importance to investors.

Originators / Sponsors

Again the difference in terminology used in USA versus Europe is apparent. It is important to clarify this for a universal understanding to apply.

Other transaction participants

Some key participants seem to be missing from this list, such as – the Swap counterparty, the liquidity provider, the Collateral manager, the Administrator to the

Collateral manager and the administrator to the issuer. Many of the agreements which govern the participation of these parties to the transaction are not readily available to investors and this is a significant cause of investor complaint. The documents which govern these relationships should be made publically available for investors to access.

Static pool Information

Provision of static pool data is not a regulatory requirement under European regulation. Most investors would contend that investor reporting should be mandatory and such reports should be publically available. Any set of principles should express this requirement firmly. Currently investors are beholden either to trustees or collateral managers to provide the necessary information. Historical static pool information is generally available in the USA in relation to ABS categories. As the European market is not so developed, such information is not readily available across all asset classes. There is little point in making such information available at the point of execution of the transaction, without creating a requirement for the provision of such information on a continuing basis.

Practices may vary across various assets categories and in many cases historical static data may not exist in respect of an asset class. This would need to be considered in framing the principles which would apply here. This is very definitely a case where one cap does not fit all situations.

Pool Assets

Investors require information relating to performance of Pool assets. Such information needs to be provided on a periodic basis. There is little value in providing such information at the point of transaction execution without creating an ongoing requirement for the reporting of such information.

Structure of the Transaction

The inclusion of a structure diagram within the prospectus should be mandatory for all ABS transactions.

Fees and Expenses

All material fees payable in respect of transaction should be disclosed. This would critical to the identification of any possible conflicts of interests.

Certain derivative instruments

In many structures the providers of credit enhancement do not create credit risk to the structure. In such cases the swap providers for example argue that there is no basis for full disclosure in respect of their activities as they create no risk for the issuing entity. This point needs to be considered in framing the principles.

Risk Factors

Many ABS prospectuses contain far too many risk factors. Risk factors tend to be layered upon each other to the point where there are multiple pages of risk factors. Generally this does to serve the interests of investors in identifying the principle risks

in a transaction, but merely serves to provide cover for the issuer from prospective litigation suits.

Reports

As indicated above this is the key element of the principles. As the value of the assets which underpin an ABS transaction are likely to change throughout the lifetime of the transaction, the provision of mandatory investor information is key. Such information should be publically available through Stock Exchanges (where the securities are listed) or through regulators (with whom the securities are registered). Provision of such information to either Stock Exchanges or regulatory authorities would serve to dispel any debate relating to accessibility of the reports and any assertion that web access to such reports would serve to breach US securities laws.

Statements by Experts

Any such statements need to be current (within an acceptable time limit from the date of the transaction) – this is key to their relevance.

Moody's Investors Service

7 World Trade Center at 250 Greenwich Street
New York, New York 10007

10 August 2009

Mr. Greg Tanzer
Secretary General
International Organisation of Securities Commissions
c/Oquendo 12
28006 Madrid
Spain

By email: UMP@iosco.org

Dear Mr. Tanzer

Re: Public Comment on the Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities

INTRODUCTION

Moody's Investors Service ("**MIS**") appreciates the opportunity to comment on the International Organisation of Securities Commissions ("**IOSCO**") Technical Committee's proposed disclosure principles for public offerings and listings of Asset-Backed Securities (the "**ABS Disclosure Principles**"). As we expressed in our recent comment letter on the consultation report published by the IOSCO Task Force on Unregulated Financial Markets and Products ("**TFUMP**"),[1] there is a need to update both the mandatory disclosure requirements for offerings/listings of ABS and other structured finance securities, as well as the continuous disclosure requirements applicable to such products.

In providing comments to IOSCO Technical Committee ABS Disclosure Principles, we have organised our comments into the following three categories:

- IOSCO's recommended disclosures about credit rating agencies ("**CRAs**") and credit ratings;
- The ABS Disclosure Principles' requirements for issuers; and
- Other points relevant to transparency in structured finance markets.

I. RECOMMENDED DISCLOSURES ABOUT CRAS AND CREDIT RATINGS

Part VII.B of the ABS Disclosure Principles recommends that issuers disclose in the prospectus or other offering document ("**Offering Document**") specified

[1] Our comment letter, dated 15 June 2009, is available on our Regulatory Affairs webpage at moodys.com.

information about credit ratings and CRAs in certain circumstances.[2] We believe that such requirements, if implemented, will likely increase the risk of inappropriate reliance by prospective investors on credit ratings. Rather than positioning credit rating opinions as simply an independent perspective on the security's credit risk, it is possible that such requirements instead would encourage investors to misconstrue ratings either as information that is "as important as" the issuer's actual data, or as factual statements about the overall quality of the issuer's data. Neither of these interpretations is accurate, and both run contrary to the broader international trend to reduce reliance on CRAs. Accordingly, we do not believe the ABS Disclosure Principles should call for such disclosures in the Offering Document.

In addition, MIS has some concerns about the specifics of the recommended disclosures.

A. Disclosure about Preliminary Ratings or a CRA's Refusal to Rate Is Insufficient and Will Not Prevent Rating Shopping

The ABS Disclosure Principles recommend that the issuer disclose in the Offering Document whether the issuer, arranger, sponsor or other party obtained a preliminary rating from another CRA, and whether any CRA refused to assign a credit rating to any class of the offered securities. Although IOSCO has not specified the rationale for such disclosures, these requirements appear designed to alert investors to the possibility that the issuer shopped for the highest rating. The recommended disclosures also may be intended to deter issuers from engaging in rating shopping. We do not believe that this disclosure requirement will provide meaningful information to the investor community; nor do we believe that it effectively addresses the rating shopping problem. We are concerned that this requirement may simply move the issuer's rating shopping to an earlier point in the rating process. Therefore, we ask that these proposed recommendations for disclosure be deleted from the Principles.

Rating shopping, in structured finance (as well as other credit markets) is a harmful practice engaged in by some issuers, sponsors, arrangers and/or subscribers for ratings. MIS has discussed this concern in public forums on numerous occasions and we have noted that rating shopping stems from issuers' exclusive control over the dissemination of the information needed to analyse an obligation. That is to say, rating shopping may be particularly endemic in markets with limited or no regulatory disclosure obligations for issuers. Such opaque markets can facilitate rating shopping by hampering the ability of CRAs – regardless of whether they are paid by the issuer – other analysts and most importantly investors to assess independently the creditworthiness of issuers or issuances.

In our view, the most effective way to deter issuers from rating shopping is for securities regulatory authorities to require issuers to make all the information

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[2] The ABS Disclosure Principles recommend that the issuer disclose: (1) whether the issuance or sale of any class of offered securities is conditioned upon assignment of a credit rating; (2) if such a condition exists, the identity of the CRA and the minimum rating that must be assigned as a condition of the transaction; (3) information about any arrangements to have the rating monitored while the ABS are outstanding; (4) information about market risks that may affect the credit rating if the CRA has undertaken this type of analysis; (5) each CRA's definition or description of the category in which it rated the class of securities; (6) the relative rank of each rating within the CRA's overall classification system; (7) all material scope limitations of the rating and any related designation or other published evaluation of non-credit payment risks assigned by the CRA; and (8) that the rating is not a recommendation to buy, hold or sell securities, that it may be subject to revision or withdrawal at any time by the assigning CRA and that each rating should evaluated independently of any other rating.

reasonably considered relevant to investors and their decision making process broadly available to the market. However, the disclosures about preliminary ratings and CRA refusals to rate securities recommended in the Principles are unlikely to provide much useful information to potential investors about rating shopping.

- At best, this requirement may only indicate that rating shopping has occurred.

  If issuers disclose that a CRA assigned a "preliminary rating", all that an investor may learn is that rating shopping possibly has occurred. Perhaps, the investor also will conclude that the credit ratings disclosed in the Offering Document may be unreliable.[3] In the end, however, this disclosure will not help investors determine a credible rating.

- The more likely scenario is that this requirement may create an impression that no rating shopping has occurred.

  While it is possible that the requirement will deter the most egregious forms of rating shopping, issuers may respond by changing their behavior to avoid triggering the requirement. For example, instead of seeking a preliminary rating and then selecting among CRAs, issuers could simply refrain from approaching CRAs that are known to have more conservative methodologies. Alternatively, issuers could simply present "hypotheticals" to CRAs and claim that they did not seek a preliminary rating. Simply put, it is more than likely that issuers will continue to rating shop, but they will move their rating shopping activity to an earlier point in the process.

Moreover, out of a concern on the issuer's part that it may accidentally trigger the disclosure requirement and possibly taint its offering document, such a rule may have a negative and unintended consequence. Specifically, it is possible that the rule could deter issuers from engaging in analytical discussions with CRAs that would otherwise help the issuer understand better the CRA's methodologies and help CRAs remain well-informed about market developments. We would be concerned about any rule that would hamper frank discussions between issuer, CRAs and / or investors.

II. THE ABS PRINCIPLES DISCLOSURE'S REQUIREMENTS FOR ISSUERS

As noted earlier, MIS strongly supports efforts to improve the amount and quality of information disclosed in the structured finance market. In our letter to TFUMP, we observed that the disclosure systems that have been established for corporate debt markets can serve as a useful model to enhance transparency and re-establish confidence in securitisation markets. This model has served investors well in the corporate finance sector for decades and has evolved with that market. A similar approach should be adopted to help restore confidence in the structured finance market. We appreciate that each jurisdiction has different rules and regulations that may need to be amended. However, given IOSCO's international role, we believe it is uniquely positioned to construct a framework that can be applied on a globally consistent basis. There are several aspects of this model that are particularly relevant:

- A process that: (i) allows investors to indicate to securities regulatory authorities the types of data they would find helpful for decision-making; and (ii)

[3] Alternatively, it is also possible that the issuer selected the CRA whose ratings are disclosed in the Offering Document because it believed that the CRA's ratings were more credible and reliable than the rejected ratings.

provides for securities laws to dictate how that information is best organised and disclosed;

- Mandatory, not optional, disclosure rules;
- A verification and testing function, performed by independent third parties, that assures the integrity of the data;
- Continuous reporting and disclosure by the issuer (*i.e.*, the entity seeking capital in the market);
- Broad dissemination of the information, which allows all interested parties equal and simultaneous access and thereby facilitates healthy scrutiny of the information; and
- A regulator that examines the conduct of market participants and data filings, and enforces compliance with the rules.

Below, we apply these ideas to the ABS Disclosure Principles.

A. The ABS Disclosure Principles Should Apply to a Wider Range of Structured Finance Securities

The IOSCO Technical Committee indicates that to facilitate the ABS Disclosure Principles' applicability across all jurisdictions, they are aimed at a relatively narrowly defined subset of structured finance securities,[4] but that they may also provide a useful starting point for disclosures about other types of securities backed by asset pools. In our view, a preferable approach would be for the ABS Disclosure Principles to adopt an inclusive framework that establishes minimum disclosure standards for all structured finance issuers but that also allows jurisdictions to incorporate asset class-specific exemptions where particular disclosure principles would not apply. For example, we believe that disclosure principles regarding the structure of the transaction, legal matters, counterparties and credit risks should be made available for all asset classes. Common, minimum disclosure requirements would help market participants and observers assess and compare the same types of information for different asset classes and across jurisdictions.

B. The ABS Disclosure Principles Should Go Beyond Pre-Existing Disclosure Requirements

In our view, the ABS Disclosure Principles comprehensively address the broad categories of information that are likely to be relevant at issuance to market participants and observers. They also appear to be broadly consistent with the pre-existing, mandatory disclosure regimes that applied in some of the more well-developed structured finance markets before the global financial crisis began in 2007. Given the ensuing events, and with the benefit of hindsight, it now appears that there was insufficient transparency even in the most developed structured finance markets.

As a result, many investors have been calling for more extensive and granular disclosures. Various public sector bodies and private sector groups have been working to improve the completeness, availability and reliability of data regarding structured

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[4] The ABS Disclosure Principles are intended to apply to "securities that are primarily serviced by the cash flows of a discrete pool of receivables or other financial assets that by their terms convert into cash within a finite period of time".

finance securities. This evolution in market practices and investor demand for information demonstrates that, even in jurisdictions with well-developed securitisation markets, the pre-existing disclosure regimes for structured finance securities may not have gone far enough. We believe, therefore, that the Disclosure Principles should set standards that go beyond the pre-existing disclosure regimes. (A good rule of thumb, or working assumption, may be that almost all of the data that the originator of a loan or other financial obligation included in a securitisation considered relevant in deciding to make the loan is likely to be useful to market participants and analysts who are analysing structured finance securities backed by such loans.[5])

Some might argue that requiring a high level of detailed disclosure in an Offering Document is inappropriate because it could lead to "information overload". That is to say, while enhanced disclosure may be helpful to some sophisticated investors, it would make the Offering Document harder to understand for many others (particularly retail investors) who, in turn, will either ignore the detailed disclosure or exit the market. In MIS's view, if the concern is that detailed disclosure would overwhelm some investors or make them more reluctant to read the Offering Document, the solution is not to limit the amount of information disclosed. Such a solution would only serve to create a false sense of security and create the impression that the security is "easy to understand". Rather, MIS believes that investors who do not have sufficient expertise to assess the various risks of a particular class of securities should be encouraged to refrain from investing such securities.

To that end, we believe that an Offering Document should provide investors with sufficient information to allow them to make a thorough assessment of the security and its associated risks, rather than offer them a short-hand proxy of the quality or the suitability of that security. In order to make the Offering Document less cumbersome, IOSCO may consider allowing issuers to incorporate by reference certain types of information. For example, the ABS Disclosure Principles could recommend that the Offering Document include a section that clearly explains to prospective investors how to obtain information relating to the assets backing the offered securities. This section could include a link to a website maintained by the originator and/or servicer where standardised loan level data would be made publicly available shortly before closing and regularly updated through the life of the deal.[6] This section also could explain the reasons why the disclosure available on the referenced website is relevant and material to prospective investors so that they can make an informed decision about whether or not to invest in the securities described in the Offering Document.

To develop and then maintain enhanced disclosure standards, we recommend that IOSCO pursue a program where it:

- builds on the work in respect of certain asset classes, such as RMBS, that is already being carried out by private sector groups;
- pro-actively facilitates regular dialogue between investors and issuers with a view to systematically identifying and assessing the information investors need to make informed investment decisions;

[5] Regulators considering the implementation of such disclosure requirements might need to consider how such disclosures could be provided while respecting consumer protection and privacy laws.

[6] See Sections II(C) and III(A) below, where we discuss the standardised definitions and presentations of key metrics.

- incorporates these enhanced, asset-class specific disclosure standards into the ABS Disclosure Principles; and
- encourages securities regulators globally to implement such standards in the form of mandatory disclosure requirements for issuers.

C. Encourage Standardised Definitions and Presentations of Key Metrics

Currently, there is no standardisation with respect to the terminology or calculation methods for key metrics in structured finance transactions.[7] This makes it more difficult for market participants and analysts to identify, assess and compare the key risk considerations in structured finance transactions. We suggest that the ABS Disclosure Principles encourage securities regulatory authorities to require issuers to use, in Offering Documents, standardised definitions and presentation of key metrics, where appropriate. Where standardisation may not be appropriate (*e.g.*, with respect to triggers, which are often designed to cover risks specific to certain asset pools or deal structures), we recommend that IOSCO encourage securities regulatory authorities to require issuers to disclose the detailed formulae.

III. Other Points Relevant to Transparency in the Structured Finance Market

A. Ongoing Disclosure Principles for Structured Finance Securities

We recognise that at this stage the Technical Committee is focusing on developing disclosure principles for offerings and listings of ABS. We would suggest, however, that ongoing disclosure about structured finance securities (including, among other things, loan-level performance data) is critically important to the restoration and maintenance of investor confidence in structured finance markets. We note that one of TFUMP's interim recommendations is for regulators to:

> "Mandate improvements in disclosure by issuers including initial and *ongoing* information about underlying asset pool performance and the review practices of underwriters, sponsors and/or originators including all checks, assessments and duties that have been performed or risk practices that have been undertaken."[8] (Emphasis added.)

As we stated earlier, we believe that IOSCO is uniquely positioned to construct a framework that can be applied on a globally consistent basis. Consequently, we believe that IOSCO should go beyond encouraging regulators to develop ongoing disclosure requirements for issuers. It should, itself, develop, as a matter of priority, principles for ongoing disclosure about the widest possible range of structured finance securities.[9]

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[7] For example, in European markets, there is no consistent definition of loan "delinquency" across transactions. Some transactions report delinquency based on the number of days a loan is past due independent of the amount unpaid, while other transactions report delinquency based on the ratio of the amount unpaid divided by the contractual monthly obligation. See Moody's Investors Service Special Report, "Investor/Servicer Reports: Important Considerations for Moody's Surveillance of EMEA ABS and RMBS Transactions", June 2009, available at moodys.com.

[8] TFUMP Consultation Report at 23.

[9] Consistent with our comments in the preceding section, we believe that such principles should recommend that securities regulatory authorities require standardisation of how issuers present performance and monitoring information.

B. Mechanisms for Enhancing Data Integrity

The quality of analysis – regardless if conducted by an investor, a sell-side analyst or a CRA – depends heavily on the accuracy of the available information. Requiring issuers to provide more information publicly and making such disclosures subject to securities laws and regulations likely will create incentives for issuers to improve data integrity and quality. Consequently, to the extent the ABS Disclosure Principles are implemented in jurisdictions that currently have less stringent disclosure requirements, there is likely to be some improvement in data integrity and quality in those jurisdictions.

But more can be done. The types of mechanisms that are needed to enhance data integrity may vary from jurisdiction to jurisdiction and from asset-class to asset-class. We recommend that IOSCO consider undertaking a survey to identify: (1) the circumstances in which additional mechanisms to enhance data integrity may be needed; and (2) the types of mechanisms that have been, or could be, effective to achieve this outcome. Based on this survey, IOSCO could publish recommendations for consideration by securities regulatory authorities.

C. Mechanisms to Improve Disclosure in Secondary Markets for Privately Placed Securities

In some jurisdictions, a significant, secondary market where privately placed securities are traded among qualified purchasers (such as institutional investors) has developed for some types of structured finance securities. In addition, some types of structured finance securities that are issued under private placements and then subsequently resold are often tailored to meet the needs of specific investors and originators to the transaction. This tailoring process can contribute to a structured product's complexity.[10] As a result, secondary market purchasers of privately placed structured finance securities can find it challenging to obtain sufficient information to make informed investment decisions. In such circumstances, they might be inclined to rely inappropriately on credit ratings to assess risks other than credit risk.

It has often been suggested that it is unnecessary for securities regulatory authorities to regulate disclosure in private securities markets where the participants are sophisticated persons with the economic power to ask for the information they need and the resources to analyse the information they receive. The recent financial crisis, however, has demonstrated that many private structured finance markets did not operate as expected. A number of studies conducted by authorities and market participants have suggested that sophisticated market participants did not insist upon receiving the data they need to make their own informed investment decisions.

A sophisticated investor's decision not to ask for information can affect persons other than the investor itself and, in turn, may have knock-on-effects on other parts of the market. For these reasons, we recommend that IOSCO consider developing mechanisms that would address the need for better disclosure about structured finance securities in secondary markets for privately placed securities.

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[10] By contrast, in the secondary market for privately placed corporate securities, potential investors often have access to a substantial amount of information on a continuous basis about issuers. For example, the issuer may maintain a website and/or file documents with securities regulatory authorities (since corporate issuers of privately placed debt may be reporting companies for purposes of local securities laws). These factors may make it easier for potential secondary market investors in privately placed corporate debt securities to obtain and assess information relevant to their investment decision.

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Thank you again for providing MIS with the opportunity to comment on the ABS Disclosure Principles. We would be pleased to discuss our comments further with you or the Technical Committee.

Sincerely,

Yours sincerely,

/s/ Andrew Kimball

Andrew Kimball
Executive Vice President
Global Head of the Structured Finance Group
MOODY'S INVESTORS SERVICE

10 August 2009

Mr. Greg Tanzer
Secretary General
International Organization of Securities Commissions
C / Oquendo 12
28006 Madrid
Spain

Re: Public Comments on the Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities (the "draft ABS Principles"): Consultation Report

Dear Mr. Tanzer,

On behalf of the European Securitisation Forum (**ESF**) and the Securities Industry and Financial Markets Association (**SIFMA**)[1], we welcome the above-referenced initiative from the International Organization of Securities Commissions (**IOSCO**) and appreciate the opportunity to provide input in the consultation process. We support IOSCO's efforts to advance international co-ordination on these important topics.

1. Executive summary and general comments

The commenting associations acknowledge the unique nature of both asset-backed securities (**ABS**) and ABS issuers in the context of considering prospectus disclosure. As noted in our response to the Consultation Report on Unregulated Products and Markets, we consider appropriate disclosure to be a key measure to facilitate effective risk identification, assessment and management in respect of securitisations by investors and other market participants. Across the board, our members support enhanced investor protection and facilitating a better understanding of the issues that should be considered by regulators when developing or reviewing their ABS disclosure regimes.

We acknowledge and support the general need to consider improving prospectus disclosure standards with the ultimate aim of restoring confidence in the securitisation market. That said, we note that much of the (public) focus on the part of the authorities to date with respect to securitisation disclosures has been focused on trade transparency, asset level information and post-closing asset performance information, and focus on these areas is generally supported.

In a number of respects, the draft ABS Principles endorse existing disclosure requirements and market practices already applied across the key relevant securitisation jurisdictions. However, we are concerned with some of the aspects of the proposals requiring detailed disclosure of certain static pool information and audited financial information for credit enhancement and other support providers. We are also concerned with other aspects of the draft ABS Principles which refer to the level and type of information to be provided in respect of the asset pool and certain service providers since there is considerable variability in the types of data that can be disclosed in various jurisdictions. In addition, we would recommend that audited financial information on credit enhancement provided by third parties and other third-party support provided only be required to be disclosed when that credit enhancement is the main source of repayment from a credit

[1] A description of the associations is provided in Appendix I.

standpoint. Alternatively, if the credit enhancement support provided by a third party is immaterial this can be provided by reference financial statements included by reference in the documentation. Our response focuses on the changes contemplated by these proposals and notes other aspects of the draft ABS Principles that may potentially be problematic.

The draft ABS Principles are modelled closely on U.S. Regulation AB. However, this may not, in all cases, be the most appropriate starting point on all fronts for the development of a global disclosure framework for ABS. We note that other regimes include specific disclosure requirements for ABS, such as the harmonised regime which applies throughout the European Economic Area (**EEA**) under the Prospectus Directive. While we support the policy goals which underlie the draft ABS Principles, as a bottom line, we encourage the development of a framework based on the guiding principle that each tenet of the framework should clearly support a well-defined need and prospective benefit with respect to achieving appropriate ABS disclosure. It should be noted that the existing U.S. standard was developed (pre-crisis) as part of a broader series of ABS offering reforms aimed at allowing more streamlined access for ABS issuers to shelf registration statements and processes. Given that these processes and means of issuance are largely unique to the U.S. market, it seems to us that wholesale adoption of parts of that regime would not meaningfully transfer to other regulatory regimes. However, the industry does recognise that in the future many European investors in securitisation transactions will, from a regulatory as well as business risk control standpoint, need to demonstrate a very thorough due diligence process. For these investors, this will require additional information that they might not have received in the past.

In addition to the guiding principle referred to above, there are other key matters that we consider to be relevant for the development of an appropriate disclosure framework. These matters are described below:

- Significant industry initiatives related to enhanced disclosure have been implemented, with others in progress. Relevant initiatives include the American Securitization Forum's Project RESTART[2] and the ESF's RMBS Issuer Principles for Transparency and Disclosure.[3] These initiatives have been endorsed by various member firms. Proposals for regulatory reform should be co-ordinated with such industry initiatives.

- There are certain other regulatory initiatives related to disclosure which have recently been adopted or are in progress. An example include the changes recently approved with respect to Article 122a of Capital Requirements Directive (e.g. new investor due diligence requirements). Another example includes the introduction of an EU regulation setting out the regulatory framework for credit rating agencies aimed at ensuring that where the credit ratings are used in the EU for regulatory purposes, these are issued by the credit rating agencies that are subject to a legally binding registration, surveillance system and other stringent requirements that address, among others, conflicts of interest and transparency in the rating process. Additional regulatory initiatives in this area should be co-ordinated with, and take account of, existing and approved regulatory reforms. We further note that certain disclosure regimes have been the subject of significant reform within the last five years, including the harmonised regime which applies throughout the European Economic Area under the Prospectus Directive. It is our understanding that the Prospectus Directive is perceived to have worked relatively well with respect to achieving appropriate ABS prospectus disclosure.

- While there are linkages among markets, there are challenges in respect of full global harmonisation of ABS disclosure standards and it will be necessary to take into account different existing local requirements. In particular, flexibility will be needed to allow regulators to take account of different asset product types and origination and servicing practices, particular market needs and local laws (e.g. any restrictions on the disclosure of certain types of personal information or pool audit information and requirements with respect to public offers and securities offerings in general). While the introduction to the draft ABS Principles suggests that there will be opportunities for local

[2] More information regarding Project RESTART is available at: http://www.americansecuritization.com/story.aspx?id=3461.
[3] More information on the Principles and a list of the endorsing firms with related RMBS programmes is available at: http://www.europeansecuritisation.com/dynamic.aspx?id=1672.

regulators to factor in other matters when considering the draft ABS Principles in the context of reviewing their regulatory disclosure regime, it is worth noting the broad challenges which exist with respect to the development of a full global harmonised framework and the general need to ensure that differences can be accommodated as appropriate.

- In general, regulatory and other policy responses to perceived securitisation market deficiencies should be aimed at facilitating the return of securitisation market activities as part of the exit strategy to the current crisis. Securitisation is one of the few ways that banking institutions can continue to lend without increasing leverage or using scarce capital and balance sheet resources, which is an important feature for regulators and policymakers to consider, given bank deleveraging underway globally. Any general disclosure principles need to take account of the information which is meaningful and appropriate for investors and also the practical ability of originators and servicers to efficiently produce asset and other data (the latter of which may vary as between originators and jurisdictions). In order to assess these positions, it would seem appropriate to include investors, originators and arrangers in any further discussions aimed at establishing appropriate disclosure standards. We note that the existing industry initiatives referred to above reflect the views, and have the general support, of a wide variety of securitisation market participants.

Our detailed response to the draft ABS Principles is set out below. We have not commented on all of the proposals and instead have focused our response on key matters raised by our members.

2. Comments on the Introduction

Application of the International Debt Disclosure Principles to the draft ABS Principles

We note that a number of sections of the draft ABS Principles require additional disclosure (to the extent applicable) with reference to various disclosure items in the International Debt Disclosure Principles. In many instances, the disclosure requirements in the International Debt Disclosure Principles are very broad, and the extent to which these requirements should be applicable in the context of the ABS is not very clear. In our view, the better approach would be to copy (with relevant modifications) into the draft ABS Principles those sections of the International Debt Disclosure Principles that may potentially apply to ABS.

Scope of the draft ABS Principles

The draft ABS Principles are stated to apply in respect of listings and public offerings of ABS. Currently, public offer regimes differ significantly between jurisdictions and further clarification as to what is intended to constitute a public offer would be helpful. For example, most European securitisation transactions are listed on an EU exchange. In some cases, this listing is obtained for fiscal reasons or investor requirements. Some transactions are broadly marketed to investors while others are sold only to a small group of investors in private placements. In the latter category are transactions with a small number of large buyers (e.g. club transactions), transactions that include assets on which broad public disclosure would breach confidentiality agreements, or transactions involved small pools of assets.

We note that no distinction is drawn in the draft ABS Principles for ABS offered to retail investors and it appears that the same disclosure requirements should apply in the context of offerings of ABS with a relatively low denomination. The concept of retail debt (determined by the note denomination amount) is an important one under the Prospectus Directive regime and one which determines the necessary level of disclosure (being based in part on the premise that notes with a denomination below a certain threshold may involve retail investors). This is not an exchange suitability criterion *per se* as referred to in the draft ABS Principles and is instead a fundamental factor in determining the appropriate disclosure requirements. Furthermore, the Markets in Financial Instruments Directive (2004/39/EC) provides for an additional layer of protection as far as retail investors are concerned and requires, in certain circumstances, EEA incorporated investment firms and EEA incorporated banks to comply with certain conduct of business rules when information is addressed to, or disseminated in such a way that is likely to be received by, retail clients.

Given that it is a market practice for the ABS to be issued in high denominations and to be aimed primarily at professional investors, it is our view that the scope of the draft ABS Principles should clearly set out that, in the first instance, they are aimed at wholesale ABS and that regulators may apply additional disclosure requirements where retail ABS investors are targeted.

The draft ABS Principles appear to be intended to extend to secondary market offers or on-sales, although it is not clear how it would work in practice and who should be responsible for the prospectus disclosure in respect of these arrangements, in particular, where considerable period of time has elapsed after the original sale. If the draft ABS Principles were to apply in the context of secondary market offers or on-sales, it would only be appropriate provided the draft ABS Principles were observed in preparing the prospectus for the primary offer.

Lastly, the scope of the ABS to which the draft ABS Principles are proposed to apply is not clear in all respects. For example, the draft ABS Principles indicate that securities backed by asset pools that are "actively managed" should be carved out. This appears to be an attempt to replicate the requirements in Regulation AB that neither the depositor nor the issuer be an investment company under the U.S. Investment Company Act of 1940 and that the issuing entity must be passive and its activities must be restricted to the ABS transaction. Like Regulation AB, it appears that the draft ABS Principles should not apply in general to ABS issued in respect of synthetic securitisations. In this regard, and taking a step back, we would note that the scope of Regulation AB was determined in part by its effect (coupled with other corresponding offering reforms for ABS) of creating increased flexibility for ABS issuers with respect to the shelf registration process – and so it made some sense (in that specific context) for more complex or less familiar ABS products (such as series trust or originator trust deals involving certain assets and synthetic deals) to remain subject to a less transparent review process for registration. It is not clear that the same carve-outs make sense in the context of the development of general principles for ABS prospectus disclosure. Moreover, if such carve-outs are included, further detail would be helpful to clarify what they are intended to extend to (given the different nature of deals and common deal structures between jurisdictions). If the Regulation AB experience is to be instructive, then we would note that such regulation includes detailed information with respect to the types of transactions intended to be in scope.

3. Comments on the draft ABS Disclosure Principles

Item I. Parties responsible for the Document

In our view, the draft ABS Principles should more clearly address that where a party, other than the Issuing Entity, authorises certain contents of the prospectus, such party may be expected to accept responsibility for that specific part of the disclosure. This is particularly relevant where more information (than is currently the market practice) is to be provided by third parties to the Issuing Entity (e.g. details about certain parties' securitisation experience, recent trends, policies and procedures, etc.), bearing in mind that the Issuing Entity has no control over such information or means of verifying the accuracy of the details provided to it.

Item III. Functions and responsibilities of significant parties involved in the securitisation transaction

Disclosure regimes will typically include a general requirement that the prospectus include, to the extent material, a description of the key parties participating in the transaction and their function. In this regard, we note that the materiality threshold plays an important role in ensuring that the prospectus includes the information needed by investors and that there is adequate flexibility such that the relevant requirement makes sense across transaction structures and varying party roles. We note that it would be difficult to adopt a more prescriptive approach given the wide variety of transaction structures used and the different roles played by key transaction parties in different structures and jurisdictions (e.g. the role of the trustee as between U.S. and other deals differs significantly and the draft ABS Principles do not fully accommodate this).

Item III.D.1. Issuing Entity's historical financial information

The draft ABS Principles require the Issuing Entity to disclose its financial information in accordance (to the extent applicable) with the requirements of Item XIII (Financial Information) of the International Debt Disclosure Principles. Since most ABS transactions would involve a newly established Issuing Entity being set up as a special-purpose vehicle, it is not very practical to apply the requirements of Item XIII in the context of ABS without expressly permitting the omission of financial information where the Issuing Entity has not prepared any financial statements as at the date of the Document. This approach is commonly accepted in numerous jurisdictions and, in our view, it should be reflected in the draft ABS Principles.

Item III E. Servicers

We note that the definition of "Servicer" would potentially include the cash managing function as well. In our view, the draft ABS Principles should distinguish between situations (i) where the Servicer is an entity that also performs the cash managing function and (ii) where the role of the Servicer excludes the cash managing function and an independent cash manager is appointed. In the case of the latter, the independent cash manager should not be expected to comply with the same level of disclosure, including the requirements concerning the back-up servicing, as the Servicer.

We further note that the section on transfer of assets refers to detailed disclosure of all expenses incurred in connection with the selection and acquisition of the pool assets which are to be paid out of the offering proceeds. In general, detailed fee information is highly sensitive and it is not clear why itemised disclosure would be material for investors. We recommend that fee information is provided cumulatively for all expenses incurred. In recognition of this, a number of authorities do not require detailed expenses disclosure under existing regimes.

With respect to loan modification information, we note that, outside of a sub-prime asset context, it is common in some markets for the servicer to hold a certain level of discretion in this regard (in certain circumstances, subject to a "reasonable prudent" lender test). A less flexible approach would present logistical difficulties and possibly restrict the activities of the relevant servicer in a manner which may impact on pool performance. It might also conflict with a servicer's regulatory obligation regarding treatment of borrowers. As such, in respect of relevant deals, it would be difficult for disclosure to be provided with respect to the criteria and for a full explanation to be provided with respect to how the criteria may impact on particular classes of ABS holders.

Item IV. Static pool information

As a starting position, we note that there are good arguments for – and against – disclosure of static pool information (of previous originations) in ABS prospectuses. We acknowledge that EU credit institutions and certain other investors will be required both under improved business operating practices as well as under Article 122a of the Capital Requirements Directive to perform certain procedures prior to investment. Among other provisions, Sections IV (d) and (e) will require before investing that a credit institution must be able to demonstrate that they have a thorough understanding of the reputation and loss experience in earlier securitisations of the originator or sponsors in the relevant exposure classes underlying the securitisation position. Also investors must demonstrate a thorough understanding of the statements and disclosures made by the originators and sponsors about their due diligence on the securitised exposures and, where applicable, on the quality of the collateral supporting securitised exposures. Many issuers will be able to report this information publicly in aggregate form if they have the information in a form that is auditable, consistent to a reader and does not violate any confidentiality or data protection restrictions. However, for a variety of other reasons, such confidentiality restrictions, differences in comparability between issuers and asset classes in various jurisdictions across Europe, as well as in some cases historical reasons relating to mergers, information technology changes, changes in definitions utilised by originators or other reasons, some issuers will not be in a position to disclose this information publicly. For these types of issuers, we recommend that this information be disclosed privately to investors or other interested participants pursuant to a

confidentiality agreement. It is important that originators be able to maintain the flexibility to report this information either publicly or privately depending on their individual circumstances.

Key aspects of the proposals are unclear, including the relevant indicative time periods for data disclosures. It may be preferable to provide for some information in this regard, as this may shape respondent views on the relevant proposals.

We would suggest that any requirements with respect to static pool information that are included in the final ABS Principles should include some flexibility to accommodate a wider range of alternative practices.

We fully support the exploration of the relevant considerations and remain committed to working with all market participants to find the best way forward for the market.

Item V. Pool assets

We note that key aspects of the proposals are not clear, including the indicative thresholds and time periods for certain types of pool information (e.g. the thresholds for disclosure of economic or other factors in respect of relevant asset origination jurisdictions). This information would be helpful as it may shape respondent views on the relevant proposals.

As noted above, certain industry initiatives are currently underway, and certain regulatory reforms have recently been adopted, which relate to disclosure of asset information. We encourage co-ordination to the extent possible across these initiatives and reforms.

The draft ABS Principles refer generally to disclosure of obligor credit scores and it is not clear that the proprietary internally-driven credit scores of the originator are not intended to fall within the relevant provision. It should be noted that such internally-driven credit scores may potentially include non-public information that would be inappropriate to disclose in a prospectus. Furthermore, unlike in the U.S., many European jurisdictions do not have a single market standard credit scoring methodology. In the absence of a market standard credit scoring methodology, the disclosure of obligor credit scores is likely to contribute more confusion than clarity. In our view, a more appropriate general principle might be to require disclosure on the basis and factors taken into account when making a credit decision, with disclosure of relative weightings (which may be in qualitative rather than quantitative form) given to the relevant factors.

Item VI. Significant obligors

Significant obligors - definition

The draft ABS Principles do not define in any detail the concept of the "significant obligor", which leaves a lot of room for interpretation by regulators. We note that how "significant obligors" are identified under the regulatory frameworks in various jurisdictions can differ quite significantly. Therefore, it may be appropriate for the draft ABS Principles to indicate what level of concentration may give rise to any one obligor becoming a "significant obligor" for the purposes of disclosure. In this regard, we would suggest for the draft ABS Principles to adopt the requirements similar to those of the Prospectus Directive and clarify that additional disclosure may be required where, for example, the assets comprise obligations of five or fewer obligors or where an obligor accounts for 20% or more of the assets.

Significant obligors that are special-purpose vehicles

In addition, and with reference to the above comments on the disclosure of the Issuing Entity's historical financial information, it should also be noted that in certain ABS structures, the significant obligor may be a newly established special-purpose vehicle (e.g. a funding entity in the context of UK master trusts). In these circumstances, such significant obligor may not be in the position to provide any disclosure with regard to its historical financial information, as it would not have prepared any financial statements as at the date of the Document. Therefore, in our view, the draft ABS Principles should expressly permit the omission of

financial information where the significant obligor is a newly established special-purpose vehicle that has not prepared any financial statements as at the date of the Document. It is our understanding that this approach is generally accepted by the regulators in the ABS markets.

Furthermore, in order to ensure consistency in the approach to the disclosure in relation to the significant obligors, it would be helpful to provide in the draft ABS Principles for some guidance as to whether regulators should be adopting a "look-through" approach (i.e. by requiring disclosure on the assets held by that vehicle rather than financial accounts for such vehicle) where the significant obligor is a special-purpose entity whose disclosure is of relatively limited value. We note that, historically, this issue would usually arise in the context of certain European asset classes such as CMBS transactions and the regulators in different markets were not always consistent in their approach to disclosure on this issue.

Item VII B. Description of the ABS – Credit ratings

It is not current practice to include disclosure on market risks that may have an impact on the credit rating. This may be difficult for the issuer to fully describe, particularly in the case of the latter type of information. In addition, the rating agencies (rather the issuer and/or the originator) are best placed to speak to these items.

With respect to the proposal that disclosure be included as to the relevant rating organisation's rating definitions, categories and overall classification system, we note that this is information that should be understood by ABS investors in general and that the rating agencies themselves already make such information publicly available (e.g. rating agencies' websites provide explanation of the rating definitions, links to the rating criteria papers and details of how the rating process works, including assignment of model-based quantitative ratings and the committee process). Since the Issuing Entity takes overall responsibility for the disclosure in the prospectus, it would be inappropriate and unreasonable, in our view, for the Issuing Entity to also take responsibility for information which is in the control of the rating agencies. Whilst the prospectus is a disclosure document, it should not be used to repeat all of the publicly available information that may be useful to investors, and, while we support better understanding of credit ratings for investors in general, this should not be done through prospectus documents.

Item VIII. Structure of the transaction

The draft ABS Principles in this section once again refer to itemised fee and expenses disclosure. As noted above, detailed fee disclosure is controversial as such information is highly sensitive. Moreover, it is not clear why itemised disclosure would be material for investors. In recognition of this, a number of authorities do not require detailed expenses disclosure under existing regimes.

With respect to the flow of funds proposals and the suggested disclosure of a financial services table, we note that such tables are (by their nature) speculative in part. There is no market standard methodology of preparation and such tables may be confusing to investors. Similarly, with respect to the proposals that any materials models used as a means to identify cash flow patterns be disclosed, we note that such models and the inputs may be confidential and may not be capable of being put into a format such that issuers would be comfortable making them public and taking formal responsibility. Moreover, it may be difficult for meaningful statistical information about the note sensitivity to rate of payment on the assets to be prepared and disclosed.

Item IX. Credit enhancement and other support, excluding certain derivative instruments and Item X. Certain derivative instruments

Disclosure of audited financial information in respect of support and derivative providers which are liable for a significant portion of the cash flow supporting the ABS would represent a significant new requirement under a number of key existing disclosure regimes. We note that "significant portion" is not defined and that it is not clear what standards would be required for use in respect of the relevant financial statements. This information would be helpful to assist with our assessment of the relevant proposals. In general, a

requirement to disclose audited financial information will result in increased costs for ABS transactions. While recent market events have demonstrated the importance of counterparty information, it is not clear that disclosure of audited financial information would have resulted in a different outcome. In addition, we understand that the ABS investors would commonly undertake their own analysis and review of the counterparties in the transaction independent from the disclosure provided in the prospectus. Therefore, more disclosure on the credit enhancement providers in the prospectus may not be necessary, particularly where such information is available elsewhere or is capable of being incorporated by reference.

Finally, if the Regulation AB experience is instructive in this regard, we would note that the requirements included in that regulation with respect to derivative providers presented significant challenges post-implementation due to the fact that a limited number of the derivative counterparties then in the market produced separate financial statements (as a number of relevant entities were established as subsidiaries of U.S. bank holding companies). It may be worthwhile to investigate this on a broader basis given that further concentration of the derivative counterparty market is not desirable at this stage.

Item XIV. Taxation

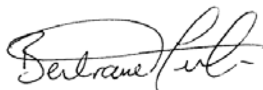
The proposals with respect to tax disclosure are very broad and should be clarified. Although we note that they are similar to requirements included in Regulation AB, we also note that it is not the market practice in jurisdictions outside the U.S. to provide for such detailed disclosure with regard to taxation. In our view, it will be challenging to meet the taxation disclosure requirements set out in the draft ABS Principles, as it is not easily feasible to convey by way of "a brief, clear and understandable summary" the tax analysis which can be very complex, is often based on assumptions and may be subject to a number of qualifications. Furthermore, should there be any significant tax risks in the transaction, then these would have to be disclosed under the general duty of disclosure, which is already addressed in the draft ABS Principles on page 4 under the heading "Materiality". However, it should also be noted that it is very unlikely that a highly rated ABS transaction would ever be completed if there were any significant tax risks. Therefore, the draft ABS Principles should, in our view, provide for a more limited taxation disclosure and simply require provision of an overview of the general considerations that may be relevant to the tax position of the investors.

General comment and a comment in relation to Item XVI. Reports - Incorporation by reference

The draft ABS Principles, in our view, should expressly allow incorporation by reference of certain information as it is a common practice in many jurisdictions to provide in the disclosure principles that certain information (e.g. financial statements and constitutional documents) is capable of being incorporated by reference, provided the supporting documents have been filed with the relevant regulator.

Thank you once again for the opportunity to comment in response to this consultation. Should you have any questions or desire additional information regarding any of the comments, please do not hesitate to contact any of the undersigned individuals.

European Securitisation Forum
Rick Watson, Managing Director



Securities Industry and Financial Markets Association
Bertrand Huet, Managing Director, European Legal & Regulatory Counsel

Annex I

The European Securitisation Forum, an affiliate of SIFMA, is the voice of the securitisation marketplace in Europe, with the purpose of promoting efficient growth and continued development of securitisation throughout Europe. Its membership is comprised of over 140 institutions involved with all aspects of the securitisation and CDO business, including issuers, investors, arrangers, rating agencies, legal and accounting advisers, stock exchanges, trustees, IT service providers and others. The ESF is a sister organisation of the American Securitization Forum and ASIFMA. For more information on ESF, please visit www.europeansecuritisation.com.

The Securities Industry and Financial Markets Association brings together the shared interests of more than 600 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong. For information on SIFMA, please visit www.sifma.org.

10 August 2009

Comment on the IOSCO Consultation Report on the Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities

Securitization Forum of Japan

I. Introduction

A. The Securitization industry in Japan welcomes this IOSCO initiative and appreciates the opportunity being provided for comment in the consultation process as to the Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities ("the ABS Disclosure Principles").

B. Our comments on the IOSCO Consultation Report on the ABS Disclosure Principles ("the Report") are based on the existing disclosure practices in Japan's ABS market. Since we basically agree with the observations, purposes, and disclosure topics stated in the Report, we would like to present our comments mainly on the applicability and adaptability of the disclosure topics in Japan.

C. In Japan, there are already several practices with regard to ABS disclosure principles, some of which are summarized in the IOSCO Subprime Report[1]. These practices include: (a) the Financial Instruments and Exchange Act (Act No. 25 of 1948, "FIEA"); its lower-level regulations such as (b) the Cabinet Office Ordinance for Disclosure of Specific Securities (Regulation No. 22 of 1993); and (c) the FSA's (The Financial Services Agency) Guidelines for Financial Instruments Business Supervision.

D. In addition, there is voluntary self-regulation of disclosure ("SIRP")[2] in Japan, which was arranged by the JSDA (Japan Securities Dealers Association), and it has been effective since June 2009. The SIRP was originally intended to ensure the traceability of securitized products, by which investors could evaluate the

[1] The *Final Report of the Task Force on the Subprime Crisis*, dated May 2008 ("the Subprime Report"), Appendix A, p. vii.

[2] In 2008, major market participants in Japan discussed the data integrity in Japan's securitization market and established the Standardized Information Reporting Package ("SIRP") to be used for industry-level self-regulation. In the discussion of the SIRP, the Investor Reporting Package rolled out by the CMSA (Commercial Mortgage Securities Association) was referred to.

credit risk of the products using sufficient and up-to-date information of the underlying asset in a timely manner.

E. Now that most Japanese securitized products are regulated under these practices in terms of disclosure, we would like to comment on the ABS Disclosure Principles from the viewpoint of these existing practices.

II. General Comments

A. Since the subprime crisis, each jurisdiction has made an effort to establish a new supervisory framework to avoid such crisis. These efforts usually relate to disclosure procedures in some way. In fact, we already have several types of disclosure practices for various purposes; not only does the FIEA provide disclosure procedures from the viewpoint of investor protection, but also banking regulations provide rating-related disclosure requirements under Basel II local regulations. In addition, as mentioned before, JSDA has recently set out further self-regulation regarding disclosure of securitized products. Therefore, upon adapting the Principles to the Japanese market, it may be necessary to re-organize all the disclosure-related rules in order not to place the ABS Disclosure Principles in a crowded field of similar rules, thereby avoiding duplicate disclosure obligations and establishing best practice.

B. We believe the ABS Disclosure Principles will be effectively utilized as a guideline for public offering disclosure practices in each jurisdiction. We need to keep in mind, however, that we should always consider who should be liable for the cost associated with the disclosure. If we always place the burden of considerable cost on the sponsor, the sponsor will eventually adopt a fund-raising tool on a private placement basis rather than on a public offering basis to avoid such costs. This situation tends to become more obvious where alternative fund-raising tools such as ABLs, which are a kind of securitized product in the form of Asset Backed Loans (ABL) that are often used in Japanese securitization on a private placement basis, are available. The FIEA judiciously requires a less strict disclosure level in a private placement with limited investors. As such, jurisdictions should well consider the cost allocation issue prior to applying and adapting the ABS Disclosure Principles to the Japanese market.

C. In order to avoid spoiling the convenience and efficiency of securitized products as fund-raising tools, we should consider how we could reduce the clerical burden of disclosure under the ABS Disclosure Principles. If we disregard this aspect and fail to reduce the burden, sponsors will tend to seek alternatives other than securitization so that they could easily raise money with less of a disclosure burden. In this context, there may be room for allowing “boilerplate language,” as the Report mentions on page 5, as long as such language is appropriately accompanied by a supplemental explanation. It is also worth considering placing the disclosure at the discretion of the sponsor, with data references by which investors can easily contact relevant parties for more detailed information or supplementary materials, depending on their needs. Saving both excessive paper

work and documentation involved in disclosure will help develop the convenience of securitized products as fund-raising tools on a public offering basis.

D. With regard to the benefit of disclosure, we have concerns about the inconsistent relationship between the positive stance in disclosure and price mechanism efficacy in the market. Sponsors with well disclosed information naturally expect that they can raise money at a lower cost (i.e., low interest or spread) than they would with less disclosure. However, the reality of the market often shows that investors and other market participants pay attention only to the negative factors of the disclosed information (e.g., high default rate of the underlying asset), and disregard the existence of credit enhancements appropriately addressed in the securitized transaction according to such negative factors. We therefore think that it is important that, in the course of developing disclosure best practice, we should promote among market participants how to best interpret and utilize the disclosed information in their investment decisions.

III. Comments on INTRODUCTION (pp. 3-4)

A. We agree with the observation stated in this section. When we apply the ABS Disclosure principles in Japan, we will consider the practical side of applying and adapting them to the Japanese market so that we can avoid overly rigid, uniform, and unnecessary rules. In addition, it is essential that applying and adapting the ABS Disclosure principles to the Japanese market should be considered not only according to the manner in which the ABS is issued (i.e., on a public offering basis or on a private placement basis), but also according to the characteristics of individual products and the degree of investors' sophistication.

B. The Report appropriately discusses the applicable scope of the Principles (p. 4). We wish to comment on some points here to add some flexibility to the scope. There may be some areas, other than private-placement, where such Disclosure Principles need not apply. Specifically, in cases where the securitized products are substantially backed by the creditworthiness of some good-standing entity rather than by the pooled assets, or in other cases where the securitized products have already been regulated by other legislation, we would not need to consider including such cases within the scope.

C. The Report clearly recognizes that there is a wide range of application and adaptation with regard to the principles (p. 4). We totally agree with this idea from the viewpoint of best practice in each jurisdiction. We believe that the ABS Disclosure Principles would be realized in mainly three ways: (a) regulation by authorities; (b) flexible self-regulation by industry organizations; and (c) exemption or no regulation at all (leaving regulation to market practices). We should consider what form of regulation should apply, and to what extent, based on the characteristics of products, on the current regulation and flexible business practices in respective jurisdictions and, as the case may be, on the viewpoint of global policy coordination among authorities and industry organizations. For example, where investors to the transaction are all sophisticated institutional

professionals, disclosure regulation by authorities would seem to be too rigid; self-regulation at most would be more suitable. This is partly because it is reasonable to require such investors to take responsibility for acquiring information relevant to investment decisions. Mere rigid and standardized regulation by authorities, and its uniform application to all types of securitized products, would lack the necessary case-by-case flexibility, and could serve individual cases inadequately, leading to market stagnation. From this point, we believe that, when we refine our existing framework within our market, the ABS Disclosure Principles will be recognized not as a mandatory requirement but as an informative guideline, as the Report suggests.

D. Above all, we should not regard disclosure with insufficient information as inadequate if the parties responsible for the disclosure provide alternative information or appropriate explanations for the limited information or, as the case may be, obtain prior consent from investors.

E. We believe it could also be recommended that the ABS Disclosure Principles be used as a reference list of disclosure items and topics, a list which enables investors to compare the specific items and judge the degree of disclosure among similar transactions. Such comparison by investors will stimulate further disclosure by sponsors in future transactions. This "reference list" method is also desirable based on the fact that the needs and the depth of information required for investors varies depending upon the degree of sophistication in investment decision-making by investors. In this regard, one of the primary purposes of the ABS Disclosure Principle may be to facilitate investment decisions and investor due diligence[3]. Considering this, there may be an area where it is more reasonable to disclose the minimum items on the reference list while having further information available according to respective investors' individual needs and provided at their request. As a result, such comparison may subsequently stimulate further disclosure on the part of the arranger.

IV. Comments on GLOSSARY OF DEFINED TERMS –Asset-backed Securities– (p. 6)

A. The definition of "Asset-backed Securities" seems to need more clarification. Some transaction lawyers have expressed concerns that this definition makes it difficult to distinguish typical ABS from other securitized products. For example, CMBS could be regarded as "[s]ecurities that are primarily serviced by the cash flows of a discrete pool of receivables or other financial assets," since the funds to redeem the CMBS usually come from the collection of non-recourse loans backed by commercial mortgages. To rule out such CMBS from the scope of the definition, we should clarify the intended ABS as those backed by a pool of granular receivables or other financial assets, ruling out deals backed by idiosyncratic assets like typical CMBS.

[3] The Subprime Report, p. 1.

B. Even in the course of market stagnation, JHF (Japan Housing Finance Agency, a government-affiliated but independent-administrative agency) MBS has been solid in Japan. JHF regularly issues its MBS on a public offering basis, pursuant to the JHF Act (Act No. 82 of 2005), with prospectus and details of asset pool characteristics offered to investors in a timely manner. Investors can also access the information about cash flow projections and asset pool payment rates through Bloomberg L.P. and other data vendors. In summary, the JHF MBS is supposed to be a kind of "mortgage bond" which is, as the Report points out on page 6, regulated by different laws and regulations in Japan. Therefore, we understand that the current disclosure level of JHF MBS is sufficient for investors and their investment decision-making, and needs no further requirements under the ABS Disclosure Principles.

V. Comments on III.B.2. Sponsor's Securitization Experience (p. 9)

A. Even though the sponsor's securitization experience is relevant information concerning securitized products, there may be cases where it is not always informative in investment decisions; in other words, mere past experience does not have determinant power for the individual when they review a transaction for investment. Rather than using past experience when evaluating the securitization transaction, investors often place more importance on relevant transaction agreements and results from due diligence meetings with the sponsor. This way, investors could better understand the present substantive capability of doing business, and the degree of individual commitment to the transaction. From this point, as the Report states, the sponsor's securitization experience is a requisite item of disclosure only when it is material. This idea may also be true with the topics discussed in "E.2. Identifying information and experience" (p. 12); "F.1. Trustee's Background and Responsibilities" (p. 14); "G. Originators" (p. 14); and "H. Other Transaction Participants" (p. 15).

VI. Comments on item III.D.4. Transfer of Assets (p. 11)

A. This section suggests that the amount of "[e]xpenses incurred in connection with the selection and acquisition of the pool assets" should be specifically disclosed if such expenses will be paid out of the offering proceeds, while there are many other types of expenses in structuring transactions. It is advisable that we should clarify the specific items to be disclosed in this context as well as the purpose of the disclosure. We should also re-consider whether disclosing such expenses is indispensable to investment decisions.

VII. Comments on III.D.5. Security Interest and Bankruptcy (p. 11)

A. This section suggests that "[d]isclosure should be provided if there is a possibility that the securitized assets could become part of the bankruptcy estate of the Sponsor, Depositor, or another entity." In a sense, every securitized product

inherently faces the potential risk of being attacked by bankruptcy trustees of the Sponsor, Depositor, or another entity. If a court were to judge the transaction not to be a true sale structure, the securitized assets could become part of the bankruptcy estate. Even though securitized transactions are usually equipped with a "bullet-proof" structure against such trustee attacks, it does not mean that we can make the transaction an absolute bankruptcy-proof structure. From this point, no detailed information about the risk should be required; only a general explanation about the risk is enough.

VIII. Comments on III.E.2. Identifying information and experience (p. 12)

A. This section claims that "[t]he Document should provide general background information about the Servicer" and that "[a] general discussion of the Servicer's experience in servicing assets of any type, as well as a more detailed discussion of the Servicer's experience in, and procedures for, servicing assets of the type included in the securitization transaction, should be provided." As is mentioned above, there may be cases where this kind of general background information is not informative in investment decisions. Rather, the information tends to be less objective and lacks accuracy so that it could lead investors to misjudgment. In addition, it does not seem realistic to make the issuer liable for the disclosure of this information. Anyway, there are several means by which investors could get information about the servicer and its servicing capabilities. Instead of disclosing the information, we believe it more desirable that relevant agreements about servicer termination and replacement by a backup servicer should be disclosed.

IX. Comments on III.G. Originators (pp. 14-15)

A. As is pointed out in the Subprime Report, the importance of disclosure information about asset pool characteristics, in particular, credit-granting or underwriting criteria (p. 15) has been increasing along with the recent subprime crisis, where a dramatic weakening of underwriting standards triggered the turmoil[4]. We totally agree with the opinions and recommendations stated in this section. In this respect, however, it is essential to discuss further not only how to ensure the timeliness of the disclosure, but also how to warrant the accuracy of the disclosure. Representations and warranties regarding the accuracy of underwriting criteria are also essential[5], and basically worth disclosing. This issue may also apply to the concern about the Loan Modification as the Report states on p. 13.

B. On the other hand, there is another concern about credit-granting or underwriting criteria disclosure. Some market participants point out negative aspects of such disclosure. Their claims include: (a) in some cases, information about credit-

[4] The Subprime Report, p. 3.
[5] Just for reference, some regulators are planning to introduce a new rule which provides that a certain portion of every securitized product should be held by the sponsor of the product.

granting or underwriting criteria may not be indispensable to investment decisions; and (b) there may be a case where investors would excessively rely on the information, resulting in a distortion of their investment decision. In addition, based on the competitive situation among originators in the same industry, they would tend to strategically avoid disclosing such information. Due to these aspects, it is advisable to further consider in what way and to what degree the information should be disclosed.

X. Comments on IV. STATIC POOL INFORMATION (p. 15)

A. With regard to static pool information, it is worth considering placing the disclosure at the discretion of the sponsor, with data references by which investors could easily contact relevant parties for more detailed information or supplementary materials depending on their needs. In addition, with regard to data in terms of asset pool characteristics and historical performance, it may be an idea to stylize the disclosure. In order for investors to maintain easy glancing and data comparison among transactions, it is adequate to lay out a recommended data format in each jurisdiction, showing the items to be listed and their sequence.

B. In some cases, static pool information of the underlying asset is not available at closing. For example, local municipalities in Japan, in order to facilitate fund-raising for small and medium-sized enterprises (SMEs), sometimes arrange publicly-offered CLO/CBOs[6] backed by local government loans to SMEs or privately-placed corporate bonds that the SMEs issue. In this case, static pool information of the underlying asset is not usually available at closing. To make up for the lack of relevant information, local municipalities make public the eligibility criteria of CLO/CBOs, and rating agencies publish pre-sales reports. In this context, we think the Report adequately discusses alternative disclosure on page 16. We basically agree with this idea. Considering the actual restrictions arrangers face when structuring transactions using newly originated assets with limited information, it is necessary to have an alternative in providing static pool information.

C. We understand that such alternatives are also essential with regard to IV. A. (Amortizing Asset Pools).

XI. Comments on VIII.C. Fees and expenses (p. 23)

A. The Report suggests on p. 23 the idea that fees and expenses of ABS transactions be disclosed. But we have some concerns based on the actual situation of structuring frontlines. It appears to be a reality that relevant parties to the transaction often offer discounts to their important customers to maintain good business relations; they sometimes offer discount rates in accordance with the amount of securitization deals concluded so far with the customer. For another

[6] CLO: Collateralized Loan Obligation, CBO: Collateralized Bond Obligation

example, compensation for the servicing operation, which is one of the critical fees of the securitized products, would usually be determined by the collection ability and experience of the servicer appointed. It is natural that relevant parties to the transaction usually tend to keep such price benefits quiet. In other words, there may be cases where it is not appropriate to reveal the price benefit publicly. Therefore, it may be a desirable option to allow such disclosure to indicate only the items of fees and expenses with no specific numbers applied, or to indicate only computational expressions, on condition that investors could individually obtain information about the details, if they are required for their investment decision. Cash flow projection using aggregate amounts of fees and expenses may also be acceptable.

XII. Comments on VIII.D. Excess cash flow (p. 23)

A. The Report suggests the idea that "[a]ny arrangements to facilitate a securitization of the excess cash flow or retained interest from the transaction, including whether any material changes to the transaction structure may be made without the consent of ABS holders in connection with this securitization" should be disclosed. We believe that this disclosure may be unnecessary. Moreover, we believe this is not so much an issue of disclosure as a problem with structuring. It is rather appropriate to restrict transactions in which publicly-offered ABS holders' interests would be infringed without their clear consent. We recognize the necessity of securitizing the excess cash flow of, or retained interest from, the precedent publicly-offered ABS. But such securitization should be acceptable only on the condition that the ABS holders' interest is firmly protected.

XIII. Comments on VIII.G. Prepayment, maturity, and yield considerations (p. 24)

A. The Report proposes that "[s]tatistical information such as the effect of prepayments on yield and weighted average life" should be disclosed. While such statistical information is essential to evaluate the credit risk associated with securitized products with longer horizons, such as MBS, there are cases where detailed disclosure of statistical information is not possible due to data limitations, or even unnecessary due to the relatively short horizon of the transaction. It is worth considering a case-by-case treatment for the disclosure of statistical information according to the characteristics of the transaction.

XIV. Comments on XVII.C. Relationships Related to the Securitization Transaction or Pool Assets (p. 30)

A. In this section, the Report states that disclosure about the relationships among the participants in the securitization transaction, outside the ordinary course of business among the participants, and relationships related to the securitization transaction or pool assets would help investors understand the structure of the securitization transaction. We basically agree with the idea. Investors, however,

often place more importance on the relevant agreements of the transaction and results from due diligence meetings with the transaction participants rather than these current and past relationships. From this point, as the Report adequately states, disclosure about such relationships should be a requisite item of disclosure only when it is material.

XV. Comments on XVIII. INTERESTS OF EXPERTS AND COUNSEL (p. 30)

A. The Report recommends that disclosure about the interests of experts and counsel would be highly relevant to investors. We basically agree with the idea. We believe, on the other hand, that each jurisdiction already has specific legislation regarding the duty of secrecy and other professional conduct of these experts and counsel. From this point, each jurisdiction should be allowed a discretion whether to disclose information about the interests of experts and counsel; in cases where the specific legislation works well, such disclosure may be unnecessary.

XVI. Concluding Remarks

A. With regard to disclosure requirements, we would like to stress again that adequate rule-making based on the individual features of the securitized products and investors is essential. Mere rigid and standardized disclosure regulations by the authorities would lack the necessary case-by-case flexibility, and might place unnecessary burdens on transaction participants, leading to market stagnation.

B. In summary, overly strict, broad, and open-ended disclosure regulations and their uniform application to every publicly-offered ABS has substantive adverse side-effects which may lead to:

1. sponsors adopting fund-raising tools other than securitization on a public offering basis to avoid excessive disclosure requirements;
2. arrangers decreasing the volume of arrangements for securitized products on a public offering basis due to the heavy burden of disclosure; and
3. investors making their investment decisions poorly and performing their due diligence procedures ineffectively due to the considerable amount of uniformly disclosed information, but missing the point of the investors' individual concerns.

All these side-effects could lead to a freeze in the public offering ABS market.

End of document.

IOSCO CONSULTATION ON DISCLOSURE PRINCIPLES FOR PUBLIC OFFERINGS AND LISTINGS OF ASSET-BACKED SECURITIES

RESPONSE BY STANDARD & POOR'S RATINGS SERVICES

Introduction

Standard & Poor's Ratings Services ("S&P Ratings Services")[1,2] welcomes the opportunity to comment on the consultation report on "Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities" (the "ABS Disclosure Principles") published on 29 June 2009 by IOSCO's Technical Committee ("the Consultation Paper").

In this response, S&P Ratings Services concentrates on the interim recommendations on disclosures in respect of credit ratings, which are the proposals most clearly of relevance to S&P Ratings Services in its capacity as a credit rating agency ("CRA"). We will also briefly comment on the role of experts which we consider to be different to the role played by CRAs.

Separate guidance on Asset-Backed Securities

It is stated in the Introduction to the Consultation Paper that existing disclosure principles and standards are not wholly applicable to public offerings and listings of Asset-Backed Securities ("ABS"). As a result the Technical Committee has developed the ABS Disclosure Principles:"... *to provide guidance to securities regulators who are developing or reviewing their regulatory disclosure regimes for public offerings and listings of [ABS]"*.

We welcome the Technical Committee's intention to give guidance to national securities regulators as we consider that such guidance can promote global consistency. We also support the principles-based format of the recommendations in the Consultation Paper.

Disclosure of credit ratings

It is stated in Section VII.A of the Consultation Paper that:"... *the Document should include a statement that the rating is not a recommendation to buy, sell or hold securities; that it may be subject to revision or withdrawal at any time by the assigning organization; and that each rating should be evaluated independently of any other rating*".

We fully support this proposal. We consider it important that investors and other market participants appreciate that ratings issued by S&P Ratings Services have an important but limited role: each of our ratings is an opinion about creditworthiness and the relative likelihood of default on a security. Our ratings do not address market value, the volatility of its price or its suitability as

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[1] Standard & Poor's Ratings Services is comprised of (i) a separately identifiable business unit within Standard & Poor's Financial Services LLC, a wholly-owned subsidiary of The McGraw-Hill Companies, Inc. ("McGraw-Hill"), and (ii) the credit ratings business housed within certain other wholly-owned subsidiaries of, or divisions of, McGraw-Hill. McGraw-Hill is a global business service provider in the fields of financial services, education and business information.

[2] S&P Ratings Services is one of the world's leading providers of independent credit ratings. S&P Ratings Services rates and monitors developments pertaining to rated issuers from its operations in more than 21 cities in 16 countries around the world. The global nature of the financial markets means that many of the individual instruments rated by S&P Ratings Services are traded on exchanges in several different countries and held by investors from around the globe.

an investment. In addition, our ratings may be different to ratings issued by other CRAs and they may therefore not be directly comparable.

We note that the ABS Disclosure Principles states that the applicable laws and regulations establish which parties have responsibility for the disclosures made in the offering document but that it is assumed that such responsibility for the preparation of such document will lie with the entity issuing ABS. We agree that the Issuing Entity, Arranger/Sponsor, or their representatives would be best placed to deal with the preparation of the disclosures.

The ABS Disclosure Principles also proposes disclosure:"*[i]f any rating agency has refused to assign a credit rating to a class of ABS ...*"

We do not believe that the disclosure of this information would be necessarily helpful to investors as a rating could be declined for a variety of reasons, including reasons internal to the relevant CRA. Accordingly, we consider that the disclosure of a refusal to assign a rating should not be made compulsory.

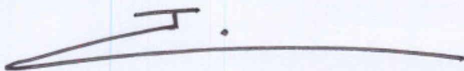
Interest of Experts

We note that the ABS Disclosure Principles address the role of "Experts". In the Section "Glossary Of Defined Terms", the ABS Disclosure Principles define an "Expert" as:"*[a] person who is named in a Document as having prepared or certified any part of such Document or as having prepared or certified any report or valuation for use in connection with that Document*",In Section XVIII, the ABS Disclosure Principles require the disclosure of the nature and terms of interest or conflict of interest that any "Expert" may have in connection with the ABS in question.

It is important that IOSCO confirms that CRAs are not "Experts" for the purposes of the ABS Disclosure Principles. CRAs such as S&P Ratings Services prepare their ratings independently of the issuer and do not prepare or certify any part of a Prospectus or other "Document" and do not prepare reports or valuations for use in connection with any such Document. Treating CRAs as Experts is likely to have a significant impact on CRAs' ability and willingness to rate issues of securities. In this context, we refer to our submissions at paragraphs 4.4 to 4.12 in our response to the consultation report of IOSCO's Technical Committee on Unregulated Financial Markets and Products which we submitted on 27 June, a copy of which is enclosed.

S&P Ratings Services is committed to continuing its dialogue with the members of the Task Force and with IOSCO's wider membership. Should you have any questions regarding the contents of this letter please contact me on +44-20-71716- 3828 or at Ian_Bell@standardandpoors.com.

Yours sincerely,



Ian Bell,

Managing Director and Head of Structured Finance Ratings, Europe

Dear Members,

With respect to the document "Disclosure Requirements for Public Offerings and Listings of Asset-Backed Securities (ABS Disclosure Principles)", in general terms we can comment that the report presents in detail the principles proposed by IOSCO regarding this matter, providing examples for its better understanding. In that sense, we only have some clarifications for the document:

- Given the extension of the information that has to include the document to be provided to the investors, it could evaluate the possibility of requesting to the issuers to give a clear and simple prospectus, which would contain the general vision of the issue's characteristics.

- In relation to the chapter about disclosure of the existence of links between the issuer of the securitized titles, the actors who participate in the process of securitization, the placement of it and the issuers of the underlying assets (Chapter XVII), it would be interesting if the document given to the investors could indicate the conflicts of interest which are faced by these actors and how these ones will be solved. For example, in managing charges to the investors for rendered services given by an entity related to the issuer.

- As far as information denominated "Statical Pool Information" (Chapter IV), although it is understood that the behaviour observed in other conducted issues can give lights of a new issue, it does not condition nor anticipates the future behaviour, reason why the referential quality of said information should be indicated to the investor.

- Referring to the chapter about the description and responsibilities of the actors who participate in the securitization process (Chapter III), as a reference, a brief review on the financial situation of each participant and, if there are services which will be subcontracted and to whom, should be included into the document. In addition, as far as the issuer of the titles, it is esteemed relevant for the investor to be provided with information on other issues of securitized assets conducted thereby, specifying, for example, their amounts and underlying assets.

- Regarding the chapter about the underlying assets (Chapter V), in order to facilitate their understanding by the investors, it could incorporate tables indicating the main origins of the underlying assets.

Best regards,

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Dear Mr. Tanzer,

I would like to address one area of the Disclosure Principles for Public Offerings and Listing of Asset-Backed Securities. That area is materiality. As you know and the Disclosure Principles are based on the principle that “an issuing entity should disclose all information that would be material to an investor’s investment decision and this is necessary for full and fair disclosure.” The ultimate success of the Disclosure Principles will be determined by whether they actually brings transparency to the structured finance marketplace or they perpetuate the current level of opacity.

The proposal recommends releasing pool-level performance data for the collateral backing each security once per month for the preceding month. Once per month is the SEC’s Regulation AB reporting standard for pool-level performance for structured finance securities.

Regulation AB is noteworthy because it failed the test of the marketplace. It neither prevented the freezing of the structured finance market nor subsequently helped it thaw. Its biggest flaw was not requiring daily loan-level reporting under the SEC’s responsibility that all material information be provided to Investors. The November 9, 2007 Wall Street Journal Heard on the Street Column described the activities of Wall Street firms with access to daily data on subprime loan performance. They profitably shorted the market. This trade says that daily collateral performance is material information that Investors need in order to make a fully informed investment decision.

In December 2008, ASF published a McKinsey & Company survey of global market participants. McKinsey found the number one factor to restarting the market was disclosure of information on underlying assets beyond what was currently available through prospectuses, Regulation AB and remittance reports. The Disclosure Principles don’t reflect this.

In May 2009, the European Parliament passed the Amended European Capital Requirements Directive. It is the global standard for best practices in structured finance. Under this legislation, Investors are required to know what they own and Issuers are required to provide the data so Investors can comply.

Is once a month data reporting sufficient to allow Investors to comply with the Directive? Many bankers believe this to be true. I wonder why? Using once per month data is like trying to value the contents of a brown paper bag. To satisfy the Directive, Investors need to know what is in the bag right now because it could be substantially different than what a standardized, out of date, end of month report shows.

Daily data is the equivalent of moving the contents of the brown paper bag to a clear plastic bag. The clear plastic bag offers real time transparency. Real time transparency data is auditable, individual loan-level data which maintains borrower information privacy delivered in a uniform format to the desktops of all market participants in the context of the structure of the deal. This information satisfies the Directive and should be in the proposal.

Some bankers worry that market participants will be overwhelmed by all the data. This is not a problem as real time transparency allows market participants to monitor the securities at the appropriate level of data aggregation with the ability to drill down into the individual loan data as necessary. In fact, individual loan data represents an opportunity for growth by independent valuation firms. These firms will complement in-house capabilities and reduce reliance on Wall Street's proprietary pricing models.

Issuers are concerned that the cost of real time transparency will destroy the economics of offering structured finance securities. Real time transparency increases demand for and reduces the cost of an Issuer's securities. Demand for an Issuer's securities increases and each security's illiquidity premium decreases as Investors see an active secondary market where they can resell the securities. Eliminating the illiquidity premium, approximately 100 basis points, saves multiples of the 5 to 10 basis point cost of actually providing real time transparency.

Can't a trade price reporting system achieve the same outcome at lower cost? No, as price data by itself doesn't tell the value of an asset-backed security. In order to make a buy/sell/hold decision, Investors need to be able to independently value the security using current cash flow information and then compare this valuation with the prices shown by Wall Street. Price transparency without real time transparency is just market participants bidding blindly.

Only real time transparency allows market participants to know what they own or are monitoring. It is the missing piece for the materiality portion of the Disclosure Principles.

Richard Field
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Paper or Plastic? Coordinating a transparency solution which minimizes costs and burdens on Issuers while maximizing the effectiveness of disclosure for structured finance market participants.

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"Public Comment on the Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities: Consultation Report"
AZ ZKA: 413-IOSCO
AZ BVR: 413-WP-AUFIOS

Dear Mr Tanzer,

We would like to thank you for the opportunity to submit our comments on IOSCO's Consultation Paper "Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities". Within the European Union, already today, a large part of the disclosure principles put forward in said Consultation Paper are enshrined under existing law and have been implemented in practice for quite some time.

Notwithstanding the foregoing, we would like to draw your attention to two aspects. Please find our respective comments below:

...

Re.: VI. Significant Obligors of Pool Assets

When it comes to significant obligors of pool assets, the Consultation Paper proposes incorporating meaningful disclosures on significant obligors including the disclosure of material changes that may have occurred since last financial statement and, if needs be, the inclusion thereof in the (consolidated) annual accounts. This provision triggers considerable legal caveats. First, depending on the nature of the securitisation transaction, the obligor will not be aware of the sale or assignment of their (loan) claim to the issuer. Hence, as a result of the disclosure, the originator may be breaching confidentiality obligations. Furthermore, from the point of view of the arranger/dealer, the inclusion of obligor-related information in the prospectus may be problematic. Under private law, the latter will generally be liable for the completeness and true and fair view provided by the prospectus. However, due to the absence of a legal relation between the arranger/dealer and significant obligors, the arranger/dealer will not be able to provide verified information. In the event of faulty or incomplete information, legal recourse will therefore not be possible for them.

Re.: VIII. Structure of the Transaction

With regard to this requirement, there is *inter alia* the call for a description of material models, which also includes assumptions that have been made and potential limitations which serve to identify the portfolio's cash flow patterns. ABS transactions will regularly feature individual cash flow models that were developed on a case-by-case basis. Any disclosure of such models would disclose trade secrets of the arranger. We doubt that this is an intentional consequence in line with the initial rationale behind the proposal. Hence, the disclosure obligation should primarily be confined to material assumptions underlying the model design.

Please feel free to contact Mr Diedrich Lange for any queries on these comments.

Yours sincerely,
on behalf of the Zentraler Kreditausschuss
Bundesverband der Deutschen
Volksbanken und Raiffeisenbanken e.V. BVR
National Association of German Cooperative Banks

by proxy

Dr. Andreas Martin

Dr. Diedrich Lange