

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

## **Consultation Report**



**OICU-IOSCO**

**TECHNICAL COMMITTEE  
OF THE  
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

**June 2009**

**This paper is for public consultation purposes only. It has not been approved for any other purpose by the IOSCO Technical Committee or any of its members.**

## Foreword

The IOSCO Technical Committee has published for public comment this consultation report on Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities. The Report sets out preliminary recommendations for disclosure principles for asset-backed securities for consideration and analysis by securities regulators.

The Report will be finalised after consideration of comments received from the public.

## How to Submit Comments

Comments may be submitted by one of the three following methods **on or before 10 August 2009**. To help us process and review your comments more efficiently, please use only one method.

### 1. E-mail

- Send comments to Greg Tanzer, Secretary General, IOSCO at the following email address: [ABSDisclosure@iosco.org](mailto:ABSDisclosure@iosco.org).
- **The subject line of your message should indicate “Public Comment on the Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities: Consultation Report”.**
- Please do not submit any attachments as HTML, GIF, TIFF, PIF or EXE files.

**OR**

### 2. Facsimile Transmission

Send a fax for the attention of Greg Tanzer using the following fax number:  
+ 34 (91) 555 93 68.

**OR**

### 3. Post

Send your comment letter to:

Greg Tanzer  
Secretary General  
International Organization of Securities Commissions (IOSCO)  
C / Oquendo 12  
28006 Madrid  
Spain

**Your comment letter should indicate prominently that it is a “Public Comment on the Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities: Consultation Report”.**

**Important:** All comments will be made available publicly, unless anonymity is specifically requested. Comments will be converted to PDF format and posted on the IOSCO website. Personal identifying information will not be edited from submissions.

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## 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)*. 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 should develop international principles regarding the disclosure requirements for public offerings of asset-backed securities ("ABS"), as 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 (International Debt Disclosure Principles)* and the *International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers (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 *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 to investors in all fixed income securities. The objective of these *ABS Disclosure Principles* is to enhance investor protection by facilitating a better understanding of the issues that should be considered by regulators when developing or reviewing their disclosure regimes for ABS. Occasionally, the *ABS Disclosure Principles* refer to the *International Debt Disclosure Principles* as a source for 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 the *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 asset-backed securities, 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. The *Principles* would not apply to securities backed by assets pools that are actively managed (such as securities issued by investment companies), or that contain assets that do not by their terms convert to cash (such as most 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.



## **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 that, 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 Arranger/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 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 of the Arranger/Sponsor for the same type of assets involved in the transaction described in the Document.

## **ABS 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 are common to most ABS transactions, although not all of the functions described occur in all transactions. For example, based on the definitions used in the *Principles*, an ABS transaction may involve an Arranger, but not a Sponsor, and vice-versa.<sup>1</sup>

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<sup>1</sup> 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*.

**A. Arranger**

The Document should identify the party acting as the Arranger, 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 highly relevant information that would help them evaluate the securitization transaction. To the extent material, the Document should contain a general discussion of the Sponsor's experience in securitizing assets of any type, as well as a more detailed discussion of the its experience in and overall procedures for originating or acquiring and securitizing assets of the type included in the current securitization transaction. It would be useful if the disclosure included, to the extent material, information regarding the size, type and 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. For example, this would include 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 VII (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 Document should describe the sale or transfer of the pool assets to the Issuing Entity, as well as the creation, perfection and priority<sup>2</sup> 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, 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 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. If the Issuing Entity is structured as a trust, the

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<sup>2</sup> 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.

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 in 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 would be helpful. To demonstrate recent trends involving the Servicer, it could be useful if the Document disclosed any material changes to the Servicer's policies or procedures in servicing assets of the same type during the past few years. 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 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 transaction, the pool assets are not originated by the Sponsor. Instead, the Sponsor may have acquired the pool assets 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, and 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.

- 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.

To enhance the usefulness of the information, delinquency, cumulative loss and prepayment data for each prior securitized pool or vintage origination year, as applicable, should be disclosed in periodic increments (such as monthly or quarterly) over the life of the prior securitized pool or vintage origination year. 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 could also provide 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.

- B. **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.
- C. **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. In addition, 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 pools 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 pools 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.

- 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.

## VII. DESCRIPTION OF THE ABS

**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<sup>3</sup>. 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,<sup>4</sup> or residual<sup>5</sup> 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.
- 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

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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.



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 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. 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. Disclosure should be provided if the Arranger/Sponsor or other party has obtained a preliminary rating from another rating agency. If any rating agency has refused to assign a credit rating to a class of ABS, disclosure of this in the Document would also provide meaningful information to investors.

## 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 describe clearly 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. 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 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 pools 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, and to the pool of 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 federal 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, 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.
- B. **Reports to be filed with the relevant authority and/or made available to the public.** The Document should specify the names if 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.
- C. **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.