Principles for Ongoing Disclosure for Asset-Backed Securities

Final Report

THE IOSCO BOARD
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

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Foreword

The Board of the International Organization of Securities Commissions (IOSCO)[1] has published this Report on *Principles for Ongoing Disclosure for Asset Backed Securities* with the objective of developing principles that will enhance investor protection by providing guidance to regulators that are developing or reviewing their disclosure regimes for offerings and listings of asset backed securities.

The disclosure topics highlighted in these *ABS Ongoing Disclosure Principles* are intended as a starting point for consideration and analysis by securities regulators that are developing or reviewing ongoing disclosure requirements applicable to ABS. 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 their specific regulatory framework, the characteristics of the issuing entity, or the characteristics of the securities involved, and may therefore wish to incorporate the *Principles* on a more selective basis. The principles-based format allows for a wide range of application and adaptation by securities regulators.

[1] In a May 2012 restructuring of IOSCO, the Board succeeded the IOSCO Technical Committee (TC).

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Chapter 1 – Introduction

In May 2008, IOSCO published the *Final Report of the Task Force on the Subprime Crisis* (*IOSCO Subprime Report*).[2] In this report, the IOSCO Task Force analyzed the 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 IOSCO´s Technical Committee (TC) concluded that IOSCO's currently existing disclosure standards and principles did not apply to such offerings.

IOSCO has published a number of disclosure principles and standards, most notably the *Principles for Periodic Disclosure by Listed Entities*[3] (*Periodic Disclosure Principles*), *International Debt Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers*[4] (*International Debt Disclosure Principles*), and *International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers*[5] (*International Equity Disclosure Standards*), which have been accepted internationally as disclosure benchmarks. These disclosure principles and standards, however, are not wholly applicable to public offerings and listings of ABS due to the unique nature of both ABS and ABS issuers, which have several distinguishing characteristics compared to other fixed income securities and their issuers. For example, the issuing entity of an ABS is designed to be a solely passive entity without management. Therefore, 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.

To begin to address the need for disclosure principles designed to suit the characteristics of ABS and ABS issuers, the TC developed *Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities*[6] (*ABS Disclosure Principles*). The objective of the *ABS Disclosure Principles* is to enhance investor protection by providing guidance to regulators

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2 See *Report on the Subprime Crisis – Final Report*, Report of the Technical Committee of IOSCO, May 2008, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD273.pdf.

3 See *Principles for Periodic Disclosure by Listed Entities - Final Report*, Report of the Technical Committee of IOSCO, February 2010, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD317.pdf.

4 See 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: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD242.pdf.

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

6 See Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities - Final Report, Report of the Technical Committee of IOSCO, February 2010, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD318.pdf.

that are developing or reviewing their disclosure regimes for offerings and listings of ABS.[7] The *ABS Disclosure Principles* expressly do not address continuous reporting disclosure mandates or requirements to disclose material developments. Therefore, IOSCO has developed these *Principles for Ongoing Disclosure for Asset-backed Securities* (*ABS Ongoing Disclosure Principles* or *Principles*) as a complement to the *ABS Disclosure Principles.*[8] The term "ongoing disclosure" encompasses both periodic disclosure (i.e. disclosure that covers a specific time period) and event-based or ad hoc disclosure (i.e. disclosure of events or information not covering a specific time period).[9]

Some jurisdictions do not have disclosure regimes that are specifically designed for ABS. The disclosure topics highlighted in these *ABS Ongoing Disclosure Principles* are therefore intended as a starting point for consideration and analysis by securities regulators that are developing or reviewing ongoing disclosure requirements applicable to ABS. 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 their specific regulatory framework, the characteristics of the issuing entity, or the characteristics of the securities involved, and may therefore wish to incorporate the *Principles* on a more selective basis as part of their general regulatory disclosure regime. The principles are highlighted in italics, and are generally followed by a narrative to describe specific disclosure considerations for how the principle could be implemented and/or examples to illustrate disclosure practices in some jurisdictions that implement the principle. These considerations and examples are not necessarily the only ways in which a principle can be implemented. The principles-based format allows for a wide range of application and adaptation by securities regulators. As with the *ABS Disclosure Principles*, these *ABS Ongoing Disclosure Principles* do not address antifraud prohibitions.

Scope of the Principles

The definition of ABS for purposes of these *ABS Ongoing Disclosure Principles* is the same as the definition under the *ABS Disclosure Principles*: ABS are 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. As with the *ABS Disclosure Principles*, these *ABS Ongoing Disclosure Principles* would not apply to securities backed by asset 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 *ABS Ongoing Disclosure Principles* and the *ABS Disclosure*

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7 In developing the *ABS Disclosure Principles*, IOSCO used as the starting point of its analysis the *International Debt Disclosure Principles* based on the expectation that some of those principles are universally applicable to investors in all fixed income securities. Occasionally, the *ABS Disclosure 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*.

8 The TC took a similar approach of distinguishing listing and offering disclosure from continuous disclosure in the case of equity securities, in which development of the *Periodic Disclosure Principles* (February 2010) was undertaken as a separate project from the *International Equity Disclosure Standards* (1998).

9 Such as, for instance, disclosures that are covered by price sensitive information requirements or by a predefined list of events.

Principles under a different regulatory framework than securities issued by investment companies; in other jurisdictions, securities regulators regulate both types of securities under the same regulatory regime. In both sets of principles, ABS are defined narrowly in order to facilitate the applicability of the principles across all jurisdictions. These *ABS Ongoing Disclosure Principles*, as with the *ABS Disclosure Principles*, may also provide a useful starting point for disclosure about other types of securities backed by asset pools.

These principles are applicable to public ABS. However, a jurisdiction that is developing disclosure requirements for private ABS also may look to these principles for relevant guidance. Disclosure to investors of the information referred to in these principles should be made in a manner consistent with a jurisdiction's disclosure framework for public or private securities, as appropriate, as some aspects of these principles may apply differently to private ABS. For example, a jurisdiction might require ongoing reports for public ABS to be publicly filed, whereas ongoing information for private ABS might be provided only to investors. In such a case, the principle of equal and simultaneous access to disclosure (Principle IX) should be implemented for private ABS in a manner consistent with that jurisdiction's disclosure framework for private securities.

Taking into account the variation in regulatory approaches and disclosure requirements in different jurisdictions, and to encourage broad application of these *Principles* while allowing jurisdictions the greatest degree of flexibility to implement them in the context of their specific regulatory and market structures, the individual principles contained in these *ABS Ongoing Disclosure Principles* are written without specific reference to whether the ABS to which they are to apply are publicly listed or offered. [10]

Regulatory Coordination

These *Principles* are prepared on a comprehensive basis. However, securities regulators to whom the objectives of these *Principles* are directed may look to the implementation of other initiatives within their jurisdictions, whether by the securities regulator itself, central banks, or other authorities.

Regulators in different jurisdictions should, wherever possible, consider all aspects to achieve consistency of ongoing disclosure requirements for ABS in order to achieve best practice and avoid overlapping or conflicting disclosure requirements. Because of the interrelation of global capital markets, enhanced regulatory coordination will encourage both consistent investor protection and efficient markets across jurisdictions and sectors. Coordination of disclosure requirements should be sought, to the extent possible, by securities regulators, prudential regulators, central banks, and other regulatory bodies that may set ongoing disclosure requirements for ABS.

In some disclosure areas, jurisdictions may use differing means to achieve the same regulatory objectives. In areas in which a jurisdiction is developing new disclosure

[10] For example, in some jurisdictions the regulation(s) to which ABS are subject may vary depending on the terms of the offer, whether the securities are admitted to trading on either a regulated market or an organized market, or whether the securities are offered without being listed. By contrast, in other jurisdictions the disclosure requirements for ABS are a function of whether the securities are publicly registered or not. In such jurisdictions, the disclosure obligations for publicly registered ABS generally do not vary based on the market on which the ABS are traded, and private ABS are either exempted from reporting or subject to less periodic or ongoing disclosure obligations.

initiatives, consideration of regulatory practices in other jurisdictions and the expressed views of other regulators would help promote consistency. IOSCO would support measures that encourage coordination of already existing disclosure requirements.

Coordination of disclosure requirements across borders would be helpful to investors by enhancing their ability to compare information. We believe that this objective should be encouraged but may be challenging to implement given differences in legal frameworks across jurisdictions and questions about whether it is best achieved through regulation or market participants. We believe, for example, that market participants could play an important role in the development of a glossary to facilitate comparison of terms as used in different jurisdictions. Another potential but parallel approach may be for a regulator that is developing definitions for key terms within its own jurisdiction to consider existing definitions used in comparable markets, including those used by other (non-regulatory) authorities.

Investor Needs

In the *Subprime Report*, IOSCO emphasized the importance of investor due diligence in order to ensure their clear understanding of each type of investment, particularly with regard to their specific risk profile.[11] Investor due diligence is a necessary component of an efficient market. In order for investors to make informed investment decisions regarding ABS, regulators should require issuers to provide full and fair ongoing disclosure about ABS to provide investors with the information they will need to perform due diligence independently and effectively. In prescribing disclosure requirements, regulators should take into account the needs of all types of investors.

Presentation

Information that is disclosed in a periodic or event-based report for ABS should be presented in a clear and concise manner without reliance on boilerplate language.

In addition to requiring certain disclosures to be made in an ongoing report, the securities and company laws and regulations of many countries may require issuers in those jurisdictions to file additional documents as documents on display or exhibits. If a jurisdiction does not require these documents to be included with a report, the 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 offices of the issuer or other designated party. The document should indicate where these additional documents may be inspected and whether copies may be obtained.

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[11] See the *Report on the Subprime Crisis* IOSCO, May 2008, supra fn 2, at Section II.

IOSCO has elsewhere emphasized the importance of due diligence, by investors as well as other market participants. See *Good Practices in Relation to Investment Managers' Due Diligence When Investing in Structured Finance Instruments* – Final Report, Report of the Technical Committee of IOSCO, July 2009, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD300.pdf

Transparency of Structured Finance Products – Final Report, Report of the Technical Committee of IOSCO, September 2009, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD326.pdf

Supplementary Information

Any material change or inaccuracy in the contents of a disclosure document that affects the issuing entity, the assets or the ABS should be adequately disclosed.

Chapter 2 – Other Relevant International Work

A number of regulatory bodies and other authorities in different jurisdictions have recently undertaken, or are in the process of undertaking, initiatives that relate to ongoing ABS disclosure. Those initiatives have been considered in the preparation of the principles for ongoing ABS disclosure, which have been developed on a comprehensive basis to provide guidance to securities regulators who are developing or reviewing their regulatory disclosure regimes for ongoing ABS disclosure.[12] Appendix I to these *Principles* provides a summary of several initiatives pertaining to ongoing disclosure for ABS by regulatory bodies and other authorities in various jurisdictions as of the date of publication of this Report.

[12] This approach is consistent with the approach taken in the *ABS Disclosure Principles*.

Chapter 3 – 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 other jurisdictions 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 Ongoing 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. In jurisdictions where an arranger is used, the arranger's role is similar to that of a sponsor in other jurisdictions.

Asset-Backed Securities - As used in these *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. These *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 timely distribution of proceeds to ABS holders. Such 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.

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, which 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.

Obligor - Any person who is directly or indirectly committed by contract or other

arrangement to make payments on all or part of the obligations on a pool asset.

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.

Trigger Event - An event the occurrence of which could result in the event of default of ABS or accelerated payment or suspension of payment of interest or principal on ABS, or which otherwise modifies the cash flow waterfall or payment terms of the ABS transaction, or any other such event as set forth in the ABS offering document.

Trustee - The entity that holds a security interest in or is owner of the assets for the benefit of the ABS holders and carries out specific functions set forth in the transaction documents that govern the securities, such as the pooling and servicing agreement, indenture, or similar contract. The trustee's duties are typically ministerial in nature. In some jurisdictions, this role is performed by an independent management company.

Chapter 4 – Principles for Ongoing Disclosure for Asset-Backed Securities

IOSCO has identified the following principles as essential for any ongoing disclosure regime for ABS.

1. Information regarding ABS should be provided on a periodic basis.

Principle ***Updated information regarding the ABS should be disclosed in reports prepared on an annual and other periodic basis, as appropriate to the type of information to be disclosed and its usefulness to investors.***

The purpose of an annual report would generally be to provide finalized performance information (in some jurisdictions, this may include audited financial information, while in other cases, this may include servicer information) regarding the asset pool or issuer for that financial year.

Interim periodic reports should be prepared on a regular basis to provide investors with current information for the specific relevant period about the performance of the assets. Each annual and periodic report should include information as of the latest practicable date, except where the applicable law or regulation requires the information to be provided for the financial year covered by the report or as of a specified date.

2. Material events regarding ABS should be disclosed in event-based reports.

Principle ***The occurrence of material events and other current or ad hoc information should be disclosed in event-based disclosure reports.***

The occurrence of material events relating to ABS and other current or ad hoc information about the ABS not covering a specific time period should be disclosed in event-based reports. Such reports should also be used to disclose price sensitive information and information pertaining to a predefined list of events as required by the regulations of a jurisdiction.

In some jurisdictions, certain material events not required to be disclosed in event-based reports may be required to be disclosed in other ongoing reports. For example, information regarding regular payments to investors may be disclosed in distribution reports.

3. Periodic and event-based disclosure reports should contain sufficient information to increase transparency and to help enable investors to perform due diligence in their investment decisions independently.

Principle ***Periodic and event-based disclosure should contain sufficient information in order to increase the transparency of information for investors and to allow investors to independently perform due diligence in their investment decisions regarding the specific ABS.***

Each jurisdiction should determine the disclosure requirements for periodic and event-based reports as appropriate to its national regulatory framework and in a manner consistent with these *Principles*. This may include the extent to which reports contain updates of information previously disclosed in an offering document. If securities regulators are developing or

reviewing ongoing disclosure requirements applicable to ABS, they should consider the disclosures described under this principle as examples of the type of information that would be useful to investors.

To help increase transparency, information contained in periodic and event-based disclosure reports should be readily understandable by investors, relevant to their decision-making needs, and reliable. Information that is reliable represents fully and fairly the transactions and other events that it purports to represent or could reasonably be expected to represent. It also represents transactions and other events in accordance with their substance and economic reality and not merely their legal form. Disclosure that an entity provides in a periodic or event-based report should facilitate comparability both with disclosure in other reports of that entity and with disclosure provided by other entities for similar securities.

a) Updated Information on the Parties Involved with the ABS

Investors and other interested parties need to know the identity of the relevant parties involved with the securities. In addition to the Issuing Entity, this information, which is generally disclosed at the time of securitization, would often include the Sponsor, the Depositor (if applicable), and the Arranger. Updated disclosure should be made on an ongoing basis of any changes to the relevant parties involved with the ABS on an ongoing basis including the material advisors or other material parties involved with servicing the ABS. Disclosure of any material changes in the functions or responsibilities of any significant parties involved with the ABS would also be useful to investors.

b) Financial Information about Significant Obligors

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 property or group of related Obligors or properties 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).

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 report 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 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.

c) Information regarding significant enhancement providers

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, ongoing disclosure about these enhancements and how they are designed to affect or ensure payment of the ABS would be very relevant to investors.

Investors may find updated financial information about significant enhancement providers to be relevant. In some jurisdictions, regulations require that 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, audited financial statements for such entity or group of affiliated entities and its consolidated subsidiaries should be provided in ongoing reports. Item XIII (Financial Information) of the *International Debt Disclosure Principles* provides more guidance on the information that should be provided in such financial statements.

d) Derivative Instruments

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 the existence and key features of these derivative instruments would be highly relevant to investors.

Updated 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 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. The significance percentage for each derivative counterparty may also be useful information to investors.

In the jurisdictions where financial significance is measured as described in the preceding paragraph, if the aggregate significance percentage related to any entity or group of affiliated entities that provides derivative instruments is significant, the report 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.

e) Legal Proceedings

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 fulfil their obligations on the securities.

A brief description of 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. 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. When creating disclosure requirements under this principle, regulators should take into account any legal restrictions to which disclosure of information about litigation or governmental proceedings may be subject.

f) Affiliations and certain relationships and related transactions

Disclosure regarding affiliations, certain relationships and transactions with related parties helps investors by informing them about parties who may be able to influence or control the issuer. This disclosure also provides information regarding transactions that the issuer has entered into with persons affiliated with the issuer who are potentially able to engage in abusive self-dealing with the issuer, and whether the terms of the related transactions are fair to the issuer or could be viewed as negotiated on an arm's-length basis.

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.

i). Affiliations Among Participants in the Securitization Transaction. Disclosure should be made to describe 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.

ii). Relationships Outside the Ordinary Course of Business Among Participants in the Securitization Transaction. Disclosure should be made of 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 ABS.

iii). 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 report. The types of arrangements that should be disclosed could include, for example, loan agreements or repurchase agreements to finance the acquisition or origination of pool assets, and servicing agreements.

g) Assessment of Compliance with Applicable Servicing Criteria

An assessment of the performance of the servicer and an independent third party check of some aspects of the servicing function are used in some jurisdictions to provide some assurance and transparency regarding the servicer's performance and may be an important element affecting an investor's assessment of a particular ABS. Different jurisdictions use various mechanisms to provide that information to investors within the context of their specific disclosure requirements. This section describes two such mechanisms for providing information about servicer performance to investors in a manner that satisfies this principle. One method involves including an assessment and attestation regarding servicing compliance in an annual report. Another method involves obtaining a report of an independent auditor, if audited financial statements are required for the Issuing Entity.

One method for providing material information about the performance of the servicer to investors would be to include an assessment and attestation regarding servicing compliance in an annual report. The performance of the servicing function is of material importance to the performance of an ABS transaction. As in other securities markets, in the ABS market there is a need for appropriate controls and processes and mechanisms to assess compliance with controls and processes.

Jurisdictions should have standardized servicing criteria for these reporting purposes. A disclosure-based assessment and attestation system identifies for investors those aspects of the standard servicing criteria that are in material compliance. Investors will thus be better able to evaluate servicing responsibilities and performance and the reliability of the information they receive. Additionally, the assessment could help to identify potential weaknesses that may adversely affect security holders. Reports on assessments of compliance with servicing criteria could be included from each party participating in the servicing function based on the activities it performs with respect to ABS transactions that are backed by the same asset type backing the class of ABS covered by the report, with associated attestation reports from registered public accountants that express an opinion concerning the asserting party's assessment of compliance with the servicing criteria.

Reports assessing compliance with servicing criteria could include:

- a statement of the party's responsibility for assessing compliance with the servicing criteria applicable to it;

- a statement that the party used the servicing criteria to assess compliance with the

applicable servicing criteria;

- the party's assessment of compliance with the applicable servicing criteria as of and for the period ending the end of the fiscal year covered by the annual report. The report also should include disclosure of any material instance of noncompliance identified by the party; and

- a statement that a registered public accounting firm has issued an attestation report on the party's assessment of compliance with the applicable servicing criteria as of and for the period ending the end of the fiscal year covered by the report.

A statement of compliance from the Servicer could be included in the annual report, signed by an officer of the Servicer, to the effect that a review of the servicer's activities during the reporting period and of its performance under the servicing agreement has been made under the supervision of that officer, and that the servicer has fulfilled all of its obligations under the agreement in all material respects throughout the reporting period. If there has been any material failure to fulfil such obligations, each such failure and the status thereof must be specified.

An alternative method for investors to obtain material information about the performance of the servicer that could help them monitor transactions, and thus their investments, more efficiently is through the report of an independent auditor, if audited financial statements are required for the Issuing Entity. That report provides assurance about the information provided in the periodic reporting and about the compliance of the servicer since the audit will include the cash-flow statement and, thereby, an audit of collections and payments made by the servicer.

h) Distribution and Pool Performance Information

Disclosure should be provided regarding the distribution for the related distribution period and the performance of the asset pool during the distribution period. This information should be provided promptly after each distribution date on the ABS, as specified in the governing documents for the securities. There should be appropriate introductory and explanatory information to introduce any material terms, parties or abbreviations used. Statistical information should be presented in tabular or graphical format where such presentation would aid understanding. While material information regarding related distribution and pool performance will vary depending on the ABS, such information would generally relate to either the assets or their impairment:

i). Asset Information, such as:

- Applicable record dates, accrual dates, determination dates and distribution dates;

- Cash flows received and their sources (including portfolio yield, if applicable);

- Calculated amounts and distribution of the flow of funds for the period itemized by type and priority of payment, including fees and expenses, payments with respect to enhancement, distributions to security holders and excess cash flow and disposition of excess cash flow;

- Interest rates applicable to the assets and the asset-backed securities, as applicable. Issuers should consider providing interest rate information for pool assets in appropriate distributional groups or incremental ranges;

- Beginning and ending principal balances of the asset-backed securities;

- Beginning and ending balances of transaction accounts, such as reserve accounts, and material account activity during the period;

- Amounts drawn on any credit enhancement or other support, as applicable, and amounts still available, if known and applicable; and

- Updated pool composition information for the period, such as the number and amount of pool assets at the beginning and ending of each period, weighted average coupon, weighted average life, weighted average remaining term, pool factors and prepayment amounts.

ii). Asset Impairment Information, such as:

- Delinquency and loss information for the period;

- The amount, terms and general purpose of any advances made or reimbursed during the period;

- Material modifications, extensions or waivers to pool asset terms, fees, penalties or payments during the distribution period or that have cumulatively become material over time;

- Material breaches of pool asset representations or warranties or transaction covenants; and

- Information on ratio, coverage or other tests used for determining any early amortization, liquidation or other performance trigger and whether the trigger was met.

Distribution reports should also contain disclosure regarding changes to the asset pool that occur not as a result of the assets converting into cash in accordance with their terms but rather as a result of external administration, such as additions or removals in connection with a prefunding or revolving period and pool asset substitutions and repurchases. Such information would include any material changes in solicitation, credit-granting, underwriting, origination, acquisition, or pool selection criteria or procedures.

Ongoing reports should include disclosure of all information necessary for investors to assess the credit quality of the assets underlying the ABS over the lifetime of the securities. The data provided should be transparent and comparable, and should be presented in a way that illustrates material changes in the asset pool, with more granular information provided about the assets when appropriate.

Disclosure of asset-level information would allow better monitoring of ABS by investors and other market participants by enhancing their ability to track the performance of the assets, as well as to assess the performance of the originator, sponsor or servicer. This ability will allow investors to continue their independent analysis of the ABS rather than relying on credit ratings agencies or other third parties to alert them of changes to the risk profile of the ABS. Regulators should consider requiring disclosure of other ratios that may assist investors in evaluating risk, such as loan-to-value and credit-to-servicing ratios. Where there has been a material change to the risk profile or risk environment of a loan, for example property loans without any equity contribution, property loans with enhancing interest and/or debt retirement, or loans with mortgage insurance, information previously disclosed in an offering document or prospectus should be updated.

i) Repurchase and Replacement Activity

Issuers should disclose, on a periodic basis, historical information about all assets of the pool that were the subject of a demand to repurchase or replace for breach of the representations and warranties contained in the transaction agreements underlying the asset securitization. This information will help investors to identify asset originators with clear underwriting deficiencies.

j) Event-Based Reporting

The occurrence of material events should be disclosed promptly in event-based reports. To the extent certain information is not required to be disclosed in an event-based report, a material event may be disclosed in other subsequent ongoing reports where a jurisdiction so permits. Disclosure of a material event in an event-based report does not preclude its subsequent disclosure in other periodic reports where a jurisdiction permits or requires it. Examples of ABS-related events that should be disclosed include, but are not limited to, those listed below. There are other types of issuer disclosure that jurisdictions may require in event-based reporting.

i). Change of servicer or trustee. If a servicer or a trustee had resigned or had been removed, replaced or substituted, or if a new servicer or trustee had been appointed, disclosure of the date the event occurred and the circumstances surrounding the change should be made. In addition, information relating to the transition would also be useful to investors. If a new servicer or trustee had been appointed, disclosure should include a description of that entity.

ii). Change in credit enhancement or other external support. Any known loss, addition or material modification of any material credit enhancement or other support provided by a third party should be disclosed. If any such enhancement or support is terminated other than by expiration of the contract on its stated termination date or as a result of all parties completing their obligations, disclosure will be required of the date of termination, identity of the parties to the agreement, a brief description of the terms of the enhancement or support, and a brief description of the material circumstances surrounding the termination. If any new enhancement or support is added, disclosure regarding the new enhancement or support should also be made. If any existing material enhancement or support has been materially modified, a

brief description of the material terms and conditions of the amendments should be included.

iii). Failure to make a required distribution. If a required distribution to holders of the asset-backed securities is not made as of the required distribution date under the transaction documents, disclosure of the failure, if material, and the nature of the failure should be made.

iv). Changes to credit rating. If an ABS issuer obtains and is required to disclose a credit rating for an ABS issuance, or if the issuer voluntarily discloses such a credit rating, updated information regarding any change in that rating should be disclosed on an ongoing basis in a manner consistent with the jurisdiction's regulatory approach for rating agencies. In providing disclosure regarding a change to a credit rating, care should be taken to provide appropriate context so as to avoid undue investor reliance on the credit rating.

v). Change of credit rating agency from which a rating has been obtained. If a credit rating agency from which an issuer had obtained a credit rating for an ABS has been removed, replaced or substituted, or if a new credit rating agency has been engaged, disclosure of the date the event occurred and the circumstances surrounding the change should be made. In addition, disclosure relating to the transition would also be useful to investors.

vi). Changes to the credit check policy. If an ABS has a revolving asset pool and the offering document included disclosure regarding the credit checks of the securitized loans (e.g., the underwriting criteria for the originator, as well as the eligibility criteria of the assets in the securitized pool), then the disclosure should be updated promptly following any material change to that policy. For example, the disclosure of credit check policy should include the scheme under which credit is granted at origination, and also could include the criteria by which the assets are selected.

vii). Payment and Performance Information. Updated disclosure should be made of any other event that materially affects payment or pool performance. For examples of this type of information, see Principle 3, Section h, above.

viii). Early redemption. If the Originator, Issuing Entity or other party that may influence the Issuing Entity redeems the securities prior to the maturity date, the date and events underlying the early redemption should be disclosed.

4. Disclosure should be complete, clear, and not misleading.

Principle ***The information disclosed in ongoing reports should not be misleading or deceptive and should not contain any material omission of information. Moreover, information disclosed in an ongoing report should be presented in a clear and concise manner without reliance on boilerplate language.***

Regulators should implement a principle of materiality under which any information that is deemed necessary to keep the mandated disclosure from being misleading or incomplete should be provided. All information that would be material to an investor's decision and that

is necessary for full and fair disclosure should be disclosed. This principle of materiality should complement requirements for itemized disclosure.

If information related to an issuer's ongoing reports is disseminated by other means, such as provided on the issuer's website, it should be substantially the same as the information provided in the issuer's reports to the relevant regulator.

5. Disclosure should be presented to facilitate analysis by investors.

Principle ***Disclosure should be presented in a format that facilitates the analysis of information by investors.***

Disclosure should be presented in a format that facilitates analysis of the information contained in the report. Presentation of disclosure in a computer readable format may be one way to achieve this objective. To that end, some regulators are investigating the use of adequate technology as a means of providing a quick and easy way for investors and others to extract, analyze and compare financial information that has been filed with regulators. The enhanced search and comparison capabilities afforded by the use of such technology could improve investors' ability to understand the available financial information, and could enable issuers to communicate their disclosure more effectively.

6. Parties responsible for the disclosure should be clearly identified.

Principle ***The person or entity responsible for publishing the disclosure and the person or entity responsible for gathering the information from other persons or entities involved in the ABS should be clearly identified.***

Ongoing disclosure reports should be signed by the issuer or servicer or authorized representatives of the issuer or servicer. If there are multiple servicers, then the master servicer or authorized representative of the master servicer should sign the report.

7. Information should be available to the public on a timely basis.

Principle ***The information provided in the ongoing report should be disclosed in a timely manner, such that the information is sufficiently current and disclosed with sufficient frequency so as to be of use to investors.***

An appropriate time period for the due date of periodic reports may depend on the nature of the information being disclosed. Consideration should be given to more frequent disclosure of performance information, for example requiring it to be done in conjunction with a payment date or quarterly, on a timing basis that facilitates comparison by investors. Due dates for reports should be established by the relevant laws, regulations or listing rules of the jurisdiction in which the report must be made available to the public. Event-based or ad hoc disclosure should be made promptly after the occurrence of the event, in accordance with the applicable event-based or ad hoc disclosure regime.

8. All investors and market participants should have equal and simultaneous access to disclosure.

Principle ***Material information that is disclosed to any investor, market participant or***

other third party should be provided to all investors, market participants and other third parties at the same time.

The disclosure of material information to certain investors (whether current or prospective security holders) or other interested parties before it is disclosed to the public may reduce investor confidence in the fairness of those markets. Prohibiting such disclosures will reduce the likelihood of insider trading or abusive use of such information. However, in some jurisdictions such disclosures may be allowed in certain circumstances, such as when other types of regulations are considered to adequately deal with insider trading or abusive use of material non-public information. For example, these exceptions could include communications with advisers and rating agencies, or communications made in the ordinary course of business. Such communications may include communications with persons with whom the company is negotiating, or intends to negotiate, a commercial, financial or investment transaction; and communications with representatives of the company's employees or trade unions acting on their behalf. In all these cases, the recipients of this information may have a duty to keep the information confidential. In other jurisdictions, there are very limited exceptions for price sensitive information. Information 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 information.

Equal access to disclosure should be provided to all investors at the same time. In some jurisdictions, dissemination of information effected via different means, such as press releases and newspaper notices of the availability of the periodic reports on the issuer's website or elsewhere, is viewed as providing investors with equal access at the same time. In other jurisdictions, equal access is viewed as provided by free public access to the periodic reports on the regulator's website when the reports are filed with the regulator, so that it is available to all investors and the public at the same time.

9. Disclosure should be equivalent in all markets.

Principle ***If securities are listed or admitted to trading in more than one jurisdiction, the material periodic information made available to one market should be made available promptly to all markets in which they are listed.***

10. Ongoing reports should be filed with or otherwise made available to the relevant regulator.

Principle ***Ongoing reports should be filed with the relevant regulator or otherwise made available in compliance with applicable regulations to permit regulators to review the reports, when appropriate, to ensure compliance with the relevant laws and regulations.***

The means of filing may include transmission of the ongoing report to the relevant regulator, or by sending the relevant regulator notice of the filing on a separate registry, among other things. Regardless of the means used, the relevant regulator has means of obtaining the report for its regulatory purposes.

11. The information should be stored to facilitate public access to it.

Principle ***The relevant law or regulation should ensure that there is storage of the ongoing information in order to facilitate public access to the information.***

Access to information should be at the lowest cost possible to investors. Electronic storage is one means of achieving this objective. This information should be easily accessible, whether with the relevant regulator or another authorized repository, and be available for a sufficient period of time given a jurisdiction's legal framework and other appropriate considerations.

Appendix I Summary of Initiatives Pertaining to Ongoing ABS Disclosure in Various Jurisdictions

1. Canada: CSA Proposal for Continuous Disclosure for Securitized Products

On April 1, 2011, the Canadian Securities Administrators (the CSA) proposed a framework for the regulation of securitized products in Canada. Under the proposed framework, reporting issuers would be required to provide investors with information on the features and risks of securitized products. This information would be provided to investors at the time of product distribution and on an ongoing basis.

The Proposed Continuous Disclosure Rule (Proposed CD Rule) requires that reporting issuers with issued and outstanding securitized products file specific continuous disclosure in addition to complying with the general continuous disclosure obligations applicable to reporting issuers that are not investment funds.

The following is a summary of several significant features of the Proposed CD Rule:

a) Payment and performance report

A reporting issuer must file a *Payment and Performance Report for Securitized Products* within 15 days after each payment date for each series or class of securitized products it has issued. The report must contain information regarding payment distribution and pool performance reflecting the pool's performance at the most recent payment distribution period. The issuer must provide the required disclosure to the extent applicable. If none of the disclosure in this report is applicable due to the attributes of the securitized product or the structure of the securitized product, the reporting issuer can file an alternative report that contains all information that would be material to an investor regarding the payment distribution and performance of the series or class of securitized products.

b) Timely disclosure of significant events

If a specified event occurs, a reporting issuer must immediately issue and file a news release disclosing the event, and file a *Report of Significant Events Relating to Securitized Products* describing the event no later than two business days after the event. In addition, the CSA have also included a more general disclosure trigger which requires disclosure of any other event that affects payment distribution or pool performance that an investor would consider material.

c) Annual servicer report

Each servicer whose servicing activities relate to more than five percent of the pool assets must assess its compliance with each servicing standard set out in the Proposed CD Rule that it has identified as being applicable to it. The servicing standards in the Proposed CD Rule are not legal obligations under securities law, and are intended only as uniform measures against which the servicing of a particular asset pool can be assessed.

The servicer must prepare a report that states whether the servicer complied with each standard during the reporting issuer's most recently-completed financial year. The servicer report must be audited.

The servicer must provide the report to the reporting issuer, who in turn must file it by the later of the date it files its Annual Information Form (AIF) or its annual financial statements and annual Management Discussion and Analysis (MD&A).

d) Annual servicer certificate

Specified servicers must provide a reporting issuer with a certificate that discloses the extent of the servicer's compliance with the applicable servicing agreement for the reporting issuer's most recently completed financial year. There is no prescribed form of certificate. The reporting issuer must file the certificate by the later of the date it files its AIF or its annual financial statements and annual MD&A.

e) Disclosure of servicer non-compliance

A reporting issuer's MD&A must include a discussion of any significant instance of non-compliance with the applicable servicing standards in the proposed CD Rule, or the relevant servicing agreement, that has been disclosed to it by a servicer through the servicer report or servicer certificate it has provided to the reporting issuer.

f) The Proposed Certification Amendments

The CSA are proposing amendments to the certification requirements that exempt reporting issuers that issue securitized products and that are subject to the proposed CD Rule from the requirements to establish and maintain disclosure controls and procedures and internal control over financial reporting. The proposed amendments also provide for modified forms of certificate for reporting issuers who are subject to proposed CD Rule.

2. European Union: Disclosure rules under the Capital Requirements Directive II

As a response to the financial crises the European Union introduced the Capital Requirements Directive II (CRD II)[13] which includes, among others, enhanced disclosure rules regarding ABS.

Under the new Article 122a (7) of CRD II each credit institution acting as sponsor or originator of a securitisation is subject to comprehensive disclosure obligations towards prospective investors.

[13] Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0097:0119:EN:PDF.

In particular such credit institutions need to ensure that prospective investors have readily available access to:

- all materially relevant data on the credit quality and performance of the individual underlying exposures, cash flows and collateral supporting a securitisation exposure; and

- all information that is necessary to conduct comprehensive and well informed stress tests on the cash flows and collateral values supporting the underlying exposures.

Further, such credit institutions have to disclose their individual retention level to the investor[14] and have to keep all the materially relevant data available for the investors.

The guidelines of the Committee of European Banking Supervisors (the CEBS Guidelines)[15] specify certain terms regarding the application of Article 122a of the CRD. The term "readily available" means that "gaining access to the information should not be overly prohibitive (in terms of search, accessibility, usage, cost and other factors that might impede availability), so that fulfilling their due diligence requirements is not overly burdensome on investors."

The term "individual underlying exposures" typically means that "such data should be provided on an individual exposure (loan-level) basis, as opposed to on a collective basis." However, it is recognised that there may be circumstances in which such loan-level disclosure is not appropriate; for instance, securitisations with a large volume of exposures that are highly granular. On the other hand, in many circumstances loan-level disclosure is a material necessity for the due diligence process; for instance, securitisations with large concentrations of non-granular exposures. In determining whether such information should be provided on an individual or aggregate basis, a credit institution, when acting as originator or sponsor, should consider the information that a credit institution when acting as investor would need in order to fulfil its requirements under Paragraphs 4 and 5 of Article 122a.

However, it must be highlighted that the disclosure required (as well as the timing and the mean of dissemination) by Article 122a (7) only refers to credit institutions. It does not take into account the fact that the securitisation products may or may not be listed. It is worth recalling that once the securitisation bond is admitted to trading on a regulated market, information given by the issuer must be freely, easy and timely accessible to all market participants.

Further, the CEBS Guidelines clarify that the disclosure requirements "need not extend to the provision of information that would directly or indirectly breach other legal or regulatory requirements of such credit institutions (for instance, market abuse and confidentiality restrictions, including (but not limited to) those related to clients and customers)."

In the case of a material breach of the 5% retention rule, the due diligence rules, or the

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[14] This retention rule forbids a European credit institution to be exposed to a securitization position according to the comprehensive CRD definition unless the originator, sponsor or original lender retains at least 5% of the nominal value of the transaction or the underlying assets (depending on the applied retention option). As a result, the responsibility (and the consequence) of the retention rule is put on investors.

[15] Guidelines to Article 122a of the Capital Requirements Directive as of 31 December 2010.

disclosure rules, the competent authorities impose a proportionate additional risk weight of no less than 2.5 of the risk weight regularly applied to the retention exposure (maximum 1,250%) depending on the type and the duration of the infringement.

It must be noted that the 5% retention rule should also apply soon to investment managers (articles 19 and 41 of the AIFM directive) and insurance companies (Solvency II).

There is currently a provision under discussion in the context of the revision of the Regulation on Credit Rating Agencies (CRA III) that is likely to have an impact on ABS disclosure in the EU.

Under the project of revision proposed by the European Commission in November 2011, a provision has been proposed to request disclosure for ABS (as Structured Finance Products under the definition of CRD) so as to provide information necessary to carry out comprehensive assessment. Information required would cover notably main characteristics of underlying asset pool, and the structure and cash flow; it would also cover any information necessary to provide for thorough stress testing. Specific details including frequency and format are to be defined by further EC rulemaking. If the European Parliament and Counsel adopt the provision, the European Securities and Markets Authority (ESMA) is then expected to set up a webpage for publication. If adopted, this provision would be expected to help provide information necessary to investors under their CRD II obligations, and as such there would be no distinction between public, listed and/or private transactions.

3. Bank of England: Disclosure Requirements for Eligible Collateral

Since December 2007 the Bank of England (the Bank) has accepted asset backed securities and covered bonds (ABS) as collateral eligible for its liquidity insurance operations. One of the Bank of England's guiding principles for its market operations is that it must be able to risk manage and value the collateral it accepts. In view of this, the Bank considered the information required from the issuers of ABS in order to be able to risk manage its collateral more effectively and efficiently.

Following a Market Consultation the Bank of England decided to amend its eligibility criteria to require enhanced disclosure of information relating to these securities. While driven by the Bank's own risk management requirements, the Bank considered it important that this information be provided not only to the Bank but also to market participants as a way of ensuring that market-wide transparency was enhanced. This reflected the information asymmetry between the information routinely and publicly provided by ABS issuers and that required by investors to manage these instruments.

In order to be eligible in the Bank's operations, the Bank of England now requires that originators of ABS make the following available to market participants in order for their securities to remain eligible:

- Detailed information about the loans included within the securitisation. For most asset classes this will take the form of loan-level data including details of the borrower, underlying assets and performance of each loan, to be provided on every quarter;

- The prospectus and other key legal documents;

- Monthly reports about the security containing a standard set of minimum information;

- A summary of the structure of individual transactions including the rights of bond or note holders; and

- A cash-flow model of each transaction which accurately represents how cash flows through the structure to the end-investor (not applicable to covered bonds).

The implementation of these requirements has been staggered. The publication of the prospectus and other key documents was required from July 2011 for all asset classes. The remaining requirements for residential mortgage-backed securities and covered bonds backed by residential mortgages came into force on 1 December 2011 and the application of the full requirements will be extended to remaining asset classes by the end of 2012.

4. European Central Bank

The European Central Bank (ECB) is currently implementing measures similar to those of the Bank to require specific loan level information for ABS accepted as collateral in Eurosystem credit operations. The ECB intends these measures to help investors with their due diligence through providing to market participants more transparency of information and in a standardized format and so to help restore confidence in the securitization market.

The Eurosystem will introduce loan level information requirements for RMBS first and then gradually extend them to other asset classes such as CMBS and SME transactions. The requirements will apply to existing and newly issued ABS and are being implemented over 2011 to mid-2012.

The requirement is for information to be provided on a quarterly basis on interest payment dates or within one month of that date. The data will include:

- borrower information;

- loan characteristics;

- interest rate info;

- property/additional collateral; and

- performance information.

5. United States

The United States Securities and Exchange Commission (the Commission) has undertaken a number of regulatory initiatives related to ABS, many of which contain specific provisions for ongoing disclosure.

In April 2010, the Commission issued proposed revisions to rules applicable to ABS transactions.[16] Several of these proposals pertained to ongoing disclosure requirements. Specifically, the Commission proposed to require the filing of tagged, computer-readable, standardized information about the specific assets, or loans, in the pool. This loan-level information would be provided both at the time the security is sold as well as on an ongoing basis. The Commission also proposed to change the requirements for pool-level disclosure regarding delinquency presentation in periodic reports from a materiality standard to an objective standard. In another provision, the Commission proposed to lower, from five percent to one percent, the threshold of change in the material pool characteristics that would be necessary to trigger the requirement to file a current disclosure report on Form 8-K. The proposal also included a provision to require the ABS issuer to file on the Commission website a computer program that provides investors with a tool to analyze asset information. This computer program would show the effect of the so-called "waterfall" so investors can analyze how the borrowers' loan payments are distributed to investors in the ABS, how losses or lack of payment on those loans will be divided among the investors, and when administrative expenses, such as loan servicing fees, are paid to service providers.

The April 2010 proposal also sought to increase transparency in the private ABS market by revising the Commission's safe harbors (which provide an exemption from registration with the Commission). The proposed revisions would require ABS issuers to file a notice of ABS offerings conducted in reliance on the safe harbor, and to represent in their transaction agreement that they will make available to investors the same information about the securities that would be provided if the offering were publicly registered.

After the Commission's April 2010 ABS proposals, the United States Congress passed the *Dodd-Frank Wall Street Reform and Consumer Protection Act*[17] (Dodd-Frank Act or the Act), which among other things, also sought to address concerns in the ABS market. The Dodd-Frank Act provides for new requirements on the ABS process, including three provisions that apply to ongoing disclosure requirements.

Section 942(a) of the Act eliminates the automatic suspension of Exchange Act reporting obligations for ABS issuers so that in the future, ABS issuers will continue to file Exchange Act reports as long as securities are held by non-affiliates of the issuer.[18] Section 942(a) also

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16 See SECURITIES AND EXCHANGE COMMISSION 17 CFR Parts 200, 229, 230, 232, 239, 240, 243 and 249 Release Nos. 33-9117; 34-61858; File No. S7-08-10 RIN 3235-AK37 ASSET-BACKED SECURITIES, available at http://sec.gov/rules/proposed/2010/33-9117.pdf.

17 *Dodd-Frank Wall Street Reform and Consumer Protection Act* available at http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf.

18 Exchange Act Section 15(d) generally requires an issuer with a registration statement that has become effective pursuant to the Securities Act of 1933 to file ongoing Exchange Act reports with the Commission. Prior to enactment of the Act, Exchange Act Section 15(d) provided that for issuers without a class of securities registered under the Exchange Act the duty to file ongoing reports is automatically suspended as to any fiscal year, other than the fiscal year within which the registration statement for the securities became effective, if the securities of each class to which the registration statement relates are held of record by less than 300 persons. As a result, the reporting obligations of ABS issuers, other than those with master trust structures, were generally suspended after the ABS issuer filed one annual report on Form 10-K because the number of record holders was below, often significantly below, the 300 record holder threshold. As a result of Section 942(a)'s statutory amendment, ABS issuers no longer automatically suspend reporting under Exchange Act Section 15(d).

granted the Commission the authority to suspend or terminate the duty of an ABS issuer to file disclosure reports. The Commission amended on August 17, 2011 its rules relating to the Exchange Act reporting obligations of ABS issuers.[19] The Commission's rule amendments include a provision for the suspension of the reporting obligations for ABS issuers for any semi-annual fiscal period, if, at the beginning of that period, there are no longer any ABS of the class sold in a registered transaction held by non-affiliates of the depositor.

Section 942(b) of the Act requires the Commission to adopt regulations to require issuers of ABS, at a minimum, to disclose asset-level or loan-level data regarding the assets backing the ABS, if such data are necessary for investors to independently perform due diligence. As part of its April 2010 proposal, the Commission had proposed new requirements for the disclosure of asset-level information in prospectuses and in Exchange Act periodic reports to augment the existing pool-level disclosure requirements. In July 2011, the Commission issued a release requesting additional comment on whether the April 2010 proposals appropriately implement Section 942(b) of the Dodd-Frank Act.[20]

Section 943 of the Act requires the Commission to prescribe regulations on the use of representations and warranties in the ABS market. To implement this, the Commission adopted rules that require ABS issuers to disclose the history of repurchase requests they received regarding potential breaches of the representations and warranties they made relating to the pool assets (including the quality of the pool assets, and their origination) and whether the requests were fulfilled or unfulfilled.[21] Also, the final rules require Nationally Recognized Statistical Rating Organizations to provide a description of the representations, warranties and enforcement mechanisms available to investors in an ABS offering and how they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities.[22]

Section 945 of the Act requires the Commission to issue rules requiring an asset-backed issuer in a Securities Act registered transaction to perform a review of the assets underlying the ABS, and disclose the nature of such review. Final rules also were adopted on January 20, 2011, to implement Section 945, requiring asset-backed securities issuers whose offerings are registered under the Securities Act to conduct a review of the assets underlying those securities and make certain disclosures about those reviews.

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19 See SECURITIES AND EXCHANGE COMMISSION 17 CFR Parts 240 and 249 [Release No. 34-65148; File No. S7-02-11] RIN 3235-AK89 Suspension Of The Duty To File Reports For Classes Of Asset-Backed Securities Under Section 15(D) Of The Securities Exchange Act Of 1934, available at http://www.sec.gov/rules/final/2011/34-65148.pdf.

20 These requests for comment were issued in the same release in which the Commission re-proposed certain ABS shelf eligibility requirements. See SECURITIES AND EXCHANGE COMMISSION 17 CFR Parts 229, 230, 239 and 249 Release Nos. 33-9244; 34-64968; File No. S7-08-10 RIN 3235-AK37 Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment, available at http://sec.gov/rules/proposed/2011/33-9244.pdf.

21 See SECURITIES AND EXCHANGE COMMISSION 17 CFR Parts 229, 232, 240 and 249 Release Nos. 33-9175; 34-63741; File No. S7-24-10 RIN 3235-AK75 DISCLOSURE FOR ASSET-BACKED SECURITIES REQUIRED BY SECTION 943 OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, available at http://sec.gov/rules/final/2011/33-9175.pdf.

22 Ibid.

In July 2011, the Commission re-proposed the proposals relating to ABS shelf eligibility from the April 2010 release.[23] The ABS shelf eligibility proposals included, among other requirements, two requirements for shelf eligibility that trigger certain ongoing disclosure requirements. First, the Commission proposed that ABS issuers must agree to provide a notice in their Exchange Act reports of an investor's desire to communicate with other investors. Second, the Commission proposed that issuers must agree to include provisions in the underlying transaction agreements requiring that the trustee of the issuing entity appoint a "credit risk manager" to review the underlying assets upon the occurrence of certain trigger events and provide its report of the findings and conclusions of the review of the assets to the trustee. Issuers would then be required to disclose information related to the appointment or dismissal of this credit risk manager and to file the credit risk manager's report regarding its review of the pool assets, if received during the distribution period. As part of the July 2011 re-proposal, the Commission also solicited comment on the provision contained in the April 2010 proposal to require a privately-issued ABS issuer to represent in the transaction agreement that it will make available to investors the same information about the securities that would be provided if the offering were publicly registered.

With respect to credit risk retention, Section 941 requires the Commission, the Federal banking agencies, and, with respect to residential mortgages, the Secretary of Housing and Urban Development and the Federal Housing Finance Agency to prescribe rules that require a securitizer to retain an economic interest in a material portion of the credit risk for any asset that it transfers, sells, or conveys to a third party. To implement Section 941(b), the Commission, and other Federal agencies charged with jointly prescribing regulations, issued proposed rules in March 2011 relating to credit risk retention requirements.[24] Consistent with the Act, the proposed rules generally would require a sponsor to retain an economic interest equal to at least five percent of the credit risk of the assets collateralizing an issuance of ABS. The proposed rules would permit a sponsor to choose from a menu of risk retention options. The proposed rules also include disclosure requirements specifically tailored to each of the permissible forms of risk retention including material information concerning the sponsor's retained interests in a securitization transaction and the assumptions used in determining the aggregate value of ABS to be issued.

Section 621 of the Dodd-Frank Act prohibits an underwriter, placement agent, initial purchaser, sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security from engaging in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity for a period of one year after the date of the first closing of the sale of the asset-backed security. In September 2011, the Commission proposed new Rule 127B under the Securities Act to implement Section 621.

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[23] See SECURITIES AND EXCHANGE COMMISSION 17 CFR Parts 229, 230, 239 and 49 Release Nos. 33-9244; 34-64968; File No. S7-08-10 RIN 3235-AK37 Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment http://sec.gov/rules/proposed/2011/33-9244.pdf.

[24] See U.S. SECURITIES AND EXCHANGE COMMISSION 17 CFR Part 246 Release No. 34-64148; File No. S7-14-11 RIN 3235-AK96, available at http://www.sec.gov/rules/proposed/2011/34-64148.pdf.

6. The Joint Forum Report on Securitisation Incentives

The Joint Forum[25] released its *Report on Asset Securitisation Incentives* in July 2011. [26] In that report, the Joint Forum analyzes the incentives to engage in securitization throughout the market before the financial crisis, the distortions created by misalignments and conflicts of interest which emerged, and the responses of governments, regulators and industry standard-setters intended to re-establish securitization on a sustainable basis after the crisis. The report recognizes the role of regulators in establishing a framework for securitization so that, conducted prudently, it continues to provide a source of funding and available credit to support the real economy. The report recommends that authorities, as part of that role, should encourage markets to improve transparency to ensure that investors, other market participants and supervisors have access to relevant and reliable information. The report also recommends that authorities encourage greater document standardization, which should assist in reducing information asymmetries and stimulating liquidity in the secondary markets.

7. IOSCO Task Force on Unregulated Markets and Products - Consultation Report

IOSCO is also currently working on a project in relation to securitization through its Task Force on Unregulated Markets and Products (TFUMP). As part of that project, in June 2012 IOSCO issued a Consultation Report in response to a request from the Financial Stability Board (FSB) as part of its work to strengthen oversight and regulation of the shadow banking system.[27] The FSB requested that IOSCO, in coordination with the Basel Committee on Banking Supervision, conduct a stock-taking exercise on the requirements for risk retention and measures enhancing transparency and standardization of securitization products, and to develop policy recommendations as necessary, with an aim to support sound regulation of securitization markets.

The Consultation Report is based on a survey of member jurisdictions and builds on earlier work undertaken by staff of the United States Securities and Exchange Commission and the European Commission on developments in the United States and the European Union. The Consultation Report describes the background for TFUMP's work, provides a snapshot of global securitization regulation and activity, and makes observations about different regulatory approaches in various jurisdictions. Some of the policy considerations subject to comment relate to differences in approaches to risk retention, improvements in transparency, and measures to standardize disclosure. A final report is expected before the end of 2012.

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25 The Joint Forum was established in 1996 under the aegis of the Basel Committee on Banking Supervision (BCBS), the International Organization of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS) to deal with issues common to the banking, securities and insurance sectors, including the regulation of financial conglomerates. The Joint Forum is comprised of an equal number of senior bank, insurance and securities supervisors representing each supervisory constituency.

26 See *Report on Asset Securitization Incentives*, Joint Forum, 13 July 2011, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD355.pdf.

27 That report is available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD382.pdf. Although the FSB has specifically defined shadow banking as "the system of credit intermediation that involves entities and activities outside the regular banking system," it continues to use the term "shadow banking" to describe such activity, noting that this is not meant to be a pejorative term and that earlier G20 communications also used the term "shadow banking."

Appendix II

Feedback Statement on the Public Comments Received by IOSCO on the *Consultation Report – Principles for Ongoing Disclosure for Asset-Backed Securities*

Non-confidential responses were submitted by the following organizations to the TC consultation entitled *Consultation Report – Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities*. The deadline for comments was 20 April 2012.

- American Securitization Forum
- APG Asset Management
- Association for Financial Markets in Europe and the Asia Securities Industry & Financial Markets Association
- Australian Securitisation Forum
- Bundesverband Investment und Asset Management e.V.
- Chris Barnard
- German Banking Industry Committee
- International Banking Federation

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

The Board took these responses into consideration when preparing this final report. The feedback statement contained in the rest of this section reports on the main points raised during the consultation.

This feedback statement describes the background of the publication of the *ABS Ongoing Disclosure Principles*, discusses the comments received by IOSCO from participants in the international financial community, and the Board'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 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 TC concluded that IOSCO's currently existing disclosure standards and principles did not apply to such offerings.

IOSCO has published a number of disclosure principles and standards, most notably the *Principles for Periodic Disclosure by Listed Entities* (*Periodic Disclosure Principles*), *International Debt Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers* (*International Debt Disclosure Principles*), and *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, however, are not wholly applicable to public offerings and listings of ABS due to the unique nature of both ABS and ABS issuers, which have several distinguishing characteristics compared to other fixed income securities and their issuers. For example, the issuing entity of an ABS is designed to be a solely passive entity without management. Therefore, 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.

To begin to address the need for disclosure principles designed to suit the characteristics of ABS and ABS issuers, the TC developed *Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities* (*ABS Disclosure Principles*). The objective of the *ABS Disclosure Principles* is to enhance investor protection by providing guidance to regulators that are developing or reviewing their disclosure regimes for offerings and listings of ABS. In developing the *ABS Disclosure Principles*, IOSCO used as the starting point of its analysis the *International Debt Disclosure Principles* based on the expectation that some of those principles are universally applicable to investors in all fixed income securities.

The TC developed these *ABS Ongoing Disclosure Principles* as a complement to the *ABS Disclosure Principles*, which expressly do not address continuous reporting disclosure mandates or requirements to disclose material developments. In February 2012, the TC approved a draft of these *Principles* for public consultation, and published a Consultation Report later that month. After reviewing the public comments received, the Board's Committee on Issuer Accounting, Audit and Disclosure revised the *Principles* based on the comments received on the Consultation Report.[28] The Board approved the *Principles* in November 2012.

The Consultation Report contained specific questions on certain aspects of the *Principles*, and also encouraged comment on any other matters related to the document. Eight comment letters were received on the Consultation Report for the *ABS Ongoing Disclosure Principles*. A list of the parties who provided comments is included in this Appendix II. Most of the respondents addressed specific sections or disclosure items addressed in the *Principles* and expressed views on how they could be revised.

The Board found all of the comments received from the public consultation to be helpful. The *ABS Ongoing Disclosure Principles* have been revised to address some of the comments received. Other comments did not result in revision but did provide valuable input for 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*.

[28] After the May 2012 restructuring of IOSCO, the Committee on Issuer Accounting, Audit and Disclosure succeeded to its Standing Committee No. 1 on Multinational Accounting and Disclosure.

II. Comments Received and the Responses to those Comments

A. General

The *ABS Ongoing Disclosure Principles* are intended as a starting point for consideration and analysis by securities regulators that are developing or reviewing ongoing disclosure requirements applicable to ABS. They contain eleven broad principles, each of which is followed by a narrative which describes specific disclosure considerations for how the principle could be implemented, and/or examples that illustrate current disclosure practices in some jurisdictions that implement the principle. The *Principles* note that some jurisdictions do not have disclosure regimes that are specific to ABS. In such jurisdictions, disclosure requirements for ABS would be part of the regulatory disclosure regime applicable to securities generally. The *Principles* explicitly note that some regulators may find it useful to incorporate all of the disclosure topics into their ABS disclosure requirements, while others may conclude that the relevance of specific disclosure topics in their jurisdictions may vary according to the characteristics of their specific regulatory framework, the characteristics of the issuing entity, or the characteristics of the securities involved, and may therefore wish to incorporate the *Principles* on a more selective basis.

Some commenters expressed concerns that the *Principles* appeared to be based too much on the disclosure model of one jurisdiction, and that they do not strike the appropriate balance between market participant interests. Another commenter thought that the eleven principles adequately reflect market needs.

The Board believes that jurisdictions may implement the disclosure principles in different ways given their specific regulatory context. The narrative following the individual principles is illustrative and drawn from the disclosure requirements and experience of multiple jurisdictions; as stated in the *Principles*, the examples or illustrations that follow the individual principles do not describe the only ways in which a jurisdiction can implement the principles. The principles-based format allows for a wide range of application and adaptation by securities regulators. The Board notes that some jurisdictions may have disclosure regulations that are specific to ABS, whereas in other jurisdictions ABS disclosure requirements are covered as part of the general securities disclosure requirements. The *Principles* have been revised to clarify that if a jurisdiction to which the principles apply does not have a disclosure regime that is specifically designed for ABS, the *Principles* should be incorporated as part of their general regulatory disclosure requirements.

B. Scope

In both these *ABS Ongoing Disclosure Principles* and the *ABS Disclosure Principles* which IOSCO issued in 2010, ABS are 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. One commenter took the view that this definition does not reflect the idiosyncrasies of asset-backed commercial paper transactions, and suggested that the definition of ABS include a waiver for such transactions. The Board appreciates the variation among ABS products and the varying regulatory treatment of them, and believes that the *Principles* provide sufficient flexibility for jurisdictions to apply the

principles in a manner best suited to the characteristics of a specific product within the context of their own national regulatory framework.

Some commenters suggested that the *Principles* should not apply to both public and private ABS. The Board has revised the *Principles* to clarify that they apply to public ABS. Although the *Principles* are not directed towards private ABS, a jurisdiction developing disclosure requirements for private ABS may choose to look to these *Principles* for relevant guidance.

C. Regulatory Coordination

In the Consultation Report, the TC noted that regulatory coordination of ongoing disclosure requirements for ABS would encourage both consistent investor protection and efficient markets across jurisdictions and sectors. Comparable definitions of key terms used in ABS were noted as useful in this regard. The TC encouraged this objective, but notes that it may be challenging to implement due to differences in legal frameworks across jurisdictions. The Consultation Report included a number of questions relating to standardization of definitions and disclosure templates as well as on coordination of regulation. Several commenters who responded to those questions supported standardization of definitions and/or disclosure templates as a means to resolve inconsistency and enhance comparability of information. Other commenters cautioned that standardized definitions and templates may be difficult to achieve given various asset classes, jurisdictional differences and transaction structures. The Board appreciates the range of viewpoints submitted in response to the questions. While encouraging the coordination of regulation where possible in order to promote the comparability of information, the Board remains sensitive to the challenges of creating standardized disclosure templates and definitions given the variety of products and assets as well as the different regulations that may apply to securitization structures within a particular jurisdiction.

One respondent contended that the definitions of "originator" and "sponsor" provided in the Consultation Report are inconsistent with the definitions applicable within the European Union. The definitions of these terms in the Consultation Report, which are consistent with the definitions in the *ABS Disclosure Principles*, focus on the function that the party performs. Although there may be differences across jurisdictions, the definitions retain the common features across different jurisdictions. The Board therefore has not revised them in the Final Report.

D. Principle 1 – Information regarding ABS should be provided on a periodic basis.

The narrative following Principle 1 includes the statement that annual reports may include audited financial information. Some commenters expressed concern that this statement suggests that audited financial statements should be compulsory for ABS issuers, and noted that in some jurisdictions this information was neither consistent with requirements nor considered relevant to issuers in securitized transactions. The *Principles* does not make audited financial information compulsory. The narrative under Principle 1 has therefore been revised to clarify that in some jurisdictions, periodic reports for ABS may include audited financial statements.

Some commenters also expressed concern that the narrative following Principle 1 may suggest that periodic reports should "refresh" previously made disclosure. In response to those comments, the narrative following Principle 1 has also been revised to clarify that the purpose of an annual report is generally to provide finalized performance information regarding the asset pool or issuer for that financial year.

E. Principle 2 – Material events regarding ABS should be disclosed in event-based reports.

Principle 2 recommends that the occurrence of material events and other current or ad hoc information should be disclosed in event-based disclosure reports, as distinguished from disclosure reports prepared on an annual or other periodic basis as described in Principle 1. One commenter pointed out that ongoing disclosure of asset pool and ABS performance information in some jurisdictions is made in a report that is separate from both the general event-based disclosure report and from periodic reports. Use of such disclosure reports may be triggered by the distribution of payments to ABS holders, which, as a regular occurrence, has characteristics of both event-based and periodic reporting. In order to reflect such circumstances, the narrative under Principle 2 has been modified to indicate that in some jurisdictions certain material events that are not required to be disclosed in event-based reports may be required to be disclosed in other ongoing reports. A conforming revision has been made to Section (j) of Principle 3, which relates to event-based reporting.

F. Principle 3 – Periodic and event-based disclosure reports should contain sufficient information to increase transparency and to help enable investors to perform due diligence in their investment decisions.

Principle 3 recommends that periodic and event-based reports should contain sufficient information to increase transparency and to allow investors to independently perform due diligence regarding ABS. The narrative under Principle 3 describes several types of information that issuers should provide to help fulfill that principle.

In Section (e) of Principle 3 it is recommended that issuers disclose legal proceedings to provide investors with sufficient information to assess the significance of the action and its potential impact. One commenter expressed concern that parties to litigation or governmental proceedings are often not at liberty to provide specific details concerning those actions. In response to this concern, the Board has indicated that the description of legal proceedings should be brief, and has added a clarification to indicate that when creating disclosure requirements under this principle, regulators should take account of any legal restrictions to which disclosure of information about litigation or legal proceedings may be subject.

Section (g) under Principle 3 relates to disclosure of information that would allow investors to assess the compliance of the servicer with applicable servicing criteria. This section has been revised to note that different jurisdictions may provide such information to investors within the context of their specific disclosure requirements. Revisions have also been made to clarify that the section describes two such mechanisms for providing information about servicer performance in a manner that satisfies the principles. These clarifications have been added to illustrate that the *Principles* are designed to provide different jurisdictions with the

flexibility to implement the principles in different ways within the context of their specific regulatory structure.

In response to other comments, Section (g) has also been revised to clarify that a report on the assessment of compliance with servicing criteria could be provided by each party on a platform basis; i.e. based on the activities that a party performs with respect to the ABS that are backed by the same asset type that backs the ABS covered by the report.

The introductory language to Section (j) of Principle 3 has been revised to comport with the changes made to Principle 2, as described above. Several revisions have also been made to the subsections of Section (j) which describe disclosure that jurisdictions may require in event-based reports. For disclosure related to changes in credit enhancement or other external support described in subsection (ii), a qualification was added to clarify that any loss, addition or material modification of a material credit enhancement or other third-party support should be disclosed if known. This revision was made in response to comments that depositors should not be required to report events of which they are not aware.

In response to comment on subsection (iii), "Failure to make a required distribution," a revision was made to clarify that disclosure should be made if the failure is material. The Board is of the view that the nature, cause, and potential effect of the failure should be considered when determining whether a failure is material.

One commenter believed that Subsection (vi), "Changes to the credit check policy" and Subsection (v) "Early redemption" were unclear in the type of information that was meant to be disclosed. In response to these comments, clarification has been added to these subsections.

G. Disclosure Relating to Credit Rating Agency Oversight

In the Consultation Report, the TC sought feedback on whether an ABS issuer should be responsible for providing ongoing disclosure about the oversight/supervision of a credit rating agency that provided a rating for its ABS. Commenters who provided feedback were opposed to issuer disclosure of credit rating agency oversight. Respondents cited a variety of reasons for their objections, including the need to reduce regulatory references to credit ratings and the lack of benefit to investors of having issuers provide such disclosure given the separate regulation that exists for credit rating agencies. Given that feedback from commenters, including investors, did not support issuer disclosure of credit rating agency oversight, it has not been included in the final *Principles*.

H. **Principle 4 – Disclosure should be complete, clear, and not misleading.**

In the Consultation Report, Principle 4 recommended that information disclosed in ongoing reports should be "fairly presented, not misleading or deceptive, and should not contain any material omission of information." One commenter cautioned the TC from using "fairly presented" as the meaning of the term may be unclear.

In response to those concerns, the Board has removed the terms "fair" and "fairly presented." The removal of the terms does not alter the intent of the principle; therefore, to clarify how

the principle should be implemented, the Board has revised the narrative to explain that all information that would be material to an investor's decision and that is necessary for full and fair disclosure should be disclosed.

I. Principle 5 – Disclosure should be presented to facilitate analysis by investors.

Principle 5 recommends that disclosure should be presented in a format that facilitates the analysis of information by investors. In the Consultation Report, the TC solicited feedback on how the means through which information is delivered affects its utility to investors. Commenters provided an array of responses: one commenter believed that a central national repository would facilitate disclosure, and another commenter advocated a single point of unrestricted industry access to information in each ABS market. The principle is intended to enhance investors' ability to understand disclosure by facilitating their analysis and comparison of the information, often through the use of technology. The Board believes that there are many different ways through which regulators may implement this principle, and has revised the explanatory narrative to reflect that presentation of disclosure in a computer readable format may be one way to facilitate investor analysis.

J. Principle 7 – Information should be available to the public on a timely basis.

In the Consultation Report, the TC solicited feedback on whether periodic reporting should depend on the information to be disclosed and, if so, what should be the basis for establishing reporting periods. In response, several commenters noted that reporting should coincide with interest payment dates. The *Principles* have not been revised in response to these comments, as the Board believes that the timeliness of disclosure is based on the nature of the information being disclosed, that jurisdictions should have the flexibility to determine appropriate reporting deadlines, and that certain information (e.g., information concerning performance of the assets) should be disclosed on a frequent basis in order to be most useful to investors.

K. Principle 8 – All investors and market participants should have equal and simultaneous access to disclosure.

One commenter noted that Principle 9 calls for disclosure of information in markets where the securities are listed or admitted to trading.[29] That commenter expressed the view that Principle 8 also should contain the same explicit reference to securities that are listed or admitted to trading, as ABS may be listed in one market but private or unlisted in another.

Principle 8 recommends that material information that is disclosed to any investor, market participant or third party should be made to all investors, market participants or third parties at the same time. Its purpose is to encourage the confidence of market participants in the fairness of markets by reducing the possibility of selective disclosure, insider trading or other abusive use of information. The Board wishes to reiterate that the *Principles* apply to public ABS, as described in Chapter 1. Because the stated scope of the *Principles* applies to each of the individual principles, the Board does not believe that revision to Principle 8 is necessary to clarify its applicability to public ABS.

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[29] Principle 9 in full states that "If securities are listed or admitted to trading in more than one jurisdiction, the material public information made available to one market should be made available promptly to all markets in which they are listed."

Appendix III

Public Comments Received by IOSCO on the *Consultation Report – Principles for Ongoing Disclosure for Asset-Backed Securities*

American SECURITIZATION FORUM

April 10, 2012

Via Email: ongoing-abs@iosco.org

Jonatan Bravo
IOSCO General Secretariat
International Organization of Securities Commissions
Calle Oquendo 12
28006 Madrid
SPAIN

Re: Public Comment on *Principles for Ongoing Disclosure for Asset-Backed Securities*

The American Securitization Forum ("ASF")[1] submits this letter in response to the request for public comment issued by the Technical Committee (the "Technical Committee") of the International Organization of Securities Commissions ("IOSCO") regarding its consultation report, entitled *Principles for Ongoing Disclosure for Asset-Backed Securities* (the "Report" and, the principles set forth therein, the "ABS Reporting Principles" or the "Principles").[2] ASF previously submitted comments[3] to IOSCO in response to its June 2009 consultation report entitled *Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities* (the "ABS Offering Disclosure Principles"),[4] which set forth principles regarding disclosure for asset-backed securities ("ABS") at the time of public offering. As such, we welcome the opportunity to provide comment on the Technical Committee's Report, which is intended to function as a complement to the ABS Offering Disclosure Principles and sets forth Principles relating to periodic and event-based reporting for ABS. ASF continues to support IOSCO's efforts to advance international coordination on this important topic.

ASF has long been a proponent of appropriate transparency in ABS transactions and we have worked within our membership to produce numerous disclosure recommendations and practices. In that respect, we support facilitating a better understanding of the issues that should be considered by the Technical Committee when reviewing and revising their ABS Reporting Principles. In general, disclosure and reporting principles for the ABS market need to take

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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 330 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. 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.

[2] *See* http://www.iosco.org/library/pubdocs/pdf/IOSCOPD372.pdf.

[3] For ASF's Letter, dated August 10, 2009, regarding the ABS Offering Disclosure Principles, *see* http://www.americansecuritization.com/uploadedFiles/ASF_Letter_re_IOSCO_Disclosure_Principles_8_10_09.pdf.

[4] *See* http://www.iosco.org/library/pubdocs/pdf/IOSCOPD296.pdf.

account of the information which is meaningful and appropriate for investors and also the practical ability of issuers and other market participants to efficiently produce such information. This is the approach we have taken in developing market standards and practices through our ASF *Project RESTART* initiative.[5] Furthermore, there are challenges with respect to full globalization of ABS disclosure standards, and it will be necessary to take into account the various existing local requirements and market practices, as well as more recent legislative and regulatory proposals, in order to achieve it.

In the U.S., the Securities and Exchange Commission ("SEC") first promulgated a comprehensive disclosure and reporting regime for ABS in 2005 with its release of Regulation AB.[6] The SEC then endeavored to overhaul Regulation AB in 2010, with its release of proposed rules that have come to be known as "Regulation AB II." This proposal remains outstanding after receiving substantial feedback from ASF and other industry players. Also in 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") to comprehensively overhaul financial regulation.[7] The reforms set forth therein are vast, impacting all corners of the financial markets, and various regulatory agencies have been tasked with implementing the required rulemakings. As part of this process, the regulators have proposed or enacted all of the reforms required by Subtitle D of Article IX, which delineated "Improvements to the Asset-Backed Securitization Process." Some of these reforms have been described in Appendix B to the Report and all should be considered for purposes of coordinating international standards.

ASF believes the Principles outlined in the Report are generally consistent with Regulation AB's modified reporting system, which includes current distribution and pool performance information, current reports for ABS-specific reportable events and reports on servicer performance. However, there are areas where the Technical Committee has introduced concepts and requirements that are inconsistent with the U.S. reporting regime, and we believe that our experience working within such regime, in addition to our longstanding track record of commenting on proposed rulemakings, may provide helpful insight to IOSCO's goal of international coordination. To that end, we set forth in the remainder of this letter (i) a brief summary of our recent advocacy and market practice initiatives relating to disclosure and reporting, (ii) a discussion of key issues to consider if the Technical Committee is contemplating disclosure and reporting requirements in private markets, and (iii) a review of the disclosure requirements contemplated in the Principles with a view to highlighting material differences in the U.S. disclosure and reporting regime, as well as some of the principles underlying those differences. We hope this letter is helpful to IOSCO's efforts to develop international disclosure standards that harmonize the disparate disclosure regimes which currently exist across major jurisdictions.

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[5] For the ASF *Project RESTART* Homepage, *see* http://www.americansecuritization.com/restart.

[6] Asset-Backed Securities, 70 *Federal Register* 1506 (January 7, 2005), *available at* http://edocket.access.gpo.gov/2005/pdf/05-53.pdf (the "Reg AB Adopting Release").

[7] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, U.S. Public Law 111-203, *available at* http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.

A. PREVIOUS ASF ADVOCACY AND MARKET PRACTICE INITIATIVES

In Appendix B to the Report, the Technical Committee has summarized relevant international initiatives regarding ongoing ABS disclosure, including initiatives by European regulators, the SEC and the Canadian Securities Administrators ("CSA"). In light of this discussion, we believe that a brief summary of ASF's recent advocacy and market practice initiatives relating to disclosure and reporting may be helpful and relevant for the Technical Committee to consider in evaluating its Principles. These initiatives are also referenced throughout our discussion of the Principles.

1. ASF *Project RESTART*

ASF launched the *Project on Residential Securitization Transparency and Reporting* ("*Project RESTART*" or the "*Project*") on July 16, 2008 in order to help rebuild confidence in mortgage- and asset-backed securities and to restore capital flows to the securitization markets. Since its launch, the *Project* has been recognized by senior policymakers and market participants as a necessary industry initiative to improve the securitization process by developing commonly accepted and detailed standards for transparency, disclosure and diligence. ASF members participating actively in the *Project* include institutional investors, issuers, originators, financial intermediaries, servicers, rating agencies, due diligence professionals, trustees, outside counsel, outside consultants, and data modelers and vendors.

On July 15, 2009, ASF released final versions of the first two deliverables of the *Project*, a disclosure package of loan-level information to be provided by issuers prior to the sale of private-label residential mortgage-backed securities ("RMBS") transactions (the "ASF RMBS Disclosure Package") and a reporting package of loan-level information to be updated on a monthly basis by RMBS servicers throughout the life of an RMBS transaction (the "ASF RMBS Reporting Package"). Next, on December 15, 2009, ASF released the "ASF Model RMBS Representations and Warranties,"[8] which establish a set of standardized representations and warranties to serve a baseline model in the production or assessment of the representations and warranties set forth in securitization governing contracts going forward. Finally, on August 30, 2011, ASF released the "ASF Model RMBS Repurchase Principles,"[9] which set forth a third-party mechanism to ensure that representations and warranties in future RMBS transactions are subject to clearly defined enforcement mechanisms.

2. ASF Reg AB II Proposal and Re-Proposal Response

On May 3, 2010, the SEC published in the *Federal Register* a proposal to amend certain aspects of Regulation AB relating to the offering, disclosure, and reporting requirements for ABS (the "Reg AB II Proposal").[10] One aspect of the Reg AB II Proposal was to set forth more granular disclosure and reporting requirements for ABS. This included an asset-level disclosure and reporting framework for RMBS that substantially incorporated the spirit and substance of *Project*

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[8] *See* http://www.americansecuritization.com/uploadedFiles/ASF_Project_RESTART_Reps_and_Warranties_121509.pdf.

[9] *See* http://www.americansecuritization.com/uploadedFiles/ASF_Model_RMBS_Repurchase_Principles.pdf.

[10] *See* http://edocket.access.gpo.gov/2010/pdf/2010-8282.pdf.

RESTART's RMBS Disclosure and Reporting Packages, which had enjoyed industry-wide consensus. However, the Reg AB II Proposal also proposed more granular disclosure and reporting regimes for 9 other asset classes, including automobile ABS, credit and charge card ABS, and equipment ABS.

In response to the Reg AB II Proposal, ASF assembled an unprecedented industry-wide representative taskforce that submitted extensive comments to the SEC, some of which are critical to consider when evaluating the ABS Reporting Principles.[11] Specifically, ASF submitted a broad, 172-page primary comment letter on August 2, 2010 detailing our members' views relating to the majority of the disclosure and reporting proposals set forth in the Reg AB II Proposal, including specific responses to the RMBS and credit and charge card disclosure regime proposals.[12] On that same day, ASF submitted a supplemental comment letter focusing solely on issues relating to asset-backed commercial paper ("ABCP"), including disclosure and reporting requirements tailored to that market.[13] Additionally, following these submissions, ASF submitted, among other materials, a supplemental comment letter dedicated solely to addressing disclosure issues relating to assets underlying auto loan, auto lease and auto floorplan ABS.[14]

On August 5, 2011, the SEC published in the *Federal Register* revised proposals of certain provisions that were initially proposed in the Reg AB II Proposal (the "Reg AB II Re-Proposal"),[15] in light of, among other things, several provisions enacted as part of Dodd-Frank. On October 4, 2011, ASF submitted our primary comment letter in response to the Reg AB II Re-Proposal, addressing the majority of the re-proposed disclosure requirements.[16] Additionally, ASF member issuers of and investors in equipment ABS submitted a thorough supplementary comment letter dedicated solely to addressing disclosure issues relating to assets underlying equipment loan and lease ABS.[17] Like our *Project RESTART* disclosure initiative, the ASF Reg AB II letters reflected industry consensus on a wide range of issues, including disclosure and reporting regimes for RMBS, credit and charge card ABS, and auto floorplan ABS. However, there were also material disagreements on certain issues, and in such cases all applicable views were presented.

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[11] For more information about ASF's Reg AB II response, *see* http://www.americansecuritization.com/index.aspx?id=4410.

[12] *See* http://www.americansecuritization.com/uploadedFiles/ASFRegABIICommentLetter8.2.10.pdf, hereinafter referred to as the "ASF Reg AB II Broad Comment Letter". For the section addressing disclosure requirements, *see* p. 39.

[13] See http://www.americansecuritization.com/uploadedFiles/ASFRegABIIABCPCommentLetter8.2.10.pdf, hereinafter referred to as the "ASF Reg AB II ABCP Comment Letter".

[14] *See* http://www.americansecuritization.com/uploadedfiles/asf_reg_ab_ii_auto_abs_comment_letter_8.31.10.pdf, hereinafter referred to as the "ASF Reg AB II Auto Disclosure Comment Letter".

[15] *See* http://www.gpo.gov/fdsys/pkg/FR-2011-08-05/pdf/2011-19300.pdf.

[16] *See* http://www.americansecuritization.com/uploadedFiles/ASF_Comment_Letter_on_SEC_Reg_AB_II_Re-Proposal_10-4-11.pdf, hereinafter referred to as the "ASF Reg AB II Re-Proposal Broad Comment Letter". For the section addressing disclosure requirements, *see* p. 22.

[17] *See* http://www.americansecuritization.com/uploadedFiles/ASF_Equipment_ABS_Letter_(11-2-11).pdf, hereinafter referred to as the "ASF Reg AB II Equipment Disclosure Comment Letter".

We encourage IOSCO to thoroughly review each of these comment letters, as they represent the most detailed and current views of securitization market participants to disclosure and reporting proposals currently under review in the U.S.

3. ASF Response to Dodd-Frank

The reforms set forth in Dodd-Frank are vast, impacting all corners of the financial markets, and various regulatory agencies have been tasked with implementing the required rulemakings. As part of this process, the regulators have proposed or enacted all of the reforms required by Subtitle D of Article IX, which delineated "Improvements to the Asset-Backed Securitization Process," including credit risk retention, ongoing reporting, repurchase disclosure and due diligence requirements. ASF has provided U.S. federal regulators seeking to implement Dodd-Frank provisions relating to securitization with extensive comments relating to proposed rules and concept releases.[18] The implementing regulations set forth below are relevant to certain concepts raised in the Report.

Section 942(a) of Dodd-Frank[19] amended Section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") to exclude ABS from the automatic suspension of the duty to file ongoing reports under that Section after any fiscal year if the securities of each relevant class were held of record by fewer than three hundred persons. In its place, Section 942(a) authorized the SEC to suspend or terminate Exchange Act Section 15(d) reporting requirements for any class of ABS as the SEC deemed appropriate. Following a proposal and comment period, during which ASF submitted a comment letter,[20] the SEC adopted Rule 15d-22(b),[21] which provided for the suspension of the reporting obligations for ABS as to any semi-annual fiscal period, if, at the beginning of that period (other than a period in the fiscal year within which the registration statement became effective or, for shelf offerings, the takedown occurred) there are no ABS of such class that were sold in a registered transaction held by non-affiliates of the depositor. This final outcome recognized that the utility of ongoing reporting is substantially diminished if only affiliate holders of the ABS remain.

Section 942(b) of Dodd-Frank requires the SEC to promulgate regulations requiring issuers to disclose asset-level data if such data are necessary for investors to perform due diligence.[22] The substance of these requirements are substantially similar to the regulations proposed in the Reg AB II Proposal. Indeed, the Reg AB II Re-Proposal sought additional comment on the original Reg AB II Proposal in light of the enactment of Section 942(b). As such, at this point, the ASF comment letters responding to the Reg AB II Proposal and Reg AB II Re-Proposal also represent ASF's views on Section 942(b).

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[18] *See* http://www.americansecuritization.com/uploadedFiles/ASFDodd-Frank_Rulemaking_Schedule.pdf.

[19] *See* Dodd-Frank Act, Public Law 111-203, 124 Stat. 1896.

[20] See http://www.americansecuritization.com/uploadedFiles/ASF_Letter_re_Proposed_Exchange_Act_Rule_15d-22(b).pdf, hereinafter referred to as the "ASF Exchange Act 15(d) Reporting Comment Letter".

[21] *See* http://www.gpo.gov/fdsys/pkg/FR-2011-08-23/pdf/2011-21500.pdf.

[22] *See* Section 942(b), Dodd-Frank Act, Public Law 111-203, 124 Stat. 1896.

Section 943 of Dodd-Frank[23] also contained provisions that relate to the ABS Ongoing Disclosure Principles. Section 943(2) mandated that the SEC implement rules to require any securitizer of ABS to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies. The SEC implemented this provision by adopting Rule 15Ga-1.[24] In response to the final regulations, ASF assembled a wide range of ASF members throughout the latter half of 2011 to create the ASF Rule 15Ga-1 Market Implementation Guide to assist market participants in interpreting and clarifying the issues arising in the implementation of the final rule.[25]

4. ASF Response to the Canadian Securities Administrators Disclosure Proposal

On April 1, 2011, the CSA issued a set of proposed rules and rule amendments relating to securitized products in Canada (the "CSA Proposals").[26] The CSA Proposals primarily set forth heightened disclosure requirements for securitized products issued by reporting issuers, and new rules that narrow the class of investors who can buy securitized products on a prospectus-exempt basis. The CSA Proposals would also require that issuers of securitized products provide disclosure at the time of distribution, as well as on an on-going basis. The CSA Proposals in large part overlap with the disclosure and reporting regime set forth in the U.S. under the original Regulation AB.

ASF submitted a comment letter to the CSA on August 31, 2011[27] that specifically focused on the underlying principles of the CSA Proposals, the role of regulation in private market transactions among highly sophisticated parties, the scope of the CSA Proposals, the significant differences between U.S. regulations and the CSA Proposals, and features of U.S. securitization initiatives not incorporated in the CSA Proposals which are still in flux and may be unwarranted in Canada.

B. THE PRINCIPLES AND THE PRIVATE PLACEMENT MARKET

The Technical Committee indicates in the Report that the Principles "are written without specific reference to whether the ABS to which they are to apply are public or private"[28] and "are intended to provide disclosure guidance that may be relevant to both public and private ABS."[29] However, the Technical Committee appropriately acknowledges that disclosure of information contained in the Principles should be made in a manner consistent with a jurisdiction's disclosure

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[23] *See* Dodd-Frank Act, 124 Stat. 1897.

[24] *See* http://edocket.access.gpo.gov/2011/pdf/2011-1504.pdf.

[25] *See* http://www.americansecuritization.com/uploadedFiles/ASF_Rule_15Ga-1_Market_Guide.pdf.

[26] *See* http://www.osc.gov.on.ca/documents/en/Securities-Category4/ni_20110401_41-103_securitized-products.pdf. For a summary of the proposed disclosure and reporting requirements for long-term and short-term securitization products, *see* http://www.americansecuritization.com/uploadedFiles/ASF_Diagrams_of_CSA_Proposals.pdf.

[27] *See* http://www.americansecuritization.com/uploadedFiles/ASF_Comment_Letter_re_CSA_Proposals.pdf, hereinafter referred to as the "ASF CSA Proposals Comment Letter".

[28] Report at 11.

[29] Report at 13.

framework for public or private securities.[30] In the U.S., private placements are generally executed under Section 4(2) of the Securities Act or under the rule-based exemptions, Regulation D and Rule 144A. Because offerings in the private market are generally made to a smaller number of sophisticated investors that have greater access to information relevant to make their investment decision, the existing U.S. laws and regulations governing such market do not include strict reporting or filing requirements.

However, under the Reg AB II Proposal, the SEC has proposed to condition the availability of Regulation D and Rule 144A on an issuer's undertaking to provide to investors, in connection with initial offers or sales and on an ongoing basis, the same information as would be required in a registered transaction. ASF has long objected to the SEC's proposed approach due primarily to the negative impacts it would have on nontraditional asset classes,[31] "one-off" issuances of mainstream asset-classes and offerings by less seasoned issuers. Issuers operate in the private placement market for a number of important and valid reasons. For example, (i) an issuer may not have access to all of the information required for a registered transaction, (ii) the underlying assets or transaction structure may not lend themselves to the delivery of information required for registered transactions, or (iii) the issuer's issuances may not be of a sufficient scale or the market for a particular product may be sufficiently limited that the costs and difficulties of compliance with the disclosure standards for a registered transaction make the private placement market the only viable alternative.

We have had continuing dialogue with the SEC on this issue, starting with the submission of our "SQIB" proposal in the summer of 2010, which sought to define a class of ABS investors who can fend for themselves and seek customized disclosure.[32] Since that time, we have produced an alternative proposal that seeks to incorporate principles-based disclosure requirements for privately placed ABS should the SEC believe that disclosure requirements are necessary in the final rule.[33] Ultimately, each of these submissions[34] provides a detailed discussion of the private placement market and the related U.S. law. The Technical Committee should review these submissions before choosing to recommend any of the Principles for private placement markets.

Furthermore, given the differences between the public and private markets in the U.S. (and elsewhere), we recommend that IOSCO resist publishing disclosure and reporting principles that are intended to apply across both markets. We also note that the U.S. private placement market is more robust than the private market that exists in Europe, so any recommendations that do not take into account the uniqueness of the private placement market could have a substantial effect on capital markets activity in the U.S. For these reasons, the remainder of this letter focuses

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[30] Report at 13.

[31] For a list of examples of nontraditional asset classes, *see* the ASF Reg AB II Broad Comment Letter at p. 89.

[32] For our views on the SEC's private placement proposal and a discussion of our SQIB proposal, *see* ASF's Broad Reg AB II Comment Letter at http://www.americansecuritization.com/uploadedFiles/ASFRegABIICommentLetter8.2.10.pdf.

[33] *See* http://www.americansecuritization.com/uploadedFiles/ASF_Reg_AB_II_Private_Placement_Proposal_(2-1-12).pdf.

[34] As mentioned in Section A above, ASF has separately addressed the ABCP market, which also operates in the private placement market.

entirely on comparing the disclosure and reporting regime applicable to the public registered market in the U.S. with the Principles proposed by the Technical Committee.

C. THE PRINCIPLES

1. *Updated information regarding the ABS should be disclosed in reports prepared on an annual and other periodic basis, as appropriate to the type of information to be disclosed and its usefulness to investors.*

ASF believes that this Principle is generally consistent with the periodic reporting scheme required under the Exchange Act for registered transactions, in which ABS issuers are required to file periodic reports on Form 10-D, annual reports on Form 10-K and event-based reports on Form 8-K. However, in the description of this Principle, the Technical Committee calls for provision of "audited financial information" regarding "the asset pool or issuer for that financial year." ASF does not believe that this type of information is relevant to the issuers traditionally used in securitization transactions and is inconsistent with current requirements in the U.S.

Unlike for operating entities, for which financial statements and related management discussion and analysis provide a useful, standardized format for valuing assets and liabilities and determining the financial condition of the entity, those same valuations and determinations are largely irrelevant to special purpose issuers of securitized products. Instead, ABS issuers are generally passive entities who 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. Those issuers are structured so that the cash flows from specified pools of assets are dedicated to service just the related securitized products. Indeed, emphasizing financial statements in connection with certain types of securitization entities may not only be unhelpful, but could be misleading to investors since not all of the amounts or assets reflected in those financial statements would in fact be available to investors (e.g., as a result of siloing, payment waterfalls and fair value accounting for related hedges).[35]

From the inception of the U.S. securitization market, financial statement and other operating entity disclosure was determined to be far less relevant to investors than asset-based servicer reporting and Form 8-K reporting. SEC "no action letters" routinely allowed issuers to replace conventional financial statement-based disclosure with customized asset-backed disclosure.

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[35] With respect to financial statement reporting relating to derivative obligations, we suggest that the match-funding, cash-based approach adopted in relation to ABS makes a traditional financial accounting overlay incongruent. In fact, given the requirement to quantify the fair value of hedge transactions, such an approach may confuse investors. The inclusion of fair value calculations may leave investors with a false impression that there is in fact a surplus or deficit asset position within a special purpose issuer. Also, since financial statements do not differentiate between the assets servicing particular ABS series within a master trust, entity-level asset aggregation creates a false impression that series investors could have recourse to the master trust's entire asset pool, rather than only to the applicable series assets. With respect to disclosure regarding priority cash flow entitlements, offering disclosure and monthly servicer reports should be sufficient to describe these items. Typically, a prospectus and the related servicer reports will contain extensive discussion regarding payment waterfalls and other arrangements. The recital of these arrangements in financial statements (typically in the notes to financial statements) may be simplified, and therefore legally imprecise or incomplete.

Regulation AB codified that result in 2004 and called for enhanced servicer reporting. Regulation AB's modified reporting system does not require that audited financial statements for the issuing entity be included in the annual report on Form 10-K. Instead, the U.S. approach focuses on a servicer's compliance with the applicable servicing criteria. As discussed further in our response to Principle 3.g., the SEC generally requires an assessment and certification by the servicer as to its compliance with those servicing criteria and an attestation by an independent public accountant regarding such servicer's compliance. This longstanding framework was developed based on the recognition that one of the most important elements affecting an investor's assessment of a particular asset-backed security is the performance of the servicer. As the SEC indicated in Regulation AB: "We continue to believe that for asset-backed securities, an assessment and attestation regarding servicing compliance provides material information to investors in monitoring transactions and thus their investments more directly and efficiently than an audit of financial statements or reporting on internal control over financial reporting."[36] ASF believes that Regulation AB's modified reporting system, which includes current distribution and pool performance information, current reports for ABS-specific reportable events and reports on servicer performance, including an assessment and attestation regarding servicing compliance, provides far better disclosure than entity-level financial statement reporting.

The description of this Principle also states that the annual report would provide finalized performance information regarding the asset pool. For ABS, pool performance information is limited to the Form 10-D report, which is distributed in connection with the distribution schedule of the ABS (generally monthly, quarterly or semi-annually) and, thus, more frequently than Form 10-K.

The description of this Principle also references providing (i) in annual reports, "updates to material information that has been previously disclosed or included in the prospectus" and "new information not previously disclosed" and (ii) in periodic reports, "any material updates to previous disclosure." It is not clear whether the Principle is implying that the disclosure included in the prospectus should be refreshed in periodic reports, as is generally required in the corporate securities regime. A general requirement to provide material updates to disclosure is not required under the ABS reporting regime. Instead, because ABS is backed by a pool of self-liquidating assets, the reporting regime has been tailored to provide ongoing pool[37] and ABS performance information on Form 10-D as well as other specified information on Forms 10-D and 10-K. Finally, each Form further provides that, pursuant to Rule 12b-20 under the Exchange Act, ABS issuers must also include "such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading."

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[36] *See* Reg AB Adopting Release at 1571.

[37] As discussed further below, the Reg AB II Proposal would require more granular information to be disclosed on an ongoing basis.

2. *The occurrence of material events and other current or ad hoc information should be disclosed in event-based disclosure reports.*

The event-based reporting regime under the Exchange Act for registered transactions is set forth on Form 8-K. Consistent with the description in Principle 2, Form 8-K requires disclosure of information pertaining to a predefined list of events, such as, among others, entry into or termination of a material definitive agreement (Items 1.01 and 1.02), bankruptcy or receivership (Item 1.03), material modification to the rights of security holders (Item 3.03) and a change of servicer or trustee (Item 6.02). Other important events may be reported under a catchall provision on Form 8-K (Item 8.01 "Other Events"), but there is no requirement to report *all* material events.

3. *Periodic and event-based disclosure should contain sufficient information in order to increase transparency of information for investors and to allow investors to independently perform due diligence in their investment decisions regarding the specific ABS.*

In evaluating this Principle generally, the Technical Committee should consider each of the ASF comment letters and advocacy initiatives addressed in Section A of this letter. Each comment letter provides a comprehensive analysis of the various proposals that are currently being considered and finalized in the U.S. As to the specific types of information referenced in the description of this Principle, we address each in turn in the context of comparable U.S. requirements for registered transactions.

a) Updated Information on the Parties Involved with the ABS

The description of this Principle states that updated disclosure should be made (i) "on an ongoing basis of any changes to the relevant parties involved with the ABS or to the material advisors or other material parties involved with servicing the ABS" and for (ii) "any material changes in the functions or responsibilities of any significant parties." Although various Items under Form 8-K may reveal information about changes to parties, there is no general requirement to provide reporting with respect to changes to *any* party involved in the ABS. Instead, under Item 6.02 of Form 8-K, the issuer is required to disclose certain information relating to whether a specified servicer or trustee has resigned or has been removed, replaced or substituted, or a new servicer or trustee has been appointed. Additionally, Item 6.03 of Form 8-K would require disclosure of any addition, modification or termination of any material credit enhancement or other external support and disclosure of the identity (and other related information) of any new support provider. Finally, Items 1.01 and 1.02 of Form 8-K require disclosure of any entry into or amendment or termination of a material definitive agreement, which would generally cover any material changes in the functions or responsibilities of any significant parties.

b) Financial Information about Significant Obligors

ASF believes that this Principle is consistent with Forms 10-D (Item 6) and 10-K (General Instruction J), which require disclosure relating to significant obligors pursuant to Item 1112(b) of Regulation AB. Item 1112 of Regulation AB sets for the disclosure requirements relating to a significant obligor, which generally refers to an obligor on, or lessee of, any pool asset or a

property securing a pool asset which represents 10% or more of the asset pool. In line with this Principle, Item 1112(b) requires disclosure of certain financial information, the extent of which depends on the concentration of the significant obligor. If a significant obligor represents 10% or more, but less than 20%, of the asset pool, selected financial data would have to be disclosed. If a significant obligor represents 20% or more of the asset pool, audited financial statements must be provided.

c) Information Regarding Significant Enhancement Providers

ASF believes this Principle is consistent with Forms 10-D (Item 7) and 10-K (General Instruction J), which require disclosure relating to credit enhancement and other support features pursuant to Item 1114(b)(2) of Regulation AB. Disclosure is required under Item 1114(b) if an entity or group of entities providing credit enhancement is liable or contingently liable to provide payments representing 10% or more of the cash flow supporting any offered class of ABS. Under Item 1114(b)(2), if an enhancement provider is liable or contingently liable to provide payments representing 10% or more, but less than 20% of the cash flow supporting any offered class of ABS, certain selected financial data meeting the requirements of Item 301 of Regulation S-K must be disclosed. If an enhancement provider is liable or contingently liable to provide payments representing 20% or more of the ABS cash flow, audited financial statements meeting the requirements of Regulation S-X are required.

d) Derivative Instruments

ASF believes this Principle is consistent with Forms 10-D (Item 7) and 10-K (General Instruction J), which requires disclosure pursuant to Item 1115(b) of Regulation AB for certain derivative instruments that are used to alter the payment characteristics of the cash flows, and whose purpose is not to provide credit enhancement related to the pool assets or the ABS. In line with this Principle, disclosure is required under Item 1115(b) depending on the significance percentage related to the entity or entities providing the derivative instrument. If the aggregate significance percentage related to any entity or group of affiliated entities that provides derivative instruments is 10% or more, but less than 20%, Item 1115(b)(1) requires that selected financial data of the relevant entities meeting the requirements of Item 301 of Regulation S-K be disclosed. If this percentage is 20% or more, Item 1115(b)(2) requires that audited financial statements of the relevant entities be disclosed meeting the requirements of Regulation S-X.[38]

e) Legal Proceedings

ASF believes that this principle is generally consistent with Form 10-D (Item 2), which requires disclosure of legal proceedings pursuant to Item 1117 of Regulation AB. Item 1117 of Regulation AB requires disclosure of a brief description of any legal proceeding (or

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[38] Consistent with our previous no-action requests of the SEC, our members continue to believe that if a parent company wholly guarantees the obligations of a derivatives subsidiary, the financial statements or information of such parent/guarantor should provide sufficient disclosure for purposes of Item 1115(b). Our no-action requests remain outstanding. *See* our second request letter at http://www.americansecuritization.com/uploadedFiles/ASF1115NoActionLetter070107.pdf. We recommend that the Technical Committee consider this issue and incorporate sufficient flexibility in its Principle to accommodate market standards from different jurisdictions.

governmental action) pending against the sponsor, depositor, trustee, issuing entity, certain servicers and originators, or other party contemplated by 1100(d)(1) of Regulation AB, or of which any property of the foregoing is subject, that is material to security holders. A legal proceeding would be reported on the Form 10-D that relates to the period during which the proceeding became a reporting event and on subsequent Form 10-Ds relating to periods during which a material development occurs. However, the description of the Principle states that the disclosure "should provide investors with sufficient information to assess the significance of the action and its potential impact." While that is a legitimate goal, ASF believes that the Principle must take into account that parties to litigation or governmental proceedings are often not at liberty to provide specific details concerning the actions. In this respect, it is important to highlight that under Item 1117 only a brief description of any legal proceeding is required.

f) Affiliations and Certain Relationships and Related Transactions

ASF believes that this Principle is consistent with Form 10-K (General Instruction J), which requires disclosure of affiliations and certain relationships pursuant to Item 1119 of Regulation AB. Item 1119 of Regulation AB requires disclosure of affiliations between the sponsor, depositor, servicer, trustee, originator, significant obligor, enhancement and support providers, and other material parties. It also requires disclosure of material business relationships, understandings and agreements that existed within the last two years between any of these parties and their affiliates that are entered into outside the ordinary course of business or on terms that would not be considered arm's length. Finally, it requires disclosure of any material relationships relating to the ABS transaction or the pool assets that existed within the last two years between the sponsor, depositor or issuing entity and any of the parties set forth in the second preceding sentence.

g) Assessment of Compliance with Applicable Servicing Criteria

ASF believes that this Principle is generally consistent with Form 10-K (General Instruction J), which requires reports on assessment of compliance with servicing criteria pursuant to Item 1122 of Regulation AB and a servicer compliance statement pursuant to Item 1123 of Regulation AB.

Consistent with the Principle, Item 1122 requires (i) a statement of the party's responsibility for assessing compliance, (ii) a statement that they used the specified criteria to assess compliance, (iii) an assessment of compliance with the specified servicing criteria for the applicable period and any disclosure of material instances of non-compliance, and (iv) a statement that a registered public accountant has issued an attestation report on the party's assessment of compliance. However, it is unclear as to whether the Principle is contemplating that the report be prepared on a platform level or on a transaction level. Under Item 1122 of Regulation AB, it is clear that this annual servicer report can be done on a "platform" basis, rather than for specific securitization transactions.[39] ASF recommends that the Principle clarify that annual servicer reporting be

[39] Under Regulation AB, an annual servicer report is prepared on a platform basis. In particular, an annual report on Form 10-K must include from each party participating in the servicing function a report regarding its assessment of compliance with the servicing criteria specified in paragraph (d) of Item 1122 of Regulation AB, with respect to ABS transactions taken as a whole involving the party participating in the servicing function and that are backed by the same asset type backing the class of ABS. This "platform" level assessment permits a single assessment and

similarly accepted on a "platform," rather than a "transactional," level. A platform approach substantially limits the operational burden associated with preparing an annual servicer report and engaging auditors for required attestations. Separate assessments would be considerably more costly and administratively burdensome and would likely provide little, if any, incremental comfort, as a platform assessment effectively covers all applicable individual transactions, but on an aggregate basis.

Also consistent with the Principle, Item 1123 requires a statement of compliance of the servicer to the effect that (i) a review of the servicer's activities during the reporting period and of its performance under the applicable servicing agreement has been made under such officer's supervision and (ii) to the best of such officer's knowledge (based on the officer's review), the servicer has fulfilled all of its obligations under the agreement in all material respects throughout the reporting period or, if there has been a failure to fulfill any such obligation in any material respect, specifying each such failure known to such officer. However, we note that the Principle seems to require that the servicer fulfilled all of its obligations under the agreement, rather than requiring that such obligations be fulfilled "in all material respects." It may be that the Technical Committee intended to include this materiality qualifier, however, as the Principle requires that the servicer report on any "material failure" to fulfill such obligations under the Principle.[40] Finally, Item 1123 allows the officer to qualify by its knowledge, and based on its review, that the servicer has fulfilled all of its obligations. The Technical Committee may want to consider including similar language in the Principle, as the statement that the servicer's obligations have been fulfilled is clearly a result of the officer's review of such servicer's activities during the period.

Finally, the Principle sets forth an alternative method for investors to obtain information about the performance of the servicer through the report of an independent auditor if audited financial statements are required for the issuer. For our views relating to audited financial statements of the issuer, please refer to our response to Principle 1.

h) Distribution and Pool Performance Information

ASF believes that this Principle is generally consistent with Form 10-D (Item 1), which requires reporting of distribution and pool performance information pursuant to Item 1121 of Regulation AB. Item 1121 requires disclosure of certain specified information that is consistent with the information specified in Principle 3.h, with the exception of the last two paragraphs. The final two paragraphs make reference to the disclosure of more granular information, such as asset-level information.

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assertion regarding compliance for entities involved in multiple securitization transactions, as compared to requiring separate assessments for each individual transaction.

[40] The Principle does not require reporting on an immaterial failure to fulfill its obligations, likely because such failures are not relevant for investors to assess the servicer's activities. However, if a servicer does not report on immaterial failures, it would effectively suggest that there are none, because the prior requirement of the Principle requires that a servicer state that all obligations have been fulfilled. For this reason, we believe that the Technical Committee likely intended that the servicer certify, consistent with Item 1123, that it has fulfilled its obligations in all material respects.

ASF has been a strong and vocal advocate for targeted securitization market reforms and we continue to work constructively with policymakers to identify and implement them. One of our earliest initiatives was ASF *Project RESTART*, through which we developed and released RMBS Disclosure and Reporting Packages encouraging the delivery of more standardized and comprehensive information regarding RMBS transactions. ASF and its membership believe that asset-level disclosure is appropriate in the RMBS sector, and the Packages have served as a reference point for other initiatives involving asset-level disclosure for RMBS.[41] However, ASF believes that the decision to extend asset-level requirements to other asset classes must be determined on a case by case basis, as different levels of disclosure may be appropriate or inappropriate in certain cases.

The Reg AB II Proposal also included asset-level information requirements that would require extensive data about each pool asset, including information relating to the terms of the asset, the characteristics of the obligor and the underwriting of the asset. ASF commented extensively on this proposal, generally endorsing the SEC's objective of more transparency but emphasizing the importance of formulating disclosure standards that would be both beneficial to investors and feasible and appropriate for issuers to satisfy, without compelling the disclosure of commercially-sensitive proprietary information about origination, underwriting and pricing models. For most ABS offerings, the SEC proposes to require asset-level information in XML format to be included in the prospectus and periodic reports filed on the Electronic Data-Gathering, Analysis, and Retrieval ("EDGAR") system. The asset-level information includes standardized data points that are generally applicable to most asset classes and additional data points for residential mortgages, commercial mortgages, auto loans, auto leases, equipment loans, equipment leases, student loans, floorplan financings, corporate debt and resecuritizations. For credit and charge card ABS, the SEC proposed to require "grouped account data."

As detailed extensively in the ASF Reg AB II Broad Comment Letter, ASF was supportive of certain of the SEC's proposals and critical of others. For example, ASF issuer and investor members believe that the SEC's proposed rules with respect to asset-level disclosure for private-label RMBS transactions substantially incorporated the spirit and substance of ASF's *Project RESTART*, and our comments were limited to those areas where the SEC's proposals strayed in a negative way. However, ASF had concerns with disclosure of grouped account data for credit card ABS, and instead provided an alternative template, representing a consensus view among issuers and investors, intended to provide extensive metrics on collateral performance and enable informed investment decisions without disclosing proprietary information.[42] We also had concerns with the disclosure outlined for auto floorplan ABS, and instead provided an alternative template, representing another consensus view, in our ASF Reg AB II Auto Disclosure Comment Letter. Additionally, ASF filed the ASF Reg AB II ABCP Comment Letter and ASF Reg AB II Equipment Disclosure Comment Letter to outline issues and recommendations relating to disclosure for those specific asset classes. While it was difficult to reach full industry consensus on all issues, these letters set forth key considerations for developing a meaningful and appropriate disclosure and reporting regime for each asset class. ASF recommends that the

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[41] *See* ASF RMBS Disclosure and Reporting Packages.

[42] *See* p. 62 and following, and Exhibit E of the ASF Reg AB II Broad Comment Letter for our detailed suggestions regarding appropriate disclosure and reporting requirements for credit card ABS.

Technical Committee consider each of the views expressed in those comment letters before endorsing any standardized disclosure and reporting scheme that would be applicable across asset classes. Finally, we note that application of any disclosure or reporting requirements on a retroactive basis can create serious operational and liability issues. In this respect, we recommend that the Technical Committee consider the views outlined in the ASF Reg AB II Broad Comment Letter under the heading "Transition Period."

i) Repurchase and Replacement Activity

ASF believes that this Principle is generally consistent with Form 10-D (Item 1), which requires reporting of distribution and pool performance information pursuant to Item 1121 of Regulation AB. Item 1121(c) requires disclosure pursuant to Rule 15Ga-1 regarding all assets of the pool that were subject of a demand to repurchase or replace for breach of representations and warranties. Rule 15Ga-1 was enacted pursuant to Section 943 of Dodd-Frank, which requires securitizers to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by securitizer, so that investors may identify asset originators with clear underwriting deficiencies.

Rule 15Ga-1 requires any securitizer of ABS to disclose repurchase activity relating to applicable outstanding ABS, including the assets that were subject to a demand, the assets that were repurchased or replaced, the assets that were not repurchased or replaced because the demand was withdrawn or rejected, and the assets that are pending repurchase or replacement due to a cure period or dispute. Rule 15Ga-1 also requires securitizers to file new Form ABS-15G periodically to disclose, on an aggregated basis, certain information concerning assets that were the subject of a demand to repurchase or replace for breach of a representation and warranty concerning the pool assets. Certain securitizers were required to file initial reports covering a three year look-back period by February 14, 2012.

With the adoption of Rule 15Ga-1, market participants began working toward implementing appropriate processes to prepare for the required filings. Working with a wide range of ASF members throughout the latter half of 2011, ASF created the ASF Rule 15Ga-1 Market Implementation Guide to assist market participants in interpreting and clarifying issues arising in connection with implementing the final rule.

j) Event-Based Reporting

The description of this Principle states that the occurrence of material events should be disclosed promptly in event-based reports and then sets forth a non-exhaustive list of examples of events that should be reported. Event-based reporting occurs on Form 8-K, which sets forth an enumerated list of events for which reporting is required. However, the Principle is not entirely consistent with the requirements of Form 8-K. First, the Principle does not include all of the Items that are applicable to ABS on Form 8-K (See General Instruction G). Second, while the events included on Form 8-K are numerous, and cover many of the events that would likely be considered material in terms of an ABS transaction, there is no requirement to disclose all material events that arise. Instead, the registrant is permitted to disclose under Item 8.01 any other events that the registrant deems of importance to security holders. Furthermore, Rule 12b-20 of the Exchange Act requires that, "[i]n addition to the information expressly required to be

included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading."

i) Change of servicer or trustee

ASF believes that this Principle is consistent with Form 8-K (Item 6.02), which requires reporting if there is a change of servicer or trustee.

ii) Change in credit enhancement or other external support

ASF believes that this Principle is consistent with Form 8-K (Item 6.03), which requires reporting if there is a change in credit enhancement or other external support. However, reporting under Item 6.03 is only required if the depositor (or servicer if the servicer signs the report on Form 10-K) becomes aware of any loss of, or addition or material change to, any material credit enhancement or support. The Principle does not include this knowledge qualification and the Technical Committee may want to consider adding language to that effect so that depositors are not required to report on events about which they are not aware.

iii) Failure to make a required distribution

ASF believes that this Principle is generally consistent with Form 8-K (Item 6.04), which requires reporting if there is a failure to make a required distribution. However, reporting under Item 6.04 is limited to instances where such failure is material. For example, if the paying agent in a transaction makes a clerical $1 error, and corrects the error the following day, filing a Form 8-K would likely not be required.

iv) Changes to credit rating; and

v) Change of credit rating agency from which a rating has been obtained

There is no requirement to report changes in credit rating and credit rating agencies under the U.S. reporting regime. However, under Item 8.01 of Form 8-K, the registrant is permitted to disclose such information if it deems it important to security holders. Nationally recognized statistical rating organizations ("NRSROs") will also generally publicize changes to their public ratings, so the market is generally up to date on such information.

It is also important to note that there has been a general move away from the inclusion of credit ratings in regulations in the U.S., in part due to the enactment of Section 939A of Dodd-Frank, which requires each federal agency to (i) review "any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and any references to or requirements in such regulations regarding credit ratings" and (ii) "to modify any such regulations…to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate…." Pursuant to Section 939A, federal regulators have begun to review instances where ratings are used in their regulations. As an

example, the SEC removed ratings from the list of permitted disclosures under the safe harbor for communications under Rule 134.[43] Rule 134 provides issuers that have filed a registration statement with a safe harbor from the gun-jumping provisions of the Securities Act by allowing the disclosure of certain specified information (that is either required or permitted to be included in the communication) in communications that are deemed not to be a prospectus or a free writing prospectus.

vi) Changes to internal credit check policy

It is not clear what is meant to be disclosed pursuant to this Principle. It would be helpful if the Technical Committee could provide further guidance.

vii) Payment and performance information

The description of this Principle states that disclosure should be provided concerning any other event that materially affects payment or pool performance. ASF believes that this Principle is generally consistent with Form 8-K (Item 8.01). However, under Item 8.01, the registrant is permitted, not required, to disclose any other events that the registrant deems of importance to security holders. Furthermore, Rule 12b-20 of the Exchange Act requires that, "[i]n addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading."

viii) Early redemption

It is not clear what is meant to be disclosed pursuant to this Principle. However, it appears that the Technical Committee is recommending disclosure of any redemption of the securities.[44] There is currently no requirement under the U.S. reporting regime to disclose this information in an Exchange Act filing. Instead, the terms of any early redemption right, such as a clean-up call, are required to be disclosed in the prospectus pursuant to Item 1113(f) of Regulation AB. Under the related transaction documents, notice of any such redemption is generally required to be provided to investors a period of time in advance of the final distribution date and the distribution relating to such redemption would be reported in the ensuing periodic report.

IOSCO Question: **Should an issuer be responsible in its ongoing reports for providing disclosure about the oversight/supervision of a credit rating agency that provided a rating for the issuer's ABS?**

ASF does not believe that an issuer should be responsible for providing ongoing disclosure about the oversight or supervision of a credit rating agency by regulators. We believe that this disclosure would more appropriately be made by the entity regulating the credit rating agency, as such entity would have the greatest insight as to the details of such regulation, the timing of any

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[43] *See* http://www.sec.gov/rules/final/2011/33-9245fr.pdf.

[44] The Principle makes reference to situations where an issuer "decides to redeem the securities." The Technical Committee should clarify that this Principle does not require disclosure where an issuer intends to redeem the securities but has not yet effected such redemption.

changes to such regulation and the sufficiency of such rating agency's compliance with such regulation.

4. ***The information disclosed in ongoing reports should be fairly presented, not be misleading or deceptive and should not contain any material omission of information. Moreover, information disclosed in an ongoing report should be presented in a clear and concise manner without reliance on boilerplate language.***

ASF believes that the first part of this Principle is generally consistent with various securities laws governing material misstatements for registered transactions. As a disclosure matter, Rule 12b-20 of the Exchange Act requires that, "[i]n addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading." Furthermore, while a complete description of the liability provisions under the Exchange Act is beyond the scope of this comment letter,[45] it is important to highlight two provisions that effectively achieve the goals of this Principle. First, Section 18 of the Exchange Act generally makes the registrant liable for any false or misleading statement as to a material fact in an Exchange Act report. Second, Rule 10b-5 under the Exchange Act generally makes it unlawful for any person in connection with a purchase or sale of a security to (i) employ any scheme to defraud, (ii) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made not misleading or (iii) engage in any act which operates as a fraud. However, there is no requirement in the U.S. regime for the information in the reports to be "fairly presented," and it is unclear what is meant by that term in the Principle. ASF cautions the Technical Committee from using "fairly presented" in this Principle as such term is not understood by securitization market participants and will cause confusion without adding any incremental value to the disclosure standards and requirements that already exist.

ASF believes that the second part of this Principle is generally consistent with the SEC's "plain English" initiative. The "plain English" initiative was undertaken by the SEC to make documents more clear and concise and to move away from the use of undue boilerplate language and the disproportionate emphasis on legal recitations of transaction terms.[46] However, the SEC was clear in terms of what type of boilerplate language to avoid. In a note to Rule 421(b), which requires that the entire prospectus be clear, concise and understandable, the SEC indicates that issuers should avoid "vague 'boilerplate' explanations that are imprecise and readily subject to different interpretations." Such a distinction is critical, as the structure and collateral of many plain vanilla ABS transactions rarely change from deal to deal, and ASF would strongly disagree with the proposition that disclosure must change from deal to deal in such instances to avoid being classified as "boilerplate."

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[45] Other provisions of the securities laws are also applicable with respect to accuracy of information, such as Section 11 of the Securities Act (if the periodic report is incorporated by reference into the registration statement) and Section 32 of the Exchange Act.

[46] *See* Reg AB Adopting Release at 1532 and http://www.sec.gov/hot/english.htm.

5. *Disclosure should be presented in a format that facilitates the analysis of information by investors.*

It is not clear what is meant by disclosure being presented "in a format that facilitates the analysis of information by investors." While some of the disclosure and reporting requirements set forth in the Reg AB II Proposal were aimed at facilitating data analysis (e.g., asset-level reporting for RMBS being filed in XML format[47]), the SEC did not aim to promulgate a new disclosure standard based on that goal, nor does one currently exist today. For this reason, ASF requests that the Technical Committee clarify that this Principle is not intended to create a new disclosure standard.

Instead, we believe that the Principle is aimed at ensuring that information is filed in a format that is useable by investors (if this is not correct, we ask that the Technical Committee provide clarification). In this regard, our investor members do not believe that EDGAR in its current form helps to facilitate analysis of posted data.[48] Of foremost concern to investors (and of great burden to issuers), is the requirement that EDGAR filings, by and large, be made in ASCII or HTML format. In fact, in the ASF Reg AB II Broad Comment Letter, our investor members supported an extension of a temporary filing accommodation for static pool data that permitted issuers to post information on an internet website rather than file the information on EDGAR simply because the investors preferred the format through which issuers posted the data on the accommodation website over those formats required by EDGAR.

We believe that other, more usable formats, such as Microsoft Excel, are more appropriate for disclosure and reporting of data than the current EDGAR format. Similarly, we believe that for textual or other documentary disclosure and reporting, formats such as PDF may be more appropriate. We encourage the SEC to develop systems and guidelines to transition the current EDGAR system to these formats for the benefit of investors. Additionally, we encourage the SEC to adopt measures by which they may periodically reassess the most appropriate format for EDGAR disclosure and reporting to ensure that the system does not fall behind available technology.

6. *The person or entity responsible for publishing the disclosure and the person or entity responsible for gathering the information from other persons or entities involved in the ABS should be clearly identified.*

This Principle sets forth the party or parties that should be responsible for signing the various ongoing reports. The description of the Principle is generally consistent with the requirements of Form 8-K, Form 10-D and Form 10-K (General Instructions G, E and J, respectively), which require that the depositor sign the report or, in the alternative, an authorized representative of the servicer (or master servicer if there are multiple servicers).[49]

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[47] *See* Reg AB II Proposal at 23356.

[48] *See* ASF Reg AB II Broad Comment Letter, p. 72.

[49] On Forms 8-K and 10-D, any authorized representative may sign on behalf of the depositor or the servicer (or master servicer). On Form 10-K, only the senior officer in charge of securitization can sign on behalf of the

7. ***The information provided in the ongoing report should be disclosed in a timely manner, such that the information is sufficiently current and disclosed with sufficient frequency so as to be of use to investors.***

The timing of periodic reports set forth in the description of this Principle is generally consistent with the timing for filing of Forms 10-D, 8-K and 10-K on the SEC's EDGAR system. Form 10-D is required to be filed within 15 days after each required distribution date relating to the ABS, Form 8-K is generally required to be filed within 4 business days after the occurrence of the event and Form 10-K is required to be filed within 90 days after the end of the fiscal year covered by the report. These timeframes correlate to the particular type of information being disclosed, whether it is performance-based or event-based.

8. ***Material information that is disclosed to any investor, market participant or other third party should be provided to all investors, market participants and other third parties at the same time.***

As indicated in our response to Principle 7, Exchange Act reports are required to be filed at specified times. Once filed, these reports are available to the public through the SEC's EDGAR system. Generally, if a third party, such as a rating agency, receives information in advance of the filing, they will be subject to confidentiality agreements to avoid further dissemination of such information.[50] It is also worth mentioning that Regulation FD requires issuers to publicly disclose any material nonpublic information regarding the issuer or its securities that has been disclosed to specified covered persons, subject to certain exceptions, such as when information is provided to a person who expressly agrees to maintain the disclosed information in confidence or who owes a duty of trust or confidence to the issuer. Regulation FD was adopted to prevent selective disclosure to those who would reasonably be expected to trade securities on the basis of the material nonpublic information or provide others with advice about securities trading.[51] Item 7.01 of Form 8-K provides one avenue through which issuers can disclose information pursuant to Regulation FD. Finally, we note that the Principle 9 makes a distinction that information should only be made available to investors in all markets in which they are listed (or public, in the case of the U.S.). We believe such distinction should also be made in the context of this Principle, as transactions may be public or listed in one market, but private or unlisted in another.

9. ***If securities are listed or admitted to trading in more than one jurisdiction, the material periodic information made available to one market should be made available promptly to all markets in which they are listed.***

This Principle is consistent with the SEC's current EDGAR system, on which information filed is publicly available to everyone.

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depositor and only the senior officer in charge of the servicing function can sign on behalf of the servicer (or master servicer).

[50] Additionally, under Section 15E(g) and Rule 17g-4, NRSROs are required to establish and maintain policies and procedures reasonably designed to prevent the misuse of material, nonpublic information.

[51] For more information on Regulation FD, *see* http://www.sec.gov/answers/regfd.htm.

10. ***Ongoing reports should be filed with the relevant regulator or otherwise made available in compliance with applicable regulations to permit regulators to review the reports, when appropriate, to ensure compliance with the relevant laws and regulations.***

This Principle is consistent with the SEC's current EDGAR system, on which information filed is publicly available to everyone.

11. ***The relevant law or regulator should ensure that there is storage of the ongoing information in order to facilitate public access to the information.***

ASF believes that this Principle is generally consistent with the purposes behind the SEC's EDGAR system. As stated on the SEC's EDGAR website,

> All companies, foreign and domestic, are required to file registration statements, periodic reports, and other forms electronically through EDGAR. Anyone can access and download this information for free.[52]

However, ASF has voiced and continues to voice concerns over the EDGAR system that may be of use to IOSCO as it considers this Principle. In comments provided in the ASF Exchange Act 15(d) Reporting Comment Letter, we stated that EDGAR remains administratively burdensome to use and, in fact, limits the usefulness of information provided through that system. The conversion of documents to ASCII or HTML is not automated on EDGAR and instead requires substantial cost and effort by skilled operators. This lack of automation, in turn, creates a risk of filing delay due to transmission error.

To improve the system, the process by which issuers post documents on EDGAR should be web based and fully automated, and issuers should be able to meet the filing requirements by posting files on EDGAR in other file formats, including PDF and Excel.[53] The ability to attach files in such formats would eliminate many of the delays and administrative burdens associated with converting files into ASCII or HTML and would also improve the readability and usefulness of information that is filed. We also note that, in many cases, ABS issuers post and archive periodic distribution reports on a website in PDF format and that investors continue to access this information through such websites over EDGAR. We have encouraged the SEC to develop processes and procedures whereby ABS issuers can file reports with regulators in a more cost-effective manner and with a greater functionality and utility.

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[52] *See* http://www.sec.gov/edgar.shtml.

[53] We note that, in connection with the Reg AB II Proposal, the SEC proposed that static pool information be filed on EDGAR as a PDF file.

Thank you for your consideration of ASF's comments to the ABS Reporting Principles. On behalf of ASF, I would like to reiterate our support of IOSCO's efforts to advance international coordination of ABS disclosure and reporting standards. For additional information or if you have any questions, please do not hesitate to contact me at 212.412.7107 or at tdeutsch@americansecuritization.com, or Evan Siegert, ASF Managing Director, Senior Counsel, at 212.412.7109 or at esiegert@americansecuritization.com.

Sincerely,

Tom Deutsch

Tom Deutsch
Executive Director
American Securitization Forum

APG Asset Management

Amsterdam,
April 20th, 2012

Visiting Address
Gustav Mahlerplein 3
1082 MS Amsterdam
The Netherlands

Phone
+31 (0)20 604 8176

Attachment(s)
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Our reference
-

Your reference
-

Internet
www.apg.nl

E-mail
zohre.tali@apg-am.nl

International Organization of Securities Commissions
IOSCO General Secretariat
Mr. Jonathan Bravo
Calle Oquendo
28006 Madrid
Spain

(submitted by email and by regular mail)

Subject: Public Comment on Principles for Ongoing Disclosure for Asset-Backed Securities

1. Introduction

We welcome the opportunity to respond to IOSCO's consultation report on Principles for Ongoing Disclosure for Asset-Backed Securities.

APG Asset Management (APG) is a Netherlands based asset manager for Dutch pension funds with assets under management of approximately €285 billion as at 31 December 2011. APG is itself an indirect subsidiary of Stichting Pensioenfonds ABP, the Dutch pension fund for the government and education sector and the second largest pension fund globally. APG works for more than 20,000 employers and provides for the income of more than 4.5 million Dutch citizens managing over 30% of all collective pensions in the Netherlands.

Please note that we have responded to the discussion paper primarily from an end users perspective and that our remarks stem from the fact that Dutch pension funds are very large institutional investors, acting in the interest of pensioners. As a large investor, we in general support legislative initiatives that aim at enlarging the transparency of the financial markets.

Below we will set out our key and high level remarks in response to (certain elements of) the consultation report.

2. Key remarks

- We strongly support a standardized, thoroughly consistent definition framework to be mainly based on market research and investors' input. Ideally, such a definition framework would be maintained consistently throughout jurisdictions. We acknowledge that establishing such a consistent framework would be difficult to achieve given the differences both in relation to the structure of the products and the culture of the local markets. Nevertheless we believe it is extremely important (and a minimum requirement) that a consistent definition framework is established within a jurisdiction. The establishment of a consistent definition framework (with standardized definitions for delinquencies, prepayments, defaults and so on) will significantly increase the comparability for investors. In this respect we welcome and actively contribute to the standardization project that is currently undertaken for Dutch RMBS by a public-private initiative set up by organizations from throughout the Dutch financial sector, the government and

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regulators (the 'Holland Financial Centre'; HFC). It includes banks, insurers, trading firms, pension funds, asset managers, audit firms, law firms and the government. One of the results is that the format, content and definitions in the prospectuses of all Dutch RMBS transactions are standardized to the maximum degree, thus improving transparency and user-friendliness for investors.

- We would also strongly support standardized disclosure templates and formats, in order to be able to compare information, which would enhance the quality of our due diligence process and, consequently, investment decisions – such to the benefit of our beneficiaries. Again, as a possible example, we refer to the initiative by HFC where a new template investor report, based on existing investor reports, regulatory guidelines, rating agency requirements and investor preferences for Dutch RMBS transactions has been developed. The fact that the so newly created investor report will be (i) standardized across all issuers, (ii) contain additional data fields complying with ECB data requirements, (iii) become available on a monthly basis and (iv) become available in downloadable format through a public portal, significantly increases transparency for investors.

- With respect to (ongoing) investor reporting we would welcome a monthly reporting frequency. In our view the minimum reporting frequency should at least coincide with the frequency of interest payments.

- As has also been indicated in the consultation report, coordination of cross-border regulatory frameworks (both existing and newly developed) as well as the acknowledgement and coordination of industry initiatives to enhance standardization of disclosure, will be vital for a proper functioning of the markets. To serve as an example: not only are we actively engaged in the HFC initiative referred to above, but also do we participate in a nation wide industry initiative creating transparency best practices (called the 'Prime Collateralised Securities' initiative). Such industry initiatives may serve as a proper source of information for IOSCO and/or local regulators.

We hope that our response is of assistance. Should you have any queries or in case you would like additional clarification, please do not hesitate to contact us.

Yours sincerely,

Guus Warringa
Board Member, Chief Counsel
Legal, Tax, Regulations and Compliance

Zöhre Tali
Senior Legal Counsel
Legal, Tax, Regulations and Compliance

afme/
Finance for Europe

asifma

19th April 2012

Mr. Jonathan Bravo
IOSCO General Secretariat
International Organization of Securities Commissions
Calle Oquendo 12
28006 Madrid
Spain

Submitted via email: ongoing-abs@iosco.org

Re: Public Comment on Principles for Ongoing Disclosure for Asset-Backed Securities

Dear Mr. Bravo

On behalf of the Association for Financial Markets in Europe (**AFME**) and the Asia Securities Industry & Financial Markets Association (**ASIFMA**), each described in Annex I, we welcome the opportunity to comment on the consultation report entitled "Principles for Ongoing Disclosure for Asset-Backed Securities" (the **Consultation Report**), and the corresponding principles set out therein (the **ABS Principles**), published by the International Organization of Securities Commissions (**IOSCO**). We support IOSCO's efforts to advance international co-ordination on the important topic of appropriate ongoing disclosure for asset-backed securities (**ABS**).

Introduction and general comments

As a starting point, we note that AFME and ASIFMA members support initiatives intended to achieve appropriate standards with respect to ABS disclosure in general and we are committed to working with the authorities in this regard, as demonstrated by our recent work on a number of disclosure related developments in Europe (including the industry-led Prime Collateralised Securities (PCS) initiative, discussed further below) and elsewhere. In keeping with this, our members generally support the development of the ABS Principles and, in particular, the role such principles may play in facilitating a better understanding of the issues that should be considered by regulators when developing or reviewing their ABS ongoing disclosure regimes.

In a number of respects, the ABS Principles endorse aspects of existing disclosure requirements and market practices already applied across certain key relevant securitisation jurisdictions. However, we are concerned that certain principles do not reflect the nature of ABS and/or may not operate to strike the appropriate balance between market participant interests. We also note that aspects of the draft ABS Principles appear to be closely modelled on requirements which apply under the U.S. ABS disclosure regime. This may not, in all cases, be the most appropriate starting point for the development of a global ongoing disclosure framework for ABS.

We support the development of a framework based on the guiding principle that each tenet should clearly support a well-defined need and prospective benefit with respect to achieving appropriate ABS ongoing disclosure. Moreover, sufficient flexibility must be provided to enable the principles to be sensibly applied by national securities regulators, taking into account the features of local asset product types, structures and markets and the wider legislative framework. While this need for flexibility is acknowledged in the Consultation Report (and is reflected in the focus on establishing principles rather than a more prescriptive framework), we wish to emphasise its importance and to note that it will be necessary in turn for national regulators to bear such local factors in mind when considering the (final) ABS Principles and their domestic disclosure requirements.

Certain more specific comments on the ABS Principles are 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.

Specific comments

Regulatory coordination

The Consultation Report acknowledges the need for coordination by national regulators with other relevant regulatory reform initiatives. AFME and ASIFMA members strongly support this and regard such coordination as a key priority.

A number of significant initiatives related to enhanced ABS ongoing disclosures have been (or are in the process of being) developed in Europe (including via article 122a of Capital Requirements Directive, new central bank eligibility criteria, and certain industry led initiatives) and elsewhere and possible further changes are under review (e.g. in connection with the latest round of proposed amendments to the EU Credit Rating Agency Regulation and through the review work underway under the EU Market Abuse Directive).

We consider it to be essential that any additional regulatory initiatives in this area are co-ordinated with, and take account of, these existing regulatory reforms.

Such coordination is particularly vital to the extent that the adopted ABS Principles refer to the disclosure of loan-level information and any further work is undertaken by local regulators in this regard. Market participants will face significant compliance challenges and the economic feasibility of deals may be threatened in the absence of a consistent approach being adopted with respect to asset-level disclosures.

As has become apparent in Europe in the context of discussions with respect to asset-level reporting requirements, much detailed and painstaking work is required on all sides to ensure that the actual requirements conform at the level of the detailed data fields. Given the very large volumes of data required, and the need to design complex IT systems to receive the data, sift it and generate the required reports, even a seemingly small amount of inconsistency at the data-field level can threaten the ability of market participants to comply. We note that concerns have already been raised with respect to inconsistencies in detailed requirements between some existing initiatives related to such disclosures, and remain committed to working constructively with the authorities to resolve them.

Scope

The ABS Principles are stated to be intended to provide disclosure guidance that may be relevant to both public and private ABS. While the drafting of the relevant provisions is unclear, there appears to be some acknowledgment in the Consultation Report of the contrast between public and private transactions and of the need for enhanced flexibility when applying the principles in a private ABS context. This acknowledgement is positive but, given the fundamental differences between public and private ABS and in investor expectations and needs as between such arrangements, we consider that it would be more appropriate for the ABS Principles to apply in respect of public transactions only.

We consider that a number of the principles do not reflect the nature of the private market and/or the practices considered acceptable and appropriate by the professional investors which participate in such market. Applying our suggested guiding principle referred to above, we do not consider there to be a clear need and corresponding benefit to setting the scope of the ABS Principles in a manner which extends to non-public transactions.

The Consultation Report further indicates that the ABS Principles are not intended to apply to securities backed by asset pools that are "actively managed" and/or that contain assets that do not by their terms convert to cash "such as most collateralised debt obligations". This appears to be an attempt to replicate the scope of U.S. Regulation AB.

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 ongoing disclosure (provided that sufficient flexibility is built into the ABS Principles to allow for adjustment to reflect necessary ongoing disclosures between different types of transactions).

Supplementary information; "refreshing" prospectus disclosure

The Consultation Report refers in various places to the need for disclosure of updated information to investors in respect of any material change or inaccuracy in the contents of a disclosure document that affects the issuing entity, the assets or the ABS. While it is not clear, these references appear to suggest that it should be necessary for issuers to effectively constantly "refresh" the prospectus disclosure through their ongoing disclosures.

A general update requirement of this nature would represent a significant departure in principle from the existing European disclosure regime (and seemingly other disclosure regimes). Moreover, such a requirement is not necessary or appropriate in an ABS context where investor focus will typically lie with the underlying assets and their performance. Under the European regime for listed securities, supplementary

information with respect to the prospectus is formally required to be provided only at the time of new issues (i.e. in the context of programmes), other than in certain limited circumstances (e.g. certain financial information) and other than in respect of certain event-based disclosures (i.e. where the information is material/price sensitive and not publicly available).

In principle, we consider that it should not be necessary for prospectus disclosures to be refreshed or fully updated on an ongoing basis in an ABS context (in the absence of a new issue) and that instead a more tailored analysis should be applied by national regulators when considering the information required by ABS investors on an ongoing basis (taking into account the nature of ABS, the types of information which are not typically already publicly available, the balance between market participant interests etc). Existing examples of this, as noted in the Consultation Report, include the disclosure initiatives put forward by the Bank of England and the European Central Bank in the context of their eligible collateral requirements and by the EU authorities in the context of article 122a(7) of the CRD. We consider these initiatives to be sufficient to achieve the appropriate disclosure standard.

Ongoing disclosure framework

As noted above, various aspects of the draft ABS Principles appear to be closely modelled on requirements which apply under the U.S. ABS disclosure regime under the Securities Exchange Act of 1934. In particular, this influence is apparent in the first three principles and the corresponding proposals related to the production and disclosure of annual reports, periodic reports and event-based reports (which sound akin to U.S. Form 10-K, 10-D and 8-K, respectively) via an established electronic filing system (such as the U.S. EDGAR system).

The ongoing disclosure framework in other jurisdictions (such as Europe) does not fit as readily into the same boxes. However, this is not indicative of such frameworks being farther from the desired mark. Such frameworks have been shaped by the applicable wider legislative backdrop and also by the specific market practices and structures specific to that jurisdiction.

We consider that a substance over form approach should be adopted with respect to the ABS Principles and, as a bottom line, we encourage the adoption of principles which focus on the provision of the key information required by a reasonable investor on a regular and ad hoc basis (rather than principles which focus on suggested types of information being provided via a specific type of report etc). This flexibility is essential for the adoption of an appropriate and meaningful set of principles suitable for use on a global basis.

Audited financial information

There are a number of references in the ABS Principles to the provision of audited financial information on an ongoing basis. For example, this is referred to in the context of the "asset pool or issuer" (in principle 1), significant obligors (principle 3) and derivative counterparties and other "significant enhancement providers" (principle 3).

It is not clear that the provision of audited financial information in respect of a wider range of entities (which would include derivative counterparties, based on the current European disclosure regime) on an ongoing basis is necessary and/or would achieve a clearly defined benefit. While recent market events have demonstrated the importance of counterparty information, it is not clear that disclosure of audited financial information on an ongoing basis would have resulted in a different outcome. Moreover, it should be noted that certain initiatives have already been put forward and/or adopted which deal with ongoing disclosures relating to counterparties; for example, under the Bank of England's transparency initiative information with respect to counterparties (including ratings) and counterparty-related triggers (including the relevant trigger event and status thereof) are required to be disclosed on a mandatory basis as part of the monthly investor reporting package. It is not clear what benefit would be achieved via a requirement for the provision of audited financial information in respect of derivative counterparties and/or that further information is required by investors in this regard.

It should also be noted that a requirement to disclose audited financial information for a range of entities may give rise to various logistical issues and increased costs for ABS transactions. In particular, audited financial information may not be available for all such entities and it is not clear that such information could be produced in an efficient manner for the purposes of the transaction (and/or that counterparties would be agreeable to this). Members have raised concerns that such a requirement could give rise to significant issues by placing further constraints on the availability and range of options with respect to suitable counterparties, which would in turn have a material adverse impact on the feasibility of ABS issuance.

If the Regulation AB experience is instructive in this regard, we would note that the prospectus 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).

Matters reflecting certain markets

Certain matters referred to in the ABS Principles appear to reflect select securitisation markets and practices (i.e. the U.S. market) and, as such, are not necessarily appropriate or as relevant for other markets. For example, the focus on servicing criteria and corresponding compliance assessments is arguably more relevant in the context of U.S. transactions given the relatively common use of third party servicers (which is less usual in a European context where originators often act as servicer). In addition, the reference to disclosure of historical information about asset repurchase demand activity is also reflective of the U.S. experience (and, in particular, the asset enforcement issues that arose in the U.S. during the recent financial crisis), as the recent "no activity" initial filings made by a number of European originators under U.S. Rule 15Ga-1 attest to.

Once again, we encourage a broader view to be taken in the crafting of the ABS Principles. An appropriate global benchmark will not have been established if it is shaped in large part by the unique experience in select markets.

Credit rating agency related disclosures

The Consultation Report seeks feedback on whether issuers should provide ongoing information about the oversight to which credit rating agencies are subject. Our members strongly oppose any move to impose any obligations on issuers in this regard. Indeed, we struggle to understand the rationale behind this aspect of the proposals and consider that issuers should not be regarded as an appropriate entity to provide related confirmations.

Moreover, if the European experience is to be illustrative in this regard, then we would note that the related prospectus disclosure requirement which was introduced with the EU Credit Rating Agency Regulation has given rise to a number of logistical issues for issuers (with respect to being able to confirm the entity in the rating agency group which has or will issue the rating (which involves consideration of unclear factors such as the location of the lead analyst) and its registration status under the Regulation).

If it is considered desirable for disclosures to be made to investors in this regard, then we consider that the relevant supervisors (or the rating agencies) are best placed to provide the information.

Conclusion

As a final general comment, we note that any further regulation of ABS ongoing disclosure should be balanced so as to not restrict the revival of securitisation market activities. Securitisation is one of the few ways that banking institutions can continue to finance real economy assets 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.

We consider that any general ongoing 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.

In this regard, we note that AFME and the European Financial Services Round Table, working together, have for some time been leading the process to deliver a scheme which will reinforce industry best practices in terms of (amongst other things) transparency. This market led initiative – referred to as the Prime Collateralised Securities (PCS) initiative – will define best practices and create incentives to enforce these practices through a label granted and maintained by an independent third party. Start up funding has been raised for the initiative (through market participant support) and concrete steps are now underway to set up and establish the operation of the administrative infrastructure. We encourage IOSCO (and national regulators) to take account of this initiative when considering ABS ongoing disclosures in Europe.

afme/
Finance for Europe

asifma

Thank you once again for the opportunity to provide comments on the Consultation Report. Should you have any questions or desire additional information regarding any of the comments, please do not hesitate to contact the undersigned.

Yours faithfully

Richard H. Hopkin

Richard Hopkin
Managing Director
Association for Financial Markets in Europe

Nicholas de Boursac
Managing Director,
Asia Securities Industry & Financial Markets Association

afme/
Finance for Europe

asifma

Annex I

Association for Financial Markets in Europe

AFME represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME was formed on 1 November 2009 by the merger of the London Investment Banking Association and the European operations of the Securities Industry and Financial Markets Association.

AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European, and UK capital markets. AFME is the European regional member of the Global Financial Markets Association (GFMA) and is an affiliate of the U.S. Securities Industry and Financial Markets Association (SIFMA) and the Asian Securities Industry and Financial Markets Association (ASIFMA). For more information, visit the AFME website www.afme.eu.

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

Asia Securities Industry & Financial Markets Association

The Asia Securities Industry & Financial Markets Association (ASIFMA) is an independent association that promotes the development of liquid, efficient and transparent capital markets in Asia and facilitates their orderly integration into the global financial system. ASIFMA priorities are driven by over 40 member companies involved in Asian capital markets, including global and regional banks, securities dealers, brokers, asset managers, credit rating agencies, law firms, trading and analytic platforms, and clearance and settlement providers. ASIFMA is located in Hong Kong and works closely with global alliance partners: the Global Financial Markets Association (GFMA), the Securities Industry and Financial Markets Association (SIFMA) and the Association for Financial Markets in Europe (AFME). More information about ASIFMA can be found at: www.asifma.org.

Australian Securitisation Forum

Chris Dalton
Chief Executive Officer
cdalton@securitisation.com.au

(t) + 61 2 8243 3906
(f) + 61 2 8243 3939

14 May 2012

IOSCO General Secretariat
Attention: Jonathan Bravo
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

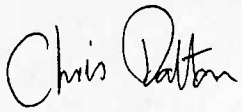
ongoing-abs@isoco.org

PUBLIC COMMENT ON PRINCIPLES FOR ONGOING DISCLOSURE FOR ASSET-BACKED SECURITIES

Thank you for the opportunity to comment on the "Principles for Ongoing Disclosure for Asset-Backed Securities Consultation Report" dated February 2012. The Australian Securitisation Forum represents issuers, investors and other participants in the Australian securitisation market. We provide comment from the perspective of the Australian securitisation market.

We trust that our comments are informative and helpful in formulating IOSCO's position on the question of ongoing disclosure for asset-backed securities. In the meantime, if you wish to discuss or clarify any of our remarks, please do not hesitate to contact me.

Yours sincerely,



CHRIS DALTON
CHIEF EXECUTIVE OFFICER

General Comment on the Australian Market

The objective of IOSCO's Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities – Final Report ("ABS Disclosure Principles") of February 2010 was to provide guidance to regulators developing or reviewing disclosure regimes for offerings and listings of ABS. The Principles for Ongoing Disclosure for Asset-Backed Securities – Consultation Report ("ABS Ongoing Disclosure Principles") is stated to compliment the former.

In considering the topic of disclosure and continuous reporting for mortgage and asset-backed securities (ABS) in Australia, it is important to acknowledge some key points about the Australian market:

- the asset-backed market in Australia is a wholesale or institutional market. The market operates as an OTC market with only some ABS listed on the Australian Securities Exchange (ASX) and no ABS are quoted securities on the ASX;
- the Australian Securities and Investment Commission (ASIC), the relevant Australian securities regulator, does not currently have jurisdiction to impose regulations concerning disclosure relating to wholesale debt securities. Its jurisdiction is confirmed to the retail financial market;
- the ASF, as the industry body for securitisation, has worked with industry participants to develop and release a series of disclosure and reporting standards for Australian mortgage and asset-backed securities. The ASF standards have been developed for Australian residential mortgage and asset-backed securities;
- the ASF standards cover the initial disclosure and ongoing reporting of ABS and also address the methodology and reporting of arrears in the collateral pools in residential mortgage-backed securities (RMBS). We have further developed a standard for representations and warranties given by a sponsor in an Australian RMBS transaction; and
- the Australian securitisation industry has revised and published a glossary of terms used in the Australian securitisation market. This glossary provides a description of common terms used in disclosure and reporting documents relating to ABS and has a large degree of commonality with terminology used in other global ABS markets.

The intention of the ASF Standards is to provide a consistent and minimum level of disclosure and reporting by Australian issuers of ABS. The ASF Standards and Glossary are available from our website www.securitisation.com.au.

Hence our comments in this letter on the IOSCO February 2010 consultation report are framed in the context of the work already undertaken in the Australian market and the current state of the powers our securities regulator has to regulate ABS disclosure and ongoing reporting.

The ASF supports IOSCO and other bodies working to improve disclosure and reporting practices in ABS markets but feels more significant problems remain in ABS markets and we would encourage IOSCO to take a lead in the harmonisation of regulations and reform in various markets with respect to ABS. Of particular concern to Australian ABS issuers is the approach taken in Europe to the issue of alignment of interests ('skin in the game') which is an approach that has not been coordinated with other market regulators and is in our view suboptimal in encouraging securitisation markets to rebuild after the 2008 financial crisis.

Our comments on the specific questions raised in the consultation report follow.

Regulatory Coordination

1. **Does current variation of definitions across jurisdictions create confusion or lack of comparability for investors or other market inefficiencies? What practical problems occur as a result in variation of definitions?**

   The ASF believes there is a high degree of familiarity with the terms and definitions used by Australian issuers of ABS. Both before and after the financial crisis Australian ABS issuers have been considered by global investors to have had good disclosure and reporting standards. The definitions used by Australian issuers of ABS have not been considered to be an impediment in issuing securities to investors in jurisdictions outside Australia. The reduced issuance of Australian ABS in global markets is primarily due to the uneconomic costs of including a currency swap in Australian ABS transactions in order to issue Euro or USD denominated securities.

2. **If variation in definitions across jurisdictions does create confusion, do respondents believe the issue is best addressed through a) greater standardization of definitions, b) improving comparability, or c) another method (please describe)? Please provide reasons and examples.**

   As a goal, we support issuers in ABS markets adopting consistent and where possible standardised definitions and terms.

3. **In addition to encouraging standardized definitions, should regulators also encourage, where possible, standardized disclosure templates and disclosure formats?**

   The ASF believes the provision of adequate, accurate and timely information to investors should be the key objective of any disclosure and reporting framework. While standardised templates may be useful, we are cautious that the use of such templates may cause a "tick the box" approach to disclosure and reporting compliance. A template may be useful for minimum level disclosure but should not discourage additional disclosure where this may be appropriate for specific asset types.

   We submit that standardised definitions and templates may be difficult to achieve given the various assets classes in ABS, jurisdictional differences and transaction structures. In the case of the Australian market, ABS structures have become less common since the financial crisis due to issuers adjusting transaction structures to meet investor requirements and to deal with difficult funding markets and changing credit rating criteria.

   A static disclosure template or format may also become out of date should ABS transactions or market change. There should be some thought given to how and by whom such templates and formats could be updated in the future.

   If so, what are the areas where that would be most necessary?

   The most beneficial areas to seek a standardised approach to ongoing disclosure could include:

   - RMBS which is the most common type of ABS in the Australian market. We would suggest this would be most the useful to consider initially; and
   - auto loan and lease ABS as many markets, including the Australian market, securitise these asset classes.

   How would standardised disclosure templates best be achieved?

   Based on the experience of the ASF in developing disclosure and reporting standards, we would suggest involving securitisation associations or capital market industry bodies to develop templates in conjunction with local regulators. A second step would then be to collaborate with international counterparties to determine if a cross jurisdictional template and format is feasible and beneficial for investors.

III. Periodic and event-based disclosure reports should contain sufficient information to increase transparency and to help enable investors to perform due diligence in their investment decisions independently.

4. Should an issuer be responsible in its ongoing reports for providing disclosure about the oversight/supervision of a credit rating agency that provided a rating for the issuer's ABS?

The ASF believes an issuer should not have the responsibility for disclosing the oversight of a credit rating agency (CRA) that rated the ABS transaction. CRAs are subject to specific regulation in most markets, including Australia. Further, most have adopted codes of conduct that meet or exceed the IOSCO Code of Conduct for CRAs. An issuer would not be privy to what surveillance activities are being undertaken by a CRA. Generally CRAs are required to disclosure to markets any changes to their ratings or methodologies in a timely fashion. The ASF believes the onus for disclosure on the oversight of the rating of the ABS should rest with the CRA.

If so, when and how frequently should the issuer disclose the information, what type of information should the issuer disclose, and what impact might it have on investors' decisions regarding the ABS?

Not applicable.

What would the benefits and concerns be with issuers providing information about CRA oversight/supervision in their ongoing reports, either as foreseen or based on your experience with the matter in other jurisdictions?

Issuers should not be responsible for the surveillance activities of a CRA who rated an ABS transaction. An issuer is not privy to the procedures, systems, resources or timetable adopted by a CRA to monitor an outstanding rating beyond providing the CRA with information they request to maintain ongoing surveillance. We submit regulators should ensure CRAs place enough resources into monitoring outstanding ratings and update the market of any changes to their opinion in a timely manner.

We see no benefit for investors in having issuers responsible for providing information about CRA surveillance of their ratings.

V. Disclosure should be presented to facilitate analysis by investors.

5. How do the means through which information is delivered affect the utility of disclosure?

A central national repository of information on ABS may a useful means to facilitate distribution of disclosure and reporting information to investors. Australian issuers of ABS maintain websites that provide access for investors to ongoing disclosure and reporting on outstanding ABS.

The Australian market has a de-facto central repository with the majority of ABS issuers providing data and ongoing disclosure to a commercial vendor Perpetual Limited. This service facilitates investors gaining access (for a fee) to update data and information on Australian ABS.

VII. Information should be available to the public on a timely basis.

6. Should periodic reporting depend on the information being disclosed? If so, what should be the basis for establishing reporting periods?

As a general proposition the ASF believes reporting should coincide with the frequency of the coupon payment dates to investors. For Australian ABS these are typically monthly or quarterly.

BVI · Bockenheimer Anlage 15 · D-60322 Frankfurt am Main

Mr. Jonathan Bravo
International Organization of Securities Commissions
Callo Oquendo 12
28006 Madrid
Spain

General Secretariat
International Organization of Securities Commissions

Sent by email to: ongoing-abs@iosco.org

Bundesverband Investment
und Asset Management e.V.

Contact:
Rudolf Siebel
Phone: +49.69/154090-255
Fax: +49.69/154090-155
rudolf.siebel@bvi.de

April 20th, 2012

Public Comment on Principles for Ongoing Disclosure for Asset Backed Securities – BVI's response

Dear Mr. Bravo,

BVI[1] is pleased to have the opportunity of commenting on the IOSCO's proposal for Principles for Ongoing Disclosure for Asset Backed Securities (ABS).

General remarks

Our members welcome the IOSCO principles as an important addition to other IOSCO work described in the report which focuses on improving transparency in the ABS sector. Our members investing in ABS believe that the 11 principles proposed by IOSCO adequately reflect the market needs. They believe that a necessary revitalisation of a global high quality ABS market will be helped by increased ongoing transparency. On the other hand, it needs to be recognized that the problems of ABS markets during the crisis have been in parts overstated. The overall loss experience of European ABS has been very good according to available rating agency research. Also the

[1] BVI Bundesverband Investment und Asset Management e.V. represents the interest of the German investment fund and asset management industry. BVI has offices in Berlin, Brussels and Frankfurt. Its 82 members currently handle assets in excess of EUR 1.8 trillion in both investment funds and mandates by managing directly or indirectly the capital of 50 million private clients in 21 million households. For more information, please visit www.bvi.de.

Director General:
Thomas Richter
Managing Director:
Rudolf Siebel

Bockenheimer Anlage 15
D-60322 Frankfurt am Main
Postfach 10 04 37
D-60004 Frankfurt am Main
Phone: +49.69.154090.0
Fax: +49.69.5971406
info@bvi.de
www.bvi.de

transparency provided in many ABS transactions is of high quality, and often allows for better analysis than the comparable reporting by banks or corporate issuers. Hence, regulation aimed at further improving the ABS markets needs to be well calibrated in order not to harm the renewed growth in the market which in turn would diminish the returns of long-term investors, thereby having detrimental effects on the pension and long-term savings of millions of investors.

Answers to specific questions

Regulatory Coordination
Q1: Does the current variation of definitions across jurisdictions create a confusion or lack of comparability for investors or other market inefficiencies? What practical problems occur as a result in variation of definitions?

Unlike covered bonds, ABS issues are usually only lightly regulated and supervised. As a result, there is little market standardization in terms of ABS structure, content and transparency across jurisdictions and often also not even within jurisdictions. This leads to problems of research and comparability between different issues even within the same segment or jurisdiction. We believe that issuers trying to place risk in the market should be obliged to inform their investors on a timely and adequate basis about these risks. However, it is not sufficient to simply aggregate the different information requirements across different investor groups in structured templates in a view of creating a holistic view of a particular issue. This effort is prone to resulting in a vast amount of detailed data which cannot be reasonably analysed.

Therefore, BVI members would rather like to see minimum information standards/templates which focus on the information relevant to most ABS investors, especially information on cash flows and delinquency characteristics within the portfolio which are agreed in a voluntary dialogue between the buy and the sell side under the auspices of the relevant securities supervisor. There should be a standard on the relevant information items/data elements to be delivered combined with glossaries to facilitate comparison of terms and concepts used in different markets and between different actors. The information standard should allow for necessary adjustments to reflect the individual portfolio characteristics. For example, in case of large and very homogeneous portfolios of small loans the individual loan data is less relevant than in case of concentrated loan portfolios or portfolios with a number

of large exposures interspersed with a small loans portfolio.

Regulatory Coordination
Q2: If variation of definitions across jurisdictions does create confusion, do respondents believe the issue is best addressed through a) greater standardization of definitions, b) improving comparability, or c) another methods?

The regulators should support and enforce market-led standardization firstly in definition of terms/data elements and secondly in definition of concepts within their own jurisdictions in order to allow for easier comparison between transactions in the same market. This is not the case today in parallel to the situation in the covered bond markets. For example, the necessary information on the "waterfall" in the portfolio (e.g. losses, defaults, delayed or missed payments after day 1) could be easily standardized. Additionally, our members feel that it is important to obtain qualitative and quantitative information on the basic characteristics of the loans within the portfolio. Our members need additional details pertaining to substituted, repurchased and modified loans. Originators – especially those in so-called periphery markets – often influence the ABS portfolio performance with such measures. For example, there are on average 11% loan modifications and 13% substitutions and/or repurchases of loans in Fitch rated Portuguese collateral pools[2]. Ongoing ABS transparency needs to capture this information in order to allow our members to establish valid loss assumptions on the portfolio and to arrive at independent relative value opinions on the issues without having to rely on CRA ratings.

Finally, standardization of ongoing reporting should not be limited to new issues. Regulators need to facilitate the ongoing reporting also on existing transactions with more than one year remaining legal life. These constitute an important part of the market and increased transparency in these terms will help to revitalize the overall market for ABS.

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[2] Fitch Ratings Structured Finance, Portuguese RMBS Performance, Performance Report, dd. 11 April 2012, at 1.

Regulatory Coordination
Q3: In addition to encouraging standardized definitions, should regulators also encourage where possible, standardized disclosure templates and disclosure formats? If so, what are the areas where that would be most necessary? How would standardized disclosure templates best be achieved?

Regulators should support and enforce market-led standardization in terms of disclosure templates and disclosure formats within their own jurisdictions in order to allow for easier comparison between transactions in the same market. There should be minimum information standards/templates to be agreed between the buy side and the sell side subject to regulatory approval/acceptance which should focus on the information relevant to most ABS investors, especially information on cash flow and delinquency characteristics within the portfolio. The information standard should not be completely fixed, but should allow for necessary adjustments to reflect the individual portfolio characteristics.

Principle III
Q4: Should an issuer be responsible in its ongoing reports for providing disclosure about oversight/supervision of a credit rating agency that provided a rating for the issuer's ABS??

No – the overreliance on CRAs needs to be diminished by reducing the overall number of regulatory references to CRA ratings. Our members deem it sufficient if the initial ABS offering documents disclose the rating – if any – of the ABS and the regulator the CRA is registered with.

Principle V
Q5: How do the means through which the information is delivered affect the utility of disclosure?

Easy access to and ready availability of information is key to investor trust in a specific ABS market or segment. The information should be presented on a single industry point of access/website per ABS market which is easily accessible without password restrictions or other requirements and which is open to the public. The exchanges or (banking) associations would be a good starting point as providers of information. There should not be further websites that need to be consulted. The information should be presented in

a downloadable format (Excel, CSV) or provided as FTP feed. Additionally, but not exclusively, the information should be available on data vendor platforms, such as Bloomberg.

Principle VII
Q6: Should periodic reporting depend on the information being disclosed? If so, what should be the basis for establishing reporting periods?

Easy access to and ready availability of information is key to investor trust in a specific ABS market or segment. The most important information is on cash flows and delinquencies. These should be presented in a timely fashion after each payment date. Our members would expect that the information report is made available to investors at the latest five (5) business days after the usual (quarterly) payment date. In today's mature ABS market delays of four weeks or more occurring currently are simply not acceptable.

We hope that our views are of assistance to IOSCO and remain at your disposal for further clarification of the issues at hand. Our response can be made public.

With kind regards

Rudolf Siebel, LL.M.
(Managing Director)

Marcus Mecklenburg
(Director)

Please note that the comments expressed herein are solely my personal views

Jonatan Bravo
General Secretariat
IOSCO
Calle Oquendo 12
28006 Madrid
Spain
ongoing-abs@iosco.org

Chris Barnard
Germany

19 April 2012

- **Public comment on IOSCO's Consultation Report on Principles for Ongoing Disclosure for Asset-Backed Securities**

Dear Mr. Bravo.

Thank you for giving us the opportunity to comment on your Consultation Report CR02/12 "Principles for Ongoing Disclosure for Asset-Backed Securities".

I welcome and support your proposed principles, which should improve transparency, enhance investor confidence and investor protection, and promote market integrity, on an ongoing basis, in the asset-backed securities (ABS) market. The bewildering complexity of many ABS transactions demands more complete, clear, fair and not misleading disclosure, such that a reasonable investor could make informed decisions, including conducting independent due diligence, on ABS offerings and transactions.

Due diligence

One of the key disclosures required by investors in order to carry out effective due diligence is complete asset-level or loan-level information regarding the assets backing the ABS. Lack of such disclosure impedes investors' ability to properly evaluate ABS.[1] Ongoing disclosure of asset-level or loan-level information will allow investors to: better monitor the ABS; track the performance of the assets; monitor the performance of the parties involved with the ABS; and even assess the structure of the ABS.

[1] For example see Supervisory Insights: Enhancing Transparency in the Structured Finance Market, FDIC, available at: http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum08/article01_transparency.html, which states that "a lack of complete and public dissemination of a securitization's loan-level data reduces transparency and hampers the investor's ability to fully assess risk and assign value".

Asset-level or loan level information should ideally be disclosed in electronic format in order to allow investors to more easily process the information, and at lower cost, compared to other disclosure formats. I would also suggest that greater standardization of asset definitions and asset disclosure templates and formats would greatly benefit investors by increasing the comparability of asset-level or loan-level information between different ABS transactions and also across jurisdictions.[2]

Waterfall illustrations

In April 2010, the Commission (SEC) issued proposed rules applicable to ABS transactions.[3] One of the proposals required that most ABS issuers file a computer program that gives effect to the flow of funds, or "waterfall", provisions of the transaction. This proposal was designed to make it easier for an investor to analyze the ABS offering at the time of its initial investment decision and to monitor ongoing performance of the ABS. I must say that I would not support including this kind of proposal in your proposed principles, as I do not believe that it would necessarily provide meaningful information to investors, and it could even be misleading. However, I propose that it would be more helpful if ABS issuers would disclose sensitivity analyses on the expected change in the flow of funds to changing the most sensitive variables and assumptions, on an ongoing basis.[4] This is especially important for highly geared and non-linear related ABS, where the interaction between variables, assumptions and the flow of funds is complex and often counterintuitive.

Yours sincerely

C.R. Barnard

Chris Barnard

[2] This applies generally to all ABS definitions, disclosure templates and formats.

[3] See SEC Proposed rule, Asset-Backed Securities, File No. S7-08-10, available at: http://www.sec.gov/rules/proposed/2010/33-9117.pdf

[4] This disclosure could be included under your Principle 3.

Response
of the German Banking Industry Committee to the IOSCO Consultation Report – Principles for Ongoing Disclosure for Asset-Backed Securities

Contact:

Dr. Diedrich Lange
Telephone: +49 30 2021- 1610
Telefax: +49 30 2021- 191600
E-Mail: d.lange@bvr.de

Olaf Achtelik
Telephone: +49 30 2021- 2323
Telefax: +49 30 2021- 192300
E-Mail: o.achtelik@bvr.de

Berlin, 20 April 2012

*The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 2,200 banks.*

Coordinator:
National Association of German
Cooperative Banks
Schellingstraße 4 | 10785 Berlin | Germany
Telephone: +49 30 2021-0
Telefax: +49 30 2021-1900

I. Introduction

The German Banking Industry Committee thanks the International Organization of Securities Commissions for the invitation to comment on the Consultation Report concerning the "Principles for Ongoing Disclosure for Asset-Backed Securities" and welcomes the opportunity to provide input at this stage of the process.

We limit our responses to queries and points with particular relevance to our members and to key aspects and concerns.

II. Comments and responses

Chapter 1 - Introduction

"Scope of Principles"

The "Scope of Principles" (page 10) contains a basic outline of the asset-backed securities' definition on which the Consultation Report is based; this is complemented by a specific definition on page 15 of the report. In our view, the scope of principles or, moreover, the definition fails to reflect the idiosyncrasies of ABCP-transactions in an adequate manner. This becomes particularly obvious with regard to the following aspects:

- Frequent distinctions between an issuing entity on the one hand and one or several buying entities on the other hand.
- Several sub-transactions which are economically separate.
- Several originators and thus, by virtue of mixing asset pools, a higher degree of granularity.
- Several servicers (usually identical with the originators).
- Originators often insist on confidential treatment.
- Interest rate and currency hedging mechanisms take place on a transaction-specific basis, partly with the originator as the counterparty, partly with the conclusion of derivatives transactions only once the trigger event has taken place.

Although, hence, with regard to many aspects there will be a higher degree of diversification on the whole and the investor's holding period is clearly shorter, pursuant to the principles, clearly more information would have to be supplied for ABCP transactions than would be required with regard to ABS term bonds which, apparently, are the primary focus of the principle's scope and of the definition.

We therefore suggest the inclusion of a waiver for ABCP programmes under the scope of principles or, respectively, in the definition.

Question 1: Does current variation of definitions across jurisdictions create confusion or lack of comparability for investors or other market inefficiencies? What pratical problems occur as a result in variation of definitions?

Yes, the current variation of definitions potentially creates confusion and may lead to difficulties during the practical implementation stage.

In the final analysis, this issue is further compounded by the current principles and the definitions used thereunder. For instance, in the present consultation report, the definitions of the "originator" and the "sponsor" are inconsistent with the definitions applicable within the European Union. Whilst the IOSCO Consultation Report e.g. defines the "originator" as an "Entity that creates the receivables, loans or other financial assets that will be included in the asset pool", the definition in the Capital Requirements Regulation (CRR I) which is currently undergoing the European legislative process refers to the originator as "an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposure being securitised or an entity which purchases a third party's exposure for its own account and then securitises them."

Question 2: If variation in definitions across jurisdictions does create confusion, do respondents believe the issue is best addressed through a) greater standardization of definitions, b) improving comparability, or c) another method (please describe)? Please provide reasons and examples.

One possible approach would consist in setting out the respectively applicable definition in every relevant ABS document. However, this would result in subsequent problems with regard to the various, legally binding regulatory provisions. For instance, in the European Union, the current provisions under the Capital Requirements Directive (CRD) and, at a future point in time, the provisions under CRR I are legally binding for banks. Based on the foregoing, any variation in provisions would, more likely than not, incur issues in terms of prudential supervision. In the final analysis, this issue can therefore only be resolved by means of a consistent regulatory framework.

Chapter 4 – Principles for Ongoing Disclosure for Asset-Backed Securities

Principle 1: Material events regarding ABS should be disclosed in event-based reports.

According to Principle 2 the occurrence of material events and other current or ad hoc information should be disclosed in event-based disclosure reports. In order to achieve a modicum of reliability for investors even in the event of heterogeneous regulatory intensity across various jurisdictions, we suggest defining a "minimum list" of possible "events".

Principle 3: Periodic and event-based disclosure reports should contain sufficient information to increase transparency and to help enable investors to perform due diligence in their investment decisions independently.

On principle, the rationale behind "event-based reporting" is perfectly plausible. However, in our view, the need for "event-based disclosure reports" will depend on how material or serious the event itself will be. As far as event-based reporting is concerned, it is furthermore necessary to narrow this down and to also consider the frequency of the existing regular reporting.

Question 6: Should periodic reporting depend on the information being disclosed? If so, what should be the basis for establishing reporting periods?

To date, the market practice in the European Union is quarterly reporting for ABS term bond issues and monthly reporting for ABCP transactions. This has stood the test of time and should be maintained.

Dr. Holger Mielk

Dr. Dietrich Lange

ibfed International Banking Federation

Pinners Hall
105-108 Old Broad Street
London EC2N 1EX

tel: + 44 (0)20 7216 8947
fax: + 44 (2)20 7216 8928
web: www.ibfed.org

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Mr David Wright
Secretary General
IOSCO
Calle Oquendo 12
28006 Madrid
Spain
Email: ongoing-abs@iosco.org

27th April 2012

Dear Mr Wright,

Subject: IBFed comments on IOSCO consultative report "Principles for ongoing disclosure of asset backed securities"

The International Banking Federation ('IBFed') is the representative body for national and international banking federations from leading financial nations around the world. Its membership includes the American Bankers Association, the Australian Bankers' Association, the Canadian Bankers Association, the European Banking Federation, the Japanese Bankers' Association, the China Banking Association, the Indian Banks' Association, the Korean Federation of Banks, the Assocation of Russian Banks and the Banking Association South Africa. This worldwide reach enables the Federation to function as the key international forum for considering legislative, regulatory and other issues of interest to the banking industry and to our customers.

Against the background of the consultative report prepared by IOSCO on "**Principles for ongoing disclosure of asset backed securities**", the IBFed would like to share with you some brief reflections in the section below.

Specific Remarks

Our concern is that the consultation does not state that required asset-level disclosures should be tailored to the particular type of asset. That statement is included in IOSCO's June 2009 consultation report on Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities, and so perhaps it is implicit in the consultation on continuing disclosures. However, we believe it should be stated explicitly.

The types of disclosures that are appropriate for different asset classes has been a significant concern in the U.S for example. Here, the SEC's first proposed revision to Regulation AB would require numerous characteristics of the underlying assets. While the disclosures were appropriate for RMBS (which was of the greatest concern), similar asset level disclosures would be both impossible and unnecessary in the case, for example, of credit card ABS.

A way to address this concern would be to include the suggested underlined text below at the end of the third principle in **Chapter 4 – Principles for Ongoing Disclosure for Asset-Backed Securities:**

3. Periodic and event-based disclosure reports should contain sufficient information to increase transparency and to help enable investors to perform due diligence in their investment decisions independently.

Principle
Periodic and event-based disclosure should contain sufficient information in order to increase the transparency of information for investors and to allow investors to independently perform due diligence in their investment decisions regarding the specific 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 conclusion, thank you for providing the opportunity to industry stakeholders to comment on the IOSCO Principles for ongoing disclosure of asset backed securities. The IBFed and its members shall continue to closely follow future developments regarding this work stream. If you have any questions whatsoever about the comments we made, please do not hesitate to get in contact with me.

Yours sincerely,

Sally Scutt
Managing Director
IBFed

Pierre de Lauzan
Chairman
IBFed Financial Markets Working Group