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Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
Attention: Ms. Elizabeth M. Murphy, Secretary

Re: File No. S7-24-10; Release Nos. 33-9148; 34-63029
Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Ladies and Gentlemen:

This letter is submitted on behalf of the Committee on Federal Regulation of Securities and the Committee on Securitization and Structured Finance (the "Committees") of the Section of Business Law of the American Bar Association in response to the request for comments by the Securities and Exchange Commission (the "Commission") in its October 4, 2010 release referenced above.[1]

The comments expressed in this letter represent the views of the Committees only and have not been approved by the American Bar Association's House of Delegates or Board of Governors and therefore do not represent the official position of the American Bar Association (the "ABA"). In addition, this letter does not represent the official position of the ABA Section of Business Law.

The Commission has issued the Proposing Release in connection with the requirement of Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010[2] that the Commission, within 180 days of enactment of the

1 75 Fed. Reg. 62718 (October 13, 2010) (the "Proposing Release").

2 Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act").

Dodd-Frank Act, prescribe regulations regarding the use of representations and warranties in asset-backed securities ("ABS") issuances.[3] We appreciate the thoughtful approach reflected in the Proposing Release, especially in light of the relatively short statutory timeframe for rulemaking. In commenting on these proposals, we have considered them within the framework of the statutory text and have therefore limited our comments to those we believe can be accommodated within those constraints.

Section 943, and the Commission's proposals, comprise two separate parts: a requirement for rating agencies to include, in reports accompanying ABS credit ratings, descriptions of the ABS transactions' representations, warranties and enforcement mechanisms and how these compare to those of other transactions; and a requirement for disclosures of demands for repurchases of assets and whether such assets were, in fact, repurchased. We have similarly divided our comments along these lines.

I. RATING AGENCY DESCRIPTIONS AND COMPARISONS OF REPRESENTATIONS AND WARRANTIES

Given the very specific statutory language placing the burden of describing and comparing the representations and warranties in ABS transactions on nationally recognized statistical rating organizations (NRSROs), we are not commenting on the fundamental requirements of Section 943(a) or proposed Rule 17g-7. We do, however, want to note the following additional matters that the Commission might consider in connection with adopting final rules:

1. The Commission has asked whether the information to be included with respect to representations and warranties should be combined with the information required

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[3] Section 943 reads as follows:

> Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe regulations on the use of representations and warranties in the market for asset-backed securities (as that term is defined in section 3(a)(77) of the Securities Exchange Act of 1934, as added by this subtitle) that—
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> (1) require each national recognized statistical rating organization to include in any report accompanying a credit rating a description of—
>
> (A) the representations, warranties, and enforcement mechanisms available to investors; and
>
> (B) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities; and
>
> (2) require any securitizer (as that term is defined in section 15G(a) of the Securities Exchange Act of 1934, as added by this subtitle) 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.

to be disclosed under Section 15E(s)[4] of the Exchange Act when final rules implementing that section are adopted. We cannot answer that question with any specificity, especially as it relates to timing considerations, without having more information about the implementation of Section 15E(s). However, as the Commission has acknowledged in footnote 34 in the Proposing Release in connection with the proposed requirement to file Form ABS-15G, and as we discuss below in Part II.H, requiring public disclosure of information about offerings relying on exemptions from registration can potentially compromise reliance on those exemptions. If the Commission decides to combine the Section 943 NRSRO descriptions and comparisons of representations and warranties into any report that the Commission concludes should be made publicly available with respect to exempt offerings, we request that the Commission revise proposed Rule 15Ga-1 to clearly provide that the publication of such report would not affect the exempt status of the related offerings or the availability of the applicable statutory or regulatory private offering exemptions or safe harbors.

2. Proposed Rule 17g-7 does not distinguish, with respect to ABS transactions, between (i) ratings provided by NRSROs hired by the related issuers or sponsors and (ii) ratings paid for by the investors or prepared by NRSROs on an unsolicited basis. If this rule and the rules the Commission subsequently proposes with respect to Section 15E(s) are intended to apply to reports prepared by NRSROs that have not been hired by issuers or sponsors, we note that adding potentially burdensome requirements to the provision of unsolicited or investor-paid ratings may discourage NRSROs from providing such ratings, which would be inconsistent with previously stated goals of the Commission to promote the issuance of ratings that have not been paid for by the issuer or sponsor of the ABS transaction.

3. We believe there are categories of representations and warranties that would not provide meaningful information to investors if included in rating agency reports. For instance, we see little value to investors in reports covering standard corporate representations, such as those relating to the legal status of the parties; the due authorization, execution and delivery of the transaction documents; the enforceability of those documents; whether entering into them conflicted with laws or regulations; and other matters that are addressed in the documentation for virtually all securities transactions and are not unique to ABS. We suggest that the Commission consider narrowing the proposed requirement to include only representations and warranties relating to the assets themselves and to the ownership or security interests held by the parties to the securitization.

4. We note that there are a number of true private placements, such as issuances to asset-backed commercial paper conduits, in which the credit rating is private and

[4] Enacted pursuant to Section 932(a)(8) of the Dodd-Frank Act.

the investors directly and actively negotiate the representations and warranties. In those transactions, the proposed NRSRO evaluation would add burden without benefit. We suggest that the investors in those transactions be able to waive preparation of the NRSRO report.

5. Representations and warranties for ABS have been evolving rapidly in the last few years. We believe that NRSRO reports on representations and warranties should encourage, rather than stifle, the evolution of representations and warranties, and we are also somewhat concerned that NRSROs will develop a "checklist" approach to representations, warranties and enforcement mechanisms that will discourage the tailoring of representations and warranties to the particular assets and that may discourage expansion beyond a set list. We encourage the Commission to include guidance to NRSROs in the final version of Rule 17g-7 that clarifies that the Commission does not intend to constrain the evolution of representations and warranties, so as not to have these adverse effects.

II. DISCLOSURE OF DEMANDS AND REPURCHASES BASED ON BREACHES OF REPRESENTATIONS AND WARRANTIES IN TRANSACTION DOCUMENTS

We understand that provisions addressing repurchases in ABS transactions have become an area of significant concern to investors in residential mortgage-backed securities ("RMBS") in the past several years. However, such concerns are virtually nonexistent with respect to other classes or categories of securitizations, such as credit cards and autos. Even within the RMBS space, efforts to enforce representations and warranties have varied widely, and in many instances have been more reflective of the approach of the trustee or the particular investors than of the asset quality itself. As the Commission notes, records may not have been kept with respect to demands, and we believe reconstruction of such records would not lead to sound data. Further, we do not believe it is clear when an inquiry or discussion would rise to the level of a demand.

In evaluating the Commission's proposals, we have focused on whether the information presented would be reliable and meaningful to investors; whether the form of presentation would provide a useful picture of repurchase activity; whether the frequency and timing of reporting would reveal important trends or would instead create a reporting burden disproportionate to the benefit; and whether the Commission's efforts to preserve the status of exempt offerings while requiring public disclosures related to such offerings are sufficient.

A. We recommend that information regarding demands and repurchases should be provided on a prospective basis only.

We believe significant concerns are raised whenever a new provision would require disclosure of data for periods during which such information was not required to be maintained for that purpose. The Commission was aware of and responded to such concerns in 2004 when it adopted static pool disclosure requirements for Regulation AB, providing first that registrants did

not need to provide such data in situations in which such data was unknown and not available to the registrant without undue effort or expense, and second—in response to concerns about the ability of registrants to effectively diligence information that pre-dated the adoption of Regulation AB—that information for pre-adoption periods would not be deemed to be part of the prospectus or the registration statement for the ABS.[5] In the current Proposing Release, the Commission notes that securitizers may not be able to obtain the relevant information about investor demands from trustees,[6] and it proposes an accommodation for that; however, it requires reconstruction of the data by the securitizers themselves.[7] As discussed below, we believe that information about repurchase demands and fulfillment of requests should be made only on a prospective basis. However, if a look-back period remains in the Commission's final rules, we believe any such look-back provision would need to include an equivalent accommodation for securitizers.

We have a number of reasons for believing that the Commission's rules implementing Section 943 should not apply to periods prior to adoption, and we do not believe the language of the statute requires such backward-looking application.[8] In addition to our concerns discussed above about the reliability and availability of the information, we also believe that such data would not fulfill the express Congressional goal set forth in the statute, namely to allow investors to identify originators with clear underwriting deficiencies.

As the Commission is aware, the last several years have been a period of significant turmoil in the residential real estate markets, with disruptions spreading from the subprime loan sector to affect even RMBS based on prime assets. Investors with unexpected losses on their RMBS increasingly looked for breaches of representations and warranties related to the mortgage loans, and in some cases the mechanics for making such demands failed, leaving investors and trustees with insufficient access to loan files to make an informed assessment of whether a breach had occurred. In other cases, investors demanded repurchase of entire pools of loans solely on the basis of adverse performance. If such demands were reported, they would make it impossible to identify the loans as to which more substantive demands were made. The

[5] Asset-Backed Securities, 70 Fed. Reg. 1506, 1543-44 (January 7, 2005) (the "Regulation AB Adopting Release").

[6] Proposing Release at 62722.

[7] *Id.* at 62723.

[8] We recognize that the statutory language requires disclosure of "fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer," but we do not believe the reference to "all trusts," without a reference to an historic timeframe, mandates rulemaking that captures prior periods. Rather, we read such language to contemplate only that securitizers that use multiple trusts should aggregate their disclosures for those trusts, rather than reporting on a trust-by-trust basis. Moreover, we believe that such language should be interpreted in light of the stated purpose of the section, which is "so that investors may identify asset originators with clear underwriting deficiencies." For this same reason, we believe that requiring reporting across different asset classes, such as RMBS and credit cards, on a single form, would not be required by the reference to "all trusts" to the extent that such a requirement would not assist investors to identify asset originators with clear underwriting deficiencies.

result of these factors, we believe, is that information about demands and repurchases from the last several years would be wholly unreliable even had it been meticulously tracked, and would provide little or no indication of origination standards. In addition, those origination standards have also changed dramatically in the past few years, so that information about problem originations in the 2005 vintage, for example, will likely have little relevance to the current quality of origination. We point out, as well, that in many cases originators, particularly originators of residential mortgage loans, are no longer in business or are in bankruptcy proceedings (thereby complicating attempts to make repurchase demands or to quantify the potential liability for unliquidated breaches of representations and warranties), and that many asset classes have seen little issuance activity since the financial crisis began.

In addition, as we discuss in Part II.B. below, we believe that data about demands and repurchases can be meaningful only if there is a clear and objective definition of "demand." The Commission has stated that the proposed disclosures would not be limited to demands successfully made, but it also has not limited the proposal to demands properly or formally made. We realize the Commission may have concern about excluding valid demands that could not be made in accordance with the transaction documents because of flawed repurchase mechanics in those documents. We believe that including demands that were made outside the parameters of the transaction documents and were unsupported by any relevant facts would also significantly skew the data. Pre-adoption data may reflect varying trustee practices and degrees of investor activism, documentation quality, and securitizer and originator practices, and in reality may not reflect asset quality or identify breaches in any reliable way. Fundamentally, we do not believe the look-back proposal can generate information that investors could reasonably use to evaluate origination standards, securitizer practices, the adequacy of representations, warranties and enforcement provisions in the original transactions, or other information about previous deals. Rather than having years of misleading data weighing negatively on the securitization industry for years to come, we believe the regulations should be applied only prospectively and subject to clear definitions.

B. The Commission should consider including a clear definition of "demand."

To provide clear data that is comparable across issuers, the disclosures required by the Commission should relate to demands that are made by appropriate parties (such as the trustee or a specified percentage of investors) in accordance with the procedures in the transaction documents. Given the intense focus on these procedures over the last few years, we believe that ABS documentation for new transactions will include clear and effective procedures for repurchases that provide appropriate interested parties the opportunity to make informed and specific allegations of breaches of particular representations and warranties. In that circumstance, only demands made in conformity with those procedures should be considered demands for purposes of the reporting provisions. We realize that taking such an approach would not be consistent with recapturing the data from the last several years; however, such an approach would enhance the comparability and reliability of data captured on a going-forward basis. We believe this approach is consistent with the Congressional mandate to create a report that will allow investors to identify deficiencies in underwriting standards. Section 943 does not

provide any indication that it was intended to serve as an investigative tool with respect to the financial crisis. We believe investors will be much better served by having a disclosure requirement that is controlled, consistent and methodical, and does more than merely reflect recent turmoil.

C. The Commission should reconsider requiring aggregation across individual asset classes rather than across all securitization trusts.

We believe there is consensus among securitization market participants that data with respect to credit cards, for instance, does not inform decisions with respect to mortgage loans originated or securitized by the same entity. We therefore believe that aggregating information for multiple asset classes in a single form will not be useful to investors and instead will require them to sort through information that has no relevance. The Commission has previously noted a preference for presenting information to investors in a way that will not require them to sift through unrelated information.[9] We believe that permitting separate reporting for each asset class will provide better disclosure. [10]

We also appreciate that defining "asset class" may be difficult to the extent that, for instance, subprime RMBS could legitimately be considered a different asset class than prime RMBS. We suggest that the Commission define broad categories of asset classes, such as RMBS, but allow securitizers to subdivide their presentation of data by subcategory in separate reports. To avoid any suggestion that such an approach would overly segment such data, the Commission could require each securitizer that has decided to subdivide its reporting within an asset class, such as RMBS, to include in each report for that asset class a list of the other reports for that asset class that such securitizer has also produced.[11]

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[9] *See, e.g.,* the Regulation AB Adopting Release at 1591, stating that "the final prospectus and Exchange Act reports are to be separately filed under the CIK code and file number of the respective issuing entity" and explaining that where issuers combine reports, "investors may have to sift through hundreds of pages that relate to securities they do not own."

[10] A large financial institution may be a securitizer of multiple asset classes, for example, RMBS, commercial mortgage-backed securities, credit card receivables and auto loans and leases. The issuance of securities for such asset classes may be handled by separate operating divisions of the institution, the information that one division collects generally may not be shared with the other divisions, and a different person may be "in charge of securitization" for separate asset classes. In such cases, the requirement to file a single Form ABS-15G aggregating multiple asset classes will be problematic. Just as Regulation AB permits entities to provide separate Item 1122 assessments and attestations for different operating functions (for example, as primary servicer, as trustee or as custodian), we believe that such institutions should be able to file separate Form ABS-15Gs where separate operating divisions within the institution have responsibility for specific asset classes.

[11] For example, an issuer might decide to present its RMBS data in three different categories: subprime, prime and scratch-and-dent. It would then have to provide, for each of these categories, a Form ABS-15G that related to all securitization of assets of that particular type. Each of those Forms ABS-15G could also include a statement to the effect that, "The attached Form ABS-15G provides information only about our [prime] residential mortgage loan securitization pools. For information about our [subprime] and [scratch-and-

Finally, although we acknowledge that the Commission has made proposals in the past that contemplate looking through resecuritization structures to the underlying assets, we do not believe that looking through resecuritizations and collateralized debt obligation structures that hold ABS is appropriate for the Form ABS-15G reports. Representations and warranties for those structures will generally relate only to the title to or security interest in the underlying security, and not to the quality or performance of the underlying security or the pool assets supporting the underlying security. In the context of those types of transactions, the securitizer will be in the same position as other investors in the underlying securities in terms of its access to information about demands and repurchases with respect to the assets underlying those securities, and will be unable to make meaningful disclosures. We therefore believe that any disclosures on Form ABS-15G for these types of structures should address only demands made with respect to the underlying security, and not demands made with respect to the pool assets supporting that underlying security.

D. Frequency and period of reporting

The Commission has suggested that reporting be updated monthly, consistently with the provision of distribution data for most ABS pools. We do not believe there is a correlation between demand and repurchase data and such distribution data, and we believe that less frequent reporting would fully capture disclosure concerns without creating undue burdens on market participants. In addition, some asset classes, such as RMBS, historically have provided for cure periods of up to 90 days with respect to asserted breaches of loan representations and warranties. For securitizers of assets classes subject to historical demands and repurchases, we recommend that reporting be done on a quarterly basis and on a time frame consistent with other quarterly and annual reporting requirements, e.g., 45 days after the end of a fiscal quarter with a cutoff at the end of the quarter. We believe including the reporting of demands and repurchases within standard financial reporting cycles will result in a more systematic approach to such disclosures and thus better disclosures. We also do not believe that identification of issues has any particular timing sensitivities that would require more frequent disclosures.[12]

In addition, we note that there are many asset classes where the documentation may contain provisions allowing demands and repurchases in some circumstances, but where no demands have ever been received. These transactions typically have other provisions that allow securitizers to address problem assets, including by absorbing losses in retained interests that were designed for that purpose or by having mechanisms within the structure for the servicer to identify and cause the replacement of troubled assets. Where there is no history of demands and repurchases, we suggest a "one and done" reporting approach, by which a securitizer could file a single Form ABS-15G indicating the lack of a history and would have no obligation to make

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dent] residential mortgage loan securitization pools, please see the additional Forms ABS-15G filed by us on the date hereof."

[12] We note that a requirement to provide the aggregate data on a quarterly basis does not preclude the Commission from requiring that, for any particular securitization trust, fulfilled repurchases be reported as part of the regular distribution date disclosures.

further reports unless demands were subsequently made. We are reluctant to see an ongoing reporting burden placed on entities that have no relevant information to report, and we are equally reluctant to see the Commission's reporting systems cluttered with reports that provide no substantive information.[13]

Finally, we would like to clarify, and recommend changing, the period covered by ongoing reporting under subparagraph (c)(2) of Rule 15Ga-1. Although the language is not entirely clear, it appears to us that such reporting may be required to include both the initial five year look-back period and the ever-increasing period of time that has elapsed since the initial filing. If that is what the Commission intended, we believe it is excessive and not required by the statute.[14] One effect would be repetition ad infinitum of data that, by virtue of its increasing age, was becoming less and less relevant in each reporting period. Another effect would be to make the reports longer and longer in each reporting period. We cannot think of any other reporting regime that requires data to remain in reports forever, and we believe such an approach will make use of the reports burdensome and unwieldy for investors. Investors will have easy access through the Commission's website to earlier reports if they wish to compile a more complete picture of a securitizer's demand and repayment history, but we see no value in weighting down new reports with stale information.

E. <u>The Commission should consider providing greater clarification around the disclosure of pending repurchase requests</u>.

We do not believe that the categories of information proposed by the Commission for Form ABS-15G will provide the appropriate level of detail about the status of repurchase demands. For instance, the Commission acknowledges that there may be a cure period that will allow the defect to be cured rather than requiring the repurchase of the asset. We agree that demands made when the cure period has not lapsed should be reported differently from other demands. Also, however, demands will have to be reviewed to determine whether they state a valid claim, and so a claim may be under review for validity even after any applicable cure period has lapsed. If enforcement mechanisms include mandatory arbitration or other dispute resolution mechanisms, repurchase demands that are going through an enforcement process could be listed as pending, but we would be concerned that there is an implication in the term "pending" that the repurchase or replacement will eventually happen rather than that it is still being evaluated. The same could be said of legitimate controversies being litigated judicially. Although the Commission has indicated that footnotes could be used to clarify some of the data, we believe the form should be structured to better capture those nuances without the need to rely on footnotes as a matter of course. Such an approach would, among other things, provide greater comparability of data across securitizers than if all key detail were provided in footnotes.

[13] If the Commission wanted confirmation that there continued to be nothing to report, it could consider including a check box on each Form 10-D that stated, for example, "There have been no demands for repurchase of assets of the class to which this securitization relates for this issuing entity, the depositor or the sponsor of this securitization."

[14] See footnote 8 above.

Even if the form is expanded to include the additional status categories suggested above, we believe the ability to comment by way of footnote will continue to be important. For instance, there may be circumstances under which the securitizer makes broader representations than the originator; where the originator made the representation, the securitizer did not, and the originator is no longer able to fulfill repurchase demands because of insolvency or dissolution; where the demand was resolved through an indemnity payment or purchase price adjustment but not through a repurchase of the affected asset; or where other facts or conditions have otherwise led to a resolution of a demand or termination of the processing of the demand that does not clearly fall within either rejection or repurchase.

F. Securitizers should be able to enter into contractual arrangements with originators for the originators to provide the Form ABS-15G disclosures.

We believe that in many instances the most useful demand and repurchase data for investors would be data provided directly by originators, rather than by securitizers, in that investors would not have to collate data across many securitizers where loans from a single originator were securitized by multiple different parties. Although in some cases the originator may also be a securitizer, the definition of "securitizer" for purposes of proposed Rule 15Ga-1, or "sponsor" for purposes of re-proposed Item 1104(e) of Regulation AB, will not include the originator for all transactions. We are not suggesting that the Commission expand the requirement beyond the parties that Congress specifically named to be responsible for these disclosures, but we do believe that an approach that allowed securitizers or sponsors, as applicable, to reference and rely on originator disclosures in satisfaction of the securitizers' or sponsors' own requirements, in circumstances in which they had made contractual arrangements with the originator to do so, would provide a valuable alternative approach that would be consistent with the Congressional focus on identifying origination issues.[15]

G. The Commission should not include ABS of foreign issuers in these reporting requirements.

The Commission has acknowledged that there may be significant difficulties in extending the reach of the proposed Form ABS-15G requirements to securities issued by foreign issuers primarily to foreign investors but with a small U.S. investor base. We agree that extending the requirements to offshore securitization programs would limit investment options for U.S. investors, as foreign issuers might prefer to exclude all contact with such investors rather than accept the significant reporting burdens associated with the proposed requirements. We note, as well, that there may be different privacy or other laws that may prohibit the proposed disclosures in non-U.S. jurisdictions. Finally, for assets originated in countries that already have

[15] The Commission has previously allowed ABS issuers to incorporate by reference information filed by third parties, such as credit enhancement providers or significant obligors. See the Regulation AB Adopting Release at 1552.

fundamentally different origination standards than those in the U.S., the disclosures may not provide meaningful comparative data and thus may be of little or no practical value to investors.

We do, however, agree that U.S securitizers of U.S.-originated assets should not be able to avoid these disclosure obligations by issuing the relevant ABS solely outside the U.S. Allowing securitizers to avoid providing transparency by issuing securities outside the U.S. does not seem consistent with the larger goals of financial regulatory reform, and would not properly reflect the global implications of U.S. actions in this arena. As we discuss below, however, we do not believe the filing of the Form ABS-15G should compromise any Regulation S safe harbor on which an issuer relies.

H. The Commission should consider further clarifying the effect of making public disclosures of demands and repurchases in connection with exempt offerings.

As disclosure requirements for ABS expand into exempt offerings, there is an increasing risk that complying with the requirements will jeopardize the exemptions and safe harbors on which those exempt offerings rely. The Commission has acknowledged this issue in footnote 34 of the Proposing Release, where the Commission states that "filing proposed Form ABS-15G would not foreclose the reliance of an issuer on the private offering exemption in the Securities Act of 1933 and the safe harbor for offshore transactions from the registration provisions in Section 5 [15 U.S.C. 77e]. However, the inclusion of information beyond that required in proposed Rule 15Ga-1 may jeopardize such reliance by constituting a public offering or conditioning the market for the ABS being offered under an exemption."[16] We are concerned that this statement will not provide sufficient certainty for market participants.

First, although the statement in footnote 34 is helpful in evaluating the intended effect of these provisions, it does not have the force of law associated with rules issued under the Exchange Act. We therefore believe a statement to this effect should be directly included in proposed Rule 15Ga-1. Second, we are very concerned about the statement that "inclusion of information beyond that required . . . may jeopardize such reliance." We note, for instance, that the Commission has said that, in compiling the form, "[s]ecuritizers would be permitted to footnote the table to provide additional explanatory disclosures to describe the data disclosed."[17] The inclusion of such permitted explanatory disclosures, however, would go beyond providing the information required by the form. Securitizers may therefore be forced to choose between clarifying their disclosures as contemplated by the Commission and jeopardizing their offering exemptions. We do not believe this is an appropriate choice to force upon them. We recommend that the Commission instead take an approach by which Rule 15Ga-1 itself would state that, as long as the information provided is either required under the form or consistent with Commission statements about the permitted contents of the form, the filing of the form would

[16] Proposing Release at 62723 n. 34.

[17] Id. at 62721.

not be considered to constitute a public offering, general solicitation or general advertising or to be conditioning the market for the ABS being offered under the exemption.

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The Committees appreciate the opportunity to comment on the Commission's proposals, and we respectfully request that the Commission consider the recommendations set forth above. Although we have approached the proposals with the goal of discussing them in the level of detail they deserve, their scope—and the many competing legislative and regulatory initiatives affecting securitization at the same time—have resulted in certain issues being left unaddressed. We are prepared to meet with the Commission and its Staff to discuss these matters with them in more detail and to respond to any questions.

Very truly yours,

/s/ Jeffrey W. Rubin
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Chair, Committee on Federal Regulation of Securities

/s/ Vicki O. Tucker
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Chair, Committee on Securitization and Structured Finance

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