American SECURITIZATION FORUM

August 2, 2010

By E-Mail: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attn: Elizabeth M. Murphy, Secretary

Re: Release Nos. 33-9117; 34-61858 (File No. S7-08-10)

Ladies and Gentlemen:

The American Securitization Forum (the "ASF")[1], on behalf of the ASF ABCP Investor Subcommittee, the ASF ABCP Conduit Sponsor Subforum and the ASF ABCP Financial Intermediary Subforum, submits this letter (the "ASF ABCP Comment Letter") in response to the request for comments made by the Securities and Exchange Commission (the "Commission") in Release Nos. 33-9117, 34-61858 dated April 7, 2010 (the "Proposing Release") relating to the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). In particular, the ASF is responding to the request for comments on the proposed information delivery requirements for privately-issued structured finance products, specifically asset-backed commercial paper issued by ABCP conduits of the type described below ("ABCP"), that is offered in reliance on the safe harbors provided for in Regulation D and/or Rule 144A of the Securities Act.

As used in this letter, the term "ABCP conduit" means a special purpose entity that (i) issues highly-rated ABCP, (ii) uses the proceeds thereof to acquire or finance financial assets, and (iii) has access to committed liquidity from one or more highly-rated liquidity provider(s) in an amount not less than the face amount (*i.e.*, principal plus interest through maturity) of all of its outstanding ABCP. Most ABCP conduits are also supported by credit facilities[2] from highly-

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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 340 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com.

[2] Certain ABCP conduit programs may have one agreement that provides both liquidity and credit support in one facility.

rated providers, the sizes of which vary, but typically cover 5%-10% or more of the face amount of the programs' ABCP outstanding from time to time.[3] "ABCP conduit" is not intended to include ABCP issued by issuers such as structured investment vehicles or market value CDOs that do not have access to committed liquidity in support of the issuer's obligation to pay the ABCP in full on its maturity date.

A. Executive Summary

In the Proposing Release, the Commission stated that asset-backed commercial paper is often sold in reliance on private placement statutory exemptions. While technically correct, nearly all ABCP conduit programs provide for resales of ABCP in reliance on Rule 144A. Consequently, the disclosure requirements of the Proposing Release would apply to ABCP issued by these ABCP conduits.

Members of our ABCP Subforums and our ABCP Investor Subcommittee have had extensive discussions about the unique nature of ABCP and ABCP programs and how ABCP is offered in the short-term money markets, including the placement and disclosure relating to those offerings. Our members have also carefully considered the proposed information delivery requirements of the Proposing Release and how they might be applied to ABCP offered in reliance on Rule 144A. The unique characteristics of ABCP programs, which are described above and discussed in more detail below, are: (i) investors in ABCP issued by ABCP conduits make a comprehensive evaluation of the ABCP, relying significantly on the structure of the ABCP program, including the liquidity support (which is always equal to at least 100% of outstanding ABCP) and credit support (typically 5%-10% of outstanding ABCP) and the creditworthiness of the providers of that liquidity and credit support, the underlying asset transactions and their performance, and the experience and policies of the program's sponsor when deciding whether to invest (and re-invest) in such ABCP; (ii) ABCP investors focus less on asset-level information than investors do in other categories of asset-backed securities because an ABCP conduit's assets are not likely to be the primary source of payment of the ABCP—rather, ABCP is expected to be repaid from the proceeds of the issuance of additional ABCP or the proceeds of the credit and liquidity facilities that support the ABCP; and (iii) ABCP has a short term and is continuously offered, thus investors are not locked into their investment and have the opportunity to evaluate continuously whether to re-invest in a particular conduit's ABCP. In addition, ABCP conduits finance a large number of diverse and frequently-changing underlying assets. Accordingly, it would be impractical, if not impossible, for ABCP conduits to comply with the information delivery requirements of the Proposing Release given the volume and detail of asset-level data required by the Proposing Release to be delivered to investors.

For all the reasons described in this letter, we respectfully request that the information delivery requirement of the Proposing Release be modified insofar as it applies to ABCP conduits and recommend, in lieu thereof, an alternative information delivery requirement, based on the types of disclosure and reporting developed throughout nearly a 30-year period by ABCP conduits in response to their investors' demands, but with the enhancements described later in this letter under the heading "**Recommended Changes to Rule 144A as Applied to ABCP Conduits.**"

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[3] Although the liquidity and credit support for the vast majority of ABCP conduits are provided by their financial institution sponsors, some ABCP conduits obtain liquidity and credit support from third-party providers.

B. **ABCP Offering Process**

In the Proposing Release, the Commission recognized that "structured finance product issuers may conduct offerings in reliance on a statutory exemption under the Securities Act without seeking the safe harbor provided by Rule 506 of Regulation D or without representing that the securities are eligible for sale under Rule 144A" and that the proposed information delivery requirements would not apply to such offerings.[4] In particular, footnote 455 of the Proposing Release states: "For example, we understand that asset-backed commercial paper is often sold in reliance on the private placement statutory exemption and the so-called "(4 1-1/2)" exemption for private resales rather than the safe harbors provided under Rule 506 of Regulation D or Rule 144A."

The Commission's statement in footnote 455 is technically correct insofar as ABCP typically is sold by ABCP conduits to investors in Section 4(2) private placements effected through dealers acting as placement agents or "riskless principals." However, substantially all[5] ABCP conduit programs provide for resales of ABCP in reliance upon Rule 144A to facilitate efficient market functioning for the following reasons. First, although the vast majority of primary issuances of ABCP is sold to investors on a same-day basis, ABCP dealers from time to time purchase ABCP from the conduits as principals, hold the ABCP overnight (or, less frequently, for longer periods) and then resell the ABCP in reliance on Rule 144A.[6] This may occur if an ABCP conduit requests its dealers to place ABCP too late in the day for the placement to be completed on that day, or if, on a given day, the ABCP conduit seeks to place ABCP at prices that ultimately do not permit all of such ABCP to be placed on the issuance date, but which the dealers believe are achievable. In such a case the non-placed portion of such ABCP is purchased by the dealers as principals (most frequently on an overnight or other short-term basis) as an accommodation to the ABCP conduit. In these situations, the dealers will typically rely on Rule 144A to effect any resales of the ABCP they have purchased. Second, ABCP investors who wish to resell their ABCP prior to maturity also rely upon the availability of Rule 144A. As a practical matter, because of the product's short term to maturity, the secondary market for ABCP is not very active—certainly far less active than the corresponding market for term asset-backed securities. Nonetheless, many ABCP investors, such as registered 2a-7 money market funds, are subject to regulatory restrictions or investment guidelines that require them to continuously monitor and adjust their investments (which sometimes includes selling ABCP) so as to comply with the risk limiting provisions of Rule 2a-7 of the Investment Company Act of 1940. The ability of these

4 Proposing Release at 23394.

5 See *Short-Term Fixed Income, J. P. Morgan U.S. Fixed Income Markets Weekly* (July 16, 2010).

6 A technical, legal issue arises if ABCP cannot be resold in reliance on Rule 144A. Under Regulation T (through the application of Section 7 of the Exchange Act), net capital requirements are imposed on broker/dealers that advance credit to issuers of debt securities for the purpose of enabling such issuers to purchase securities. For this purpose, broker/dealers are generally considered to be advancing such credit if they purchase debt securities of such issuers and hold such securities overnight; this is not the case, however, if the broker/dealers purchase such debt securities but resell them on the same business day. Technically, an ABCP dealer who holds the ABCP overnight is deemed to be acting as a principal, and so advancing credit to the ABCP conduit, and such accommodating behavior would necessitate that the ABCP conduit provide margin. This would be at best administratively difficult, and perhaps impossible, for ABCP conduits to comply with. The Federal Reserve Board has provided dealers that place ABCP in this manner with an exemption from the requirements of Regulation T, so long as the ABCP is offered in a manner that permits it to be re-sold in reliance on Rule 144A.

investors to sell commercial paper, including ABCP, to QIBs consistent with Rule 144A makes their positions more liquid and, in the case of money market funds, enhances their ability to maintain a stable net asset value in accordance with the requirements of Rule 2a-7.

Consequently, the Commission's conclusion that the ABCP market should not be impacted by the proposal to impose additional information delivery requirements on issuers that rely on Rule 144A is not correct. As described below (and as perhaps implicitly recognized by the Commission in footnote 455 and the related text of the Proposing Release), ABCP conduits, unlike term ABS/MBS issuers, do not really have a choice of either using Securities Act exemptions other than Rule 144A or providing enhanced disclosure of the type described in the Proposing Release. Either result would substantially reduce ABCP volumes.[7]

C. The Information Delivery Requirements of the Proposing Release Should be Modified for ABCP Because ABCP Conduits Have Structural Protections

The stated goal of the Proposing Release is to require offerings of structured finance securities that rely on Rule 144A for secondary market liquidity to provide disclosure to investors consistent with a new, more robust disclosure standard equivalent to the standard that would apply in connection with a public, registered offering of such securities, including asset-level disclosure and periodic reporting of asset performance in a standardized electronic reporting format. ABCP has never been offered through a public, registered offering process, and, accordingly, there is no template for the disclosure and reporting that would be required for such an offering. Furthermore, ABCP disclosure and reporting practices have been developed over a period of nearly 30 years in response to the unique characteristics of the product and the demands of its investors. Due to the short term maturities of most ABCP[8], sponsors of ABCP conduits must continuously consider the sufficiency of, and adjust, the disclosure they provide to investors. If ABCP investors are not satisfied with the disclosure provided by a particular ABCP conduit, they will not purchase such ABCP. If, during the period they hold ABCP, they become dissatisfied with the current disclosure provided by the related ABCP conduit, they will not reinvest in such ABCP at its maturity (and may, indeed, sell such ABCP prior to maturity), and will instead invest in ABCP or other short-term instruments issued by issuers that provide disclosure that is satisfactory to such investors.

As such, ASF ABCP Investor Subcommittee members, which include among them a supermajority of owners of outstanding ABCP, urge the Commission not to apply the public-style information delivery requirements of the Proposing Release to ABCP issued in reliance on the private placement safe harbors. Investors find the disclosure and information reporting in the

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7 Before requesting the relief set forth herein, the ABCP Conduit Sponsor Subforum and the ABCP Financial Intermediary Subforum of the ASF considered other approaches that might permit ABCP to continue to be offered, and to continue to have some reduced amount of secondary market liquidity, even if ABCP conduits made no further use of Rule 144A but relied upon other registration exceptions. If it becomes necessary to implement any of these alternative offering procedures, we believe the amount of ABCP issued will be substantially reduced, as will the volume of ABCP proceeds available to businesses for working capital and core business activities. Further, several ABCP investors have indicated that they would be less likely to purchase ABCP if such ABCP could not be resold in reliance on Rule 144A because they would deem such ABCP to be illiquid.

8 On July 23, 2010, the weighted average maturity of outstanding ABCP was approximately 36 days.

ABCP market to be satisfactory. In fact, these investors would not have purchased such ABCP if they had not found that to be the case. Nonetheless, in an effort to improve the transparency and consistency of the ABCP conduits' market practices, which we believe will be consistent with the goals of the Proposing Release, we recommend an alternative, enhanced information delivery requirement for ABCP conduits, as described below.

ABCP conduits finance numerous, diverse and frequently-changing pools of assets (often including revolving asset pools). ABCP is issued on a continuous basis and maturing ABCP generally is repaid from the net proceeds of a new issuance of ABCP, rather than from the cashflows on the underlying assets. If an ABCP conduit cannot issue ABCP for any reason, the outstanding ABCP is generally repaid from the liquidity provided by highly-rated providers. And, if liquidity is not available in a sufficient amount (*e.g.*, due to the occurrence of losses on the financed assets in an amount that exceeds all available asset-level credit enhancement), a conduit's ABCP is expected to be repaid from the program-wide credit enhancement.

ABCP investors therefore principally base their investment decisions on several factors, including the record of the program, the conduit sponsor's policies and experience, the creditworthiness of the financial institution(s) which provide liquidity and credit support, the conduit's investment guidelines, the maturity of the investor's portfolio, the conduit's disclosure practices and the circumstances in which the conduit may be prohibited from issuing ABCP—in which case the asset performance risk shifts to the liquidity and credit support providers who are required to repay the maturing ABCP. ABCP investors understand that the payments on the financed assets may not be the source of payment on the short-term ABCP they are buying and that they must continuously monitor the foregoing factors. Needless to say, most of these structural protections are not present in other types of asset-backed securities. In particular, it is worth emphasizing that although ABCP investors do monitor the performance of the underlying assets financed by the ABCP conduits, these investors focus their credit analysis less on the likelihood that any individual asset or asset pool will default, and more on whether the conduit will suffer program-wide deterioration of asset pools within a very short time period at levels that exceed both the asset-level credit support and the available program credit enhancement. ABCP investors, in comparison to investors in other categories of asset-backed securities, therefore focus less on individual asset information and much more on program-wide liquidity and credit characteristics and program performance.

In short, ABCP is a unique product in the asset-backed securities market. The features of ABCP listed above, including, its short term, its continuous offering, the absence of a significant secondary market for ABCP, the diversity and revolving and frequently-changing nature of the underlying assets, and significantly, its credit and full liquidity support, clearly indicate why the information delivery requirements of the Proposing Release would be of limited value to ABCP investors. We believe that the enhanced disclosure requirements of the Proposing Release, particularly the emphasis on underlying asset-level reporting, are important, but should be modified for ABCP, due to the features described above. The discussion that follows provides additional details on the bases for our conclusion.

D. <u>Proposed Information Delivery Requirements as Applied to ABCP Conduits</u>

We fully appreciate the need for disclosure in private transactions that enables sophisticated investors to make informed decisions about the securities they are considering for purchase and informed analyses about the securities they own. We believe that the ABCP conduits currently offer ABCP investors most of such information and, as stated below, that the application of the information delivery requirements contained in the Proposing Release to the private offering of ABCP is both unworkable and unnecessary.

1. <u>Public Style Information Delivery is, as a Whole, Not Workable</u>

The Commission proposes to condition an issuer's reliance on the safe harbors for its privately-placed structured finance securities on a requirement that such issuer provide, upon request, the same information to investors that would be required in a publicly-registered offering. Taking into account both current securities laws disclosure requirements for registered offerings and the additional proposed disclosure requirements of the Proposing Release, this would include: asset-level disclosure, in addition to pool data; periodic reporting on asset-level performance using standardized data points for specific asset types; standardized electronic reporting of all information; filing of a computer program that gives effect to the flow of funds provisions of a securities transaction (in a particular form of downloadable source code); and further disclosure, including financial information and experience of, and compliance with obligations by, transaction parties, such as, originators of 10% or more of pool assets, parties who have repurchase obligations and servicers.

The information delivery proposals contained in the Proposing Release would, as a whole, not work if applied to ABCP programs. ABCP conduits finance many different types of assets in numerous transactions, each of which would be subject to the asset-specific information delivery requirements described in the Proposing Release. ABCP offering memoranda, which have traditionally presented information in summary form in reliance on the significant liquidity and credit support provided for the benefit of the ABCP issued by the related ABCP conduit, would therefore be required to contain a volume of asset-level disclosure that would be a substantial multiple of the volume of disclosure that would be required in term asset-backed and mortgage backed securitizations of a single asset type. Some ABCP conduits finance over one hundred different pools of assets, which are originated and serviced by different sellers/servicers. On a practical level, because the assets financed by ABCP programs are diverse, originated by unrelated third parties, often revolving in nature and frequently changing, it is unclear whether an ABCP conduit issuer could ever stay current on the information delivery requirements contemplated in the Proposing Release.[9]

[9] Please note in this regard that ABCP conduits do not originate the assets they finance so they cannot themselves generate the requisite asset-level data. While ABCP conduits could attempt to require their customers to provide such data on a continuous basis, it is likely most ABCP customers would be unable or unwilling to provide such information consistent with the requirements of the Proposing Release. In fact, many of these customers are not themselves issuers of asset-backed securities, and so, they do not have experience, personnel or systems designed to support reporting of the type typically used in term offerings of asset-backed securities.

2. **Public Style Disclosure is Unnecessary in the ABCP Market**

The disclosure included in offering materials in the ABCP marketplace has been developed over the years by ABCP conduits (or their sponsors) in response to the demands of ABCP investors (who are among the most sophisticated investors[10]). An ABCP offering memorandum generally includes: (i) a description of the program documentation, specifically the administration agreement, the program-wide credit enhancement agreement, the liquidity support agreement(s) and the terms under which such liquidity will (and will not) fund; (ii) a general discussion of the investment guidelines which limit the types and credit quality of assets and asset originators that may be financed by such ABCP conduit; (iii) the circumstances under which poor asset performance or other risk events will result in the occurrence of "ABCP stop issuance events", which will promptly shift such asset performance risk to the sponsor financial institution (and/or others) through the liquidity and credit support facilities provided to the ABCP conduit, (iv) a description (including financial information, usually incorporated by reference) of the parties who administer the program and provide its credit and liquidity support and (v) a description of the offering and resale restrictions applicable to such ABCP. The disclosure provided to ABCP investors reflects the unique characteristics of the ABCP markets noted previously and is consistent with the demands of those investors. Accordingly, the public-style information delivery requirements contemplated in the Proposing Release are unnecessary as applied to ABCP programs and would in fact not be helpful or beneficial to ABCP investors.

We also note that the staff of the Division of Investment Management in May 2010 published guidance (the "FAQs Release")[11] to clarify the operation of certain provisions of the Rule 2a-7 amendments approved by the Commission in Release No. IC-29132 (February 23, 2010) (the "Adopting Release"), and that in the FAQs Release the staff stated that a money market fund's board of directors, in performing its duty under Rule 2a-7(c)(3)(i) to determine that each investment purchased by the fund presents "minimal credit risks," is required to "consider all elements relevant to the analyses required to evaluate the ABS' risk", but that the board is not required to "consider other elements discussed in the Adopting Release that the board determines are not relevant for the particular investment." In the Adopting Release, the Commission had stated that any money market fund considering an investment in asset-backed securities should, among other elements that it reviews, "analyze the underlying ABS assets to ensure that they are properly valued and provide adequate asset coverage for the cash flows required to fund the ABS under various market conditions." The subsequent FAQs Release, however, makes clear the staff's view that money market funds considering the purchase of ABCP are not in fact required by Rule 2a-7 to analyze asset-level values or cash flows if the funds determine that such information is not relevant to the credit analysis. We think that the staff's position stated in the recent FAQs Release - as applied to ABCP - correctly permits money market funds to focus their credit analysis on the structure of ABCP conduits and, in particular, on the liquidity and credit support provided for the ABCP, and confirms that funds are not required to undertake time-

10 We note that the largest investors in ABCP (*i.e.*, money market funds registered with the Commission under the Investment Company Act of 1940) are already subject to the risk-limiting elements of Rule 2a-7, which has recently been amended to further limit the credit and liquidity risks to which such investors could theoretically be subject in connection with their investments, including ABCP.

11 *Staff Responses to Questions About Money Market Fund Reform*, Response to Question IV.B.1 (May 25, 2010) (available at http://www.sec.gov/divisions/investment/guidance/mmfreform-imqa.htm).

consuming (but ultimately unnecessary) analyses of asset-level information. In view of the staff's recent statement in the FAQs Release, it would be anomalous for the Commission to now amend Rule 144A to require ABCP conduits to make asset-level information available.

3. Public Style Reporting is Unnecessary in the ABCP Market

Because ABCP is continuously offered and generally matures within a very short time frame, ABCP investors are continuously evaluating the merits of one ABCP program versus another. Components of this evaluation are the relative experience of the program's sponsor and relative strength of the program and the liquidity and credit support providers. To assess this, ABCP investors require continuous and ongoing information about the liquidity and credit support providers, which is generally available to investors through current public filings made by such parties and news services that continuously report on the business affairs and credit quality (including the short-term ratings assigned by nationally recognized statistical rating organizations) of such parties.

ABCP investors also require, and receive, monthly reports regarding the performance of the program and its underlying assets. Monthly reports provided to ABCP investors typically include information such as: (1) the program purchase limits, the aggregate amount of outstanding ABCP, the aggregate amount of commitments, and number of asset pools; (2) a breakdown of program assets then financed by asset type, industry, external ratings of the related originator/servicer, purchase limits, type and amount of credit enhancement, and default statistics; (3) the occurrence of selected transaction-specific amortization events or events of default, and draws on transaction-specific liquidity; and (4) any program-wide events of default and draws on program-wide credit enhancement. Accordingly, because the ongoing reports provided to ABCP investors reflect the unique characteristics of the related ABCP program, and have been developed by issuers (or their sponsors) over years consistent with ABCP investor demands, we believe such information reporting is appropriate and sufficient for ABCP programs.

We recognize that certain segments of the asset-backed commercial paper markets performed poorly after the onset of the global credit and liquidity crisis. In particular, asset-backed commercial paper issued by "structured investment vehicles" ("SIVs") and other non-bank supported market value financing platforms, including market value CDOs, were unable to satisfy their liquidity needs or issue additional short-term securities from the onset of the credit crunch, and were thereafter effectively shut out of the short-term capital markets. These types of financing platforms are very different from ABCP conduits (in fact, as defined in this letter, these types of financing platforms do not constitute "ABCP conduits"). Among the most significant differences are: (i) the SIVs were established as investment vehicles and financed assets on a market value basis; investors in ABCP issued by SIVs were exposed to the market value risk of the financed assets; and (ii) the SIVs did not have access to committed bank liquidity lines in amounts sufficient to provide for the timely payment of one hundred percent (100%) of the face amount of their outstanding asset-backed commercial paper and typically were only required to have approximately fifteen percent (15%) or less of their outstanding commercial paper covered by committed bank liquidity lines. In contrast, ABCP conduits only issue ABCP with one hundred percent (100%) committed liquidity support, and investors in such ABCP are not exposed to any market value risks associated with the financed assets.

4. <u>Application of the Proposed Information Delivery Requirements to ABCP Would Adversely Affect the Economy</u>

ABCP has for nearly 30 years been a very important source of low-cost, short-term financing, satisfying a core component of the financial needs of businesses of all kinds in the United States and globally, from industrial companies to finance and service companies to governmental entities. ABCP financing of corporate America and the global economy remains significant. As of July 28, 2010, ABCP conduits have U.S. $403.5 billion and U.S. $34.4 billion of outstanding ABCP in the U.S. and Euro commercial paper markets, respectively.[12] If ABCP conduits were required to satisfy the information delivery requirements of the Proposing Release, the amount of financing provided through the ABCP markets would be drastically reduced. Given the critical role that conduits play in providing capital markets financing, such a result would be deleterious to the broader U.S. economy.

As described above, ABCP is an important investment product for money market funds and other investors in high-quality, short-term, liquid investments. A direct consequence of making ABCP programs less viable as a financing alternative for bank customers, who view ABCP as an important source of financing for their working capital needs and core business activities, would be a dramatic reduction in the availability of highly-rated, liquid securities for investors. In particular, we observe that recent amendments to Rule 2a-7 require that money market investors, the largest single group of ABCP investors, hold an increased percentage of their assets in short-term securities, including ABCP. Eliminating quality, short-term investment opportunities for investors, including money-market funds, would seem contrary to the Commission's goal of promoting economic recovery through sounder and safer practices in securities offerings.

E. <u>Relief Sought</u>

For the reasons stated above, we do not believe it would be appropriate for the Commission to impose the public-style information delivery requirements proposed in the Proposing Release to ABCP issued by ABCP conduits. We do, however, take seriously the Commission's challenge to determine whether lack of transparency in the offering and sale of certain structured finance products markets contributed to the recent financial crisis. To that end, we recommend to the Commission an alternative information delivery requirement for ABCP conduits, which would involve changes to the information delivery requirements in Rule 144A(d)(4)(iii) in the Proposing Release and Rule 144A(f)(1) set forth in the Proposing Release, in each case for issuers of ABCP offered in reliance on Rule 144A and changes to proposed Form 144A-SF as applied to issuers of ABCP in reliance on Rule 144A.

We are aware that the Commission is receiving responses to the Proposing Release from many interested parties.[13] The relief we request in this letter is tailored specifically to the distinct

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[12] See *Morgan Stanley Short-Term Credit Weekly Update.*

[13] For example, the ASF, on behalf of all of its members in the asset-backed securities market, has today delivered to the Commission a response to the Commission's request for comments to the entire Proposing Release (the "<u>ASF Comment Letter</u>").

characteristics and history of the ABCP market. As we have stated clearly in this letter, ABCP, ABCP conduits and the ABCP market are very different from most other structured finance products in the capital markets. The ABCP market is smaller in number of participants and has a tradition of more direct and ongoing contact among its ABCP conduit issuers, dealers and highly sophisticated investors. These factors allowed our members who participated in the preparation of this letter to reach consensus on the recommended information reporting for ABCP. We recognize, however, that recommendations such as ours would not necessarily work for the broader universe of structured finance products. We express no view in this letter as to whether, or to what extent, the information delivery requirements of the Proposing Release should be applied to other structured finance products.

F. Recommended Changes to Rule 144A as Applied to ABCP Conduits

1. Changes to Rule 144A(d)(4)(iii) in the Proposing Release

While we believe that ABCP is a unique type of structured finance product that in no way contributed to the recent financial crisis and does not suffer from information reporting deficiencies, we acknowledge there is always room for improvement. To that end, we would propose to the Commission an amendment to the information delivery requirements in Rule 144A(d)(4)(iii) that would apply only to ABCP conduit issuers of ABCP. That amendment would provide that each ABCP conduit (or the sponsor or administrator, on behalf of the ABCP conduit) include in an underlying relevant program agreement relating to the ABCP, a requirement to provide, (i) upon request of the holder or upon a prospective purchaser's request to the ABCP conduit, copies of the ABCP offering memorandum, the underlying program documentation (other than customer agreements)[14] and (ii) ongoing information relating to the ABCP program and its underlying assets, which information will include at a minimum the data points listed in Schedule I to this letter and will incorporate standardized definitions as set forth in Schedule II[15]. The attached Schedules have been compiled following extensive discussions among our ABCP market members and reflect the consensus view of ABCP investors, conduit sponsors and financial intermediaries. Each ABCP conduit issuer will also be required to agree in an underlying program agreement to report the ongoing information in at least one reporting format (XML or comparable format, subject to resolution of data security concerns) that will

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[14] Program documentation are the program-level agreements entered into by the ABCP conduits, such as, management agreements, administration agreements, collateral and security agreements, program-level credit and liquidity agreements, issuing and paying agent agreements, depositary agreements and swing line agreements. Customer agreements are the documents related to the underlying transactions financed by the ABCP conduits and would include the receivables and asset financing agreements, servicing agreements and transaction-specific credit and liquidity agreements.

[15] We feel the need to point out to the Commission that, as described in this letter, the ABCP market is a frequently-changing one. As new assets are financed by ABCP conduits, the conduits and their sponsors/administrators will need the flexibility to modify the data points and standardized definitions to accommodate those new assets types, while adhering to principles of transparent and uniform reporting. We also observe that while they share the distinctive features described in this letter, ABCP conduits are all unique businesses, each with its own structural details, management style, software programs, different asset portfolios, etc. These differences, too, will necessitate, some flexibility in reporting. However, the ABCP market participants are committed to carrying out the principles and spirit of the information reporting recommendations in this letter, as evidenced by their active participation in the letter's preparation.

allow investors to sort the data, evaluate the ABCP program's performance and compare different ABCP programs.

2. Changes to Proposed Rule 144A(f)(1) and Form 144A-SF

As stated in the ASF Comment Letter, the ASF fully supports the Commission's proposal to require a notice of the initial placement of securities to be filed with the Commission on proposed Form 144A-SF for the initial placement of structured finance products that are represented as eligible for resale under Rule 144A. The ASF ABCP Conduit Sponsors' Subforum and the ASF ABCP Financial Intermediaries Subforum endorse the broader market view. There are, however, a few elements of the notice contemplated in proposed Rule 144A(f)(1) and Form 144A-SF that do not work for ABCP programs.

An issuer of ABCP under an existing ABCP program which has relied, and continues to rely, on the Rule 144A safe harbor cannot file Form 144A-SF within 15-calendar days after the first sale of ABCP under that program. The first sale of ABCP by such an issuer has already occurred, perhaps years ago. And, due to the continuous offering of ABCP—indeed ABCP is sold on a daily basis—it would be impractical for an ABCP issuer to file a Form 144A-SF within 15-calendar days of each such sale after the effectiveness of proposed Rule 144A(f)(1). Such a filing requirement would be extremely burdensome and would provide investors with little or no useful information (in many instances, the issued ABCP would have already matured).

We propose, therefore, that (i) each issuer of ABCP under an ABCP program in existence at the time proposed Rule 144A(f)(1) becomes effective that represents that its ABCP is eligible for resale under Rule 144A be required to file a Form 144A-SF within 15-calendar days after the effectiveness of proposed Rule 144A(f)(1) and (ii) each issuer of ABCP under an ABCP program first established after the effectiveness of proposed Rule 144A(f)(1) that represents that its ABCP is eligible for resale under Rule 144A be required to file a Form 144A-SF within 15-calendar days after the first sale of such ABCP (unless, in either case, the end of that period falls on a Saturday, Sunday or holiday, in which case the due date shall be the first business day following such period).

Further, ABCP conduits do not identify the originators, sponsors or servicers of the underlying transactions financed by them. Any information included in a Form 144A-SF with respect to the underlying assets financed by an ABCP conduit would quickly become outdated because of the frequently-changing composition of those underlying assets. Therefore, we propose that an ABCP issuer be exempt from providing the following information in its Form 144A-SF notice: (i) in Item 1(b), the identity of the principal originators, servicers and collateral managers for the underlying pools and (ii) in Item 2(c), the description of the specific underlying pools of assets and securities.

3. Conforming Changes to Regulation D

We also believe that the same amendment to the information delivery requirements for ABCP issuers proposed above with respect to Rule 144A and the same exemption for ABCP issuers with respect to Form 144A-SF should be included in the proposed amendments to Regulation D and related Form D in the Proposing Release, as some ABCP issuers may elect to rely upon Rule 506 of Regulation D in connection with the initial sale of their securities whether or not Rule 144A is available to, or utilized by, them for resales.

G. Conclusion

As we have emphasized in this letter, ABCP plays an important role in the financing needs of many businesses. As the economy begins to recover and businesses again begin to expand, the availability of ABCP will be critical. As the Commission is well aware, promoting liquidity and encouraging investment will also be critical components of economic recovery. These goals, of course, must be tempered with the need for laws and regulations that protect the investing public. We understand that the enhanced disclosure requirements set forth in the Proposing Release are intended to permit the continued issuance of ABCP while protecting the interests of investors. However, we believe that the application of the Proposing Release's public-style enhanced disclosure requirements to the ABCP market will effectively put ABCP conduits out of business and thereby extinguish a significant source of business and consumer financing and high credit quality liquid investments for money market investors. We also firmly believe that these deleterious consequences will occur in a marketplace where investors have not been put at risk due to a lack of transparency or deficient information reporting. Accordingly, for the reasons set forth herein, we urge the Commission to modify its proposals as requested in this letter.

The ASF very much appreciates the opportunity to provide the foregoing comments in response to the Commission's Proposing Release. Moreover, the ASF would welcome the opportunity to discuss the matters addressed in this letter in an in-person meeting with the Commission's staff at your convenience. Should you have any questions or desire clarification concerning the matters addressed in this letter, please do not hesitate to contact me at 212.412.7107 or tdeutsch@americansecuritization.com or ASF's outside counsel on this ASF ABCP Comment Letter, James Croke of Orrick, Herrington and Sutcliffe LLP at 212.506.5085 or jcroke@orrick.com.

Sincerely,

Tom Deutsch

Tom Deutsch
Executive Director
American Securitization Forum

cc: Via Hand Delivery
The Honorable Mary L. Schapiro, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Kathleen L. Casey, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Elisse B. Walter, Commissioner
Meredith B. Cross, Director, Division of Corporation Finance
Paula Dubberly, Deputy Director, Division of Corporation Finance
Katherine W. Hsu, Senior Special Counsel, Office of Rulemaking
Rolaine S. Bancroft, Special Counsel, Office of Structured Finance, Transportation and Leisure

SCHEDULE I

DATA POINTS TO BE REPORTED BY ABCP CONDUITS

Program Information

- Program Size – Maximum Authorized
- Program Establishment Date
- Program Size – Total Commitments
- Program Size – Issued ABCP
- Program Ratings
- Program Dealers
- Liquidity Providers – Total $ and by Percent of program; Ratings of Providers
- Program Credit Enhancement - form and required $ amount, $ amount available, and % of issued and Total Commitments
- Program Credit Enhancement Provider(s) – By $ and % of issued ABCP; Ratings of Provider(s)
- Number of Transactions/Assets
- Section 2a-7 Disclosure
- Five Largest Transactions by Purchase Limit (Identify Transaction #, Asset Type and Purchase Limit)

Program Compliance Events (yes or no)

- Bankruptcy of Conduit
- Program Event of Default and Status
- Program Credit Enhancement Draws
- Liquidity Draws (if program-wide liquidity)
- Committed Liquidity plus Permitted Investments greater than or equal to issued ABCP
- Committed Credit Enhancement greater than or equal to Program requirement

Aggregate Asset Composition Charts

- Asset Type - $/% Commitment/ and $/% Outstandings (Assets or ABCP)
- Industry of Servicer (based on SIC codes)
- External Seller/Servicer Rating(s)
- External Asset Pool Rating(s)
- Currency - % Assets

Transaction-Specific Asset Data/Performance – line items by transaction (if applicable/available)

- Asset type (based on standardized Asset Definitions in Schedule II)
- Closing Date

- External Rating(s) of Deal (if any)
- Industry (based on SIC codes)
- External Rating(s) of Seller/Servicer (if any)
- Purchase Limit
- Funded Amount
- Revolving/Amortizing
- Measure of Collections (applicable metric and method of measurement, *e.g.*, payment rate, days sales outstanding, turnover rate, other)
- Aggregate Outstanding Eligible Receivables/Asset Balance
- Number of Obligors/Accounts
- Form of Credit Enhancement (if multiple Credit Enhancements, specify breakdown)
- Available Credit Enhancement Amount (as % of Receivables/Asset Balance)
- Current Month Default Ratio (with basis of presentation)
- 12-Month Average Default Ratio (with basis of presentation)
- Current Month Defaults Relative to Credit Enhancement
- Description of Liquidity (including External Ratings of Providers, Fully - or Partially-Supported)
- Current Default/Early Amortization relating to payment, asset performance or bankruptcy (yes or no and Identify) and Status (waived, plan for resolution, wind-down)
- CUSIPs, if applicable, and whether publicly-issued or 144A Securities[*] and Asset type

Period Program Activity

- Asset Additions (types and $ amounts), Exiting Assets (types and $ amounts) and Reason (refinanced, liquidated, maturity, liquidity draw), Commitment Reductions and Increases

Notes: Each report including the data points above provided by an ABCP conduit to its investors will (i) provide information as of a period-end date no earlier than two (2) calendar months before the month in which the report is delivered and (ii) will specify contact information (name, phone number, e-mail address) for the ABCP conduit.

[*] For 144A Securities, to include notation that ABCP investor can request further information from the sponsor or administrator.

SCHEDULE II

ASSET DEFINITIONS

Aircraft and Engine Leases – Leases of airplanes or equipment pertaining to the aircraft industry

Agricultural Loans/Leases – Loans and leases of agricultural equipment, usually to farmers

Auto Leases – Consumer auto-related leases

Auto Loans (Prime) – Prime consumer auto-related loans

Auto Loans (Sub-Prime) – Sub-prime consumer auto-related loans

Capital Commitments – Loans to investment funds in advance of funded capital calls

CBO & CLO – Receivables from collateralized bond obligations or collateralized loan obligations

Closed-End Mutual Fund Financings – Loans made by SEC-registered mutual funds to customers

Commercial Auto Fleet Leases/Loans – Leases and loans of automobiles to commercial companies under fleet management arrangements

Commercial Loans – Loans made to businesses

Commercial Mortgage Loans – Mortgage loans on commercial properties

Consumer Loans – Loans made to consumers

Credit Cards (Prime) – Receivables generated by prime consumer or business credit card accounts

Credit Cards (Private Label) – Receivables generated by consumer or business private-label credit card accounts

Credit Cards (Sub-Prime) – Receivables generated by sub-prime consumer or business credit card accounts

Equipment Leases – Leases of equipment, usually to businesses

Equipment Loans – Loans of equipment, usually to businesses

Floorplan (Auto) – Loans made to dealers for the purpose of financing automobile inventory

Floorplan (Equipment) – Loans made to dealers for the purpose of financing equipment inventory

Floorplan (Other) – Loans made to dealers for the purpose of financing inventory (other than auto or equipment)

Franchise Loans – Loans made to owners of franchise businesses

Future Flow – Amounts owing from the future sale of goods or services (including film, whole business, diversified payment rights, tobacco)

Government Agency-Backed Financings – Financings backed by Agency bonds

Government-Guaranteed Loans – Loans backed by the obligor's government

Home Equity Loans – Loans taken by consumers against the value of their home

Insurance Premium Finance – Financings secured by premiums owed by insured parties to insurance companies

Rental Fleet – Leases or loans on vehicle fleets rented to consumers or businesses

Residential Mortgage Lines – Warehoused consumer mortgage loans

Residential Mortgage Loans – First Lien Alt-A consumer mortgage loans

Residential Mortgage Loans – First Lien Prime consumer mortgage loans

Residential Mortgage Loan – First Lien Sub-Prime consumer mortgage loans

Residential Mortgage Loans – Second Lien consumer mortgage loans and HELOC (Home Equity Lines of Credit)

Servicer Advances – Loans backed by super-priority advances to RMBS or equipment trusts

Structured Settlements – Monetization of insurance settlements

Student Loans (FFELP) – Government-Guaranteed Loans made to post-secondary students

Student Loans (Private) – Student Loans made to post-secondary students, no government guarantee

Timeshare Receivables – Loans made for the purchase of a residential property timeshare

Trade Receivables – Amounts owing from the sale of goods or services

Vendor Financings – Equipment leases and loans with recourse to vendors of equipment