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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
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RE: SEC NOTICE OF PROPOSED RULEMAKING FOR ABS – EQUIPMENT LEASING AND LENDING
(SEC FILE NO. S7-08-10)

This letter is a response by the Equipment Leasing and Finance Association (ELFA) to the SEC's Notice of Proposed Rulemaking with respect to Regulation AB particularly as the proposed rules relate to equipment leasing and finance within the United States. (SEC FILE NO. S7-08-10)

Reference is made to Federal Register / Vol. 75, No. 84 / Monday, May 3, 2010 which contains the SEC's proposed rules relating to 17 CFR Parts 200, 229, 230, 232, 239, 240, 243 and 249 (Asset-Backed Securities). Page Numbers in this letter refer to the Federal Register.

Background on ELFA

The Equipment Leasing and Finance Association (ELFA) is the trade association that represents financial services companies and manufacturers in the $650 billion U.S. equipment finance sector. Equipment finance provides a significant source of funding for both small and large commercial enterprises in the United States and is a significant contributor to capital formation in the U.S. and abroad. Overall, business investment in equipment and software accounts for 8.0 percent of the U. S. Gross Domestic Product (GDP) and the commercial equipment finance sector contributes about 4.5 percent to the GDP.

ELFA members are the driving force behind the commercial equipment finance market, providing credit every business day to nearly every business sector in the country. ELFA members finance the acquisition of all types of capital equipment, including commercial and corporate aircraft, rail cars and rolling stock, trucks and transportation equipment, vessels and containers, construction and off road equipment, medical technology and equipment, IT equipment and software and virtually every other type of equipment.

The ELFA has more than 500 members including (i) independent leasing and finance companies, (ii) captive finance companies, (iii) commercial banks, (iv) diversified financial services

companies, (v) investment banks and (vi) service providers including law firms, accounting firms, trustees, servicers, custodians and others who assist in the financing of equipment leases and loans. ELFA members include (a) many of the nation's largest financial services companies and manufacturers, (b) regional and community banks and (c) independent medium and small finance companies throughout the country. ELFA members' clients range from Fortune 100 companies to small and medium sized business enterprises to governments and non-profits.

The ELFA represents virtually all sectors of the equipment finance market and its members see virtually every type of equipment financing transaction conducted in the United States. ELFA members who are service providers to the equipment finance industry (such as lawyers, accountants, trustees and vendors) have a unique vantage point of seeing scores of financial transactions from initial concept to final payout and from the perspective of both the borrower/issuer and lender/investor. ELFA truly is at the heart of equipment finance in the United States.

Summary

The equipment finance sector provides a significant source of funding for small businesses and a valuable alternative source of funding for large businesses in the United States. We are concerned that the SEC's proposed revisions to Regulation AB would impose significant costs and burdens on equipment finance providers, and limit their access to the securitization market, without providing real added value to investors in Equipment asset backed securities (Equipment ABS). Equipment finance providers have already been harmed by the financial crisis in the United States and have limited access to the capital they need to continue to extend credit to their customers. Many equipment lessors and lenders may not survive additional costs and limitations on funding which would significantly decrease the availability of equipment leasing and loans to operating companies, increase equipment finance costs and harm the United States' economic recovery.

No data has indicated any correlation between practices in the equipment finance sector and causes for the U.S. financial crisis. In addition, we are not aware of any significant defaults in securitizations involving Equipment ABS. Although defaults and delinquencies on equipment leases and loans backing Equipment ABS did increase significantly as the U.S. economy deteriorated, unlike collateralized debt obligations (CDOs) and residential mortgage-backed securities (RMBS), this did not translate into a sudden and precipitous drop in the valuation or performance of Equipment ABS.[1] We believe that the relatively stronger performance of

[1] See, for example, Moody's Investors Service, "Structured Finance Ratings Transitions: 1983-2009" (March 2010, Analyst Contacts: Julia Tung and Nicolas Weill) reporting that during 2008 and 2009, the downgrades in US Home Equity Loans were 54.7% and 47.4%, the downgrades in US RMBS were 37.2% and 74.7%, the downgrades in US CDOs were 48.1% and 66.8% and the downgrades in US Equipment Leases were 5.6% and 9.3% (Figure 1: "Global Structured Finance 12-Month Downgrade and Upgrade Rates by Sector in 2009, 2008 and Averaged over 2000-2009" at page 2).

Equipment ABS is attributable in large part to the already sound practices followed by issuers in this sector, including (i) historic risk retention that is well in excess of five (5) percent, (ii) stronger underwriting practices for equipment finance contracts as compared to mortgage lending and (iii) more conservative valuations for equipment as compared to housing. In addition, because Equipment ABS offerings are typically smaller and less frequent, and the overall volume of Equipment ABS transactions completed each year significantly less than in most other sectors of securitization, the investor base for Equipment ABS is smaller, more sophisticated and better informed than investors in more generic MBS securitization offerings. As a result, application of many of the SEC's proposed reforms to Equipment ABS issuers is unwarranted and we strongly believe that the small benefits, if any, derived by investors in Equipment ABS would be significantly outweighed by the substantial costs imposed on the equipment finance sector as a whole. This in turn could further curtail funding for both small and large businesses in the United States.

The U.S. capital markets are extremely important to equipment lessors/lenders because they operate a highly-capital intensive business, essentially financing equipment used by operating companies in the production of goods and services in exchange for cash flow (in the form of lease/loan payments) that will repay the lessors/lenders only over a period of several years. Equipment lessors/lenders tend to be relatively highly leveraged with significant bank loans and securities issuances. During the past twenty years, equipment lessors/lenders have been significant users of securitization facilities by offering securities backed by lease/loan cash flow and equipment residual values to investors in equipment asset backed securities. The securitization market has been a valuable alternative to the bank loan market and provided access to institutional investors (such as pension plans, insurance companies and investment funds) that provide a meaningful complement to traditional syndicated bank loans -- this has allowed both banks and institutional investors to diversity their portfolios.

The efficient functioning of the securitization market is of vital important to ELFA members. The ELFA appreciates the efforts of the SEC to appropriately regulate the asset backed securities market, provide increased investor confidence in the securitization marketplace and minimize the likelihood of future financial crises that affect the capital markets. ELFA generally applauds the changes suggested by the proposed revisions for Regulation AB to the extent that they will increase the transparency of asset backed securities and increase investor confidence, thereby creating greater stability in the capital markets and decreasing funding costs for capital. As the SEC has noted through the Proposed Rules, a cost-benefit determination is needed for every proposed regulation to ensure that the costs that are imposed on the issuer community are outweighed by the benefits to the investor community so that the capital markets operate efficiently and there are not unintended increased costs on a different sector of the capital markets.

We believe that certain aspects of the proposed rules do not provide a significant benefit to the investor community but do impose significant costs on potential issuers. Those proposed rules taken as a whole may cause a substantial decrease in the number of Equipment ABS transactions

that occur (especially for smaller or infrequent issuers) and may cause issuers to instead seek additional lending from traditional syndicated loan facilities provided by banks. That will decrease the investment opportunities for institutional investors, decrease the overall capital available to equipment lessors/lenders and result in overall increased higher financing costs -- which are passed on to operating companies in the form of higher lease/loan rates and then to consumers through higher costs. This letter highlights the particular proposed rules that we believe are problematic for the equipment finance industry and suggests alternatives which will promote an optimal cost-benefit solution.

I. The asset-level disclosure requirements for Equipment ABS go substantially beyond that which matters to a reasonably prudent investor while being very costly to implement (particularly for smaller and infrequent issuers) and raising significant competitive and privacy concerns.

Most Equipment ABS transactions contain a pool of equipment finance contracts backed by widely diversified equipment types, obligors, industries and geographic locations such that no one equipment finance contract is material to an investor in the security. In our experience, only in aircraft ABS transactions are the individual pieces of equipment important to an investor and only in certain Equipment ABS transactions (such as aircraft, railcar and certain other transportation assets with high obligor concentrations) are individual leases/loans important to an investor. Instead, investors prefer to review pooled portfolio-wide information more akin to the "grouped account data" suggested by the SEC for credit card securitizations (Page 23360) because the grouped data is easier to analyze and understand. We have been told by investors that "more information is not necessarily better information" and are concerned that the vast quantities of information being requested will tend to blur the line between material and non-material information. **We propose that unless an individual lease/loan represents more than 3% of the total transaction size, no asset-level information be required and instead that Equipment ABS should be exempt from the requirement to provide asset-level data.**

One investment banker has stated that in his twenty years of experience involving several dozen Equipment ABS transactions, no investor has ever requested asset-level information for Equipment ABS. And the treasurer of a small ticket equipment lessor who has completed seven transactions during the past five years (including two after the start of the U.S. financial crisis) stated that investors in Equipment ABS simply do not rely on the detailed asset-level information that the SEC is proposing. (Pages 23355-23361)

Asset-level data could be used by competitors of a borrower/issuer to derive proprietary pricing and underwriting data for individual assets as well as its confidential business strategy. We understand that certain Equipment ABS issuers would exit the securitization market rather than risk having their proprietary information revealed to competitors. Asset-level data could also create privacy concerns for equipment lessors/lenders who are concerned that information about their individual customers could be obtained by reverse-engineering the data to discover confidential information about an individual customer's leases and equipment -- this would

impact the reasonable expectation of privacy for such customers and potentially reveal competitive information about the number and types of equipment being leased by such customer to the customer's business competitors. **We propose that if asset-level information is required, it be reported solely in groups that are sufficiently broad to avoid revealing (i) proprietary pricing and underwriting criteria and (ii) any information that could identify a specific customer.**

The Notice of Proposed Rulemaking requests comment on whether the SEC should require data points on the obligor's ability to pay an equipment lease/loan. (Pages 23357-23358) For equipment leases and loans that are commercial obligations, the underwriting for them typically does not contain FICO scores or underwriting of Obligor's income and ability to pay. That the originator/underwriter/servicer does not even collect such information indicates its unimportance because, for Equipment ABS, the originator typically holds the residual value of the securitization and expects to derive substantial cashflow from its residual interest. Because the types of equipment and lessees vary significantly, each lessor/lender has developed its own underwriting process which may include the importance of the equipment to the Obligor's business, the ease of remarketing to other end users at the end of a lease term, the ease of repossession or the possible alternative equipment available. The best indication of performance of a lease/loan portfolio generally is past performance of a similar lease/loan portfolio by that issuer/sponsor/servicer and not a particular obligor's creditworthiness. We also note that FICO scores are not universally used; instead, lessors/lenders may use Dun & Bradstreet ratings, Dynamar ratings, other rating services or proprietary internal credit scores (which may not have any analogous counterpart). (Page 23360)

The SEC has requested information about the possible cost of implementing the additional asset-level disclosure requirements. (Pages 23356 and 23359-23360) One computer systems vendor has estimated that the cost to implement a computer system to monitor and produce the additional asset-level information proposed by Reg AB would be approximately $250,000 in direct programming costs plus the additional staff time devoted to preparing such reports and posting them. This suggests that particularly for infrequent issuers, the cost of providing such information is prohibitive for Equipment ABS in a similar manner to the prohibitively high cost that the SEC's staff has identified for credit card ABS. (Page 23360) For this reason, most funding sources to equipment finance companies review and track static pool data (which tracks pools of leases and loans originated during the same period, typically a month or quarter) and use of this metric is commonly requested by investors in Equipment ABS.

Equipment ABS transactions have ranged from $50 Million to in excess of $1 Billion and range from issuers/servicers/sponsors who may issue Equipment ABS nearly every month to those who conduct an ABS transaction only once every 18 months or even less frequently. The cost-benefit analysis for these different types of transactions varies significantly. The implementation cost and on-going compliance cost for a monthly issuer with an average of $500 Million per issuance can readily be spread over several Billion dollars of transactions annually and the SEC's current Reg AB rules for public transactions appear reasonable to protect the economy from systemic

risk caused by such an issuance program. However, the implementation cost and on-going compliance cost for an infrequent issuer with an average issuance of less than $300 Million annually cannot be spread so broadly and an infrequent issuer simply does not present the same systemic risk to the economy. **We propose that the SEC modify the proposed rule to apply solely to issuers who (with their affiliates) issued more than $300 Million in any calendar year during the preceding 3 calendar years**. Absent such a modification, small and infrequent issuers simply will not have access to the securitization market because of the increased costs that the proposed Regulation AB will impose. They may be expected to migrate to the syndicated bank loan market, thereby increasing pricing on bank loans and reducing the opportunities for institutional investors to diversify into equipment assets all of which will decrease the capital available to equipment lessors/lenders and increase costs to lessees/borrowers.

II. <u>The treatment of private Rule 144A and Reg D transactions akin to public transactions creates substantial confidentiality concerns while providing little benefit to investors.</u>

In the Equipment ABS sector, first-time issuers, issuers of unusual assets and infrequent and small-issuers have typically used the private Rule 144A and Reg D market rather than the public market. The private market has offered the advantages of a negotiated process between issuers and investors so that investors can obtain information that they reasonably need to make investment decisions while issuers retain confidentiality of key business information. In our experience, investors have routinely requested and received information about the underlying portfolios -- both initially and through on-going reporting covenants -- that they need to make an initial investment decision and to monitor the on-going performance of their collateral. There has been very little secondary market trading in the Equipment ABS sector; instead the securities are generally purchased to be held by an investor as part of its overall portfolio and the securities rarely change hands (although the liquidity provided by Rule 144A is a noticeable advantage for insurance companies and other institutional investors). Current transaction documents provide for confidentiality of business information but typically allow investors to share that information with prospective purchasers. Transactions also often contain a “further information” covenant that requires the issuer/sponsor/servicer to provide additional information that is reasonably requested by the investor; that covenant allows existing investors to obtain additional information on behalf of a prospective purchaser. There simply is not the need for either (i) the detailed initial disclosure of a proposed Equipment ABS transaction as contemplated by the Notice of Proposed Rulemaking or (ii) the on-going posting of periodic information on a website to allow potential purchasers to assess the security. (Pages 23398-23399) Instead, there are very good business reasons for issuers to reasonably expect the confidentiality of their business information -- particularly to withhold that information from existing or potential competitors who would otherwise receive an unfair competitive advantage if the information were disclosed. In our experience, issuers/sponsors of Equipment ABS often negotiate to block acquisition of an Equipment ABS security from their direct competitors for exactly the reasons described above while otherwise allowing essentially free transferability of the securities to financially sophisticated investors. **We propose that (i) the initial disclosure of a proposed issuance as**

contemplated by the Notice of Proposed Rulemaking and (ii) the on-going posting of periodic information on a website to allow potential purchasers to assess the security both be omitted with respect to Equipment ABS.

The SEC has also proposed that the "basic structure of the securitization" be publicly disclosed in the notice of the offering of securities under Rule 144A. (See page 23398.) In our experience, certain issuers/sponsors of Equipment ABS have expended significant effort, time and expense in creating unique structures for their securitization transactions in order to provide an additional benefit to investors, provide for additional tax or equity investors or to provide for additional hedging or risk reduction for investors. Because of the creativity, time and expense involved in creating such structures, issuer/sponsors may view the basic structure of their transaction to be proprietary and do not wish to publicly disclose that structure to competitors (although such structure can, of course, be disclosed as needed for tax, accounting and regulatory reasons). As discussed above, an issuer/sponsor may determine that a private placement under Rule 144A appropriately allows for the issuer/sponsor to control the investors to whom such transaction is shown and to control the confidentiality of that structure. **We propose that Equipment ABS be exempt from the requirement to disclose the "basic structure" of a transaction.**

III. <u>The requirement to provide residual values for individual items of equipment is particularly troublesome and fails any reasonable cost-benefit test.</u>

We believe that the required disclosure of the residual values and sources thereof for automobile leases and equipment leases should either be eliminated or modified. (Page 23365) This information may be modeled by the sponsor using proprietary techniques and accordingly disclosing such amounts on an individual basis could significantly harm the sponsor's competitive position by revealing to its competitors how the sponsor values specific equipment classes. Furthermore, residual values are generally not treated as a valuable component of the collateral when sizing the amount of the offering, and so in most situations investors are not relying on any specific asset-level residual value to support the Equipment ABS. **We propose that (i) residual values only be required to be disclosed when they are a material element of the overall credit enhancement for the asset-backed securities and (ii) the disclosure should be on an aggregate basis for the entire asset pool, rather than an asset-by-asset disclosure for each item of equipment.** Notwithstanding the foregoing, with consumer vehicles that have a universally agreed-upon residual value, such as vehicles listed in the Kelley Blue Book, the required disclosure of residual values on an individual basis may be justified.

Furthermore, equipment investors have preferred to rely upon portfolio-wide residual values for equipment included in an Equipment ABS transaction. Equipment lessors/lenders do not typically monitor residual values for individual items of equipment in their portfolio on a monthly basis. Instead, they book residuals at the time a lease is originated and then monitor the actual proceeds they receive from dispositions of equipment at the time equipment is returned. Investors rely on this historical realization of equipment residual values to determine the

capability of a servicer to successfully manage residual values and, in transactions in which residual value is important, to require (i) on-going reporting on the actual realization of residual values as well as (ii) amortization events or similar trigger events to collect additional cashflow if the actual realization of equipment residual values varies significantly from historical realization rates. Many well-established equipment lessors/lenders have a track record of collecting significantly more than their booked residual values on returned equipment due to their knowledge and experience in the equipment industry.

We propose that instead of asset-level residual value information on a monthly basis, the SEC require (i) disclosure of historical realization rates on residual equipment values on a portfolio-wide basis or within specific category bands and (ii) periodic reporting of actual realization rates on a portfolio-wide basis. That level of disclosure is similar to that currently provided by issuers and provides investors with a realistic view of actual realization rates.

Many equipment lessors/lenders view their residual values as proprietary and believe that disclosing them publicly on an individual asset level would provide an unfair advantage to competitors who have not invested the same time and effort into developing residual values. Because the residual values are a component of pricing equipment leases, providing individual residual values inappropriately divulges an element of pricing information to competitors. Typically, investors have preferred to rely upon portfolio-wide residual values for equipment included in an Equipment ABS transaction and that portfolio information appropriately balances confidentiality and investor disclosure. **In the event that the SEC does determine that asset-level residual values are important, we propose that the SEC provide for a minimum original equipment value of $500,000 to require individual residual values where there is not an industry-wide source for residual values (such as the Kelley Blue Book for automobiles).**

IV. Obligor-specific information related to automobiles should be limited to consumer obligors and not be required in Equipment ABS transactions that primarily relate to commercial lessee/borrowers and non-automobile equipment.

We believe that the extensive disclosure requirements for automobile leases/loans should be clarified. Many of the required fields, such as the obligor's credit score, employment history, wage income, and co-obligor data, are uniquely oriented to consumer obligors. (Page 23365) As such fields do not have equivalent measures for commercial obligors, **we propose that such fields be required only for automobile receivables owed by consumer (as defined in the UCC) obligors. We further propose that auto leases/loans involving commercial obligors be treated as equipment obligations, with the attendant disclosure required of that asset class.** This uniform treatment would coincide with the increasing tendency for Equipment ABS to include a noticeable minority of contracts for delivery vans, off-road mobile equipment and other specialty vehicles used by commercial operators.

V. The proposed definition of “Servicer” is too broad and includes parties that are merely “trustees” or “collection account custodians”.

The SEC defines "Servicer" as one who "is responsible for the management or collection of the pool assets or making allocations or distributions to holders, regardless of the entity's title." (Page 23383). This definition, read broadly, would include "trustees" and "collection account custodians" who merely hold legal title to a cash collection account and distribute funds according to a pre-negotiated payment priority. Such trustees and custodians do not exercise any independent discretion in determining payments and do not have the power to influence the collection or management of lease/loan assets. It is not relevant for an investor to receive "a detailed discussion … of the servicer's experience", a public accounting firm's attestation of compliance, financial condition, financial statements or other detailed information about such ministerial parties. To require such additional information will expense in the form of increased trustee fees, increased auditor costs and increased legal fees without providing significant additional useful information to investors. **We propose that the definition of Servicer be revised to relate solely to those entities responsible for (or with the power to influence) the management or collection of pool assets with independent discretion in determining allocations or distributions to holders.**

VI. <u>The proposal to require a fraud representation does not benefit investors but does create significant concerns for Equipment ABS issuers -- therefore it fails a reasonable cost-benefit test.</u>

We believe that disclosure of whether a "fraud representation" is included among the representation and warranties is neither useful nor warranted. (Page 23377) The typical Equipment ABS transaction already has a few dozen representations about the specific origination, underwriting and performance of the underlying equipment and leases/loans. A general "fraud representation" is difficult to make due to the potential chain of parties involved in a single lease/loan including the lessee, manufacturer, dealer, broker, lessor/lender and servicer. It is unclear from which of those parties a "fraud representation" would emanate and it is inappropriate to ask the sponsor or an issuer to represent that a different party has not committed fraud -- instead the issuer might, itself, be the primary victim of a fraud perpetrated by another party. In our experience, fraud has generally not been a significant problem in past Equipment ABS transactions because of the underwriting and due diligence conducted on each portfolio. We also note that a party who is committing fraud is unlikely to be dissuaded from making a representation that fraud is not being committed. Instead, the desire by the issuer/sponsor to realize the cash flow from proper performance of the underlying assets (through the residual interest) serves as a powerful incentive to properly underwrite leases/loans and to perform due diligence against fraud in a portfolio. In our experience, unlike in the RMBS market, Equipment ABS is typically "seasoned" by at least one month (and sometimes up to one year or more) before being included in a securitization transaction. During this seasoning, the underlying lessee will have made at least one scheduled payment which significantly decreases the risk of fraud in a transaction. Furthermore, to our knowledge, no Equipment ABS transaction has been tainted by the type of fraudulent appraisals or income misstatement which have been attributed to certain RMBS transactions. **We propose that the SEC require simply**

restating or identifying the specific fraud representation, if any, included in the transaction rather than including a binary response to whether or not there is a fraud representation.

VII. Disclosure of Originators comprising more than 10% of originations are of little value to investors if leases/loans are reunderwritten by sponsors and such disclosures create confidentiality concerns for issuers.

We believe there should be modifications to the requirement to identify originators of 10% or more of pool assets "if the cumulative amount of assets originated by parties other than the sponsor (or its affiliates) comprises 10% or more of the total pool assets". (Page 23381) Generally, assets not originated by the sponsor are reunderwritten by the sponsor prior to any Equipment ABS offering to support the sponsor making new eligibility representations as each receivable is added to the asset pool. Investors rely upon these sponsor representations and the accompanying repurchase obligations, rather than attributing any importance to the underlying originator. Accordingly, the identities of the underlying originators are typically of little value to investors. Requiring disclosure of the identities of originators would put the sponsor at a competitive disadvantage by revealing its broker channels to its competitors. **We propose that these concerns be addressed by requiring disclosure of originators who have originated more than 10% of the assets only if the cumulative amount of originated assets by parties other than the sponsor (or its affiliates) comprises more than 50% of the total pool assets.**

VIII. Transactions involving a revolving period in excess of 1 year or a pre-funding component of more than 10% should only be required to provide the information required on Form SF-1.

Proposed Regulation AB would alter the definition of asset-backed security so that an asset-backed security could not have (1) a prefunding account of more than 10% of the offering proceeds or (2) a revolving period of more than one year. The release states, however, that "[i]f a security does not meet the definition under Regulation AB, the offering may still be registered with the Commission on Form S-1." (Page 23389) These changes would not prohibit public issuances of asset-backed securities with larger prefunding accounts and revolving periods. Rather, it simply means that the disclosure requirements for such public offerings would be governed by the more extensive disclosure requirements of Form S-1.

The proposed definition of asset-backed security may factor into private offerings as well. The release proposes revisions to Rule 144, Rule 144A and Regulation D offerings that would mandate that a transaction document for such offerings "grants any [investor] the right to obtain from the issuer promptly, upon the request of the [investor], information as would be required if the offering were registered on Form S-1 or Form SF-1." **We propose that the language be clarified so that, if the private offering would not meet the definition of an asset-backed security under Regulation AB, then the only information required to be provided to a requesting investor would be that required on Form SF-1.** As currently proposed, it is arguable that an investor can request information that would be required on Form S-1, even if the transaction would not have to be registered on such form if it were offered publicly.

IX. The asset data file and waterfall computer programs do not provide useful information to investors while resulting in significant increased costs to issuers.

The SEC has requested comments on the proposed "Asset Data File and XML" (pg. 23374) and the "Waterfall Computer Program" (pg. 23378). In our experience, in the typical Equipment ABS transaction, investors in Equipment ABS transaction are not interested in receiving asset-level information with respect to each asset included in a portfolio except to the extent that a particular asset exceeds 3% of the value of a security. In over 20 years involving scores of transactions, we are not aware of any instances in any privately negotiated securitization transaction in which the investor has asked for the type or extent of asset-level information proposed by the SEC.

An investment banker with over 20 years of experience in Equipment ABS transactions has questioned the value of requiring an issuer to provide a Waterfall Computer Program. In his experience, all significant investors in Equipment ABS transactions use Intex, not Python, to model cash flows and that a serious investor would never rely on an issuer's cash flow model, but would instead create its own model. Thus, we believe the SEC's proposal to require a Python waterfall model will increase costs (in the form of third-party vendor costs, external auditor costs and increased staff time) while providing little or no benefit to investors. **We propose that the SEC eliminate the required Waterfall Computer Program for Equipment ABS.** In particular, we note that unlike certain RMBS and CDO transactions, even the most complicated Equipment ABS transaction cashflow waterfalls are fairly simply to understand and to model by any reasonable investor by reviewing the straight-forward plain-text waterfall already contained in the disclosure materials and legal transaction documents. Unlike many RMBS and CDO transactions, a typical Equipment ABS transaction waterfall contains only 10-15 items and changes only upon the occurrence of an early amortization event or event of default. We believe that an additional open-source cashflow model would tend to obscure information rather than provide additional transparency to Equipment ABS transactions.

To the extent that waterfall computer programs are required by the SEC, one specialized vendor of computer software has suggested that (i) any libraries used by the program must be open-source as well (for example for XML processing), (ii) the exact version numbers of the libraries be included in the submission package and (iii) that comments in the source code not be required because they would likely increase confusion and decrease readability by a software developer. Finally, this specialized vendor suggested that an independent third party should review and verify the computer program to ensure that it accurately reflects the details of the waterfall contained in the legal transaction documents and appropriately reflects the risk profile of the transaction.

To the extent that asset data files are required, one specialized vendor of computer software to auto and equipment leasing companies has suggested that the SEC require information to be provided in YAML (http://en.wikipedia.org/wiki/YAML) instead of

XML stating that "YAML has all of the benefits of XML but is far less verbose and allows non-technical readers to understand documents without the use of specialized tools".

X. Comments to Specific Table Disclosure Items.

A. Table 1 - Schedule L, Items 1(b)(5), 1(f)(12), 1(f)(13), 1(f)(14) and 1(f)(15) -- in certain sectors of the equipment leasing industry, delinquency is normally tracked and reported by aging buckets. We propose adding the following categories as options to Item 1(b)(5) and the others be modified accordingly:

1 - 0-30 days
2 - 31-60 days
3 - 61-90 days
4 - 91-120 days
5 - 121+ days

B. Table 1 - Schedule L, Item 1(b)(6) -- in certain sectors of the equipment leasing industry, "past due" status is normally tracked based on whether the obligor has made at least 90% of the schedule payment. To reconfigure computer systems to report based on "full scheduled payment" would be expensive and has not been deemed necessary by underwriters, rating agencies and investors.

C. Table 11 - Schedule L-D, Items 1(f)(2), 1(f)(3), 1(f)(5), 1(f)(6), 1(f)(10), 1(f)(11) and 1(f)(17) -- in the equipment leasing industry, payments are normally tracked based on the "regularly scheduled payment" concept which does not distinguish between principal and interest components (although, a lease payment does implicitly contain a "principal" and an "interest" component, these are not separately tracked). We recommend that these items be combined into a "regularly schedule payment" item. To reconfigure computer systems would be expensive and has not been deemed necessary by underwriters, rating agencies and investors.

D. Table 11 - Schedule L-D, Item 1(f)(4), 1(f)(1) and 1(f)(9) -- this item requests information on "actual other amounts paid". In the equipment leasing industry, payments may include a variety of items that are not pledged as part of the collateral for the securitization such as (i) late fees, documentation fees and similar charges that are payable to the sponsor / servicer, (ii) sales and property taxes payable to governmental authorities and (iii) pass-through items billed on behalf of a third party such as a monthly service / repair charge or insurance which are directly remitted to third parties, and so detailed reporting on them would not be relevant to investors. We recommend that item 1(f)(4) be removed and that items 1(f)(1) and 1(f)(9) refer solely to payments which have been pledged to the securitization.

E. Table 11 - Schedule L-D, Item 1(f)(7) and 1(f)(8) -- In the equipment leasing industry, leases are generally tracked based on an "implicit principal balance" rather than on "current asset balance" and "current scheduled asset balance". We recommend that these items be modified to reflect current industry practices.

F. Table 11 - Schedule L-D, Item 1(g)(1) -- In the equipment leasing industry, securitization servicing fees are generally based on the total securitization pool and are not tracked on a lease-by-lease basis. Reporting a servicing fee on a lease-by-lease basis is not meaningful. We recommend that this item be modified to reflect current industry practices.

G. Table 11 - Schedule L-D, Items 1(g)(6), 1(g)(7), 1(k)(1) and 1(k)(2) -- As described above, in the equipment leasing industry, "regularly scheduled payments" are generally tracked instead of "principal" and "interest". We recommend that this item be modified to reflect current industry practices.

H. Table 11 - Schedule L-D, Items 1(g)(8) and 1(g)(9) -- As described above, in the equipment leasing industry, payments may include a variety of items that are not pledged as part of the collateral for the securitization such as (i) late fees, documentation fees and similar charges that are payable to the sponsor / servicer, (ii) sales and property taxes payable to governmental authorities and (iii) pass-through items billed on behalf of a third party such as a monthly service / repair charge or insurance which are directly remitted to third parties. Neither are cash flows which are collateral for the securitization and so detailed reporting on them would not be relevant to investors. We recommend that item 1(g)(8) and 1(g)(9) be removed.

I. Table 6 - Schedule L Item 6(b)(1) -- we propose that the following categories be added:

10 - Food Service
11 - Retailing

J. Table 6 -- Schedule L Item 6(c)(1) -- we propose that the following categories be added:

16 - Railroad
17 - Maritime
18 - Interstate Highway
19 - Aircraft and Engines

K. Table 7 - Schedule L Item 7(a)(1) -- please specify the purpose for determining the "Lease type". We note that leases may be classified differently depending on (i) whether viewed from the lessee's or the lessor's/lender's perspective and (ii) for accounting, tax or other purposes.

L. Table 7 - Schedule L Item 7(b)(1) -- we propose that the following categories be added:

10 - Food Service
11 - Retailing

M. Table 7 - Schedule L Item 7(b)(3) -- As discussed above, the residual value is (i) often confidential unless there is a publicly available source for the residual value and (ii) irrelevant to investors on an asset-by-asset level unless the particular item of equipment accounts for more than 3% of the value of the collateral.

N. Table 7 -- Schedule L Item 7(c)(1) -- we propose that the following categories be added:

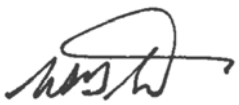
16 - Railroad
17 - Maritime
18 - Interstate Highway
19 - Aircraft and Engines

Conclusion

The ELFA appreciates the efforts of the SEC to appropriately regulate the asset backed securities market to increase investor confidence in the securitization marketplace and minimize the likelihood of future financial crises that affect the capital markets. As described above, we believe that certain aspects of the proposed rules do not provide a real benefit to the investor community but do impose significant costs on potential issuers of Equipment ABS. The proposed rules taken as a whole may cause a substantial decrease in the number of Equipment ABS transactions that will occur (especially for smaller or infrequent issuers) and may cause issuers to instead seek additional lending from traditional syndicated loan facilities provided by banks. That would decrease the overall transparency of the U.S. capital markets, decrease the investment opportunities for institutional investors, decrease the overall capital available to equipment lessors/lenders and result in overall higher financing costs -- which are passed on to operating companies in the form of higher equipment finance costs and then to consumers through higher costs. We believe that the alternatives discussed above will promote an optimal cost-benefit solution that appropriately protects the investor community and the broader economy while preserving access to the capital markets for equipment lessors/lenders.

Respectfully submitted,

EQUIPMENT LEASING AND FINANCE ASSOCIATION (ELFA)

By: 

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President