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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: SEC NOTICE OF PROPOSED RULEMAKING FOR ABS AND REQUEST FOR ADDITIONAL COMMENTS ON ASSET LEVEL INFORMATION REPORTING REQUIREMENTS (SEC FILE NO. S7-08-10)

This letter supplements our letters dated June 8, 2011, October 20, 2011, and December 20, 2011 in response to the SEC's March 29, 2011 Notice of Proposed Rulemaking (the "NPRM") to implement the credit risk retention requirements of P.L. 111-203 (the "Dodd-Frank Act") and its Notice of Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment (the "Re-Proposal") and is focused on responding to various questions raised by the Commission during our meeting on May 16, 2012.

Background on ELFA

ELFA is the trade association that represents financial services companies and manufacturers in the U.S. equipment finance sector. The industry's equipment finance volume is projected to be $628 billion in 2012 and 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 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, agriculture and off road equipment, medical technology and equipment, IT equipment and software and virtually every other type of equipment.

ELFA represents virtually all sectors of the equipment finance market and its members see practically every type of equipment financing transaction conducted in the United States and every type of funding available to providers of equipment finance. 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/funding source. ELFA truly is at the heart of equipment finance in the United States.

Treatment of nonscheduled payments.

The NPRM proposes that the securitizer should be permitted to receive only scheduled payments of principal on the assets but not its subordinated share of prepayments or recoveries from disposition of equipment under defaulted leases and loans. The NPRM declares this prohibition "is designed to ensure that unscheduled payments would not accelerate the payoff of the eligible

horizontal residual interest before other ABS interests [and] reduce the capacity of the [sponsor] to absorb losses on the securitized assets".

However, equipment lease payments are made as rentals rather than principal payments, and hence this proposal is more suited to the mortgage-backed securities ("MBS") and credit card ABS worlds, where there are separate payment date "waterfalls" for principal and interest collections from the assets. In our meeting, we also pointed out that Equipment ABS is subject to an artificially high prepayment experience, because upgrades typically are documented as an early termination and prepayment of the original contract, in exchange for a new contract for the reconfigured equipment. This mechanism is essentially mandatory where the contract has been securitized and the servicer has no authority to renegotiate a contract for a higher periodic rental. This prepayment experience does not exist in MBS, auto loans, health care or trade receivables. Imposing this element of the NPRM on Equipment ABS would result in a unique burden on this asset class.

Furthermore, a prepaid or defaulted contract is valued at zero, thereby accelerating the entire remaining discounted contract balance as the borrowing base is reduced. Consequently, when the prepayment or recovery proceeds are deposited in the collection account, the outside investors receive a higher than usual amount of principal distributions. To the extent that the issuer or sponsor receives any amounts remaining at the bottom bucket of the waterfall, the ratio of the horizontal risk retention piece to the outside investor securities should remain constant. To require otherwise would be to impose a *rising* level of risk retention upon the sponsor and would be inconsistent with prevailing investor requirements as well as principles of true sale analysis.

Principal payments on "horizontal" securities.

Page 45, lines 7 and 8, of the NPRM suggest that an eligible horizontal residual interest may not receive any principal payments "until all other ABS interests in the issuing entity are paid in full". In our May meeting, the Commission representatives indicated that the intent was to restrict principal payments to the holder of an eligible horizontal interest, *on each periodic payment date*, until principal payments *then due* to all senior securities had been paid in full. That interpretation coincides with longstanding market practice and we respectfully request that the final Rule be written accordingly.

Overcollateralization.

Equipment ABS differs from the other, larger securitized asset classes, in that it typically does not utilize a trust (such as a REMIC trust for MBS or a master trust for credit card receivables) which issues certificated securities for all of the economic interests. Instead, investors in both term and warehouse securitizations use the concept of an "advance rate" to calculate the aggregate original principal amount of Equipment ABS which are issued against the borrowing base (generally, the discounted principal balance of the equipment finance contracts). On each periodic payment date, the issuer will receive payments from its subordinated interest only after all other senior "waterfall" claims (such as trustee and servicer fees and expenses, and interest and principal payments due to third party noteholders) have been paid on that periodic payment date. The difference between the aggregate discounted contract balance on the closing date, and

the discounted amount of all such senior claims, commonly is referred to as "overcollateralization" and constitutes a valid form of horizontal risk retention by the issuer.

During the 27 years that Equipment ABS have been issued, neither investors nor sponsors have insisted that overcollateralization be documented as a senior security. This structure mirrors that used for decades in leveraged lease financings, in which the owner/lessor/borrower receives its excess rent on each periodic rent payment date after the periodic debt service payments have been made, without an equity security having to be issued, and is based in large part on the tax treatment of lease related assets under the Internal Revenue Code. Like leveraged leases, many Equipment ABS pools include "true tax leases" in which the lessor's tax basis is in the leased equipment, which is amortized over time as depreciation, while separately recognizing income from the lease payments. Although, as an economic matter, subordinated cash flow associated with the overcollateralization in a leveraged lease or an Equipment ABS are indistinguishable from the rights which the issuer (or an affiliate) would possess as the holder of a deeply subordinated "Z bond", issuance of a Z bond could adversely affect the tax treatment of the transaction for the issuer[1]. The Commission should not require issuance of a Z bond where the economic impact with overcollateralization is identical for the investors but has a potential adverse impact on the tax treatment for issuers, especially where market participants have not deemed it necessary or advisable to do so.

Reserve account permitted investments.

In our May meeting, the Commission representatives properly observed that it is no longer permitted to utilize NRSRO ratings. In that light, ELFA restates its suggested seven categories of permitted investments, *sans* the references to "highest short-term credit rating". There is every reason to believe that investors and underwriters independently will impose such a requirement; one rating agency recently has confirmed that it still insists upon such a limitation in Equipment ABS documents for which it will issue a rating.

Asset level disclosure.

Our May meeting elicited a vigorous discussion of how investors (or credit enhancers), whether in public or private securitizations, or as purchasers of syndicated portfolios, will demand data on the securitized assets in accordance with their current policies and procedures—and that investors have not required granular data as mentioned in the Re-Proposal. ELFA noted that not even a majority of ASF investor members wanted the SEC to require asset-level disclosure, in part because Equipment ABS does not enjoy the homogeneity of RMBS, credit cards, and auto loans. ELFA and ASF, along with the American Bar Association, worry that imposing asset-level disclosure is very likely to result in daunting staff and systems requirements and hence to block entry to the ABS capital market by smaller equipment finance companies. Furthermore investors, placement agents, and credit enhancers also have not clamored for grouped level data,

[1] If overcollateralization was required to be captured in a Z bond or other security issuance, the security would have to be issued in a form that is not debt and that is in substance not treated as debt for tax purposes. Otherwise the issuer would risk not being treated as the owner of the collateral pool or worse yet, treated as having sold all the lease receivables (thereby accelerating all the receivable income on the true leases into income at the time of sale) while continuing to own the equipment and recover its cost basis (via tax depreciation) over time.

and hence ELFA believes that the Commission should continue to require pool level data and let market participants impose any greater granularity on a deal by deal basis.

Municipal pass-through ABS.

The proposed Rule creates appropriate exemptions for ABS securities issued by States and political subdivisions and public instrumentalities of States and territories by referencing Section 3(a)(2) of the Securities Act of 1933. During our May meeting, the Commission representatives noted confusion over the nature of the exemption we proposed in our June 8, 2011 letter on municipal pass-through ABS. Our intention was to extend exemption from the credit risk retention requirement for municipal pass-through ABS to cover municipal pass-through ABS securities which represent ownership of State and local government obligations. We believe this is appropriate for the same credit and policy reasons that support the Section 3(a)(2) registration exemption; in both cases, the underlying assets consist of State and local government obligations.

State and local governments finance their acquisition of essential government equipment and other personal property by entering into bond, note, loan, capital lease, installment sale and similar financing obligations (*"Municipal Obligations"*) that (1) generally qualify as exempt securities under Section 3(a)(2) of the Securities Act of 1933; (2) are federally tax-exempt, subject to compliance with requirements of the Internal Revenue Code of 1986; and (3) would not be an "asset-backed security" under the Dodd-Frank Act or would qualify for the exemption under the proposed Rule. A significant source of funding for essential State and local government equipment and other personal property is provided through the issuance of securities that are structured to constitute the equivalent of ownership by investors of undivided interests in a pool of underlying Municipal Obligations (*"Municipal Pool ABS"*) in order to pass-through federally tax-exempt income that would not be passed-through as federally tax-exempt if the securities were issued as debt obligations collateralized by a pool of Municipal Obligations.

The final rules should exempt Municipal Pool ABS from credit risk retention for the following reasons:

1. As has been well established, Municipal Obligations have the lowest default rates of any class of issuer. ABS representing equity interests in a pool of Municipal Obligations do not pose any credible threat to the safety and security of the financial system. Even in the few instances of default (*e.g.,* Jefferson County, Alabama), several have been the result of fraud and malfeasance. The predicted cascade of municipal bankruptcies has not come to pass.

2. Imposition of the Rule will have a disproportionate effect on small local governments that finance their purchase of major equipment such as school buses, fire trucks, police cars and many other categories of essential government equipment. States and larger local governments, such as New York and Chicago, are able to access the capital markets directly to finance major equipment acquisitions through the issuance of bonds in the public capital markets. Smaller local governments may not have such access and may be financing 5 police cars or a fire truck over a 5-year period. These smaller local governments rely on lenders who are able to access the capital markets by aggregating

large numbers of Municipal Obligations and packaging them in the form of Municipal Pool ABS. Without an exemption for Municipal Pool ABS, lenders to smaller local governments will have less capital available to lend and pay more in transaction costs, which will directly increase the borrowing costs of smaller local governments to a greater extent than States and larger local governments.

3. The imposition of credit risk retention would adversely affect the market for Municipal Pool ABS because, with historic losses for Municipal Obligations at such low levels, certain forms of risk retention could cause such transactions to be reclassified for tax purposes as debt (secured by Municipal Obligations), the interest on which is not federally tax-exempt, or may have other negative consequences to the federal tax analysis that supports pass-through of federally tax-exempt income by Municipal Pool ABS.

Thank you for your attention to these responses to your thoughtful comments. We appreciate the opportunity to meet with you last month and would be happy to respond to any questions which you may have.

Respectfully submitted,

William G. Sutton, CAE
President and CEO