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October 20, 2011

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 is a response by the Equipment Leasing and Finance Association ("ELFA") to the SEC's Notice of Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment (the "*2011 Reg AB Proposals*") and is focused primarily on the SEC's request for comments on proposed rules that would require asset level information reporting in respect of equipment asset-backed securities ("*Equipment ABS*").

Reference is made to Federal Register/Vol. 76, No 151/Friday, August 5, 2011 which contains the SEC's re-proposed rule and its requests for comment mentioned above and to SEC File No. S7-08-10.

Background on ELFA

ELFA is the trade association that represents financial services companies and manufacturers in the U.S. equipment finance sector. In 2010, this industry's equipment finance volume was \$559 billion and its financing volume is projected to be \$628 billion in 2011. 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 virtually 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.

Background on Equipment Finance

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 SECs proposed asset level reporting requirements under Regulation AB would, if adopted as proposed in 2010 or as re-proposed in 2011, have an adverse impact on the ability of the equipment finance sector to access the capital markets and thereby impair the availability of credit for its customers, who lease or borrow to acquire essential equipment for their businesses. Access to the securitization market for equipment finance providers has already been chilled due to the financial crisis and uncertainties over regulatory reforms in the United States. Thus, although the Equipment ABS sector has rebounded somewhat since the 2008 financial crisis, Equipment ABS issuers remain on the sidelines due to the lack of meaningful access to capital market funding sources.¹

The U.S. capital markets are extremely important to equipment lessors/lenders because they operate in 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. 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 ABS. The securitization market provides a valuable alternative to the bank loan market and has provided access to institutional investors (such as pension plans, insurance companies and investment funds) that provide a meaningful complement to traditional syndicated bank loans. The availability of funding at competitive prices provided by the securitization market helps to reduce the total prices paid by the businesses that are customers of equipment lessors/lenders for new assets used in their businesses. Additionally, Equipment ABS has allowed both banks and institutional investors to diversify their portfolios.

Equipment ABS have performed well, both before and during the financial crises, and are considered one of the more stable categories of asset backed securities.^{2 3} As noted by ELFA in

¹ See, for example, survey by the Securities Industry and Financial Markets Association (SIFMA), cited in the Equipment Leasing and Finance Foundation Report “Equipment Lease Securitization Performance Versus Other Asset Classes”, October 2011.

² 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 the 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). The Federal Reserve Board also noted in October 2010 that “[A] handful of equipment ABS classes have experienced downgrades, but most securities have had stable performance or even upgrades over time.” See “Report to the Congress on Risk Retention” by The Federal Reserve Board, October 2010. at: www.federalreserve.gov/BoardDocs/RptCongress/securitization/riskretention.html#toc6g

our prior comment letter on the 2010 Proposals regarding Regulation AB (the “*2010 Reg AB Proposals*”)⁴, Equipment ABS offerings are typically smaller and less frequent, and the overall volume of Equipment ABS transactions completed each year is significantly less, than the volume in most other sectors of securitization. As a result, the investor base for Equipment ABS is smaller, more sophisticated and better informed than investors in more generic ABS and has a history of working collaboratively with the equipment finance community to develop industry wide reporting standards for this class of ABS when the demand for more uniform reporting has arisen. For instance, in response to investor awareness of a correlation between loss performance and date of origination of equipment finance contracts, ELFA worked with issuers and investors to develop the static pool loss reporting method that is now widely used for reporting losses on underlying assets securing Equipment ABS.

ELFA is not aware of any specific lease or loan level data that has been widely requested by investors in the Equipment ABS sector or of investors that have withdrawn from the Equipment ABS sector due to lack of access to contract or pool level information. Although we understand that a few of the comment letters submitted to the SEC in response to the 2010 Reg AB Proposals endorsed requiring contract level disclosures and reporting for Equipment ABS, our members do not believe that there is a widely held view among regular investors in Equipment ABS that such information is necessary or useful.

It is also worth noting that the equipment finance industry is populated by numerous lessors and lenders that focus on financing a particular type of equipment or software or that specialize in financing assets sold by a particular type of vendor or that are used in a particular type of industry. Many such specialty finance companies are independently owned and operated and their access to the capital markets is most often through the issuance of privately placed Equipment ABS, where asset pool composition and asset level and pool wide reporting and triggers can be customized to fit the specialized focus of the issuer and the investor’s needs. Mandating specific and detailed, rather than principles-based, disclosure and reporting rules would thus be impractical and would be most likely to adversely impact Equipment ABS issuers in this category without enhancing investor decision-making in any measurable respect.

We thus remain concerned that imposition of one size fits all asset level reporting for Equipment ABS, especially in the private placements market, is unnecessary given the nature of the investor base and the lack of any widespread demand for or agreement on minimum asset level information that is needed for this category of ABS.

³ We believe that the relatively stronger performance of 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, (iii) more conservative valuations for equipment as compared to housing and (iv) the absence of the “originate to distribute” business model in the Equipment ABS Sector.

⁴ See ELFA’s letter to the SEC, dated July 22, 2010, providing comments on the SEC’s prior Notice of Proposed Rulemaking regarding Regulation AB (Release Nos. -33-9117; 34-61858, April 7, 2010).

Concerns Regarding Asset Level Reporting For Equipment ABS

This letter highlights those aspects of the asset level reporting proposals in the 2011 Reg AB Proposals that, if implemented, would be particularly problematic for the equipment finance industry and outlines our recommendations regarding asset level reporting with respect to Equipment ABS.

The equipment finance sector is characterized by a large number of highly competitive providers of loan and lease financing, both to small businesses and to larger enterprises. We believe, and several issuers in the equipment ABS sector have confirmed, that both the 2010 Reg AB Proposals and the 2011 Reg AB Proposals are likely to adversely affect the cost and availability of credit to the commercial obligors which comprise the overwhelming majority of underlying lessees and borrowers in equipment ABS. Similarly, we believe that investors in equipment ABS have the marketplace power to force disclosure, both in due diligence meetings and in placement memoranda, of any data which initial purchasers and other investors deem material--and hence that certain aspects of the proposed revisions to Regulation AB are both unnecessary and counterproductive.

For over 25 years, the private placement marketplace has functioned as a laboratory for securitization of new asset classes which are not yet sufficiently developed to be marketed through the (often) “take it or leave it” marketing process of a registered public offering. In the 1980s, securitization of equipment leases, with their status as “executory contracts” under the Bankruptcy Code, was developed almost exclusively in the private placement arena, with the exceptions being programs sponsored by nationally recognized banking institutions. Whether public or private, Equipment ABS transactions during the 1985-1995 period typically required lengthy due diligence and structuring discussions, as well as detailed negotiations with potential institutional investors. To our knowledge, none of those investors was ever denied asset level data which it requested in order to make its investment decision. Had there then existed legal compulsion to provide certain data, that might have had the unintended effect of suppressing the free thinking which characterized this emerging asset class, because many issuers and investors might have defaulted to the SEC requirements as being both the “floor” and “ceiling” for disclosure.

Similarly, the adoption of Rule 144A in the mid-1990s energized the ABS marketplace by streamlining the process of marketing Equipment ABS to institutional investors. By facilitating the means by which investors could resell these securities, and reducing related transaction costs, Rule 144A provided much-needed liquidity to ABS. The proposed conditioning of the Rule 144A and Regulation D safe harbors, upon compliance of Regulation AB asset-level disclosure, would improperly mix two different concepts in federal securities law: the circumstances in which private offerings would be exempt transactions; and the disclosure standards for public and private offerings. Federal securities laws have regulated more strictly the information which must be provided in a registered public offering (with its looser standards for resale of the securities), whereas private offerings (whether under Securities Act Section 4(2) or a safe harbor exemption from registration) have been governed by the more general disclosure standard of Exchange Act Section 10 and Rule 10b-5 thereunder.

Equipment ABS participants have expressed concern that the proposed disclosure requirements could have the unintended and undesired effect of limiting the private marketplace to the larger issuers which possess the visibility and resources to participate in the registered public marketplace. That consequence further would be likely to suppress the innovation, whether in equipment ABS or other asset classes, which the U.S. securities markets traditionally have provided to new issuers and nontraditional financial products.

Some observers have remarked that the SEC may be concerned about companies which have issued ABS in the public market but may attempt to circumvent the disclosure requirements by contemporaneously issuing ABS in the private market. We appreciate those concerns and would not object if Regulation AB were revised to require such an issuer to provide, upon request, the same kind of data which it had provided to investors in a public offering for substantially the same kind of structured finance product within the twelve months prior to commencement of the private offering.

That said, commentators from both the issuer and the investor side of Equipment ABS have noted that the 2011 Reg AB Proposals suffer from a number of defects. For one, the costs to issuers in the private market, of developing and verifying loan-level data (even data grouped by categories of obligors by credit quality) would far outweigh the illusory benefits of compelling such disclosure to institutional investors. As previously noted, these investors demonstrably have had ample access to asset-level data during both the formative and maturity stages of Equipment ABS. We are unaware that any institutional investor ever has ceased to participate in this ABS segment because of inadequate access to material information, no matter how detailed.

Equipment ABS Differs From Auto ABS

A further defect is that the current proposal in effect treats Equipment ABS as if it were another formulation of Auto ABS. However, Auto ABS is a much more homogeneous asset class as compared to Equipment ABS. The general uniformity of auto finance contracts makes it easier to develop a common set of data points that are likely to be easily tracked and relevant to most investors. By contrast, the lack of uniformity in equipment finance makes developing a common set of data points an almost impossible task. For instance:

- Auto ABS is backed by limited variants of contracts (either retail installment sales, secured loans or operating leases) that finance a smaller range of equipment (primarily private passenger auto and light and medium duty trucks) than those backing Equipment ABS--where the contracts can take the form of secured loans, leveraged leases, single investor "true" leases, rental agreements, lease-purchase contracts or conditional sale agreements, rent stripping transactions, sale-leaseback transactions, and equipment finance agreements, to name a few which are prevalent today. This is in part because the contracts that back Equipment ABS are primarily a commercial product that is subject to less regulation and that is used to finance a vast array of equipment types for a vast range of obligor types. These factors enhance the ability of equipment lessors and lenders to offer a range of financial products customized to fit various types of equipment, industry and obligor but also reduce the ability to design and impose a homogenous set of data reporting requirements.

- Because auto loans and leases are primarily a consumer product, they are underwritten on a more standardized basis that looks at Fair Isaac (FICO) scores and similar statistical metrics to assess credit quality and that better lend themselves to loan level disclosures regarding credit quality, either individually or by uniform groupings of obligor credit quality. In contrast, Equipment ABS obligors range from AAA-rated corporations to unrated middle market companies to small businesses which may or may not have a FICO score. In addition, equipment leases and loans are often credit enhanced by use of cash reserves, letters of credit, cross collateralization and other means that are diverse and variable. Thus, mandating Auto ABS loan and lease level disclosures about FICO scores, interest rates and other key credit terms is both more relevant and less likely to reveal confidential or competitive information than is the case with Equipment ABS, where developing and agreeing on a mandated set of requirements for loan and lease level disclosures regarding credit terms is problematic at best.
- Contracts backing Equipment ABS are used to finance assets as small as swipe card machines and as large as ocean-going vessels and jumbo jet aircraft and many securitized pools involve a mixture of equipment types. This range of equipment types in turns results in (i) a wider range of original equipment costs for equipment finance contracts that can vary dramatically by equipment type and may encompass one item of equipment, a package of equipment and/or a mixed package of equipment and software, (ii) a wider array of mechanisms for perfecting liens (i.e. while liens for auto contracts are typically perfected by certificate of title notations, lien perfection on equipment varies by asset type and may involve UCC filings, STB filings, FAA filings, certificates of title or other methods, each of which impacts structure, costs and enforcement mechanisms for an equipment finance transaction differently), and (iii) less uniformly recognized or readily available sources for projecting residual values and for effecting end of term sales and remarketing options, to name but a few of the areas of variability.

This wide divergence in characteristics among the assets backing Equipment ABS as compared to those backing Auto ABS should lead to the conclusion that what may be justifiable and workable for Auto ABS is not readily transferable to Equipment ABS and a one-size-fits-all regulation for both assets classes makes no sense.

Confidentiality is a Real Concern for Our Members

Our August 17, 2010 letter provided substantial background on the confidentiality issues which the Proposal would present to Equipment ABS. We will not reiterate the detailed analysis of the problems which would result from the Proposal, but we wish to emphasize the following:

a. Asset level data, even data grouped by credit quality (which as noted above may not be feasible for many Equipment ABS asset classes), may enable competitors to derive the originator's proprietary pricing and underwriting practices.

b. Obligor credit ratings and other proposed disclosure regarding ability to pay are not as pertinent to Equipment ABS as in other asset classes. An equipment lessor or lender considers

several subjective factors, such as whether the equipment is “mission critical” to the obligor’s business operations; how readily the equipment can be repossessed and remarketed; and whether the equipment is likely to produce meaningful resale or re-lease revenues at lease expiration.

c. Most (but we concede not all) investors in Equipment ABS prefer that data relate to the originator’s entire portfolio or to the securitized asset pool, rather than to each individual asset. For instance, delinquency data traditionally has been presented by aging buckets for the entire pool rather than by the specific number of days past due for each contract; servicing fees are calculated on the basis of the securitized pool rather than by individual assets; and breakdown of data by true lease versus a loan-type contract has not been required, because of the subjective analysis which is used to distinguish between the two kinds of contracts. As the American Bar Association’s “Annual Survey of Uniform Commercial Code: Leases” has demonstrated over the years, courts have struggled with the question of whether a contract is more properly characterized as a lease or a loan, reaching inconsistent and occasionally erroneous conclusions. It would be improper to impose upon Equipment ABS issuers the burden of representing whether each contract in the securitized pool constitutes a true lease or a lease intended for security, when courts of law and academic commentators in many instances have been unable to agree upon how to classify a particular contract.

d. There has been understandable reluctance among our member companies which are issuers of Equipment ABS, to disclose detailed data or methodology regarding calculation of anticipated equipment residual values. Whether or not the contracts are securitized, this is perhaps the most competitive aspect of equipment finance, because the more aggressively optimistic a lessor is in projecting the residual value of the equipment under a lease RFP, the lower the periodic lease rental which the lessor needs to offer the user, in order to be awarded the transaction, recover its investment and earn a competitive profit. However, we believe that issuers would be willing to disclose--using bands (such as “projected residual amount \$5,000 to \$10,000”) for the contracts in the pool--the number of contracts, the average discounted balance of the contracts within that band, and percentage of the aggregate discounted contract balance represented by the contracts within that residual band.

e. For those investors that do prefer asset level reporting for Equipment ABS, such information can be readily obtained in negotiations with an issuer in the context of a Reg D private placement, where a motivated issuer can work with an investor to customize the information presented so as to make it relevant to the asset pool being securitized while also maintaining confidentiality regarding the information provided.

Conclusion and Recommendations

ELFA appreciates the efforts of the SEC to update Regulation AB and appropriately regulate the asset backed securities market to increase transparency and investor confidence in the securitization marketplace. Nonetheless, we strongly recommend that the final Regulation AB reporting rules recognize that additional asset level reporting is valuable only if it has the potential to enhance decision making by investors and that the costs associated with the tracking and reporting of information not otherwise required by issuers or investors merely imposes

additional regulatory costs and constraints on capital formation. The private placement market functions as a laboratory for innovation and historically has been characterized by initial purchasers and investors which are knowledgeable and insistent upon receiving whatever they deem relevant, both at closing and through periodic reporting.

Accordingly, we recommend that:

1. The final Regulation AB should recognize the many differences between Equipment ABS and Auto ABS and should provide for disclosure and reporting rules for Equipment ABS that are tailored to the more unique features of Equipment ABS, rather than attempting to impose standardized disclosure requirements on both asset classes. In particular, we continue to object to any mandatory requirement that loan level or lease level data be disclosed or reported periodically in offerings of Equipment ABS (whether such offerings are registered public offerings or safe harbor private placements). We do note that in unusual situations (such as aircraft ABS) asset level disclosure at closing may be warranted where an individual asset accounts for more than 10% of the aggregate asset base.

2. We concede that the practical objections to loan-level data disclosure become less persuasive if an issuer or its sponsor has within the last 12 months arranged one or more registered public offerings of Equipment ABS for the same asset class and has made loan level or lease level disclosures in that public offering. In that instance, we accept that the Commission justifiably could require such an issuer or sponsor to provide, upon request by a prospective investor in a safe harbor private placement, substantially the same kind of loan level and lease level data which it previously delivered in the registered public offering.

3. To establish the expectations for a certain level of mandated disclosure, even in safe harbor private placement transactions, we believe that it would be acceptable for the Commission to require disclosure and reporting using grouped data for each significant equipment type, for the following categories: a) type of receivable (loan, lease, other); b) number of contracts; c) new or used equipment; d) original term (by bands); e) remaining term (by bands); f) implicit contract discount rate (by bands); g) geographic region; h) aggregate original discounted contract balance; and i) aggregate current discounted contract balance. In this connection, we recommend that projected residual value disclosure at closing (by dollar amount bands) be mandated only where the portion thereof included in the asset base constitutes more than 10% of the asset base (including the discounted present value of the lease and loan scheduled payments in the contract pool) used in calculating the original principal amount of the Equipment ABS.

Thank you for your attention to our comments. We would welcome the opportunity to meet with you and discuss our suggestions and any questions which you may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Sutton', with a stylized flourish extending from the end.

William G. Sutton, CAE
President and CEO