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April 28, 2014

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)

On February 25, 2014, the SEC re-opened the comment period applicable to proposed amendments to the rules governing asset-backed securities (“ABS”) disclosure and registration, released a memorandum describing an alternative method for disseminating asset level data for ABS (the “February 2014 Memo”), and requested comments on both the memorandum and on the issue of whether asset level disclosure is necessary for independent due diligence by investors in non-mortgage related ABS. This letter responds to those developments and supplements our prior letters dated June 8, 2011, October 20, 2011, December 20, 2011, and June 20, 2012 that commented on the SEC’s Notice of Re-proposal of Shelf Eligibility Conditions for Asset-Backed Securities and Other Additional Requests for Comment (the “Re-Proposal”).

### Background on ELFA

The Equipment Leasing and Finance Association (ELFA) is the trade association representing financial services companies and manufacturers in the \$827 billion U.S. equipment finance sector. Equipment finance not only contributes to businesses’ success, but to U.S. economic growth, manufacturing and jobs. Seventy-two percent of U.S. companies use some form of financing when acquiring equipment, including loans, leases, and lines of credit (excluding credit cards). Each year American businesses, nonprofits and government agencies invest over \$1.448 trillion in capital goods and software (excluding real estate). Some 57%, or \$827 billion, is financed through loans, leases, and other financial instruments. America’s equipment finance companies are the source of such financing, providing access to capital.

ELFA represents more than 580 member companies, including many of the nation’s largest financial services companies and manufacturers and their associated service providers, as well as regional and community banks and independent medium and small finance companies throughout the country. ELFA member companies finance the acquisition of all types of capital equipment and software, including agricultural equipment; IT equipment and software; aircraft; manufacturing and mining machinery; rail cars and rolling stock; vessels and containers; trucks

and transportation equipment; construction and off-road equipment; business, retail, and office equipment; and medical technology and equipment. The customers of ELFA members range from Fortune 100 companies to small and medium sized enterprises to governments and non-profits.

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 and our member companies provide lease, debt and equity funding to small and medium sized businesses, as well as larger companies in the transport and mining sectors.

#### Reiteration that Asset-Level Disclosure Has Never Been Requested by Investors in Equipment ABS

Our meeting with the SEC in May 2012 elicited a vigorous discussion of how investors and credit enhancers, whether in public or private securitizations, or as purchasers of syndicated portfolios, demand data on securitized assets in accordance with their current policies and procedures. We noted at that meeting that investors in Equipment ABS had not historically required or even requested the granular asset-level data being mentioned in the Re-Proposal. ELFA also noted that a majority of the then ASF investor members did not want the SEC to require asset-level disclosure, in part because Equipment ABS does not enjoy the homogeneity of other asset classes, such as RMBS, credit cards, and auto loans. Equipment finance contracts are used to finance a wide variety of asset types and sizes and can range from \$1,000 to \$100,000,000 in unit cost/contract amount. Since our meeting in May 2012, Equipment ABS issuance has continued to rebound yet no investors, placement agents, or credit enhancers have requested that our member issuers provide even the group-level data suggested in our prior comment letters or the asset-level data suggested in the Re-Proposal.<sup>1</sup>

It thus seems highly unlikely that imposing a uniform set of asset level disclosure requirements like those referenced in the Re-Proposal or in the February 2014 Memo on all types of Equipment ABS is viewed by investors in this asset class as necessary, or even desirable, for their due diligence purposes. As a result, ELFA continues to believe that the Commission should require only pool level data for Equipment ABS, especially in private placement transactions, and that if any more detailed disclosure is mandated for Equipment ABS that it should be limited

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<sup>1</sup> In its Report to Congress on Risk Retention, dated October 2010, the Board of Governors of the Federal Reserve System pointed out that "Equipment loan and lease ABS in general and the triple-A rated securities, in particular, performed well during the financial crises". They also noted that only a handful of Equipment ABS experienced [ratings] downgrades, most had stable performance or even [ratings] upgrades over time and, more importantly, that most of the downgrades that did occur were associated with downgrades of the monoline insurers that wrapped the Equipment ABS issued by smaller issuers (as opposed to performance issues with the actual securitized equipment lease and loan pools). See pages 63-64 of the Report. Given the historically strong performance of Equipment ABS, it is easy to see why Equipment ABS investors have not felt the need to review asset level data on equipment finance contracts.

to grouped account data, and that market participants should be left to impose any greater granularity on a deal by deal basis.

Disclosure of Asset-Level Information Potentially Exposes the Private Information of Small Business Owners and the Proprietary Customer Lists of Equipment Finance Companies

The granular data disclosure that Regulation AB II would impose upon sponsors of Equipment ABS is as susceptible to customer identification and/or misuse as is asset-level disclosure for consumer ABS classes. We note that many commercial use equipment finance transactions involve small businesses, including individuals, that are doing business in the form of a general partnership or as a sole proprietorship and that the principals of a small business, however organized, may provide personal guarantees for their transaction. Thus, a zip code combined with a particular equipment type (such as a bakery truck or bakery oven) may be the only information needed to identify a particular customer, including an individual, such that other information disclosed about such customer's contract ends up violating restrictions on disclosure or use of personal, non-public data and/or spotlighting business opportunities for competitors.

In addition, asset-level disclosures required from a securitizer could be matched with other public data (such as UCC financing statements that are publicly recorded and are required to state the customer's name and address). This combining of data has an even greater potential to violate restrictions on disclosure or use of personal, non-public data and to allow a competitor to reverse engineer actual customer lists, origination channels and/or pricing practices, to the disadvantage of the securitizer providing the information.

Website Disclosure Does Not Adequately Address Privacy or Competition Concerns

If required to disclose asset-level data of any type, ELFA's member companies would prefer that such information not be disclosed on EDGAR and instead be disclosed on other more secure and limited access sites where access to the information and activity on the site can be conditioned and monitored. Nonetheless, like the members of SFIG and SIFMA, ELFA's members are concerned that disclosure of asset level or grouped account data, whether made to third parties via EDGAR or via a secure private website, will create significant legal and reputational risks due to competing obligations and unresolved issues under existing privacy laws.<sup>2</sup> In addition, ELFA's members are concerned that under existing securities laws, disclosure of SEC mandated information via a restricted website creates the added legal risk that any enforcement of preconditions to access and/or restrictions on continued access to the site could give rise claims under existing securities laws that material information is being withheld from actual and prospective investors.

Lastly, ELFA's members are concerned that posting asset-level data or even grouped-level data on private websites goes well beyond any information currently being posted on private websites

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<sup>2</sup> The issues and concerns related to conflicts with existing privacy laws have been extensively detailed by other industry groups, including in letters submitted by the Mortgage Bankers Association on March 28, 2014, jointly by SIFMA and the Financial Services Roundtable on March 28, 2014, in the presentation by SIFMA to the SEC on April 9, 2014 and more recently in the comment letter submitted by the World Privacy Forum on April 18, 2014 [and SFIG on or about April 28, 2014]. We concur with those assessments.

in connection with existing Equipment ABS and will likely impose a significant financial burden on ELFA members to develop and maintain such capabilities while not adequately addressing risks associated with inadvertent or malicious dissemination of such information or providing investors with data considered necessary by them for making decisions regarding their investment.

We note that many equipment finance companies are small or infrequent securitizers. The burden of establishing and maintaining a website to securely hold and maintain asset-level data will disproportionately increase the costs and burdens to such companies, either directly or through contracting to use third party hosted sites. Smaller member companies will thus find it difficult and burdensome to assess and reconcile the requirements of asset-level disclosure with state and federal restrictions on disclosure of consumer and other private data. We estimate that a small, infrequent issuer of Equipment ABS would have set-up technology costs for an outward facing web site of approximately \$125,000 to \$150,000 and costs for maintaining, updating, and reporting of approximately \$125,000 to \$250,000 per issuance attributable to managing data and screening investors and prospective investors, depending on the data fields and frequency and detail of periodic updates ultimately required under Regulation AB II. Additional legal costs associated with privacy law advice, renegotiation of contracts, and additional charges for disseminating information supplied by credit bureaus could dramatically increase those costs. The withdrawal of issuers from the Equipment ABS market due to cost and potential liability concerns will ultimately increase the cost of equipment finance for those businesses (especially small businesses) served by this industry.

More importantly, ELFA is concerned that the disclosure of sensitive private and/or competitive information on a website, even on a website intended to be secure, poses a significant risk to its members. ELFA member companies believe that disclosure of asset-level information on a secure website could be further disseminated in ways that have the potential to violate privacy laws or create competitive disadvantages because (i) the website on which such information is stored is “hacked,” (ii) the information presented on the website is downloaded by a legitimate user but stored on an unprotected network or without limitations on access or (iii) a competitor or other third-party purchases an ABS security from the related issuer intending to access sensitive information other than for purposes of managing its investment in such ABS. Mandating private website (rather than EDGAR) disclosure does not adequately address those concerns. Thus, if the SEC does mandate that asset-level data or grouped account data be disclosed to investors on a website, we respectfully request that the SEC also promulgate rules outlining permissible grounds for restricting access to such information or sites and that protect securitizers from claims related to a failure to disclose information as a result of enforcement of such restrictions.

### Concluding Recommendations

Our member companies continue to be concerned by the implications of the asset-level disclosure that is contemplated by the February 2014 Memo. SIFMA, SFIG and the American Bar Association have all expressed concern that imposing mandatory asset-level disclosure is very likely to result in complex legal entanglements and daunting staff and systems requirements. We are especially concerned that these issues will block entry to or cause the departure from the ABS capital markets by smaller issuers without providing any meaningful

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benefit for investors. Moreover, the SEC has not yet released an updated or final version of Regulation AB II, so it is impossible to determine the true scope of the sensitive or confidential information that may be required to be disclosed under the final rule and the degree of cost to be incurred to develop, implement, and maintain secure methods reporting asset level information that is both compliant with Regulation AB and with privacy laws and that does not give away competitive advantages.

ELFA strongly recommends that the SEC first re-propose those portions of Regulation AB that address whether and when pool or grouped account data disclosure will be permitted in lieu of asset level data disclosure, that it exempt Equipment ABS from any mandatory requirement of asset level or grouped account disclosure and, if not, that it provide more detailed guidance on any specific grouped account or individual asset level data fields considered necessary for due diligence by investors in Equipment ABS. In addition, we request that any final version of Regulation AB II, in whatever form it takes, include a multi-year phase-in that will allow smaller ABS issuers to either develop the systems and expertise necessary to manage their disclosure obligations under all applicable laws and regulations or find alternative funding arrangements. In particular, we suggest that if the SEC does mandate asset level disclosure for all categories of ABS, it delay the effective date of the rules applicable to smaller and or more esoteric categories of ABS until after the effective date applicable to those categories of ABS having the largest new issuance volume, thereby allowing adequate experience to be developed regarding asset level disclosure by those categories and lessening the burden on the industry groups that do not drive the securitization markets.

Thank you for your attention to this letter. We would be happy to respond to any questions which you may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'WGS', with a stylized flourish extending to the right.

William G. Sutton, CAE  
President and CEO